



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/03/09

SUBJECT: Contract for Sale and Purchase of Real Property for Drainage Improvements (Spruce Creek Estates)

DEPARTMENT: Public Works

RECOMMENDED MOTION: To approve Resolution No. 09-95 authorizing the Mayor and City Manager to enter into a contract to acquire a 2-1/2 acre (+/-) parcel of vacant land accessible from Spruce Creek Road for the purchase price of \$400,000, plus buyer's closing costs, and to execute any additional documents necessary to close the transaction.

SUMMARY: For several years staff has been working to resolve drainage problems at the south end of Spruce Creek Road. The impacted areas are Spruce Creek Estates, River Oaks, and parts of Riverwood Subdivision. This 2-1/2 acre (+/-) parcel, having approximately 190 feet of frontage along Spruce Creek, is privately owned (S. Elliott) and shares a common boundary with property proposed for purchase from the Smiths. This one of three parcels of vacant land City Staff is desirous of acquiring in order to make the necessary drainage improvements. The owner has agreed to sell the property to the City for \$400,000, being the MAI appraised fair market value. Closing costs are estimated at \$1,000. Funds are available for this acquisition in Account # 41218005416100, DIP032.

046 *SES*

ATTACHMENTS: [] Ordinance [X] Resolution [] Budget Resolution
[X] Other [X] Support Documents/Appraisal & Contract Available for Review in Manager's Office

DEPARTMENT HEAD <i>WJ</i>	Signed	Date <i>10/28/09</i>
FINANCE DEPARTMENT ASSISTANT <i>[Signature]</i>	Warren Pike, Public Works Director	Date
CITY ATTORNEY <i>[Signature]</i>	Approved as to Budget Requirements <i>SES</i>	Date
	Approved as to Form and Legality <i>for John A. Shelley</i>	Date <i>10/29/2009</i>
CITY MANAGER <i>[Signature]</i>	Approved Agenda Item For:	<i>11/3/09</i>

COUNCIL ACTION: [] Approved as Recommended [] Disapproved [] Tabled Indefinitely
[] Continued to Date Certain [] Approved with Modification:

RESOLUTION NO. 09- 95

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING A CONTRACT FOR SALE AND PURCHASE OF APPROXIMATELY 2.5 ACRES OF REAL PROPERTY LOCATED EAST OF SPRUCE CREEK ROAD; AUTHORIZING EXECUTION OF SAID CONTRACT; AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE CLOSING DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Sue Day Elliott desires to sell and the City of Port Orange desires to buy a parcel of real property located at the southern end of Spruce Creek Road as described in the Contract for Sale and Purchase, attached hereto as Exhibit 1 and incorporated herein by reference; and

WHEREAS, the City plans that the property will be utilized for the development of industrial property; and

WHEREAS, funding is available for acquisition of the property from the drainage fund; and

WHEREAS, the City Council has reviewed the Contract for Sale and Purchase, a copy of which is attached hereto as Exhibit 1, and has determined that it is fair and equitable and that it is in the best interest of the City of Port Orange and the citizens thereof to enter into the Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

(RES. NO 09-____)

Section 1. The Contract for Sale and Purchase, attached hereto as Exhibit 1, is approved and execution of the aforesaid Contract by the Mayor and City Manager on behalf of the City of Port Orange is hereby authorized by the City Council. The Mayor and City Manager are authorized to execute such additional documents as may be necessary to effectuate the intent of this resolution and to otherwise proceed to close the transaction and acquire title to the property on behalf of the City of Port Orange.

Section 2. This resolution shall take effect immediately upon adoption.

MAYOR ALLEN GREEN

ATTEST:

Kenneth W. Parker, City Manager

Adopted on the day of

Reviewed and Approved: 

City Attorney

EXHIBIT "1"



CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY

THIS CONTRACT is made and entered into this 9th day of October, 2009 between: SUE DAY ELLIOTT, a single woman, mailing address 4217 Mayfair Lane, Port Orange, FL 32129; hereinafter referred to as "Seller"; and CITY OF PORT ORANGE, FLORIDA, a municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144, hereinafter referred to as "Purchaser."

