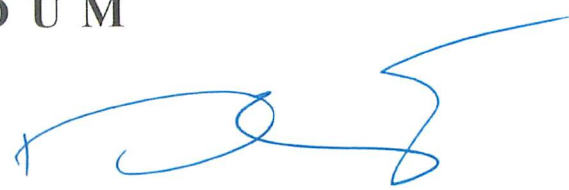


*Founded 1910*

## MEMORANDUM

TO: Central Florida Expressway Authority Board  
FROM: David A. Shontz, Esq., Right-of-Way Counsel  
DATE: March 18, 2015  
RE: State Road 429 Wekiva Parkway, Project 429-204; Parcel 237  
Settlement/Purchase Agreement



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Shutts & Bowen LLP, Right-of-Way Counsel, seeks the approval of a settlement to be consummated with a Purchase Agreement between Henry J. and Kathleen R. Dubel (the "Owners") and the Central Florida Expressway Authority (the "CFX") for the acquisition of Parcel 237 (the "Taking" or "Property") for the construction of State Road 429 Wekiva Parkway, Project 429-204. The Right-of-Way Committee has recommended approval of the Purchase Agreement.

### DESCRIPTION AND BACKGROUND

Parcel 237 is a partial acquisition consisting of 2.345 acres with a remainder of .534 acres. The property is located in unincorporated Orange County at 3404 Paulette St, Apopka, FL. The improvements located within the taking include a 2,024 s.f. three bedroom/two bath single family residence build in 1979. Additional site improvements include field wire and no-climb fencing and cross fencing, 346 s.f. goat barn, 554 s.f. two-car carport and 292 s.f. chicken coop and landscaping. The property is zoned A-R (Agricultural-Residential District). This property is the homestead of Mr. and Mrs. Dubel.

The CFX's appraisal of the property was prepared by David Hall of Bullard, Hall and Adams, Inc. Mr. Hall estimated the value of the taking to be \$309,000 (Land \$70,400, Improvements \$210,200 and damages \$28,400). Comparable land sales of \$23,660 to \$30,021 per acre were utilized by Mr. Hall. Mr. Hall opined the subject property value is \$30,000 per acre. The taking results in a remainder that has a nominal value of \$100, resulting in the incurable damages of \$28,400.

Mr. and Mrs. Dubel are represented by Mark Natirboff and he has argued that the land should be valued at \$60,000 per acre, the improvements at \$130 s.f. and the landscaping installed by the Dubel's should also be paid by the CFX as part of the improvements.

Parcel 237 is scheduled for an Order of Taking hearing on April 6, 2015. Although the CFX disagrees with some issues raised by Mr. Natirboff, the parties were able to reach a settlement to purchase the whole parent tract (2.879 acres) contingent on Board approval for a total of \$417,000, plus attorney's fees totaling \$35,640 and expert fees totaling \$2,206.75 (\$988.00 appraiser – American Valuation, \$375.00 land planner – Karen Taylor, and \$843.75 engineer – Reggie Mesimer. Mr. and Mrs. Dubel and CFX entered into a proposed Purchase Agreement for a total of \$454,846.75, inclusive of all fees and costs.

The Right-of-Way Committee recommends the approval of the proposed purchase agreement and we are requesting Board approval of the proposed purchase agreement and is in the CFX's best interest. This settlement considers the substantial differences of opinion regarding valuation issues to be presented to the jury by both parties, credibility of expert witnesses and it will eliminate further risk and unnecessary expenses that the CFX will ultimately incur if it is required to litigate a condemnation action to acquire Parcel 237, as the CFX is responsible for the property owners attorney's fees and experts fees as set forth in Florida Statutes Chapter 73 and 74.

