

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Agenda
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT-OF-WAY COMMITTEE
May 27, 2015
2:00 p.m.
CFX Boardroom

1. **CALL TO ORDER**

2. **PUBLIC COMMENT**

Pursuant to Florida Statute 286.0114 (2013) the Right of Way Committee will allow public comment on any matter either identified on this meeting agenda as requiring action, or anticipated to come before the Committee for action in reasonable proximity to this meeting. Speakers shall be limited to three minutes per person and the assignment of one person's time to another or designation of group spokesperson shall be allowed at the discretion of the Committee Chairman.

3. **APPROVAL OF MINUTES – April 22, 2015**

Requesting approval of the 4/22/15 minutes. **Action Item.**

TAB A

4. **APPROVAL OF MINUTES – May 4, 2015**

Requesting approval of the 5/04/2015 minutes. **Action Item.**

TAB B

5. **S.R. 429 (JDC PLANTS, INC.) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 203 – David Shontz, Shutts & Bowen**

Requesting the Committee's recommendation for Board approval of a proposed mediated settlement agreement. **Action Item.**

TAB C

6. **S.R. 429 (WEKIVA PARKWAY PROJECT) PROJECT 429-202 (PARTS A & B) PARCEL 800 – Trippe Cheek, Winderweedle, Haines, et. al.**

Requesting the Committee's recommendation for Board approval of the proposed settlement. **Action Item.**

TAB D

7. **S.R. 429 (SCOFIELD) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 249 & 256 – Trippe Cheek, Winderweedle, Haines, et. al.**

Requesting the Committee's recommendation for Board approval of a proposed settlement. **Action Item.**

TAB E

8. **S.R. 429 (ACKLEY) WEKIVA PARKWAY PROJECT (PROJECT 429-204) PARCELS 266 & 866 – Trippe Cheek, Winderweedle, Haines, et. al.**

Requesting the Committee's recommendation for Board approval of a proposed settlement. **Action Item.**

TAB F

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Agenda

9. **S.R. 429 (CALHOUN) WEKIVA PARKWAY PROJECT (PROJECT 429-203)** **TAB G**
PARCEL 217 – *Linda Brehmer Lanosa, CFX*
Requesting the Committee's recommendation for Board approval of an offer of judgment. **Action Item.**
10. **S.R. 429 (ORLANDO BELTWAY ASSOCIATES) WEKIVA PARKWAY PROJECT** **TAB H**
(PROJECT 429-203) PARCEL 235 – *Linda Brehmer Lanosa, CFX*
Requesting the Committee's recommendation for Board approval of an offer of judgment. **Action Item.**
11. **S.R. 528 (ALL ABOARD FLORIDA) FOURTH AMENDMENT TO CONTRACT**
FOR SALE AND PURCHASE OF RAIL LINE EASEMENTS **TAB I**
Joseph L. Passiatore, CFX and Myles Tobin, All Aboard Florida
Requesting the Committee's recommendation regarding the proposed Fourth Amendment to Contract for Sale and Purchase of Rail Line Easements between All Aboard Florida and CFX. **Action Item.**
12. **S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / RECOMMENDATION**
FOR AWARD OF CONTRACT NUMBER 001116 – *Joseph L. Passiatore, CFX* **TAB J**
Requesting Committee's acceptance of the Evaluation's Committee's recommendation for selection of right-of-way counsel for S.R. 528 multi-modal corridor property acquisitions. **Action Item.**
13. **OTHER BUSINESS**
14. **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 any evidence upon which the appeal is to be based, per Florida Statute 286.0105.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

SUPPLEMENTAL AGENDA
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT-OF-WAY COMMITTEE
MAY 27, 2015
2:00 p.m.
CFX Boardroom

An additional action item has been added to the previously published agenda as follows:

13. **S.R. 528 - OFFER FROM MATTAMY HOMES FOR PARCEL 104 -** **NO TAB**
Linda Brehmer Lanosa, CFX
Requesting the Committee's recommendation for Board approval of the purchase of Parcel 104 with a temporary construction easement in the amount of \$3,500,000 including all fees and costs. **Action Item.**

MEETING NOTICE

RIGHT-OF-WAY COMMITTEE MEETING

DATE: May 27, 2015

TIME: 2:00 p.m.

LOCATION: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807
CFX Boardroom

Members of the Right-of-Way Committee:

David May, Osceola County Representative, Committee Chair
Brett Blackadar, Seminole County Representative
Laurie Botts, City of Orlando Representative
Sandy Minkoff, Lake County Representative
John Terwilliger, Orange County Representative

Section 286.015, Florida Statutes states that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, then not later than two (2) business days prior to the proceeding, he or she should contact the Central Florida Expressway Authority at (407) 90-5000.

