

34-5

Agenda Item #:

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: November 20, 2007 [X] Consent [] Regular
[] Ordinance [] Public Hearing
Department: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Option Agreement for Sale and Purchase with Nancy Kindt Hernandez, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, and the Florida Communities Trust (FCT) to acquire 1.10 acres adjacent to DuBois Park for \$3,600,000.

Summary: This Agreement provides the County the option to purchase 1.10 acres of waterfront property on DuBois Road adjacent to the County's DuBois Park. The property is improved with a 1,493 square foot house with a detached garage, several wood cottages, a former pineapple packing house, four docks, and a boat ramp. It has 136.68 feet of water frontage on the same basin in which the existing DuBois Park marina is located. In 2006, the Parks and Recreation Department applied for and received a matching grant from Florida Communities Trust for acquisition of this property. The initial appraisal obtained by the County valued the property at \$2.4 million. Two appraisals obtained by FCT valued the subject property at \$3.1 million and \$3.6 million. FCT handled the negotiations and agreed to a \$3.6 million purchase price. FCT will fund \$1.8 million of the purchase price and one-half of the due diligence and closing costs. The balance will be funded by the County out of the \$50 Million Waterfront Bond issue. (PREM) District 1 (HJF)

Background and Justification: Acquisition of this property will add 1.10 acres to the west side of DuBois Park and provide additional waterfront access. Once the acquisition is complete, the boat ramp and docks will be renovated to accommodate launching of non-motorized vessels, a water taxi landing site and day use dockage. The exotic vegetation will be removed and native landscaping will be installed, additional parking will be constructed, and a multi-purpose path, picnic shelter, park benches, and bike racks will be installed. The pineapple packing house is believed to be one of the oldest structures in Palm Beach County. The Parks and Recreation Department plans to restore this historic structure for use as an educational kiosk. FCT will fund 50% of the acquisition and associated costs including the costs of title work, surveys, environmental assessments and recording documents. Under Florida Statutes Section 286.23, a Disclosure of Beneficial Interests is required in connection with any purchase of property by the County. Nancy Kindt Hernandez, provided the Disclosure (Attachment #4) which identifies the ownership interests of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003 as Charles T. Kindt, Roy J. Kindt, and Nancy Kindt Hernandez, each with a 33.33% interest. Nancy Hernandez is the wife of August Hernandez, a long-time School Board employee. The waterfront of this property was used in the operation of Zeke's Marine, a small outboard motor repair shop. A full environmental assessment will be performed to determine whether any environmental contamination exists on the property. As this is an option to purchase, the County has the ability to not exercise the option in the event that the results of the due diligence investigations are unsatisfactory. In addition, the Seller is responsible for remediation of any contamination. In the event that the estimated cost of such remediation exceeds three percent (3%) of the purchase price (\$108,000), the Seller has the right to terminate the Agreement. FCT and the County have until March 31, 2008, to exercise the option with closing to take place within 15 days thereafter.

Attachments:

- 1. Location Map
- 2. Option Agreement for Sale and Purchase
- 3. Budget Availability Statement
- 4. Disclosure of Beneficial Interests
- 5. Conceptual Site Plan of Park Improvements

Recommended By: Ret Army Wolf 11/6/07
Department Director Date

Approved By: [Signature] 11/6/07
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	\$3,600,000	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(\$1,800,000)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
	\$1,800,000				
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes X No _____

Budget Account No: Fund 3038 Dept 581 Unit P605 Object 6501

B. Recommended Sources of Funds/Summary of Fiscal Impact:

The BCC allocated \$2,700,000 to this project from the \$50 Million Waterfront Bond for the acquisition of the property, construction of day-use docks, finger piers, and stabilization of the shoreline along the Jupiter Inlet. Closing cost and due diligence are estimated to be less than \$75,000, and will be split 50/50 with FCT. Other construction and renovation projects (additional parking, picnic shelter, park benches, bike racks, pineapple packing house) will require BCC approval. The estimated cost of these additional projects is indeterminable at this time.

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

The Board has approved total funding for this project of \$3.7 million (\$2.7 million from the \$50 Million Waterfront Bond and \$1 million from interest).