1. Seller agrees to sell and Purchaser agrees to purchase the following described real estate, with its appurtenances, if any, located in the County of Volusia, State of Florida:

A portion of Lots 1 and 3, Assessor's Subdivision of Lot 1, Section 34, Township 16 South, Range 33 East, Volusia County, Florida; more particularly described on the attached Exhibits "A-1" and "A-2," Boundary Survey dated May 1, 2003 and prepared for Seller by Sliger & Associates, and made a part hereof by reference.

Also being identified by Parcel Number: 6334-01-00-0030; the subject real estate being hereinafter referred to as "the Property."

General Description and Vicinity of Property: A vacant 2.51-acre +/- waterfront parcel at the southern end of Spruce Creek Road, having access to Spruce Creek Road via an access easement for ingress and egress recorded in Official Records Book 4632, Page 4180, Public Records of Volusia County, Florida. The subject Property is located outside of incorporated Port Orange, in Volusia County, Florida.

Improvements Located on the Site: None

Tangible Personal Property: None

Conveyance by the Seller and Purchase by the Purchaser of the above-described Property is subject to the Standards for Real Estate Transactions set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as Exhibit "B." In the event of a conflict between the terms of this Contract for Sale and Purchase and the terms contained in Exhibit "B," this Contract for Sale and Purchase shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller as follows:

- (a) The Purchase Price for the Property is: Four Hundred Thousand and 00/100 Dollars (\$400,000.00); and
- (b) The total Purchase Price, less the Purchaser's good faith deposit of One Thousand and No/100 Dollars (\$1,000.00), and less expenses and prorations as provided in Standard K and Standard L, by check payable to the order of Seller, to be delivered at the time of closing.
- (d) Upon acceptance of this Contract, Purchaser's good faith deposit shall be paid to and held in trust by Columbia Title Research Corporation Trust Account, 200 Forest Lake Boulevard, Daytona Beach FL 32119, referred to as "Escrow Agent," pending the closing of this transaction and to be delivered to Seller at the time of closing.

3. Title insurance. Seller agrees to obtain from the Escrow Agent named above, at Seller's expense, an owner's title insurance policy insuring Purchaser for the full amount of the purchase price against loss or damage by reason of defect in the title of Seller in the above-described Property. Such policy shall be delivered to Purchaser at the time of closing. Not later than ten (10) days prior to the closing date, Seller shall cause to be delivered to and receipted by the City Attorney on behalf of the Purchaser a title insurance commitment in accordance with Standard A, together with copies of all items noted in Schedule B - Section 1, as prepared for execution and with copies of all items noted in Schedule B - Section 2, as evidenced in the public records or otherwise.

4. Taxes and assessments. Seller agrees to pay before delinquency all taxes and assessments, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing.

5. Risk of loss. Risk of loss or damage to the premises by fire or other casualty between the date of this Contract and closing shall be and is assumed by Seller.

6. Deed. Seller agrees, on full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient warranty deed to the premises, including easement rights for access.

7. Closing. Closing will take place in Volusia County, Florida at a location to be agreed upon by the parties on or before One Hundred Twenty (120) days following the approval of this Contract for Sale and Purchase by the Port Orange City Council. The date of closing may be extended upon mutual agreement of the parties. At the closing, Seller will provide Purchaser with the deed to the premises and other documents in accordance with Standard J. Following the closing, Purchaser will have the right to exclusive possession of the property.

8. Closing Costs. Sellers shall pay closing costs including, but not limited to, title insurance premium, Florida documentary tax stamps, and document preparation costs

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Contract for Sale and Purchase -- Parcel Number 6334-01-00-0030

attributable to Seller. Costs of environmental audits, surveys, and other inspections shall be paid by the Purchaser.

