

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY EMERGENCY BOARD MEETING May 28, 2015

Board Members Present:

Commissioner Welton G. Cadwell, Lake County (Chairman)
Commissioner S. Scott Boyd, Orange County (Vice Chairman)
Commissioner Brenda Carey, Seminole County (Secretary-Treasurer)
Mayor Buddy Dyer, City of Orlando
Walter A. Ketcham, Jr., Gubernatorial Appointment

Board Members Participating By Phone:

Jay Madara, Gubernatorial Appointment
S. Michael Scheeringa, Gubernatorial Appointment

Board Members Not Present:

Commissioner Fred Hawkins, Jr., Osceola County
Mayor Teresa Jacobs, Orange County

Non-Voting Advisor Not Present:

Diane Gutierrez-Scaccetti, Florida's Turnpike Enterprise

Staff Present at Dais:

Laura Kelley, Executive Director
Joseph L. Passiatore, General Counsel
Darleen Mazzillo, Recording Secretary/Executive Assistant

CALL TO ORDER

The meeting was called to order at 8:30 a.m. by Chairman Welton Cadwell.

PUBLIC COMMENT

There were no comments from the public.

S.R. 528 – OFFER FROM MATTAMY HOMES FOR PARCEL 104

General Counsel Joseph Passiatore reported that CFX has been negotiating with Mattamy Homes for the acquisition of an approximately 3-acre parcel located generally at the southwest quadrant of the S.R. 528/S.R. 417 Interchange, as part of the pre-acquisition process for the multi-modal corridor. This matter is being brought to the Board because of the time constraints attached to the counteroffer and the development schedule and ongoing construction work of the property owner. A condition by the seller is that closing take place on May 29, 2015.

The Right-of-Way Committee recommended this matter for Board approval at their meeting yesterday.

Linda Brehmer Lanosa gave a presentation which included information, sketches and pictures of the subject property.

Highlights:

- CFX orally communicated the draft appraised value of \$3,120,350
- CFX to pay \$3,500,000 inclusive of all claims, fees and costs
- Payment must be received by Mattamy by May 29, 2015
- Mattamy agrees to:
 - Quit Claim Deed for the 50-foot encroachment area
 - Cooperate re: subordination from FP&L
 - Grant CFX a Temporary Construction Easement over its existing retention pond
 - Agreement contingent upon CFX receipt of appraisal report, Right-of-Way Committee approval, and Board approval
- Withdrawn by Mattamy:
 - Sound wall at the northern edge
 - Indemnify Mattamy from any fees or costs from Thorpe Early, who apparently was an intermediary

CFX legal staff recommends that the Board approve Mattamy Homes' purchase price of \$3.5 million.

Jere Daniels of Winderweede, Haines, Ward & Woodman reviewed the highlights of the Purchase Agreement (attached as Exhibit "A").

The Board members asked questions regarding wetland impacts, the impact of this acquisition on remaining parcels, discount rate determination, construction commencement timeline, and retention pond construction, which were answered by CFX staff and appraiser Woody Hanson. A question concerning wetland mitigation was answered by Kent Hipp, counsel to Mattamy Homes.

A motion was made by Mayor Dyer and seconded by Mr. Ketcham to approve the Real Estate Purchase Agreement between Mattamy (Jacksonville) Partnership and CFX for the all-inclusive purchase price of \$3,500,000. The motion carried 7 to 0 with Commissioner Cadwell, Mayor Dyer,

Commissioner Carey, Commissioner Boyd and Mr. Ketcham present and voting AYE by voice vote and Mr. Madara and Mr. Scheeringa voting AYE via phone; Mayor Jacobs and Commissioner Hawkins were not present.

BOARD MEMBER COMMENT

Mayor Dyer proposed that Laura Kelley make her recommendations on any staff reorganization after her employment contract is approved by the Board on June 11.

Commissioner Carey suggested that Shutts & Bowen continue to pursue discussions with Brunetti regarding purchase of their property for the multi-modal corridor.

ADJOURNMENT

The Chairman adjourned the meeting at 8:48 a.m.

Commissioner Welton G. Cadwell
Chairman
Central Florida Expressway Authority

Darleen Mazzillo
Recording Secretary/Executive Assistant
Central Florida Expressway Authority

Minutes approved on _____, 2015.

Pursuant to the Florida Public Records Law and CFX Records Management Policy, audio tapes of all Board and applicable Committee meetings are maintained and available upon request to the Records Management Liaison Officer at publicrecords@CFXWay.com or 4974 ORL Tower Road, Orlando, FL 32807. Additionally, video tapes of Board meetings commencing July 25, 2012 are available at the CFX website, www.expresswayauthority.com

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

AGENDA
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
EMERGENCY BOARD MEETING
May 28, 2015
8:30 a.m.