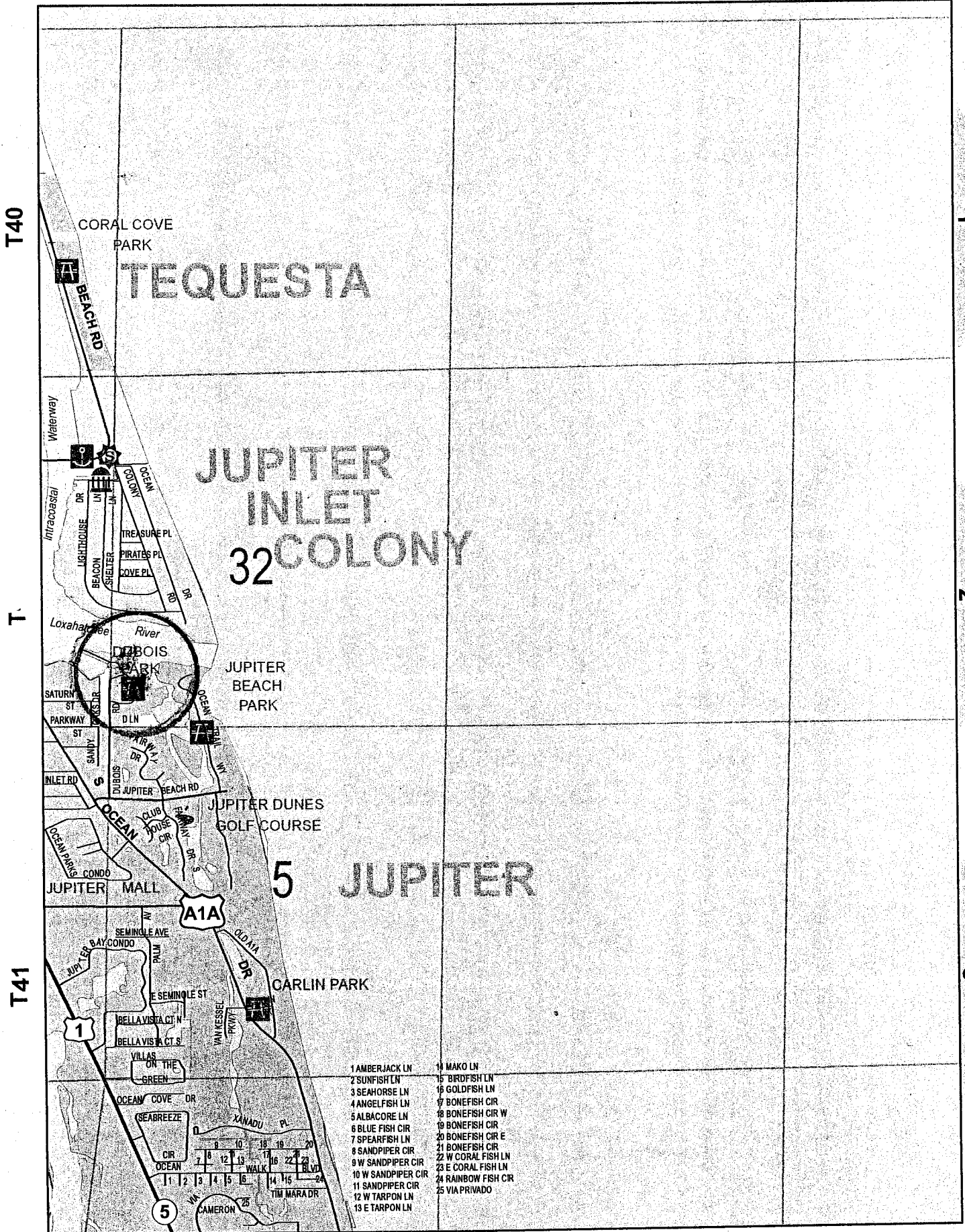
This item complies with current County policies.

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director



LOCATION MAP

ATTACHMENT #

Handwritten signature or initials.

Project: The Susan DuBois Kindt Estate
Project #: 06-041-FF6
Parcel : Dubois Kindt

Contract #: _____
Property Tax I.D.#: 00-43-40-31-00-007-0060
& 00-43-40-31-00-007-0070

OPTION AGREEMENT FOR SALE AND PURCHASE

THIS AGREEMENT is made this _____ day of _____, 2007, between **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, whose address is 2639 West Edgewater Drive, Palm Beach Gardens, Florida 33410, as "Seller", and the **FLORIDA COMMUNITIES TRUST**, a nonregulatory agency within the Department of Community Affairs, ("Acquiring Agency") whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, and **PALM BEACH COUNTY**, a political subdivision of the State of Florida, ("Local Government"), whose address is 2700 6TH Avenue South, Lake Worth, Florida 33461. Acquiring Agency and Local Government will be collectively referred to as ("Purchaser").

1. **GRANT OF OPTION.** Seller hereby grants to Purchaser the exclusive option to purchase the real property located in Palm Beach County, Florida, described in Exhibit "A", together with all improvements, easements and appurtenances ("Property"), in accordance with the provisions of this Agreement. This Option Agreement becomes legally binding upon execution by the parties but exercise of the option is subject to approval by Purchaser and is effective only if Acquiring Agency and Local Government give written notice of exercise to Seller.

2. **OPTION TERMS.** The option payment is \$100.00 ("Option Payment"). The Option Payment, in the form of a state warrant, will be forwarded to Seller upon its receipt by Acquiring Agency from the Comptroller of the State of Florida. The option may be exercised during the period beginning with the Purchaser's approval of this Agreement and the Acquiring Agency's governing body granting project plan approval in accordance with Rule 9K-8.011, Florida Administrative Code, and ending on March 31, 2008 ("Option Expiration Date"), unless extended by other provisions of this Agreement. In the event Acquiring Agency's Purchase Price (as hereinafter defined in paragraph 3.A) or Local Government's Purchase Price (as hereinafter defined in paragraph 3.A) are not available by the Option Expiration Date the period of exercise of the option may be extended until such funds become available, not to exceed 60 days after the Option Expiration Date, by written notice to Seller.

3.A. **TOTAL PURCHASE PRICE.** The total purchase price ("Total Purchase Price") for the Property is **THREE MILLION SIX HUNDRED THOUSAND and no/100 Dollars (\$3,600,000.00)** which, after reduction by the amount of the Option Payment, will be paid by Acquiring Agency and Local Government at closing. Seller hereby authorizes Acquiring Agency to issue a state warrant directly to an escrow agent who is authorized by law to receive such payment, and who is acceptable to Purchaser, and to require the escrow agent to pay Seller's expenses of sale and real estate taxes. This Total Purchase Price presumes that the Property contains at least 1.175 total acres, to be confirmed by the Survey, as provided in paragraph 5. The Total Purchase Price shall be paid to Seller as follows: Acquiring Agency shall pay the lesser of \$1,800,000.00 or 50% of the final adjusted Total Purchase Price for the Property as determined in accordance with paragraph 3.B. ("Acquiring Agency's Purchase Price"), which after reduction by Acquiring Agency of the Option Payment, will be paid to Seller by state warrant at closing; and Local Government shall pay the lesser of \$1,800,000.00 or 50% of the final adjusted Total Purchase Price for the Property as determined in accordance with paragraph 3.B. ("Local Government's Purchase Price"), will be paid to Seller by Local Government check at closing. The Total Purchase Price is subject to adjustment in accordance with paragraph 3.B. The determination of the final Total Purchase Price can only be made after the completion and approval of the survey required in paragraph 5. This Agreement is contingent upon approval of Total Purchase Price, Acquiring Agency's Purchase Price, and Local Government's Purchase Price by Purchaser and upon confirmation that the Total Purchase Price is not in excess of the final maximum approved purchase price of the Property as determined in accordance with Rule 9K-8.007, Florida Administrative Code ("Maximum Approved Purchase Price").