9. Fees. Purchaser has not utilized the services of a Florida Real Estate Broker for the sale and purchase of the subject property. Both parties acknowledge that the Seller shall be responsible for the payment of any brokerage fee incurred for the transfer of the subject property. Purchaser shall be responsible for appraisal report prepared at its request, and Seller shall be responsible for fees incurred for independent review of this proposal by attorneys and engineer/professionals, if any.

10. Environmental Audit. Up to Fifteen (15) days before the date of closing, Purchaser shall have the right to conduct an environmental audit of the property which audit shall be certified to Purchaser, hereinafter referred to as the "Inspection Period." In the event the environmental audit detects the presence of any hazardous materials, unique prehistoric or historic artifacts, relics, or structures of archaeological value, or of the remains of deceased persons interred therein on the property, Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Inspection Period and neither party shall have any further obligations under this Contract. For purposes of this Contract, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct.

11. Purchaser's Intended Use of the subject Property. The restrictions, easements and limitations of record shall not prevent and shall provide the rights to the Purchaser for its intended use intended use of the property for the construction of public improvements for public access, utilities and drainage. In the event that Purchaser determines that the Property can not be used for its intended purposes then the Purchaser shall be entitled to terminate this contract prior to the expiration of the Inspection Period.

12. Default by Seller. If Seller is unable to convey marketable title to the subject Property in accordance with the terms of this Contract, or otherwise fails to perform this Contract within the time specified for closing or any extension thereof, the costs of examining the title, surveying the property, and inspecting and auditing the premises shall, at the option of Purchaser, be paid to Purchaser on demand. Service of such demand may be made by certified mail, return receipt requested to Seller as identified and at her respective mailing address(es) shown above, with a copy to Seller's agent or other authorized representative: * Kathrine Swain - 444 Seabreeze Blvd. Suite 260 or at such other address(s) as Seller may indicate in writing to Purchaser. Purchaser shall have the right of specific performance and all other remedies at law or equity. Election of any options by Purchaser or failure of Purchaser to exercise any rights granted by this Contract shall not be construed as a waiver of any action for damages resulting from Seller's default.

13. Access to Premises. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the premises upon execution of this Contract by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the premises.

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Contract for Sale and Purchase — Parcel Number 6334-01-00-0030

CPO/djRW
LL10/7/2009

* 12. Daytona Beach, FL 32118

14. Approval of Contract. This Contract is contingent on approval by the Port Orange City Council. If this Contract is not approved by the City Council, Purchaser shall provide written notice to Seller and Purchaser shall not be responsible for any cost, expense, damage or liability.

15. Effective Date. The Effective Date of this Contract shall be the date of approval by the City Council for the City of Port Orange, Florida; such approval shall be evidenced by the signing by all parties to this Contract.

16. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

This Contract for Sale and Purchase of Real Property is executed by the parties as of the respective dates shown below:

WITNESSES:

Tamara Lynn Wilson
First Witness Signature Above, Printed Name Below:

Tamara Lynn Wilson

Kathy Cate
Second Witness Signature Above Printed Name Below:

Kathy Cate

SELLER:

By: Sue Day Elliott
SUE DAY ELLIOTT

Date: October 9th, 2009

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 9th day of October, 2009, by SUE DAY ELLIOTT who (Notary, please check as applicable): took an oath or did not take an oath; and is personally known to me or who has produced personally known as identification.



CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

Printed Name:

By: _____
Allen Green, Mayor

Printed Name:

Attest: _____
Kenneth W. Parker, City Manager

Witnesses as to Both

Date: _____, 2009

STATE OF FLORIDA

COUNTY OF VOLUSIA


The foregoing Contract for Sale and Purchase of Real Property was acknowledged before me this _____ day of _____, 2009, by Allen Green and Kenneth W. Parker, as Mayor and City Manager, respectively, of the City of Port Orange, Florida, a chartered municipal corporation, on behalf of the city. They are personally known to me.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

Seller:
Purchaser:
Parcel No.