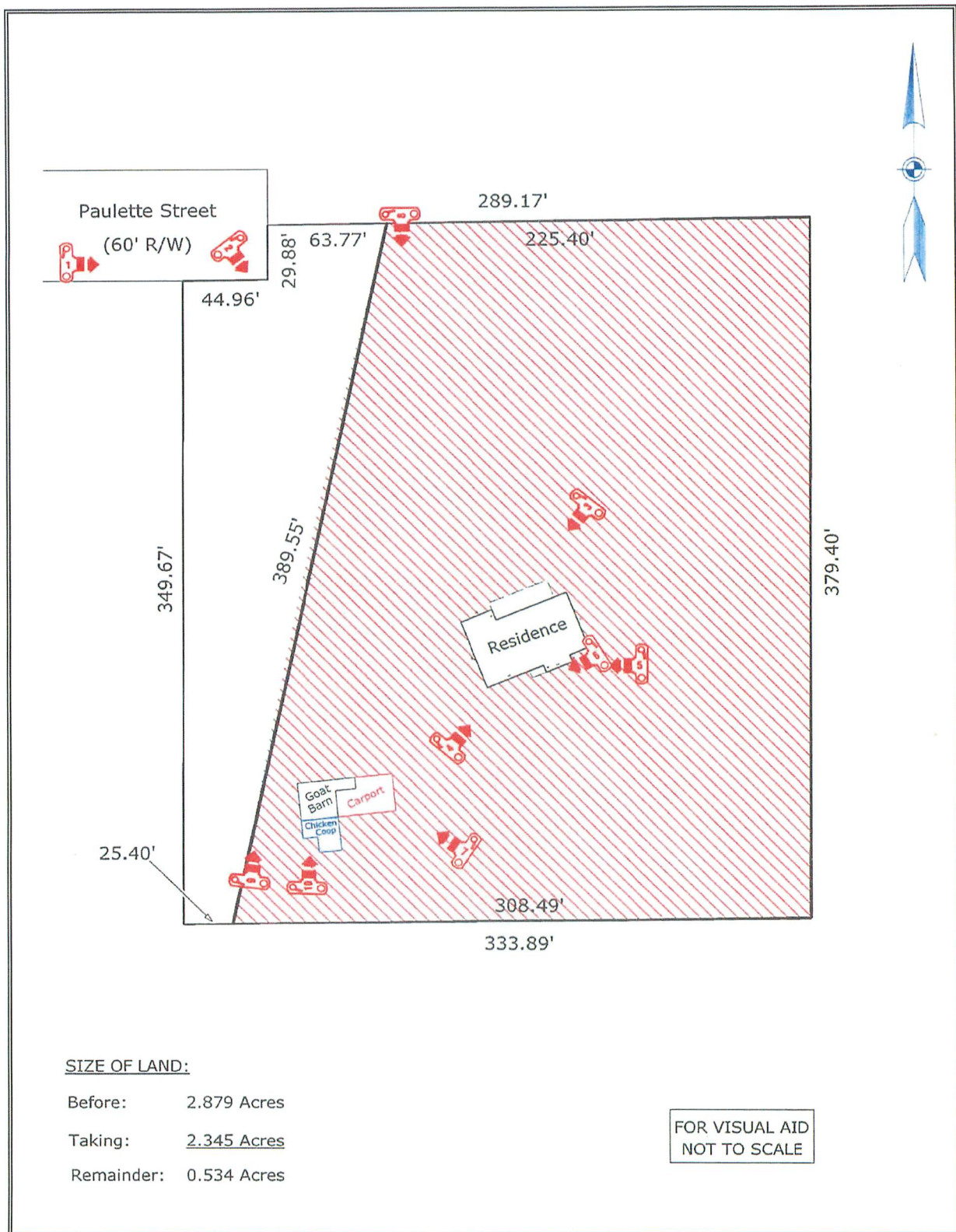
### **RECOMMENDATION**

We respectfully request that the CFX Board the approval of the proposed purchase agreement with a total settlement amount of \$454,846.75, inclusive of all fees and costs in full settlement of all claims for compensation for the acquisition of Parcel 237.