September 21, 2007
06-041-FF6

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ATTACHMENT #2

This Agreement is also contingent upon Local Government's funds for closing being available at closing and upon Local Government giving written notice to Acquiring Agency, prior to the exercise of the option, that these funds are available to close in accordance with this Agreement. If such notification is not accomplished, Acquiring Agency may in its sole discretion declare this Agreement void and of no further force and effect as of that date. Local Government's funds are the sole responsibility of Local Government. Seller shall have no recourse whatsoever, at law or equity, against Acquiring Agency or the Property as a result of any matter arising at any time whether before or after fee simple title is conveyed to Local Government, relating to Local Government's funds. Acquiring Agency shall have no obligation under this Agreement to provide any portion of Local Government's funds. Acquiring Agency's funds necessary to close are the sole responsibility of Acquiring Agency. Seller shall have no recourse whatsoever, at law or equity, against Local Government or the Property as a result of any matter arising at any time, whether before or after fee simple title is conveyed to Local Government, relating to Acquiring Agency's funds. Local Government shall have no obligation under this Agreement to provide any portion of Acquiring Agency's funds. Should Local Government's funds or Acquiring Agency's funds not be available for any reason, Purchaser or Seller may elect to terminate this Agreement by written notice to the parties without liability to any party.

Acquiring Agency and Local Government agree that the Local Government shall take fee simple title to all of the Property at the closing notwithstanding that Acquiring Agency and Local Government are required to pay all of the Total Purchase Price in the manner set forth in this Agreement. Conveyance of the Property in fee simple from Seller to Local Government will take place at the closing, in exchange for the payments to be made by Acquiring Agency and Local Government to Seller at closing as set forth above in this paragraph 3.A.

3.B. ADJUSTMENT OF TOTAL PURCHASE PRICE. If, prior to closing, Acquiring Agency determines that the Total Purchase Price stated in paragraph 3.A. exceeds the final Maximum Approved Purchase Price of the Property, the Total Purchase Price will be reduced to the final Maximum Approved Purchase Price of the Property. Upon determination of the final adjusted Total Purchase Price, Acquiring Agency's Purchase Price and Local Government's Purchase Price will be determined and adjusted in accordance with paragraph 3.A. If the final adjusted Total Purchase Price is less than 100% of the Total Purchase Price stated in paragraph 3.A. because of a reduction in the Maximum Approved Purchase Price of the Property, Seller shall, in his sole discretion, have the right to terminate this Agreement and neither party shall have any further obligations under this Agreement. If Seller elects to terminate this Agreement, Seller shall provide written notice to Acquiring Agency and Local Government of his election to terminate this Agreement within 20 days after Seller's receipt of written notice from Acquiring Agency of the final adjusted Total Purchase Price. In the event Seller fails to give Acquiring Agency and Local Government a written notice of termination within the aforesaid time period from receipt of Acquiring Agency's written notice, then Seller shall be deemed to have waived any right to terminate this Agreement based upon a reduction in the Total Purchase Price stated in paragraph 3.A.

4.A. ENVIRONMENTAL SITE ASSESSMENT. Local Government shall, at Local Government's sole cost and expense and at least 30 days prior to the Option Expiration Date, furnish to Acquiring Agency an environmental site assessment of the Property which meets the standard of practice of the American Society of Testing Materials ("ASTM"). Local Government shall use the services of competent, professional consultants with expertise in the environmental site assessing process to determine the existence and extent, if any, of Hazardous Materials on the Property. The examination of hazardous materials contamination shall be performed to the standard of practice of the ASTM. For Phase I environmental site assessment, such standard of practice shall be the ASTM Practice E 1527. If the Findings and Conclusions section of the assessment reports evidence of recognized environmental conditions, then a Phase II Environmental Site Assessment shall be performed to address any suspicions raised in the Phase I environmental site assessment and to confirm the presence of contaminants on site. For purposes of this Agreement "Hazardous Materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any Environmental Law (as hereinafter defined in paragraph 4.B.). The environmental site assessment shall be certified to Purchaser and Acquiring Agency and the date of certification shall be within 90 days before the date of closing.

4.B. HAZARDOUS MATERIALS. In the event that the environmental site assessment provided for in paragraph 4.A. confirms the presence of Hazardous Materials on the Property, Purchaser may elect to terminate this Agreement and neither party shall have any further obligations under this Agreement. Should Purchaser elect not to terminate this Agreement, Seller shall, at Seller's sole cost and expense and prior to the exercise of the option and closing, promptly commence and diligently pursue any assessment, clean up and monitoring of the Property necessary to bring the Property into full compliance with any and all applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials ("Environmental Law"). However, should the estimated cost of clean up of Hazardous Materials exceed a sum which is equal to 3% of the Total Purchase Price as stated in paragraph 3.A., Seller may elect to terminate this Agreement and no party shall have any further obligations under this Agreement.

5. SURVEY. Seller shall, at Seller's sole cost and expense and not less than 35 days prior to the Option Expiration Date, deliver to Purchaser a current boundary survey of the Property prepared by a professional land surveyor licensed by the State of Florida which meets the standards and requirements of Acquiring Agency ("Survey"). It is Seller's responsibility to ensure that the surveyor contacts the Acquiring Agency regarding these standards and requirements prior to the commencement of the Survey. The Survey shall be certified to Purchaser and the title insurer and the date of certification shall be within 90 days before the date of closing, unless this 90 day time period is waived by Purchaser and by the title insurer for purposes of deleting the standard exceptions for survey matters and easements or claims of easements not shown by the public records from the owner's title policy. If the Survey shows any encroachment on the Property or that improvements intended to be located on the Property encroach on the land of others, the same shall be treated as a title defect.