EXHIBIT A-1
SUE DAY ELLIOTT, a single woman
CITY OF PORT ORANGE, FLORIDA, a municipal corporation
6334-01-00-0030

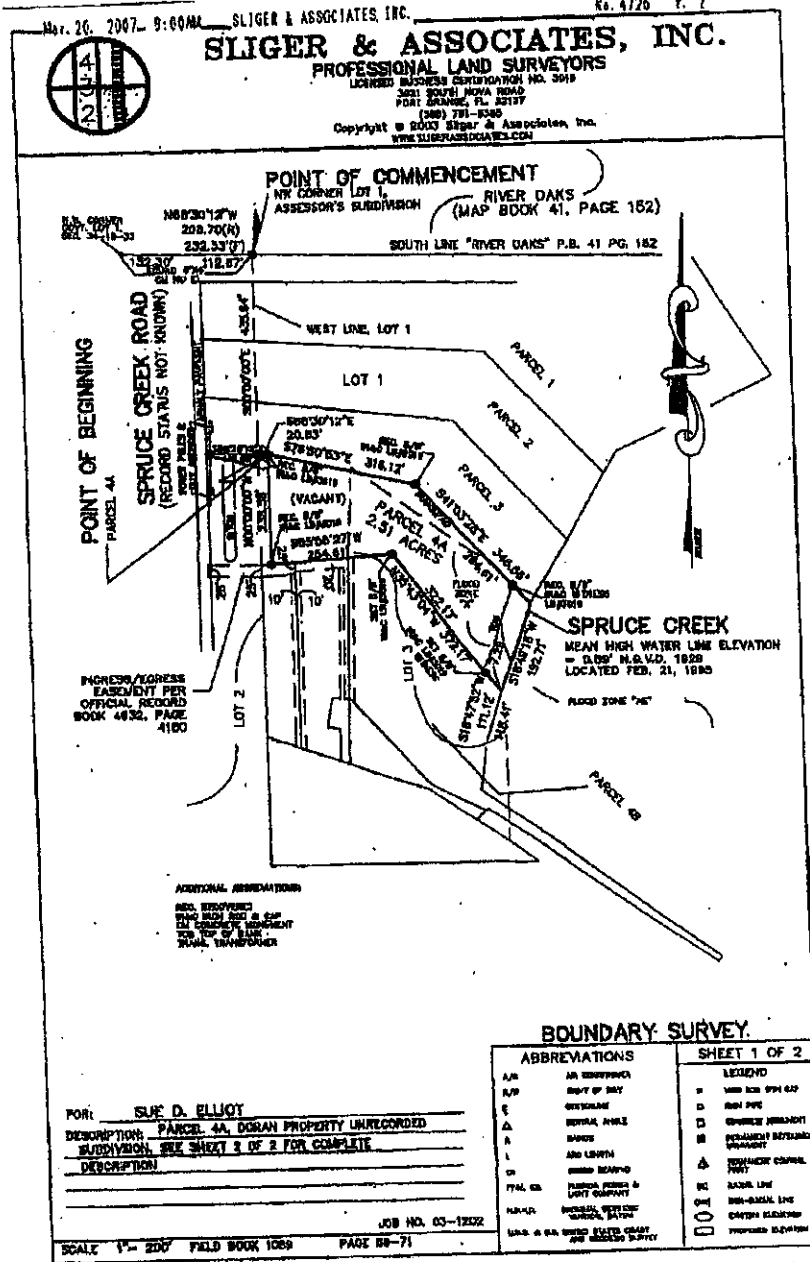
Legal Description of Subject Real Property