### **ATTACHMENTS**

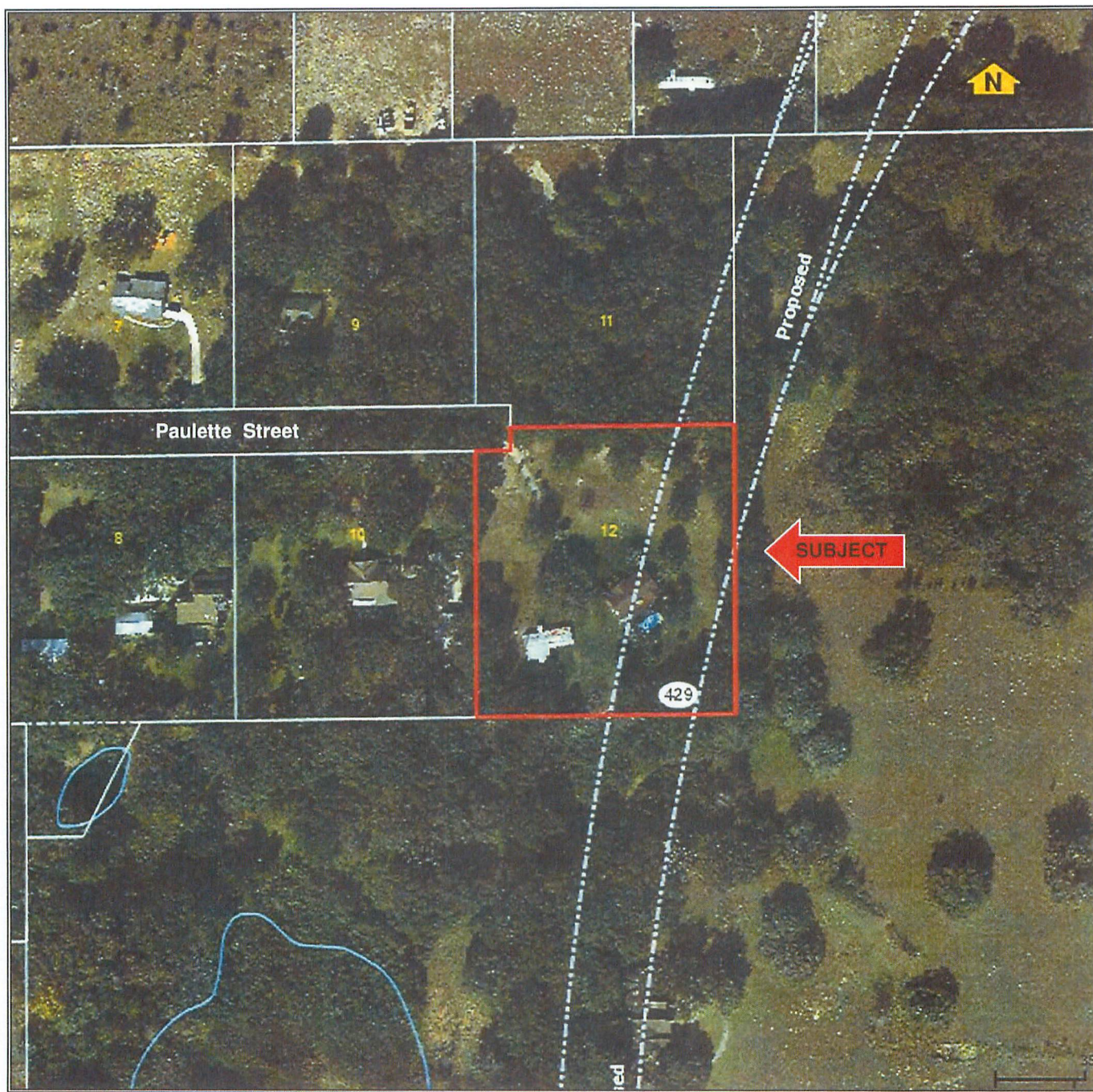
- Exhibit "A" – Sketch of Subject Property
- Exhibit "B" – Proposed Purchase Agreement