6. TITLE INSURANCE Seller shall, at Seller's sole cost and expense and at least 35 days prior to the Option Expiration Date, furnish to Purchaser a marketable title insurance commitment, to be followed by an owner's marketable title insurance policy (ALTA Form "B") from a title insurance company, approved by the Acquiring Agency, insuring marketable title of Local Government to the Property in the amount of the Total Purchase Price. Seller shall require that the title insurer delete the standard exceptions of such policy referring to: (a) all taxes, (b) unrecorded rights or claims of parties in possession, (c) survey matters, (d) unrecorded easements or claims of easements, and (e) unrecorded mechanics' liens.

7. DEFECTS IN TITLE. If the title insurance commitment or survey furnished to Purchaser pursuant to this Agreement discloses any defects in title which are not acceptable to Purchaser, Seller shall, within 90 days after notice from Purchaser, remove said defects in title. Seller agrees to use diligent effort to correct the defects in title within the time provided therefore, not including the bringing of necessary suits. If Seller is unsuccessful in removing the title defects within said time or if Seller fails to make a diligent effort to correct the title defects, Purchaser shall have the option to either: (a) accept the title as it then is with a reduction in the Total Purchase Price by an amount mutually agreed to by Seller and Purchaser, (b) accept the title as it then is with no reduction in the Total Purchase Price, (c) extend the amount of time that Seller has to cure the defects in title, or (d) terminate this Agreement, thereupon releasing Purchaser and Seller from all further obligations under this Agreement.

8. INTEREST CONVEYED. At closing, Seller shall execute and deliver to Local Government a statutory warranty deed in accordance with Section 689.02, Florida Statutes, conveying marketable title to the Property in fee simple free and clear of all liens, reservations, restrictions, easements, leases, tenancies and other encumbrances, except for those that are acceptable encumbrances in the opinion of Purchaser and do not impair the marketability of the title to the Property. The grantee in Seller's Warranty Deed shall be **Palm Beach County, a political subdivision of the State of Florida**.

9. PREPARATION OF CLOSING DOCUMENTS. Upon execution of this Agreement, Seller shall submit to Purchaser a properly completed and executed beneficial interest affidavit and disclosure statement as required by Sections 286.23, and 380.08(2), Florida Statutes. Seller shall prepare the deed described in paragraph 8. of this Agreement, Seller's closing statement and the title, possession and lien affidavit certified to Purchaser and title insurer in accordance with Section 627.7842, Florida Statutes, and an environmental affidavit on Acquiring Agency forms provided by Acquiring Agency. Acquiring Agency shall

prepare Purchaser's closing statement. All prepared documents shall be submitted to Local Government and Acquiring Agency for review and approval at least 30 days prior to the Option Expiration Date.

10. PURCHASER REVIEW FOR CLOSING. Purchaser will approve or reject each item required to be provided by Seller under this Agreement within 30 days after receipt by Purchaser of all of the required items. Seller will have 30 days thereafter to cure and resubmit any rejected item to Purchaser. In the event Seller fails to timely deliver any item, or Purchaser rejects any item after delivery, Purchaser may in its discretion extend the Option Expiration Date upon mutual agreement of the parties.

11. EXPENSES. Seller will pay the documentary revenue stamp tax and all other taxes or costs associated with the conveyance, including the cost of recording the deed described in paragraph 8. of this Agreement and any other recordable instruments which Purchaser deems necessary to assure good and marketable title to the Property.

12. TAXES AND ASSESSMENTS. All real estate taxes and assessments which are or which may become a lien against the Property shall be satisfied of record by Seller at closing. In the event the Local Government acquires fee title to the Property between January 1 and November 1, Seller shall, in accordance with Section 196.295, Florida Statutes, place in escrow with the county tax collector an amount equal to the current taxes prorated to the date of transfer, based upon the current assessment and millage rates on the Property. In the event the Local Government acquires fee title to the Property on or after November 1, Seller shall pay to the county tax collector an amount equal to the taxes that are determined to be legally due and payable by the county tax collector.

13. CLOSING PLACE AND DATE. The closing shall be on or before 15 days after Purchaser exercises the option; provided, however, that if a defect exists in the title to the Property, title commitment, Survey, environmental site assessment, or any other documents required to be provided or completed and executed by Seller, the closing shall occur either on the original closing date or within 30 days after receipt of documentation curing the defects, whichever is later. The date, time and place of closing shall be mutually agreed to by Purchaser and Seller.

14. RISK OF LOSS AND CONDITION OF REAL PROPERTY. Seller assumes all risk of loss or damage to the Property prior to the date of closing and warrants that the Property shall be transferred and conveyed to the Local Government in the same or essentially the same condition as of the date of Seller's execution of this Agreement, ordinary wear and tear excepted. However, in the event the condition of the Property is altered by an act of God or other natural force beyond the control of Seller, Purchaser may elect, at its sole option, to terminate this Agreement and neither party shall have any further obligations under this Agreement. Seller represents and warrants that on the date of closing there will be no parties other than Seller in occupancy or possession of any part of the Property, Seller agrees to clean up and remove all abandoned personal property, refuse, garbage, junk, rubbish, trash and debris from the Property to the satisfaction of Local Government prior to the exercise of the option by Purchaser.

15. RIGHT TO ENTER PROPERTY AND POSSESSION. Seller agrees that from the date this Agreement is executed by Seller, Purchaser and its agents, upon reasonable notice to the Trustee, shall have the right to enter the Property for all lawful purposes in connection with the this Agreement. Seller shall deliver possession of the Property to the Local Government at closing.

16. ACCESS. Seller warrants that there is legal ingress and egress for the Property over public roads or valid, recorded easements that benefit the Property.

17. DEFAULT. If Seller defaults under this Agreement, Purchaser may waive the default and proceed to closing, seek specific performance, or refuse to close and elect to receive the return of any money paid, each without waiving any action for damages, or any other remedy permitted by law or in equity resulting from Seller's default. In connection with any dispute arising out of this Agreement, including without limitation litigation and appeals, Purchaser will be entitled to recover reasonable attorney's fees and costs.