	SLIGER & ASSOCIATES, INC. PROFESSIONAL LAND SURVEYORS <small>ADDRESS: BUSINESS REGISTRATION NO. 3018 3331 SOUTH MOVA ROAD PORT ORANGE, FL 32127 (386) 701-9324 Copyright © 2003 Sliger & Associates, Inc. WWW.SLIGERASSOCIATES.COM</small>																																								
SURVEYOR'S NOTES																																									
<p>1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SECTION OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/SECTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.</p> <p>2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.</p> <p>3. BEARING STRUCTURE BASED ON RECORD PLAT WITH THE BEARING ON THE <u>WEST LINE OF LOT 1</u> <u>BEING S20°12'00"E</u></p> <p>4. UNDERGROUND FOUNDATIONS, IF ANY, NOT LOCATED.</p> <p>5. DESCRIPTION PREPARED BY SLIGER AND ASSOCIATES, INC. BASED UPON INFORMATION PROVIDED BY THE CLIENT AND BOUNDARY AND MEAN HIGH WATER LINE SURVEY PREPARED BY SLIGER AND ASSOCIATES, INC. ON FEB. 21, 1983.</p> <p>6. THIS PROPERTY IS LOCATED IN FLOOD INSURANCE RATE MAP (FIRM) ZONED "C" & "AE". THIS LOCATION IS DETERMINED BY SCALING FROM FIRM MAP NO. 12127C0222 & MAP EFFECTIVE DATE: APRIL 15, 2002. APPROXIMATE SCALE: 1"=500'.</p> <p>7. FLOOD ZONE CORRECTION ADDED TO SURVEY MAY 1, 2003 (03-1203).</p>																																									
<p>DESCRIPTION (PARCEL 4A):</p> <p>A PORTION OF LOTS 1 AND 3, ASSESSOR'S SUBDIVISION OF LOT 1, SECTION 34, TOWNSHIP 18 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:</p> <p>COMMENCING AT THE NORTHWEST CORNER OF LOT 1, ASSESSOR'S SUBDIVISION OF LOT 1, SAID ASSESSOR'S SUBDIVISION, RUN S00°00'00"E, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 438.84 FEET; THENCE S88°30'12"W A DISTANCE OF 20.83 FEET TO THE POINT OF BEGINNING; FROM THE POINT OF BEGINNING, RUN S78°50'53"E A DISTANCE OF 318.12 FEET; THENCE S41°03'25"E A DISTANCE OF 348.85 FEET TO A POINT ON THE MEAN HIGH WATER LINE OF SPRUCE CREEK; THENCE SOUTHWESTERLY ALONG SAID MEAN HIGH WATER LINE, S18°48'18"W A DISTANCE OF 192.71 FEET; THENCE CONTINUING ALONG SAID MEAN HIGH WATER LINE, S19°47'52"W A DISTANCE OF 7.28 FEET; THENCE DEPARTING SAID MEAN HIGH WATER LINE, N35°43'01"W A DISTANCE OF 372.17 FEET; THENCE S85°38'27"W A DISTANCE OF 254.81 FEET; THENCE N00°00'00"W A DISTANCE OF 238.58 FEET TO THE POINT OF BEGINNING.</p> <p>CONTAINING 2.810 ACRES OF LAND, MORE OR LESS.</p> <p>TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS RECORDED IN OFFICIAL RECORD BOOK 4632, PAGE 4180 OF THE PUBLIC RECORDS OF SAID VOLUSIA COUNTY, FLORIDA.</p>																																									
<p>NOTE: NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.</p>																																									
<p>REFERENCE: PARCEL 4A, BORAN UNRECORDED SUBDIVISION PLAT PREPARED FOR THE FOLLOWING: (ONLY THE LAST DATE IS CERTIFIED ON SEALED COPY)</p>																																									
<p>THIS PLAT OF SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND/OR INDIVIDUALS LISTED BELOW ON THE MOST CURRENT DATE, AND SHALL NOT BE RELIED UPON BY ANY OTHER ENTITY OR INDIVIDUAL WHO/SOEVER.</p>																																									
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Seller:
 Purchaser:
 Parcel No.

EXHIBIT A-2
Graphical Depiction of Subject Real Property

SUE DAY ELLIOTT, a single woman
 CITY OF PORT ORANGE, FLORIDA, a municipal corporation
 6334-01-00-0030



THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.

Contract for Sale and Purchase
FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR



1* PARTIES: _____ ("Seller").
 2* and _____ ("Buyer").
 3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
 4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract").