ORLDOCS 13924680 1



**PARCEL SKETCH  
PARCEL 237**





## LEGAL DESCRIPTION

PARCEL 237

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

THAT PART OF LOT 12, EMERY SMITH SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 7, PAGE 22 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 6176, PAGE 1203, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST (A 4"X4" CONCRETE MONUMENT NO IDENTIFICATION AS NOW EXISTS); THENCE SOUTH 00°21'57" WEST ALONG THE WEST LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 2089.57 FEET TO A POINT ON THE SOUTH LINE OF SAID EMERY SMITH SUBDIVISION; THENCE DEPARTING SAID WEST LINE NORTH 89°17'11" EAST ALONG SAID SOUTH LINE, A DISTANCE OF 262.37 FEET TO THE POINT OF BEGINNING AND A POINT ON A NON-TANGENT CURVE; THENCE FROM A TANGENT BEARING OF NORTH 10°18'13" EAST, NORTHEASTERLY 389.55 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 5,653.17 FEET, A CENTRAL ANGLE OF 03°56'53" AND A CHORD BEARING NORTH 12°16'39" EAST TO A POINT ON THE NORTH LINE OF SAID LOT 12; THENCE NORTH 89°19'11" EAST ALONG SAID NORTH LINE, A DISTANCE OF 225.40 FEET TO THE NORTHEAST CORNER OF SAID LOT 12; THENCE SOUTH 00°02'23" EAST ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 379.40 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12 AND SAID SOUTH LINE OF EMERY SMITH SUBDIVISION; THENCE SOUTH 89°17'11" WEST ALONG THE SOUTH LINE OF SAID LOT 12, A DISTANCE OF 308.49 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 2.345 ACRES, MORE OR LESS.

I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SUBJECT TO NOTES AND NOTATIONS SHOWN HEREON.

  
RUSSELL J. MARKS, PSM NO. 5623

3/25/14  
DATE

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: SMP

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

**URS**

URS CORPORATION  
315 E. ROBINSON STREET  
SUITE 245  
ORLANDO, FL 32801-1949  
PH (407) 422-0353  
LICENSED BUSINESS NO. 6839

REVISIONS:

SHEET: 1 OF 2

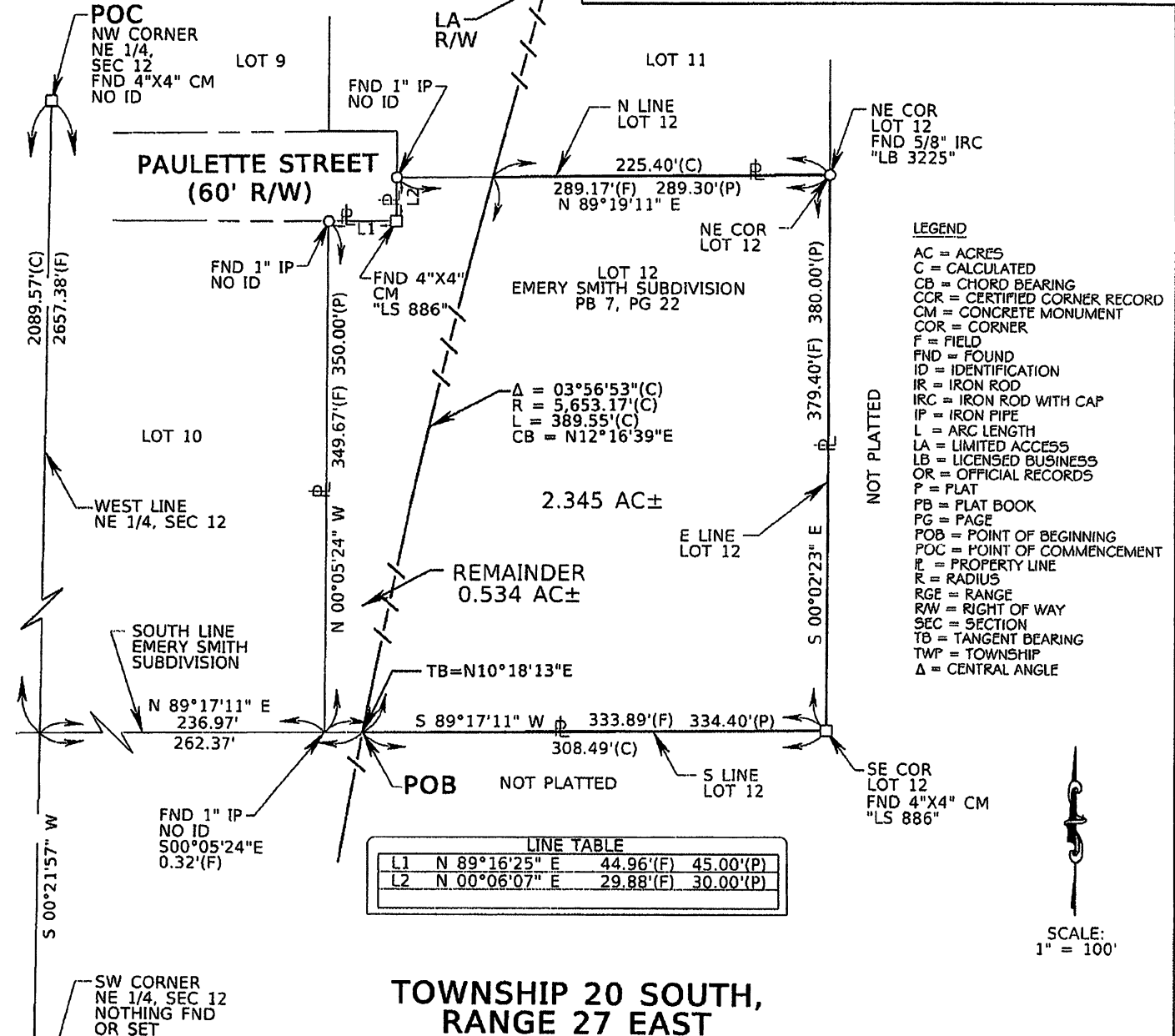
**EXHIBIT "A"**

# SKETCH OF DESCRIPTION

PARCEL: 237

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



## GENERAL NOTES:

- THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE WEST LINE OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 00°21'57" WEST.
- THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
- ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
- A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED NOVEMBER 19, 2012, FILE NO. 2037-2856892 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

**URS**

URS CORPORATION  
315 E. ROBINSON STREET  
SUITE 245  
ORLANDO, FL 32801-1949  
PH (407) 422-0353  
LICENSED BUSINESS NO. 6839

REVISIONS:

DRAWN BY: SMP

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

SHEET: 2 OF 2

## PURCHASE AGREEMENT

PROJECT 429 - 204  
 STATE ROAD NO 429  
 PROJECT NAME Wekiva Parkway  
 COUNTY Orange  
 PARCEL NO 237

Seller: Henry J. and Kathleen R. Dubel

Buyer: The Central Florida Expressway Authority ("Expressway Authority")

Expressway Authority and Seller hereby agree that Seller shall sell and Expressway Authority shall buy the following described property pursuant to the following terms and conditions

I. Description of Property

(a) Estate being purchased ☒ Fee Simple ☐ Permanent Easement ☐ Temporary Easement ☐ Leasehold

(b) Real property described as See Attached Exhibit "A"

(c) Personal property None

(d) Outdoor advertising structure(s) permit number(s) N/A

Buildings, structures, fixtures and other improvements owned by others N/A

These items are NOT included in this agreement. A separate offer is being, or has been, made for these items