Posted 5/5/2015 at CFX Administration Building

Tab A

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Right of Way Committee Meeting April 22, 2015

Committee Members Present:

David May, Osceola County Representative, Committee Chair
Brett Blackadar, Seminole County Representative
Laurie Botts, City of Orlando Representative
Sandy Minkoff, Lake County Representative
John Terwilliger, Orange County Representative

CFX Right of Way Committee Staff Present:

Joseph L. Passiatore, General Counsel
Linda S. Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

The meeting was called to order at 2:00 p.m. by Chairman May.

Item 2: PUBLIC COMMENT

Public comment for Item 7 will be made by Kurt Bauerle before the Committee addresses the item.

Item 3: APPROVAL OF MINUTES

The minutes are amended as follows:

- The statement "the designated substitute was not present" deleted from the section Committee Members Present on Page 1; and
- On Items 6, 7 and 8 listed on Pages 6, 7 and 8 the recommendation made by outside counsel has been included.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to approve the minutes of the March 25, 2015 Right of Way Committee meeting with the above amendments. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 4: S.R. 429 (MERCED) / WEKIVA PARKWAY PROJECT (PROJECT 429-204)
PARCEL 254

Mr. Cheek provided the Committee with a brief description and background on the subject property. Parcel 254 is a total taking of a 0.76 acre piece of property located along Ondich Road. The property is improved with a 3,140 square foot residence that was constructed in 1985, along with a number of other improvements.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall's fourth and final report is dated February 12, 2015, with a date of value of January 22, 2015, and a final updated appraisal amount of \$336,200.00 (\$41,000.00 for land plus \$295,200.00 for improvements).

As this settlement is in advance of an Order of Taking, the property owners, Suzanne and Felix Merced, have not submitted a final appraisal report. However, the Merceds have retained the services of Rick Dreggors, whose primary valuation was substantially higher than CFX's offer. The Merceds have submitted a compensation claim of \$596,000.00 for this property, in addition to seeking federal relocation assistance.

Mr. Minkoff commented and Ms. Botts agreed that the settlement amount is 170% over the appraised amount and the property owner has not submitted a final appraisal report, therefore, they could not support this settlement.

A motion was made by Mr. Terwilliger and seconded by Mr. Minkoff to deny the recommended proposed settlement. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 5: S.R. 429 (DAVIS D/B/A BAY HILLS EQUESTRIAN CENTER) / WEKIVA PARKWAY PROJECT
(PROJECT 429-203) PARCEL 197

Mr. Spoonhour explained that a business damage claim has been filed by Vickie Davis, who is a tenant of Parcel 197. Ms. Davis is doing business as Bay Hills Equestrian Center and leases 60 acres which is used for a horse boarding operation. Ms. Davis has relocated her business to a 160-acre farm (the Allen Farm) which has stables, riding oval and pasture near Tavares.

The business damage claim was submitted by Vickie Davis on December 18, 2014 in the amount of \$616,345.78, as follows: \$450,794.00 replacement cost new (RCN) of buildings; \$101,829.78 relocation claim (less \$30,000 for building replacement); \$93,722.00 for loss of goodwill and increased rent (one year's average income and two years increase in rents.). CFX's counter-offer is due by May 18, 2015.

Mr. Spoonhour explained each of the claims and his recommendation on each claim. His recommendations are as follows:

1. CFX should make a counter-offer to this business damage claim.

2. The amount of the counter-offer to be made is a strategic decision. It can range from a nominal amount because the claim is questionable to a more substantial amount given the cost to litigate this issue. Mr. Spoonhour recommends a counter-offer of \$30,000 exclusive of legal fees and expert fees. Because the first offer acts as the floor in calculating attorney's fees, it is easier to determine attorney's fees if the counteroffer excludes legal fees and expert fees.

Discussion ensued as to apportionment and the amount of the counter-offer.

Mr. Minkoff disclosed that Allen Farm property is a mile from his residence.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to recommend approval for CFX to make a business damages counter-offer in the amount of \$30,000.00. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Mr. Spoonhour explained that he is also seeking the Committee's approval for an Offer of Judgment. He is recommending CFX make an Offer of Judgment in the amount of \$30,000.00.

If CFX makes an Offer of Judgment, the business owner has 30 days to accept or reject the offer. No response is the same as a rejection.

- a. The significance of an Offer of Judgment is that, if the business owner does not recover more than the offer of judgment, the experts on the business owner's team are at risk of not having their fees covered (fees incurred later than 30 days after the Offer of Judgment).
- b. An Offer of Judgment can be withdrawn at any time.

Discussion ensued as to the amount of Offer of Judgment.

A motion was made by Mr. Minkoff and seconded by Mr. Terwilliger to recommend Board approval for an Offer of Judgment in the amount of \$30,000, the same as the counter-offer. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 6: S.R. 429 (VIP PROPERTIES, LLC) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 170

Ms. Brehmer Lanosa provided maps depicting the location of the subject property and described the location. Mr. Hall of David K. Hall, ASA has appraised the property at \$16,300. The taking involves 0.454 acres.