5 I. DESCRIPTION:
 6* (a) Legal description of the Real Property located in _____ County, Florida: _____
 7* _____
 8* _____
 9* (b) Street address, city, zip, of the Property: _____
 10 (c) Personal Property includes existing range, refrigerator, dishwasher, ceiling fans, light fixtures, and window treatments unless
 11 specifically excluded below.
 12* Other items included are: _____
 13* _____
 14* Items of Personal Property (and leased items, if any) excluded are: _____
 15* _____

16* II. PURCHASE PRICE (U.S. currency): \$ _____
 17 PAYMENT:
 18* (a) Deposit held in escrow by _____ (Escrow Agent) in the amount of \$ _____
 19* (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date
 20* (see Paragraph III) in the amount of \$ _____
 21 (c) Assumption of existing mortgage in good standing (see Paragraph IV(c)) having an approximate
 22* present principal balance of \$ _____
 23* (d) New mortgage financing with a Lender (see Paragraph IV(b)) in the amount of \$ _____
 24* (e) Purchase money mortgage and note to Seller (See Paragraph IV(d)) in the amount of \$ _____
 25* (f) Other: \$ _____
 26 (g) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject
 27* to adjustments or prorations \$ _____

28 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:
 29 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or
 30* before _____, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. UNLESS OTH-
 31 ERWISE STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUN-
 32 TEROFFER IS DELIVERED.
 33 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the
 34 final counteroffer, if such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for
 35 acceptance of this offer or, if applicable, the final counteroffer.

36 IV. FINANCING:
 37* (a) This is a cash transaction with no contingencies for financing;
 38* (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days after Effective Date for (CHECK
 39* ONLY ONE): a fixed; an adjustable; or a fixed or adjustable rate loan, in the principal amount of \$ _____ at an initial inter-
 40* est rate not to exceed _____%, discount and origination fees not to exceed _____% of principal amount, and for a term of _____
 41* years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date and use reasonable diligence to obtain Loan
 42 Approval and, thereafter, to satisfy terms and conditions of the Loan Approval and close the loan. Buyer shall pay all loan expenses. If Buyer
 43 fails to obtain a Loan Approval or fails to waive Buyer's rights under this subparagraph within the time for obtaining Loan Approval or, after
 44 diligent, good faith effort, fails to meet the terms and conditions of the Loan Approval by Closing, then either party thereafter, by written notice
 45 to the other, may cancel this Contract and Buyer shall be refunded the deposit(s);
 46* (c) Assumption of existing mortgage (see rider for terms); or
 47* (d) Seller financing (see Standard B and riders; addenda; or special clauses for terms).

48* V. TITLE EVIDENCE: At least _____ days (if blank, then 5 days) before Closing:
 49* (a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after
 50* Closing, an owner's policy of title insurance (see Standard A for terms); or (b) Abstract of title or other evidence of title (see rider for terms),
 51* shall be obtained by (CHECK ONLY ONE): (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
 52* (2) Buyer at Buyer's expense.

53* VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on _____ ("Closing"), unless
 54 modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate
 55 due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.

56 VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning,
 57 restrictions, prohibitions and other requirements imposed by governmental authority; resolutions and matters appearing on the plat or otherwise
 58 common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unpatented public utility easements of record
 59 located contiguous to real property lines and not more than 10 feet in width; as to the rear or front lines and 7 1/2 feet in width as to the side

Exhibit B
Page 2 of 4

60 lines); taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see
61 addendum); provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for
62* _____ purpose(s).

63 VIII. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended
64 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F.
65 If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable
66 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

67 IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed pro-
68 visions of this Contract in conflict with them.

69* X. ASSIGNABILITY: (CHECK ONLY ONE): Buyer may assign and thereby be released from any further liability under this Contract; may
70* assign but not be released from liability under this Contract; or may not assign this Contract.

71 XI. DISCLOSURES:

72* (a) CHECK HERE if the Property is subject to a special assessment lien imposed by a public body payable in installments which
73* continue beyond Closing and, if so, specify who shall pay amounts due after Closing: Seller Buyer Other (see addendum).