Meeting Location: CFX Boardroom
4974 ORL Tower Road, Orlando, FL 32807

A. CALL TO ORDER

B. PUBLIC COMMENT

Pursuant to Rule 1-1.011, the governing Board for CFX has set aside at least 15 minutes at the beginning of each regular meeting for citizens to speak to the Board on any matter of public interest under the Board's authority and jurisdiction, regardless of whether the public interest is on the Board's agenda, but excluding pending procurement issues. Each speaker shall be limited to 3 minutes.

C. S.R. 528 – OFFER FROM MATTAMY HOMES FOR PARCEL 104 – *Joseph Passiatore, General Counsel*
Requesting Board approval for the purchase of Parcel 104 with a temporary construction easement in the amount of
\$3,500,000 including all fees and costs (action item)

D. BOARD MEMBER COMMENT

E. ADJOURNMENT

This meeting is open to the public.

Note: Any person who decides to appeal any decision made at this meeting will need record of the proceedings and for that purpose, may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based, per Florida Statute 286.0105.

EXHIBIT "A"

PARCEL NO. 104
PROJECT 528-1240
Beachline Expressway

REAL ESTATE PURCHASE AGREEMENT

This **REAL ESTATE PURCHASE AGREEMENT** ("Agreement") is made and entered into this ____ day of May, 2015, by and between **MATTAMY (JACKSONVILLE) PARTNERSHIP, a Florida general partnership** ("Owners"), whose address is 1900 Summit Tower Blvd., Suite 500, Orlando, FL 32810 and whose U.S. Taxpayer Identification Number is 47-2421943 and the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the state, under the laws of the State of Florida, ("Authority"), whose address is 4974 ORL Tower Road, Orlando, FL 32807.

W I T N E S E T H:

WHEREAS, Owners are the fee simple owners of a certain parcel of real property located in Orange County, Florida (the "Property"), being more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference; and

WHEREAS, the Authority desires the Property as right of way for future construction, improvement, expansion, and maintenance of (a) SR 528, an authorized roadway and/or related facilities or for other appropriate and legally authorized uses and (b) an intercity passenger railroad (the "AAF Railroad"); and

WHEREAS, Owner, under threat of condemnation, desires to sell to the Authority and the Authority desires to purchase from Owner the Property upon the terms and conditions herein below set forth.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by the Authority to Owners, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the parties hereto, the Authority and Owners hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Agreement to Buy and Sell.** Owners, under threat of condemnation, agree to sell to the Authority and the Authority agrees to purchase from Owners the Property in the manner and upon the terms and conditions herein below set forth in this Agreement.

3. **Purchase Price.** The total Property to be purchased from Owners is 3.05 acres, more or less, and includes any and all site improvements in that area described in **Exhibit "A"** attached hereto and incorporated herein by reference. The total purchase price (the "Purchase Price") to be paid by the Authority to Owner for the Property shall be **\$3,500,000.00, inclusive**

of all expert fees, costs, and attorneys' fees. The Purchase Price shall be paid by the Authority to the Gray Robinson P. A. Trust Account. The Purchase Price shall be paid by wire transfer of funds, subject to appropriate credits, adjustments and prorations as herein below provided, and represents the full compensation to Owners for the Property and for any damages suffered by Owners and/or any adjoining property owned by Owner in connection with the transaction contemplated under this Agreement.

4. **Authority's Right of Inspection.** The Authority shall at all times before Closing have the privilege of going upon the Property with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which the Authority, in its discretion, deems necessary or desirable to determine the suitability of the Property for its intended uses thereof. Said privilege shall include, without limitation, the right to make surveys, soils tests, borings, percolation tests, compaction tests, environmental tests and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Property. The Authority may, in its sole discretion and at its sole cost and expense, have the Property tested, surveyed and inspected to determine if the Property contains any hazardous or toxic substances, wastes, materials, pollutants or contaminants. As used herein, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state superlien or environmental clean-up statutes (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). The Authority may obtain a hazardous waste report prepared by a registered engineer, which report, if obtained, shall be satisfactory to the Authority in its sole discretion. In the event the Authority determines that said report is not satisfactory, the Authority may terminate this Agreement, both parties thereby being relieved of all further obligations hereunder.

5. **As Is.** The property is being conveyed to the Authority "as is" (as set forth in Section 26 below) and the Authority specifically acknowledges that it is aware of the existence of a permitted water retention area on the Property and the adjacent property which Owner will retain ownership to after Closing (the "Remainder Property"). The Authority and AAF shall be solely responsible for constructing their projects so as to leave intact and in clean and working order the portion of the existing water retention area located adjacent to the Property. This obligation of the Authority and AAF shall survive closing for the duration of the Temporary Construction Easement as defined in Section 9 below. Any portion of the then existing water retention pond located on the Property does not need to be maintained by the Authority and may otherwise be altered, amended or filled.