18. BROKERS. Seller warrants that no persons, firms, corporations or other entities are entitled to a real estate commission or other fees as a result of this Agreement or subsequent closing, except as accurately disclosed on the disclosure statement required in paragraph 9. Seller shall indemnify and hold Purchaser harmless from any and all such claims, whether disclosed or undisclosed.
19. RECORDING. This Agreement, or notice of it, may be recorded by Purchaser in the appropriate county or counties upon receiving written approval from the Seller.
20. ASSIGNMENT. This Agreement may be assigned by Purchaser, in which event Purchaser will provide written notice of assignment to Seller. This Agreement may not be assigned by Seller without the prior written consent of Purchaser.
21. TIME. Time is of essence with regard to all dates or times set forth in this Agreement.
22. SEVERABILITY. In the event any of the provisions of this Agreement are deemed to be unenforceable, the enforceability of the remaining provisions of this Agreement shall not be affected.
23. SUCCESSORS IN INTEREST. Upon Seller's execution of this Agreement, Seller's heirs, legal representatives, successors and assigns will be bound by it. Upon Purchaser's approval of this Agreement and Purchaser's exercise of the option, Purchaser and Purchaser's successors and assigns will be bound by it. Whenever used, the singular shall include the plural and one gender shall include all genders.
24. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties.
25. WAIVER. Failure of Purchaser to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect.
26. AGREEMENT EFFECTIVE. This Agreement or any modification, amendment or alteration thereto, shall not be effective or binding upon any of the parties hereto until it has been executed by all of the parties hereto.
27. ADDENDUM. Any addendum attached hereto that is signed by the parties shall be deemed a part of this Agreement.
28. NOTICE. Whenever either party desires or is required to give notice unto the other, it must be given by written notice, and either delivered personally or mailed to the appropriate address indicated on the first page of this Agreement, or such other address as is designated in writing by a party to this Agreement.
29. SURVIVAL. The covenants, warranties, representations, indemnities and undertakings of Seller set forth in this Agreement shall survive the closing, the delivery and recording of the deed described in paragraph 8. of this Agreement and Local Government's possession of the Property.

THIS AGREEMENT IS INITIALLY TRANSMITTED TO THE SELLER AS AN OFFER. IF THIS AGREEMENT IS NOT EXECUTED BY THE SELLER ON OR BEFORE OCTOBER 5, 2007. THIS OFFER WILL BE VOID UNLESS THE PURCHASER, AT ITS SOLE OPTION, ELECTS TO ACCEPT THIS OFFER. THE EXERCISE OF THIS OPTION IS SUBJECT TO: (1) APPROVAL OF THIS AGREEMENT, TOTAL PURCHASE PRICE, ACQUIRING AGENCY'S PURCHASE PRICE, AND LOCAL GOVERNMENT'S PURCHASE PRICE BY PURCHASER, (2) ACQUIRING AGENCY'S GOVERNING BODY GRANTING PROJECT PLAN APPROVAL IN ACCORDANCE WITH RULE 9K-8.011, FLORIDA ADMINISTRATIVE CODE, (3) CONFIRMATION THAT THE TOTAL PURCHASE PRICE IS NOT IN EXCESS OF THE FINAL MAXIMUM APPROVED PURCHASE PRICE OF THE PROPERTY, AND (4) LOCAL GOVERNMENT AND ACQUIRING AGENCY APPROVAL OF ALL DOCUMENTS TO BE FURNISHED HEREUNDER BY SELLER. THE ACQUIRING AGENCY'S PERFORMANCE AND OBLIGATION TO PAY UNDER THIS CONTRACT IS CONTINGENT UPON AN ANNUAL APPROPRIATION BY THE LEGISLATURE.

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THIS IS TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

SELLER

NANCY KINDT HERNANDEZ, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003.

Idalina Musso

Witness as to Seller
Idalina Musso

Witness as to Seller

Amos James

Nancy Kindt Hernandez

Nancy Kindt Hernandez, as Trustee

F.E.I.D./Social Security No. 20-6061169

10-5-07

Date signed by Seller

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 5 day of October, 2007, by **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, on behalf of the Trust, who is personally known to me or who has produced Nancy Kindt Hernandez as identification.

(NOTARY PUBLIC)
SEAL

Nadia Campbell

Notary Public

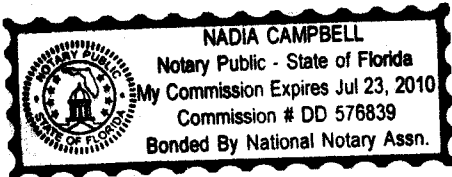
Nadia Campbell

(Printed, Typed or Stamped Name of

Notary Public)

Commission No.: 576839

My Commission Expires: July 23, 2010



PURCHASER

LOCAL GOVERNMENT

PALM BEACH COUNTY, a political subdivision of
the State of Florida

ATTEST:
SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Addie L. Greene, Chairperson

By: _____
Deputy Clerk

_____, 2007
Date of execution by County

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: Patt Anthony Wolf
Department Director

PURCHASER

ACQUIRING AGENCY

FLORIDA COMMUNITIES TRUST

Witness as to Acquiring Agency

By: _____
Janice Browning, Director
Division of Housing and Community Development

Witness as to Acquiring Agency

Date signed by Acquiring Agency

Approved as to Form and Legality (FCT)

By: _____

Date: _____

STATE OF FLORIDA

COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by **Janice Browning**, Director, Division of Housing and Community Development, on behalf of the Acquiring Agency. She is personally known to me.