II. PURCHASE PRICE

(a) Real Property

Land and Improvements	1	\$	417,000.00
Real Estate Damages	2	\$	0.00
(Severance/Cost-to-Cure)			
<b>Total Real Property</b>	<b>3.</b>	<b>\$</b>	<b>417,000.00</b>
<b>(b) Total Personal Property</b>	<b>4.</b>	<b>\$</b>	<b>0.00</b>
<b>(c) Fees and Costs</b>			
Attorney Fees	5	\$	35,640.00
Appraiser Fees	6	\$	2,206.75
	Fees (s) 7	\$	
<b>Total Fees and Costs</b>	<b>8.</b>	<b>\$</b>	<b>37,846.75</b>
<b>(d) Total Business Damages</b>	<b>9.</b>	<b>\$</b>	<b>0.00</b>
<b>(e) Total of Other Costs</b>	<b>10.</b>	<b>\$</b>	<b>0.00</b>
List:			

**Total Purchase Price (Add Lines 3, 4, 8, 9 and 10)** **\$ 454,846.75**

(f) Portion of Total Purchase Price to be paid to Seller by Expressway Authority at Closing **\$ 0.00**

(g) Portion of Total Purchase Price to be paid to Seller by Expressway Authority upon surrender of possession **\$ 0.00**



### III. Conditions and Limitations

- (a) Seller is responsible for all taxes due on the property up to, but not including, the day of closing.
- (b) Seller is responsible for delivering marketable title to Expressway Authority. Marketable title shall be determined according to applicable title standards adopted by the Florida Bar in accordance with Florida Law, subject only to those exceptions that are acceptable to Expressway Authority. Seller shall be liable for any encumbrances not disclosed in the public records or arising after closing as a result of actions of the Seller.
- (c) Seller shall maintain the property described in **Section I** of this agreement until the day of closing. The property shall be maintained in the same condition existing on the date of this agreement, except for reasonable wear and tear.
- (d) Any occupancy of the property described in **Section I** of this agreement by Seller extending beyond the day of closing must be pursuant to a lease from Expressway Authority to Seller.
- (e) The property described in **Section I** of this agreement is being acquired by Expressway Authority for transportation purposes under threat of condemnation pursuant to **Section 337.25 Florida Statutes**.
- (f) Pursuant to Rule 14-10.004, Florida Administrative Code, Seller shall deliver completed **Outdoor Advertising Permit Cancellation Form(s)**, Form Number 575-070-12, executed by the outdoor advertising permit holder(s) for any outdoor advertising structure(s) described in **Section I** of this agreement and shall surrender, or account for, the outdoor advertising permit tag(s) at closing.
- (g) Seller agrees that the real property described in **Section I** of this agreement shall be conveyed to Expressway Authority by conveyance instrument(s) acceptable to Expressway Authority.
- (h) Seller and Expressway Authority agree that this agreement represents the full and final agreement for the herein described sale and purchase and no other agreements or representations, unless incorporated into this agreement, shall be binding on the parties.
- (i) Other \_\_\_\_\_  
\_\_\_\_\_
- (j) Seller and Expressway Authority agree that a real estate closing pursuant to the terms of this agreement shall be contingent on delivery by Seller of an executed Public Disclosure affidavit in accordance with **Section 286.23, Florida Statutes**, if applicable.

### IV. Closing Date

The closing will occur no later than sixty (60) days after Final Agency Acceptance.

### V. Typewritten or Handwritten Provisions

Any typewritten or handwritten provisions inserted into or attached to this agreement as addenda must be initiated by both Seller and Expressway Authority.

- ☒ There is an addendum to this agreement. Page 4 is made a part of this agreement.
- ☐ There is not an addendum to this agreement.