6. **Evidence of Title.** The Authority has, at the Authority's sole cost and expense, ordered a commitment for a policy of owner's title insurance (the "Commitment") from Fidelity National Title Insurance Company bearing Order No. 5300431 and an effective date of May 18, 2015. The Commitment binds the title company to deliver to the Authority a policy of owner's title insurance (the "Owner's Title Insurance Policy") which shall insure the Authority's title to the Property in an amount equal to the Purchase Price. Prior to Closing, the Authority shall notify Owners of any defects, a defect being a matter which would render title unmarketable.

Owner agrees that it will, if title is found to be unmarketable or otherwise unacceptable to the Authority, use its best efforts to correct the defect(s) prior to closing, provided that Owner shall have no obligation to extend the Closing Date to cure any such title defect, failing which, the Authority may proceed to Close or terminate this Agreement. Those matters set forth on **Exhibit "B"** attached hereto and incorporated herein by reference shall be deemed and collectively referred to herein as the "Permitted Exceptions". Authority shall take title to the Property subject to only the Permitted Exceptions. At Closing, the Authority shall pay the premium for the Owner's Title Insurance Policy to be issued.

Notwithstanding the preceding, Owner agrees to cooperate in the Authority's efforts to obtain a utility subordination agreement from the power line easement which encumbers the Property and is recorded at O. R. Book 1893, Page 946 of the Official Public Records of Orange County, Florida. Furthermore, Owner agrees to remove, release or terminate all other matters listed on Schedule B-II of the Commitment (the "Objectionable Encumbrances") on or before December 31, 2015. Within ten (10) business days following Closing the Owner shall deliver the Authority a letter of credit in the amount of _____ Thousand and 00/100 Dollars (\$_____) payable to the Authority on demand in the event that the Owner fails to remove, release or terminate the Objectionable Encumbrances on or before December 31, 2015. The letter of credit shall be issued by an institution and in a form acceptable to the Authority, in the Authority's reasonable discretion, and such letter of credit shall remain open for a period of one (1) year from the date of Closing. The preceding obligations of Owner shall survive Closing for a period of three (3) years (provided that the referenced letter of credit shall remain open for only one (1) year from the date of Closing).

7. **Survey.** The Authority shall have the right, at any time before Closing, to have the Property surveyed at its sole cost and expense (the "Survey"). Any Survey shall be performed and certified to the Authority and the title company issuing the Commitment in accordance with applicable law, statutes and regulations and shall have located thereon all matters listed in the Commitment which are capable of being shown on a survey. Any survey exceptions or matters not acceptable to the Authority shall be treated as title exceptions. The surveyor shall provide certified legal descriptions and sketches of said descriptions delineating the Property into various portions of right of way and the legal descriptions will be included in the deed as an additional description of the Property conveyed by Owners.

8. **Encroachment Area.** As part of the consideration for this Agreement, Owners shall provide a Quit Claim Deed for the property described hereto in **Exhibit "C"**, which consists of approximately 50 feet where Owners' retention pond berm encroaches upon the Authority's pre-existing property.

9. **Temporary Construction Easement.** Owner agrees to grant the Authority a temporary construction easement (the "Temporary Construction Easement") over the portion of the existing water retention area and abutting berm width that is not within the Property being acquired in fee by the Authority as more fully set forth in attached **Exhibit "D."** A form of the Temporary Construction Easement grant and agreement is attached as **Exhibit "E"**. If Owner, its contractors, agents, successors or assigns modify the shape of the retention pond prior to All Aboard Florida, its successors or assigns ("AAF") commencing construction of AAF Railroad,

then the Temporary Construction Easement shape shall follow the modified pond shape and berm width.

10. **Closing Date and Closing Procedures and Requirements.**

(a) **Closing Date.** The closing of the purchase and sale contemplated under this Agreement (the "Closing") shall be held on or before May 29, 2015 (the "Closing Date"), at the offices of the Authority, or the Authority's attorney, or any other place which is mutually acceptable to the parties. The timely closing of this transaction on or before May 29, 2015, is an absolute condition of this Agreement. Should this transaction not be closed on or before close of business May 29, 2015, then this Purchase Agreement shall be deemed terminated.

(b) **Conveyance of Title.** At the Closing, Owners shall execute and deliver to the Authority a Statutory Warranty Deed, in the form and content attached hereto as **Exhibit "F"** and incorporated herein by reference, conveying fee simple marketable record title to the Property to the Authority, free and clear of all liens, general and special assessments, easements, reservations, restrictions and encumbrances whatsoever.

Any mortgage, financing statement, assignment of rents, leases and profits or similar encumbrance on the Property shall be satisfied and or released at Closing by Owner.