(NOTARY PUBLIC)
SEAL)

Notary Public

(Printed, Typed or Stamped Name of
Notary Public)

Commission No.: _____

My Commission Expires: _____

EXHIBIT "A"
Legal Description

DESCRIPTION

PARCEL 1

TAKE A POINT WHICH IS THE SOUTHEAST CORNER OF GOVERNMENT 7, SECTION 31, TOWNSHIP 40 SOUTH, RANGE 43 EAST, THENCE RUN NORTH ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 290 FEET TO A POINT OF BEGINNING; THENCE RUN NORTH ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 100 FEET; THENCE RUN WEST PARALLEL WITH THE SOUTH LINE OF SAID LOT 7 A DISTANCE OF 150 FEET MORE OR LESS TO THE EAST LINE OF THE LAND CONVEYED TO A. J. HODGSON BY DEED RECORDED IN DEED BOOK 102, PAGE 449, PALM BEACH COUNTY RECORDS; THENCE RUN SOUTH ALONG SAID HODGSONS EAST LINE A DISTANCE OF 100 FEET; THENCE RUN EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 150 FEET MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH PARCEL 2

AS DESCRIBED AS

ALL THAT PORTION OF LAND LYING IN GOVERNMENT LOT 7, SECTION 31, TOWNSHIP 40 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, BEING ALL THAT LAND LYING NORTH OF THE SOUTH 390 FEET OF THE EASTERLY 75 FEET OF SAID GOVERNMENT LOT 7.

TOGETHER CONTAINING 1.175 ACRES MORE OR LESS.

Final Legal Description to be determined after completion of Survey pursuant to paragraph 5.

ADDENDUM
BENEFICIAL INTEREST AND DISCLOSURE AFFIDAVIT
(OTHER)

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

Before me, the undersigned authority, personally appeared **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003 this 5 day of Oct, 2007, who, first being duly sworn, deposes and says:

1) That **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, whose address is 2639 West Edgewater Drive, Palm Beach Gardens, Florida 33410, is the record owner of the Property. The following is a list of every "person" (as defined in Section 1.01(3), Florida Statutes) holding 5% or more of the beneficial interest in the Property: (if more space is needed, attach separate sheet)

<u>Name</u>	<u>Address</u>	<u>Interest</u>
CHARLES T. KINDT,	18063 DuBois Rd, JUPITER, FL	1/3
ROY J. KINDT,	400 CALOUSAHATCHEE AV, JUPITER, FL	1/3
NANCY KINDT HERNANDEZ,	2639 W. EDGEWATER DR, PALM BCH, GDNS, FL	1/3

2) That to the best of the affiant's knowledge, all persons who have a financial interest in this real estate transaction or who have received or will receive real estate commissions, attorney's or consultant's fees or any other fees or other benefits incident to the sale of the Property are: NONE

<u>Name</u>	<u>Address</u>	<u>Reason for Payment</u>	<u>Amount</u>
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3) That, to the best of the affiant's knowledge, the following is a true history of all financial transactions (including any existing option or purchase agreement in favor of affiant) concerning the Property which have taken place or will take place during the last five years prior to the conveyance of title to **Palm Beach County, a local government of the State of Florida:** NONE

<u>Name and Address of Parties Involved</u>	<u>Date</u>	<u>Type of Transaction</u>	<u>Amount of Transaction</u>
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This affidavit is given in compliance with the provisions of Sections 286.23 and 380.08(2), Florida Statutes.

AND FURTHER AFFIANT SAYETH NOT.

AFFIANT

Nancy Kindt Hernandez
NANCY KINDT HERNANDEZ

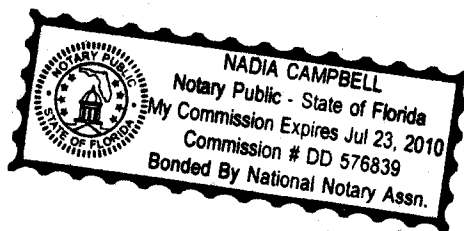
SWORN TO and subscribed before me this 5 day of October, 2007, by NANCY KINDT HERNANDEZ, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, who is personally known to me or who has produced a driver license as identification and who did take an oath.

Nadia Campbell
Notary Public

Nadia Campbell
(Printed, Typed or Stamped Name of Notary)

Commission No.: 5710839
My Commission Expires: July 23, 2010

FLORIDA COMMUNITIES TRUST
APPROVED AS TO FORM AND LEGALITY
By: Kristen L. Coons, Trust Counsel
Date: _____



ADDENDUM
(TRUSTEE)

A. At the same time that Seller submits the closing documents required by paragraph 9. of this Agreement, Seller shall also submit the following to Purchaser:

1. Copies of the written trust agreement and all amendments thereto,
2. All certificates, affidavits, resolutions or other documents as may be required by Acquiring Agency or the title insurer, which authorize the sale of the Property to Purchaser in accordance with the terms of this Agreement and evidence Seller's authority to execute this Agreement and all other documents required by this Agreement, and
3. Copy of proposed opinion of counsel as required by paragraph B. below.

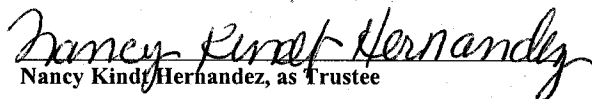
B. As a material inducement to Purchaser entering into this Agreement and to consummate the transaction contemplated herein, Seller covenants, represents and warrants to Purchaser as follows:

1. Seller's execution of this Agreement and the performance by Seller of the various terms and conditions hereof, including, without limitation, the execution of all agreements, notices and other documents hereunder, have been duly authorized by the requisite trust authority.
2. This Agreement, when executed and delivered, will be valid and legally binding upon Seller and enforceable in accordance with its terms and neither the execution of this Agreement and the other instruments to be executed hereunder by Seller, nor the performance by it of the various terms and conditions hereto will violate the terms of the trust agreement or any amendment thereto.

At the closing, Seller shall deliver to Purchaser an opinion of counsel to the effect that the covenants, representations and warranties contained above in this paragraph B. are true and correct as of the closing date. In rendering the foregoing opinion, such counsel may rely as to factual matters upon certificates or other documents furnished by beneficiaries, partners, officers, officials and other counsel of Seller, and upon such other documents and data as such beneficiaries, partners, officers, officials and counsel may deem appropriate.