74 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to per-
75 sons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.
76 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

77 (c) Buyer acknowledges receipt of the Florida Building Energy-Efficiency Rating System Brochure.

78 (d) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.

79 (e) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

80 (f) If Buyer will be obligated to be a member of a homeowners' association, BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL
81 BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION DISCLOSURE.

82 XII. MAXIMUM REPAIR COSTS: Seller shall not be responsible for payments in excess of:
83* (a) \$ _____ for treatment and repair under Standard D (if blank, then 2% of the Purchase Price),
84* (b) \$ _____ for repair and replacement under Standard N not caused by Wood Destroying Organisms (if blank, then 3% of
85 the Purchase Price).

86 XIII. RIDERS; ADDENDA; SPECIAL CLAUSES:
87 CHECK those riders which are applicable AND are attached to this Contract:
88* CONDOMINIUM VAFHA HOMEOWNERS' ASSN. LEAD-BASED PAINT
89* COASTAL CONSTRUCTION CONTROL LINE INSULATION "AS IS" Other Comprehensive Rider Provisions
90* Addenda
91* Special Clauses(s): _____
92* _____
93* _____
94* _____
95* _____

96 XIV. STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"): Buyer and Seller acknowledge receipt of a copy of Standards A
97 through W on the reverse side or attached, which are incorporated as part of this Contract.
98 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF
99 AN ATTORNEY PRIOR TO SIGNING.
100 THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.
101 Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
102 particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
103 positions of all interested persons.
104 AN ASTERISK(*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

105* _____
106 (BUYER) (DATE) (SELLER) (DATE)

107* _____
108 (BUYER) (DATE) (SELLER) (DATE)

109* Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____

110* _____
111* _____ Phone _____ Phone _____

112* Deposit under Paragraph II (a) received (Checks are subject to clearance); _____ (Escrow Agent)

113 BROKERS: The brokers named below, including listing and cooperating brokers, are the only brokers entitled to compensation in connection
114 with this Contract:

115* Name: _____

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER: A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgage clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

C. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

D. WOOD DESTROYING ORGANISMS: Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") at least 10 days prior to Closing to determine if there is any visible active Wood Destroying Organism infestation or visible damage from Wood Destroying Organism infestation, excluding fences. If either or both are found, Buyer may, within 5 days from date of written notice thereof, have cost of treatment of active infestation estimated by the Operator and all damage inspected and estimated by an appropriately licensed contractor. Seller shall pay costs of treatment and repair of all damage up to the amount provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction and receive a credit at Closing on the amount provided in Paragraph XII(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.

E. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

F. LEASES: Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

G. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential liens known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

H. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

I. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5 p.m. of the next business day. Time is of the essence in this Contract.

J. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

K. EXPENSES: Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. Documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

L. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

M. SPECIAL ASSESSMENT LIENS: Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of

STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

N. INSPECTION, REPAIR AND MAINTENANCE: Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage of the property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or an appropriately licensed Florida contractor make inspections of, those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XII(b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted masonry or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

O. RISK OF LOSS: If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall either take the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

P. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

Q. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery in Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

R. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

S. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

U. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.


V. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

W. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

MEMORANDUM

TO: Kenneth W. Parker
City Manager

DATE: October 27, 2009

FROM: Warren Pike 
Public Works Director

SUBJECT: Agenda Item for November 3, 2009

Please place approval of Resolution 09- required to purchase land for drainage improvements on November 3rd Council agenda.

Commentary

As mentioned on the other DF/Commentary, attached is one of the two outstanding parcels the City needs to acquire for the Spruce Creek Road area that gives the City the ability to have a pop off or discharge point to hopefully relieve flooding in several subdivisions at the end of Spruce Creek Road.

Attached is the contract for sale and a resolution. This is finally a much needed piece of a puzzle that has been a long time problem for us.

Funds are available in Account #41218005416100, DIP032.
046

Recommendation

Staff recommends approval of Resolution #09- in order to purchase the parcel of land shown on the attached for future drainage improvements.