(c) **Conveyance of Possession.** Title shall transfer as of the Closing Date. any personal property or fixtures left by Owners upon the Property after the Closing Date shall be presumed to be abandoned, and the Authority will have the right to remove and destroy such property or fixtures without any responsibility or liability to Owners for any damages or claims whatsoever.

(d) **Prorating of Taxes and Assessments.** Owners shall pay all taxes, assessments and charges applicable to the Property for all years upon to Closing. At Closing, Owners will pay to the Authority or the closing agent, by credit to the Purchase Price or otherwise, Owners' pro rata share of all taxes, assessments and charges as determined by the Orange County Property Appraiser, the Orange County Tax Collector and/or other applicable governmental authority.

(e) **Closing Costs.** The Authority shall, at Closing, pay: (i) all real property transfer and transaction taxes and levies, including documentary stamps on the Statutory Warranty Deed delivered to the Authority hereunder, if any, relating to the purchase and sale of the Property; (ii) the cost of recording the Statutory Warranty Deed, Quit Claim Deed and Temporary Construction Easement delivered hereunder; (iii) all costs pertaining to the title commitment, including, but not limited to, title insurance premiums, title search fees, and the premiums for any endorsements requested by the Authority, and all costs related to the issuance of the Commitment and a title insurance policy insuring title to the Property, should the Authority desire to obtain a title insurance policy on the Property; (iv) all of the costs and expenses associated with the Survey, should the Authority desire to obtain a Survey. All other costs incurred at Closing shall be borne by the parties in accordance with the custom and usage in Orange County, Florida.

(f) General Closing Documents. At Closing, the Owners shall sign a closing statement, an owner's affidavit including matters referenced in Section 627.7842(b) and (c), Florida Statutes, and an affidavit that Owners are not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time (which certificates shall include Owners' taxpayer identification numbers and address or a withholding certificate from the Internal Revenue Service stating that Owners are exempt from withholding tax on the Purchase Price under FIRPTA) and such other documents as are necessary to complete the transaction. If, at the time of Closing, the Owners hold title to the Property in the form of a partnership, limited partnership, corporation, trust or any form of representative capacity whatsoever, then at Closing the Owners shall sign a beneficial interest affidavit described in Section 286.23, Florida Statutes, as applicable (a copy of which is attached hereto as Exhibit "G").

11. Maintenance of Property. From and after the date hereof and until physical possession of the Property has been delivered to the Authority, Owners will keep and maintain all of the Property in good order and condition and will comply with and abide by all laws, ordinances, regulations and restrictions affecting the Property or its use, and Owners will pay all taxes and assessments relative to the Property prior to the due date thereof. From and after the date hereof, Owners shall not offer to sell the Property to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale or conveyance of the Property or any interest therein.

12. Warranties and Representations of Owners. To induce the Authority to enter into this Agreement and to purchase the Property, Owners, in addition to the other representations and warranties set forth herein, make the following representations and warranties, each of which is material and is being relied upon by the Authority and shall survive Closing for one (1) year after Closing:

(a) That Owners own fee simple marketable record title to the Property, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances (except the existing Florida Power Corporation n/k/a Duke Energy Florida, Inc. power line easement recorded at O.R. Book 1893, Page 946 of the Official Public Records of Orange County Florida of which Authority is aware and which is excepted from this Agreement and the other Permitted Encumbrances) and there are no tenancy, rental or other occupancy agreements affecting the Property.

(b) To the best of Owner's actual knowledge, there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting the Property or any portion thereof or relating to or arising out of the ownership of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality, unless such action has been commenced by the Authority.

(c) Owners have the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase and sale of the Property in accordance herewith and to perform all covenants and agreements of Owners hereunder.

(d) Owners have no actual knowledge or received any written notice that there are any present material default or material breach of any mortgage or other encumbrance encumbering the Property or any covenants, conditions, restrictions, rights-of-way or easements which may affect the Property or any portion or portions thereof.

(e) In reliance on and subject to that certain Phase One conducted by Universal dated September 20, 2012, and certified to Owners, Owners have no actual knowledge that the Property has ever been used by previous owners and/or operators to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances. Owners have no actual knowledge of the Property having ever contained nor does it now contain either asbestos, PCB or other toxic materials, whether used in construction or stored on the Property, and Owners have not received a summons, citation, directive, letter or other communication, written or oral, from any agency or Department of the State of Florida or the U.S. Government concerning any intentional or unintentional action or omission on Owners' part which had resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances. Owners have no actual knowledge of any release of Hazardous Substances or notice of violation of any environmental law related to such operation.

(f) To the best of Owner's actual knowledge, there are no Hazardous Substances, pollutants, contaminants, petroleum products or by-products, asbestos or other substances, whether hazardous or not, on or beneath the surface of the Property, which Owners or any other person or entity has placed or caused or allowed to be placed upon the Property, and which have caused or which may cause any investigation by any agency or instrumentality of government, which are or may be on the Property in violation of any law or regulation of any local, state or federal government or which are or may be a nuisance or health threat to occupants of the Property or other residents of the area.