SELLER

Nancy Kindt Hernandez, as Trustee of the
Susan D. Kindt Trust created under agreement dated
September 26, 2003


Nancy Kindt Hernandez, as Trustee

10-5-07
Date signed by Seller

PURCHASER

PALM BEACH COUNTY, a political subdivision
of the State of Florida

By: _____
Addie L. Greene, Chairperson

Date signed by City

ACQUIRING AGENCY

FLORIDA COMMUNITIES TRUST

By: _____
Janice Browning, Director
Division of Housing and Community Development

Date signed by Acquiring Agency

ADDENDUM
(IMPROVEMENTS/PURCHASER)

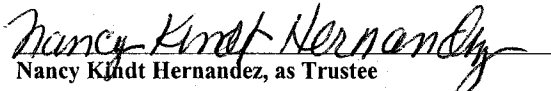
A. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This notice is being provided in accordance with Section 404.056(8), Florida Statutes. Purchaser may, at its sole cost and expense, have the buildings that will remain on the Property inspected and tested for radon gas or radon progeny by a qualified professional properly certified by the Florida Department of Health and Rehabilitative Services. If radon gas or radon progeny is discovered, Purchaser shall have the option to accept the Property as it then is with no reduction in the Purchase Price.

B. **Wood Destroying Organisms Inspection Report.** Purchaser may, at its sole cost and expense, obtain a Wood Destroying Organisms Inspection Report made by a state licensed pest control firm showing the buildings that are to remain on the Property to be visibly free of infestation or damage by termites or other wood-destroying pests. If the report shows such infestation or damage, Purchaser shall have the option to accept the Property as it then is with no reduction in the Purchase Price.

C. **Maintenance of Improvements.** Seller shall, if required by Purchaser, maintain the roofs, doors, floors, steps, windows, exterior walls, foundations, all other structural components, major appliances and heating, cooling, electrical and plumbing systems on all improvements that will remain on the Property in good working order and repair up to the date of closing. Purchaser may, at its expense, have inspections made of said items by licensed persons dealing in the repair and maintenance thereof. Purchaser shall have the option to accept the Property as it then is with no reduction in the Purchase Price.

SELLER

Nancy Kindt Hernandez, as Trustee of the
Susan D. Kindt Trust created under agreement dated
September 26, 2003


Nancy Kindt Hernandez, as Trustee

10-5-07
Date signed by Seller

PURCHASER

PALM BEACH COUNTY, a political subdivision
of the State of Florida

By: _____
Addie L. Greene, Chairperson

Date signed by City

ACQUIRING AGENCY

FLORIDA COMMUNITIES TRUST

By: _____
Janice Browning, Director
Division of Housing and Community Development

Date signed by Acquiring Agency



BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 09/10/07

REQUESTED BY: Dave Douglass

PHONE#: 233-0211
FAX #: 233-0210

PROJECT TITLE: Dubois Marina

PROJECT #:

CURRENT CONTRACT AMOUNT: \$3,600,000.00

BCC RESOLUTION#/DATE:

CONTRACTOR/CONSULTANT: PBC PREM

PROVIDE A BRIEF STATEMENT OF THE SCOPE OF SERVICES TO BE PROVIDED:

50% of purchase price

AMOUNT REQUESTED ON THIS BAS: \$1,800,000

CONSTRUCTION	
ARCHITECTURE/ENGINEER	
STAFF COSTS	
BOND WAIVER	
EQUIPMENT	
OTHER	\$1,800,000.00
TOTAL	\$1,800,000.00

BUDGET ACCOUNT NUMBER (IF KNOWN)

FUND: 3038 DEPT: 581 UNIT: P605 OBJT: 6501

FUNDING SOURCE (CHECK ALL THAT APPLY)

AD VALOREM OTHER
 FEDERAL/DAVIS BACON

BAS APPROVED BY: *[Signature]*

DATE: _____

ENCUMBRANCE NUMBER: _____

FUNDING SOURCE(S)	
<input checked="" type="checkbox"/>	Bond
<input type="checkbox"/>	Impact Fees
<input type="checkbox"/>	Park Improvement Fund
<input type="checkbox"/>	Ad Valorem
<input type="checkbox"/>	Other

BAS APPROVAL	
<input checked="" type="checkbox"/>	FULLY FUNDED WITHIN CURRENT BUDGET <i>[Signature]</i>
<input type="checkbox"/>	FULLY FUNDED PENDING BUDGET TRANSFER _____

G:\Ckopolak\BAS\Forms\P605 Dubois Marina.DOC
9/10/2007

ADDENDUM
BENEFICIAL INTEREST AND DISCLOSURE AFFIDAVIT
(OTHER)

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

Before me, the undersigned authority, personally appeared **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003 this 5 day of Oct, 2007, who, first being duly sworn, deposes and says:

1) That **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, whose address is 2639 West Edgewater Drive, Palm Beach Gardens, Florida 33410, is the record owner of the Property. The following is a list of every "person" (as defined in Section 1.01(3), Florida Statutes) holding 5% or more of the beneficial interest in the Property: (if more space is needed, attach separate sheet)

<u>Name</u>	<u>Address</u>	<u>Interest</u>
CHARLES T. KINDT,	18063 DuBois RD, JUPITER, FL	1/3
ROY J. KINDT,	400 CALOUSAHATCHEE AV, JUPITER, FL	1/3
NANCY KINDT HERNANDEZ,	2639 W. EDGEWATER DR, PALM BCH, GDNS, FL	1/3

2) That to the best of the affiant's knowledge, all persons who have a financial interest in this real estate transaction or who have received or will receive real estate commissions, attorney's or consultant's fees or any other fees or other benefits incident to the sale of the Property are: NONE

<u>Name</u>	<u>Address</u>	<u>Reason for Payment</u>	<u>Amount</u>
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3) That, to the best of the affiant's knowledge, the following is a true history of all financial transactions (including any existing option or purchase agreement in favor of affiant) concerning the Property which have taken place or will take place during the last five years prior to the conveyance of title to **Palm Beach County, a local government of the State of Florida:** *NONE*

<u>Name and Address of Parties Involved</u>	<u>Date</u>	<u>Type of Transaction</u>	<u>Amount of Transaction</u>
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This affidavit is given in compliance with the provisions of Sections 286.23 and 380.08(2), Florida Statutes.