VI. Seller and Expressway Authority hereby acknowledge and agree that their signatures as Seller and Expressway Authority below constitute their acceptance of this agreement as a binding real estate contract

This Agreement is subject to final agency acceptance by Expressway Authority pursuant to Section 119.0711 Florida Statutes (2013) ("Final Agency Acceptance") after Right of Way Committee and Expressway Authority Board Approval. Notwithstanding anything in this Agreement to the contrary, the Closing shall not occur prior to thirty (30) days from the date this Agreement is executed and delivered by Owners and Expressway Authority to allow public review of the transaction contemplated by this Agreement. Final Agency Acceptance shall be evidenced by the signature of Expressway Authority in Section VII of this agreement

Seller: Henry J. and Kathleen R. Dubel

Buyer: Central Florida Expressway Authority

Henry J. Dubel 3/6/15  
Signature Date

BY Joseph A. Berenis 3/11/15  
Signature Date

Henry J. Dubel  
Type or print name

Joseph A. Berenis  
Type or print name

Kathleen R. Dubel 3/6/15  
Signature Date

Kathleen R. Dubel  
Type or print name

## VII. FINAL AGENCY ACCEPTANCE

The Expressway Authority has granted Final Agency Acceptance this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

### WITNESSES:

### "EXPRESSWAY AUTHORITY"

\_\_\_\_\_  
Print Name

### CENTRAL FLORIDA EXPRESSWAY AUTHORITY

A body politic and corporate, and an agency of the state under the laws of the State of Florida

\_\_\_\_\_  
Print Name

By \_\_\_\_\_

Print Name \_\_\_\_\_

APPROVED AS TO FORM FOR EXECUTION BY A  
SIGNATORY OF THE CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY  
Legal Counsel

Title \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

The Central Florida Expressway Authority

ADDENDUM TO PURCHASE AGREEMENT

PROJECT 429 204  
 STATE ROAD NO 429  
 PROJECT NAME Wekiva Parkway  
 COUNTY Orange  
 PARCEL NO 237

This is an addendum to the Purchase Agreement attached hereto and made a part hereof between, Henry J and Kathleen R Dubel Seller and The Central Florida Expressway Authority ("Expressway Authority"), Buyer for the use and benefit of the Expressway Authority for the above-referenced project

- 1 Buyer and Seller agree all fees, costs and/or business damage claims are included in this Purchase Agreement
- 2 This acquisition is a whole take

Funds shall be made payable and will be issued according to the Seller and/or their representatives

- 1 Funds in the amount of \$ \_\_\_\_\_ shall be made payable to \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused these present to be executed in their respective names

Seller(s): Henry J. Dubel Kathleen R. Dubel

[Signature] Kathleen R. Dubel

Date

3/6/15

By \_\_\_\_\_  
 Type or print name and title

Buyer: The Central Florida Expressway Authority

Signature \_\_\_\_\_  
 Print Name \_\_\_\_\_

Date \_\_\_\_\_

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

KPD The total Amount of \$454,846.75  
KPD Shall be paid to the Law offices of  
KPD D. Mark Natirboff, PA, Trust Account  
 The Mortgage shall be paid out of the  
 Trust Account

## LEGAL DESCRIPTION

PARCEL 237

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

THAT PART OF LOT 12, EMERY SMITH SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 7, PAGE 22 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 6176, PAGE 1203, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 2.345 ACRES, MORE OR LESS.

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RUSSELL J. MARKS, PSM NO. 5623

3/25/14

DATE

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAD 429	
DESIGNED BY: RJM	DATE: 3/18/14	<b>URS</b> URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	REVISIONS:
DRAWN BY: SMP	JOB NO:		
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204		SHEET: 1 OF 2