(g) To the best of Owner's actual knowledge, no person, firm or other legal entity other than the Authority has any right or option whatsoever to acquire the Property or any portion or thereof or any interest therein.

(h) To the best of Owner's actual knowledge, that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a material violation or material breach by Owners of any provision of any material agreement or other instrument to which Owners are a party or to which Owners may be subject although not a party, nor result in or constitute a material violation or material breach of any judgment, order, writ, injunction or decree issued against Owners.

(i) To the best of Owner's actual knowledge, that each and every one of the foregoing representations and warranties is true and correct as of the date hereof, will remain true and correct throughout the term of this Agreement, and will be true and correct as of the Closing Date.

(j) In the event that changes occur as to any information, documents or exhibits referred to in the subparagraphs of this section, or in any other part of this Agreement, of which Owners have knowledge, Owners will immediately disclose same to the Authority when such knowledge is first available to Owners; and in the event of any change which may be

deemed by the Authority to be materially adverse, the Authority may, at its election, terminate this Agreement.

13. **Defaults.** In the event either party breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by such party under the terms and provisions of this Agreement, the non-defaulting party, in its sole discretion, shall be entitled to: (i) exercise any and all rights and remedies available to it at law and in equity, including without limitation, the right of specific performance; or (ii) terminate this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect.

14. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., by telecopier device) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

Authority:

CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Executive Director
Telephone: (407) 690-5000
Facsimile: (407) 690-5011

With a copy to:

Jere F. Daniels, Jr., Esquire
Winderweedle, Haines Ward & Woodman, P.A.
Post Office Box 880
329 Park Avenue North, 2nd Floor (32789)
Winter Park, Florida 32790-0880
Telephone: (407) 423-4246
Facsimile: (407) 645-3728

Owners:

**MATTAMY (JACKSONVILLE)
PARTNERSHIP**
Attn: Thomas McCarthy
1900 Summit Tower Blvd., Ste 500

Orlando, FL 32810

Telephone: _____

With a copy to:

Kent Hipp, Esquire
GrayRobinson, P.A.

Orlando, FL 32801

301 E Pine St., Ste 1400

Telephone: 407-843-8880

Facsimile: 407-244-5690

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

15. **General Provisions.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by Owners and the Authority. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. Owners and the Authority do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at Closing. This Agreement shall be interpreted under the laws of the State of Florida. The parties hereto agree that venue for any legal action authorized hereunder shall be in the courts of Orange County, Florida. **TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.**

16. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

17. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration or bankruptcy, at trial or on appeal.

18. **Waiver of Jury Trial.** OWNERS AND THE AUTHORITY VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.

19. **Radon Gas.** Radon is 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.

20. **Conditional Acceptance.** Owners hereby acknowledge and agree that the Authority's execution hereof and acceptance of the terms and provisions hereof constitute a conditional acceptance and agreement. Notwithstanding anything to the contrary contained herein, it is expressly acknowledged and agreed that this Agreement shall be subject to the final approval and acceptance by the Authority's Board, in its sole discretion, and shall be accepted or rejected by said Board on or before May 29, 2015 (the "Acceptance Date"). In the event of Acceptance, the Authority shall notify Owners immediately in form of notice of approval and acceptance attached hereto as **Exhibit "H"** or in similar format, and the Purchase Price shall be paid in accordance with Paragraph 3 as soon after the acceptance as possible but no event later than the close of business on May 29, 2015. If Owners do not receive the entire Purchase Price before 5 p.m. on May 29, 2015, this Agreement shall terminate and no parties will have any further obligation under this Agreement. In the event the Authority shall fail to accept this Agreement on or before the Acceptance Date, this Agreement shall be deemed rejected. If this Agreement is rejected or deemed rejected by the Authority, this Agreement shall automatically be null and void and of no further force or effect and the parties shall be released from all further obligations and liabilities hereunder. Owner hereby expressly acknowledges and agrees that Owners have made and entered into this Agreement in consideration of the Authority's covenant to conditionally accept this Agreement subject to final acceptance by the Authority, in its sole discretion, in accordance with the terms and conditions herein set forth.

21. **Design, Location and Funding Disclosure.** In accordance with Section 5.2.5 of the Central Florida Expressway Authority Right-of-Way Acquisition Procedures Manual, Owner acknowledges that: (i) the design and location of any contemplated or proposed roadway systems or access scenarios are not guaranteed unless otherwise specified therein; (ii) funding has not been completed for the subject project; and (iii) this Agreement may be subject to funding by a CFX bond issue or other applicable sources. However, none of the foregoing items may be used to unwind this transaction once Closing has occurred.