AND FURTHER AFFIANT SAYETH NOT.

AFFIANT

Nancy Kindt Hernandez

 NANCY KINDT HERNANDEZ

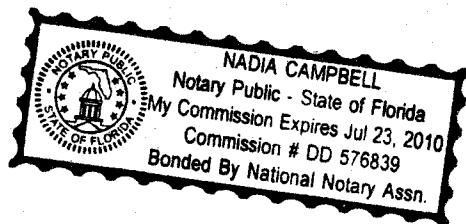
SWORN TO and subscribed before me this 5 day of October, 2007, by **NANCY KINDT HERNANDEZ**, as Trustee of the Susan D. Kindt Trust Created Under Agreement Dated September 26, 2003, who is personally known to me or who has produced a driver license as identification and who did take an oath.

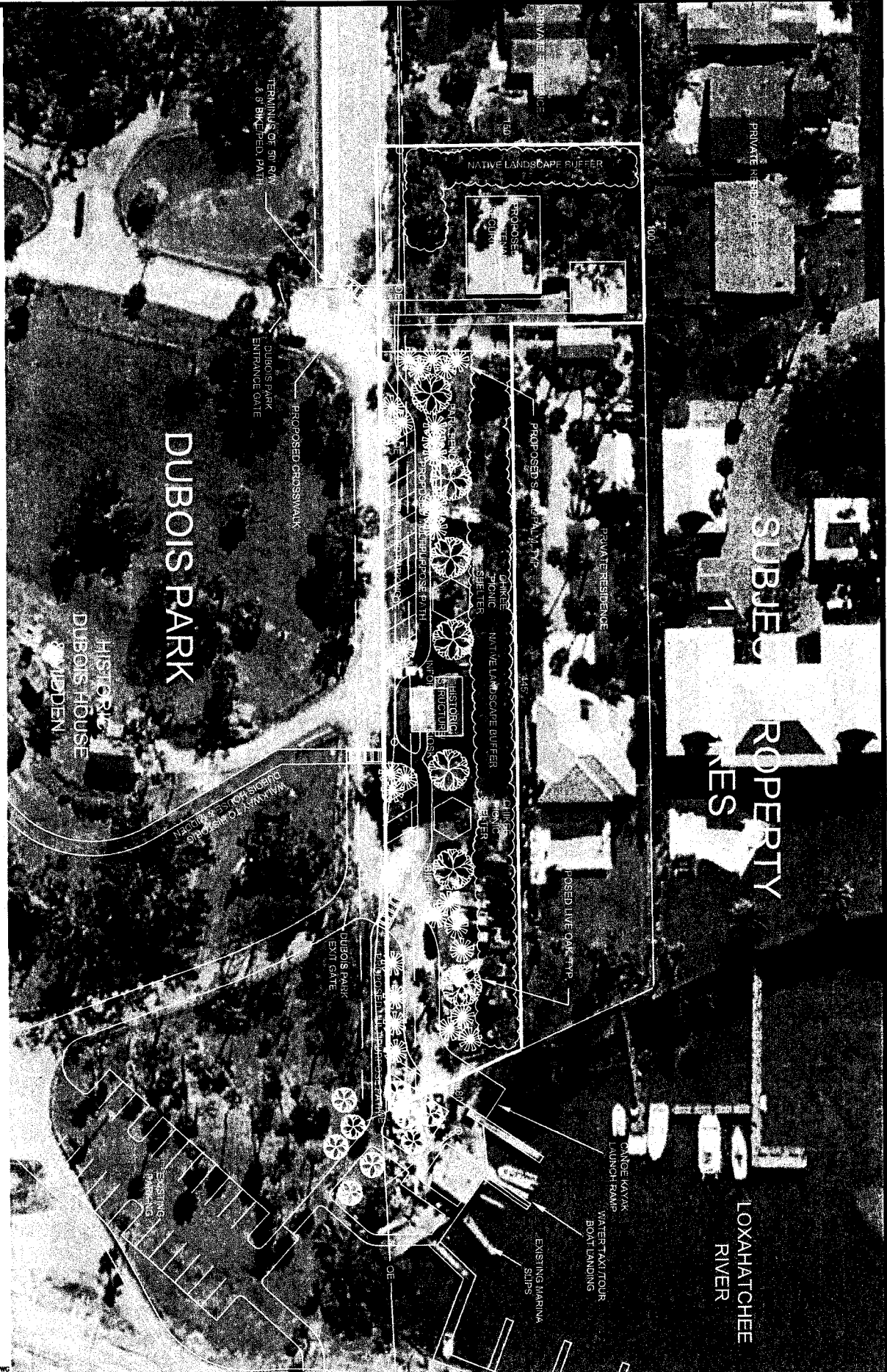
Nadia Campbell

 Notary Public
Nadia Campbell

 (Printed, Typed or Stamped Name of Notary)
 Commission No.: 5710239
 My Commission Expires: July 23, 2010

FLORIDA COMMUNITIES TRUST
 APPROVED AS TO FORM AND LEGALITY
 By: _____
 Kristen L. Coons, Trust Counsel
 Date: _____





DUBOIS FCT.DWG

0 10 20 30 40 50

NORTH

SHEET NO. 1 OF 1

THE SUSAN DUBOIS KINDT
ESTATE FCT
SITE PLAN

PALM BEACH COUNTY
PARKS & RECREATION DEPARTMENT

DESIGNED BY: T. GRANOWITZ
DRAWN BY: N. OUELLETTE
DATE: 5/3/06

APPROVED BY:
B. WILSHER



ATTACHMENT #5