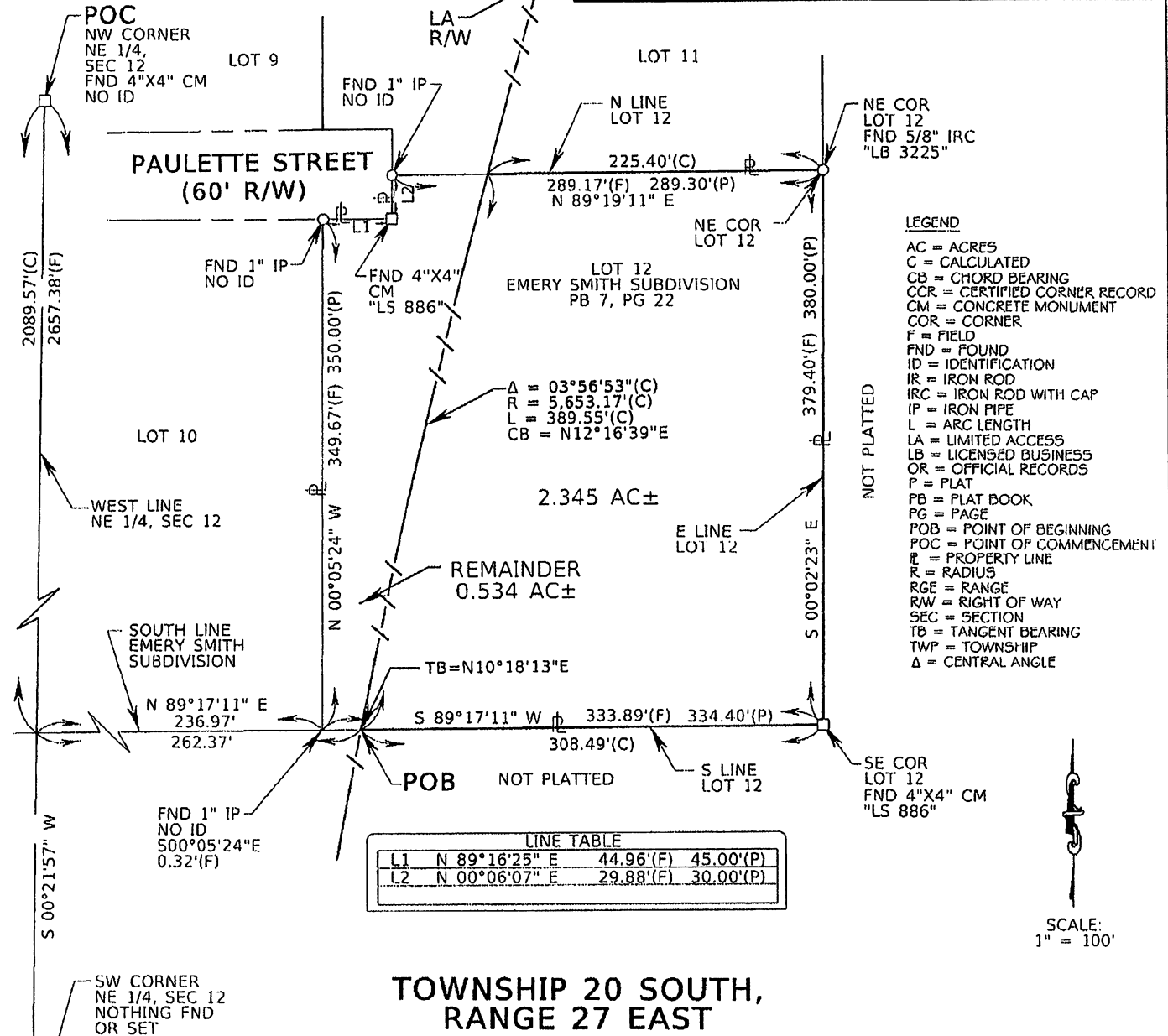
**EXHIBIT "A"**

# SKETCH OF DESCRIPTION

PARCEL: 237

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



## GENERAL NOTES:

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE WEST LINE OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 00°21'57" WEST.
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3. ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED NOVEMBER 19, 2012, FILE NO. 2037-2856892 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

SCALE:  
1" = 100'

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

**URS**

URS CORPORATION  
315 E. ROBINSON STREET  
SUITE 245  
ORLANDO, FL 32801-1949  
PH (407) 422-0353  
LICENSED BUSINESS NO. 6839

REVISIONS:

DRAWN BY: SMP

JOB NO:

APPROVED BY: RJM

OCEA PROJECT NO: 429-204

SHEET: 2 OF 2