22. **Release of Authority.** By execution of this Agreement, Owners acknowledge and agree that as of the date of Owners' execution and delivery of the deed, Owners shall thereby remise, release, acquit, satisfy, and forever discharge the Authority, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Owners ever had, then have, or which any personal representative, successor, heir or assign of Owners, thereafter can, shall or may have, against the Authority, for, upon or by reason of any matter, cause or thing whatsoever, arising out of or in any way connected with Owners' conveyance of the Property to the Authority,

including, without limitation, any claim for loss of access to Owners' remaining property, severance damages to Owners' remaining property, business damages or any other damages, all from the beginning of the world to the day thereof. A covenant shall be contained in the deed acknowledging Owners' agreement to the foregoing.

23. **Effective Date.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the last date that either the Authority or Owners execute this Agreement.

24. **Access to Property and Project Work.** The Authority agrees that it shall not access or use any roadway or driveway located within the Owner's adjacent residential development to access the Property for any of the Authority's project work within the Property.

25. **Not an Offer.** Notwithstanding anything to the contrary in this Agreement, in the event that the transaction under this Agreement does not close, this Agreement shall not be deemed an offer nor admissible in any subsequent eminent domain proceeding with respect to the Property.

26. **As-Is Sale.** Except for the representations and warranties of Owners specifically set forth herein, if any, the Property is being sold and conveyed by Owners to the Authority "AS IS, WHERE IS, WITH ALL FAULTS," in such condition as the same may be on the closing date, without any representations or warranties by Owners as to any condition of the Property, including, without limitation, surface and subsurface environmental conditions, whether latent or patent. Except for the representations and warranties of Owners specifically set forth herein, Owners makes no guarantee, warranty or representation, express or implied, as to the quality, character, or condition of the Property, or any part thereof, or to the fitness of the Property, or any part thereof, for any use or purpose, or any representation as to the nonexistence of any hazardous substances. Except for any claim related to a breach of Owners' express representations and warranties contained herein or Owner's failure to timely deliver title clear of all matters other than the Permitted Encumbrances, the Authority shall have no claim, in law or in equity based upon the condition of the Property, or the failure of the Property to meet any standards. In no event shall Owners be liable for any incidental, special, exemplary, or consequential damages, including, without limitation, loss of profits or revenue, interference with business operations, loss of tenants, investors, purchasers, diminution in value of the Property, or inability to use the Property, due to the condition of the Property, absent a breach of Owners' express representations and warranties contained herein. The Authority agrees that upon acceptance of the condition of the Property hereunder and except for its reliance on the representation and warranties of Owners contained herein, if any, it shall purchase and accept title to the Property. In the event that any hazardous substances are discovered on, at or under the Property, except for any claim for breach of any representation or warranty of Owners specifically made herein, the Authority shall not maintain any action or assert any claim against Owners, its successors and their respective members, employees and agents arising out of or relating to any such hazardous substances. The provisions of this Section shall survive the Closing.

The Authority has read and understand the provision of this Section and acknowledges and agrees that except as expressly set forth in this Agreement, it is buying the Property, "AS-IS,

WHERE IS AND WITH ALL FAULTS” and that Owners have disclaimed herein any and all warranties, express or implied.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

WITNESSES:

“OWNER”

**MATTAMY (JACKSONVILLE)
PARTNERSHIP, a Florida general partnership**

Print Name: _____

By: Calben (Florida) Corporation, a
Florida Corporation, general
Partner

Print Name: _____

By: _____
Printed Name: Thomas P C McCarthy
As its: Vice President
Dated: _____
And

Print Name: _____

By: MBC (Florida) Corporation, a
Florida Corporation, general
partner

Print Name: _____

By: _____
Printed Name: Leslie C. Candes
As its: Vice President
Dated: _____

WITNESSES:

Print Name: _____

Print Name _____

“AUTHORITY”

CENTRAL FLORIDA

EXPRESSWAY AUTHORITY, a body
politic and corporate, and an agency of the
state, under the laws of the State of Florida

By: _____

Printed Name: _____

Title: _____

Date: _____

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

Legal Counsel: WINDERWEEDLE,
HAINES, WARD & WOODMAN, P.A.

By: _____

Jere F. Daniels, Jr., Esquire

Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Central Florida
Expressway Authority
State Road 528
Project No. 528-1240
Parcel No. 104

A parcel of land lying in Section 32 Township 23 South, Range 31 East, Orange County, Florida, being a portion of those lands described in Official Records Book 10459 at Page 0063 of the Public Records of Orange County, Florida, being more particularly described as follows:

Commence at a 4"x4" concrete monument marking the Northwest Corner of Section 32, Township 23 South, Range 31 East, Orange County, Florida; thence run South 00°13'49" West, along the west line of the Northwest 1/4 of said Section 32, a distance of 312.61 feet to the existing south Right of Way line of State Road 528 as described in Official Records Book 1516 at Page 915 of said Public Records for the Point of Beginning; thence run North 89°45'06" East, along said existing south Right of Way line, a distance of 629.95 feet to a point on the southerly line of Parcel #41-104 Mitigation Area Taking, as recorded in Official Records Book 4068 at Page 3668 of said Public Records, also being a point on the northerly line of a 60.00 foot wide Florida Power Corporation Right-of-Way Easement recorded in Official Records Book 1893 at Page 946 of said Public Records; thence run South 63°45'43" East, along said southerly line and northerly line of easement, a distance of 861.24 feet; thence, departing said southerly line and northerly Right-of-Way line, run North 73°45'36" West, a distance of 639.09 feet to a point of curvature of a non-tangent curve concave to the south; thence run westerly along the arc of said curve, having a radius of 4851.15 feet, a central angle of 09°26'39", a chord length of 798.71 feet bearing North 81°07' 44" West, an arc distance of 799.62 feet to said west line; thence run North 00°13'49" East along said west line, a distance of 76.12 feet to the Point of Beginning.

Together with all rights of ingress, egress, light, air and view to, from or across any of the above described right-of-way property which may otherwise accrue to any property adjoining said right-of-way.

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Real Property Taxes for the year 2015.
2. Florida Power Corporation n/k/a Duke Energy Florida, Inc. power line easement recorded at O. R. Book 1893, Page 946 of the Official Public Records of Orange County, Florida
3. Capacity Enhancement Agreement recorded in Official Records Book 8061, Page 2766; Assignment and Assumption of Capacity Enhancement Agreement recorded in Official Records Book 8666, Page 1061; Partial Assignment of Owner's New Units in Randal Park recorded in Official Records Book 10149, Page 8359; First Amendment to Capacity Enhancement Agreement recorded in Official Records Book 10363, Page 8835.
4. Assignment and Assumption of Related Rights and Interests recorded in Official Records Book 8666, Page 1054.
5. Ordinance recorded in Official Records Book 8666, Page 1067.
6. Unrecorded City of Orlando Ordinance No. 2010-48, Establishing the Zoning Classification of PD dated October 18, 2010.
7. Assignment and Assumption of Related Rights and Interests recorded in Official Records Book 8666, Page 1165.
8. Interlocal Agreement between City of Orlando, Florida, and Randal Park Community Development District recorded in Official Records Book 9144, Page 124.
9. Memorandum of Joint Development Agreement recorded in Official Records Book 10149, Page 8325; First Amendment to Memorandum of Joint Development Agreement recorded in Official Records Book 10377, Page 942; Second Amendment to Memorandum of Joint Development Agreement recorded in Official Records Book 10418, Page 4736.
10. Partial Assignment of Development Rights and Interests recorded in Official Records Book 10149, Page 8340; First Amendment to Partial Assignment of Development Rights and Interests recorded in Official Records Book 10377, Page 954.
11. Notice of Environmental Resource of Surface Water Management Permit recorded in Official Records Book 10372, Page 770.
12. Assignment of Declarant Rights recorded in Official Records Book 10459, Page 93.
13. Partial Assignment of Development Rights recorded in Official Records Book 10459, Page 106.
14. Master Lighting Installation, Upgrade and Service Agreement Randal Park Boulevard II recorded in Official Records Book 10527, Page 3642.
15. Interlocal Agreement for Rights-of-Way Maintenance recorded in Official Records Book 10564, Page 4667.

DRAFT

EXHIBIT "C"

DESCRIPTION OF 50' ENCROACHMENT AREA

DRAFT

EXHIBIT "D"

SKETCH OF TEMPORARY CONSTRUCTION EASEMENT AREA

DRAFT

EXHIBIT “E”

FORM OF TEMPORARY CONSTRUCTION EASEMENT

DRAFT

EXHIBIT "F"

FORM OF DEED

This deed has been executed and delivered under threat of condemnation and/or in settlement of condemnation proceedings affecting the property described herein and is not subject to documentary stamp tax. See, Department of Revenue Rules 12B-4.013(4) and 12B-4.014(14), F.A.C; *and see*, Florida Department of Revenue v. Orange County, 620 So.2d 991 (Fla. 1993)

WARRANTY DEED

THIS INDENTURE, made and executed the _____ day of _____, 2015 by **MATTAMY (JACKSONVILLE) PARTNERSHIP**, a **Florida General Partnership**, whose address is 1900 Summit Tower Boulevard, Suite 500, Orlando, FL 32810 hereinafter referred to as "Grantors," to **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate, and an agency of the state, under the laws of the State of Florida, whose tax identification number is 59-1021557, and whose mailing address is 4974 ORL Tower Road, Orlando, FL 32807, hereinafter referred to as "Grantee".

W I T N E S S E T H:

THAT Grantors, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto Grantee all that certain land situate in Orange County, Florida, to-wit:

Parcel Identification No.: _____ 104 _____

Legal Description: _____

Subject to those exceptions listed on Exhibit "A" attached hereto and incorporated herein by this reference, as well as the ad valorem real estate taxes for the year 2015 and all subsequent years thereafter.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND Grantors hereby covenant with Grantee that Grantors are lawfully seized of said land in fee simple; that Grantors have good right and lawful authority to sell and convey said land; that Grantors hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whatsoever; and that said land is free of all encumbrances except those matters set forth on Exhibit "A".

AND by execution and delivery of this deed, Grantors hereby remise, release, acquit, satisfy, and forever discharge Grantee, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Grantors ever had, now have, or which any personal representative, successor, heir or assign of Grantors, hereafter can, shall or may have, against Grantee, for, upon or by reason of any matter, cause or thing whatsoever, arising out of Grantors' conveyance of the subject property to Grantee, including, without limitation, any claim for loss of access to Grantors' remaining property, severance damages to Grantors' remaining property, business damages or any other damages, both before and after the date of this instrument except the obligations provided for and surviving that certain Purchase Agreement dated May 28, 2015

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered
in the presence of:

WITNESSES:

"OWNER"
MATTAMY (JACKSONVILLE)
PARTNERSHIP, a Florida general partnership

Print Name: _____

By: Calben (Florida) Corporation, a
Florida Corporation, general
Partner

Print Name: _____

By: _____
Printed Name: Thomas P C McCarthy
As its: Vice President
Dated: _____
And

Print Name: _____

By: MBC (Florida) Corporation, a
Florida Corporation, general
Partner

Print Name: _____

By: _____
Printed Name: Leslie C. Candes
As its: Vice President
Dated: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ of Mattamy (Jacksonville) Partnership, a Florida General Partnership on behalf of the _____. He / She is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No.: _____

My commission expires: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ of Mattamy (Jacksonville) Partnership, a Florida General Partnership on behalf of the _____. He / She is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No.: _____

My commission expires: _____

EXHIBIT "G"

DISCLOSURE OF INTERESTS IN REAL PROPERTY

TO: _____, Chairman, CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate and an agency of the state, under the laws of the State of Florida

FROM: (Owner's Name)

SUBJECT: Project 528-124D, Parcel 104 as more particularly described on Exhibit "A" attached hereto (the "Property")

Please be advised that the undersigned, after diligent search and inquiry, hereby states under oath, and subject to the penalties for perjury, that the name and address of each person having a legal or beneficial interest in the Property as of May 28,, 2015 is as follows:

Name	Address	Percentage of Ownership
_____	_____	
_____	_____	
_____	_____	

I swear and affirm that the information furnished herein is accurate as of the date hereof, and I agree to promptly disclose any changes in the information contained herein, or any errors in such information.

This disclosure is made under oath and I understand I am subject to penalties for perjury for any false information contained herein.

This disclosure is made pursuant to Section 286.23, Florida Statutes, in connection with a conveyance of the Property to the Central Florida Expressway Authority.

[SIGNATURE AND NOTARY ON NEXT PAGE]

**“OWNERS”
MATTAMY (JACKSONVILLE)
PARTNERSHIP, a Florida general
partnership**

By: Calben (Florida) Corporation, a
Florida Corporation, general
Partner

By: _____
Printed Name: Thomas P C McCarthy
As its: Vice President
Dated: _____
And

By: MBC (Florida) Corporation, a
Florida Corporation, general
Partner

By: _____
Printed Name: Leslie C. Candes
As its: Vice President
Dated: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ of Mattamy (Jacksonville) Partnership, a Florida General Partnership. He / She is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)
Notary Public, State of Florida
Commission No.: _____
My commission expires: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____ as _____ of Mattamy (Jacksonville) Partnership, a Florida General Partnership. He / She is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No.: _____

My commission expires: _____

EXHIBIT "H"

NOTICE OF APPROVAL AND ACCEPTANCE

The Central Florida Expressway Authority, a body politic and corporate and an agency of the state, under the laws of the State of Florida ("Authority"), on the day and date set forth herein below has duly approved and accepted that certain Real Estate Purchase Agreement dated _____, 2015, by and between MATTAMY (JACKSONVILLE) PARTNERSHIP, a Florida General Partnership and the Authority.

"AUTHORITY"

CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, a body politic and corporate,
and an agency of the state, under the laws of
the State of Florida

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____
2015, by _____ as _____ of Central Florida Expressway
Authority, a body politic and corporate, and an agency of the state, under the laws of the State of
Florida, on behalf of the corporation. He / She is personally known to me or has produced
_____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)
Notary Public, State of Florida
Commission No. _____
My commission expires: _____