In a letter, Tom Callan, the owner's attorney, indicated that he had retained Richard Dreggors to appraise the property, but he has not provided the Authority with an appraisal report. In other appraisal reports, Mr. Dreggors

valued property in the area, including Parcels 177, 180, 186, 188, 189, and 190 at \$75,000 per acre, with comparable sales ranging from roughly \$66,000 to \$159,000 per acre.

Ms. Brehmer Lanosa is requesting the Committee's approval for an Offer of Judgment just over the appraised value in the amount of \$20,001.

A motion was made by Ms. Botts and seconded by Mr. Blackadar to recommend to the Board approval of an Offer of Judgment in the amount of \$20,001 for Parcel 170. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

At the request of Ms. Brehmer Lanosa, Item 7 was moved to be heard after Items 8 and 9.

Item 8: S.R. 429 (MEGA GNP, LLLP) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 232

Ms. Brehmer Lanosa depicted the location of Parcel 232 on a map. The parent tract is located on the northeast corner of Plymouth Sorrento Road and West Kelly Park Road, in unincorporated Orange County, Florida. The taking consists of 7,407± square foot located in the southwest corner and on the south border of the parent tract.

Walter N. Carpenter, Jr., MAI, CRE, appraised the property. He estimated the market value of Parcel 232 as of June 6, 2014 as follows: Land \$14,800, Improvements \$11,680, Cost to Cure \$5,490, Total \$31,970.

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of an Offer of Judgment in the amount of \$40,001.

A motion was made by Mr. Terwilliger and seconded by Mr. Minkoff to recommend to the Board approval of an Offer of Judgment in the amount of \$40,001 for Parcel 232. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 9: S.R. 429 (HUANG AND WU) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 233

Ms. Brehmer Lanosa is requesting the Committee's recommendation for Board approval of an Offer of Judgment in the amount of \$29,001, or some other amount determined by the Committee to be in the best interest of the Authority. She provided a map depicting the location of Parcel 233.

The taking is 0.137 acres. The purpose of the taking is to add turn lanes on Plymouth Sorrento to S.R. 429. The parent tract was improved with two small manufactured buildings. The first building is a manufactured home containing 1,392± square feet built in 1973. The second building is a manufactured home containing 500± square feet built in 1973. The improvements were in very poor condition.

Walter N. Carpenter, Jr., MAI, CRE, appraised Parcel 233 as follows: Land \$17,890, Improvements \$2,030, Cost to Cure \$3,020, Total Value \$ 22,940. In response, the property owners have not disclosed what they seek in full compensation from CFX.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board approval of an Offer of Judgment in the amount of \$29,001 for Parcel 233. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 7: S.R. 429 (GILLIS) WEKIVA PARKWAY PROJECT (PROJECT 429-203) PARCEL 229

Ms. Brehmer Lanosa informed the Committee that Kurt Bauerle who represents Gracie Gillis would like to address the Committee.

Ms. Brehmer Lanosa explained that this parcel was mediated but the mediation was not concluded. The Parcel is located next to the previous parcel just presented (Huang parcel). Ms. Brehmer Lanosa displayed for the Committee construction maps and pictures of Parcel 229.

CFX's appraiser Mr. Carpenter of Pinel & Carpenter, Inc. estimated the market value of Parcel 229 as of July 10, 2014 as follows; Land \$10,835; Improvements \$11,725; Cost to Cure \$4,435; for a total of \$26,995. Mr. Carpenter valued the parent tract at \$130,680 per acre or \$3.00 per square foot based upon comparable sales on Plymouth Sorrento Road with the City of Apopka.

Mr. Bauerle addressed the Committee. He explained Ms. Gillis is an elderly widow. He informed the Committee of the mediation, Ms. Gillis' position in the before and after of the project. He explained that hours before the Committee meeting, the settlement of \$71,900 was reached inclusive of all fees and costs. Mr. Bauerle is requesting, with Ms. Brehmer Lanosa's consensus, that the Committee recommend Board approval of the proposed \$71,900 in settlement of full compensation plus all fees and costs for Parcel 229.

Ms. Brehmer Lanosa provided addition information. Parcel 229 is improved with a manufactured home containing 872± square feet, built in 1970. The taking consists of a 36-foot wide strip along the 100-foot frontage on Plymouth Sorrento Road. The strip taken is to widen Plymouth Sorrento Road in front of the Subject Property to include a southbound left turn lane and a southbound right turn lane.

Ms. Brehmer Lanosa informed the Committee that the property owner is requesting \$45,000 in addition to the initial deposit for an all-in, all inclusive settlement.

Discussion ensued as to the breakdown of the proposed settlement and compensation to the property owner; CFX's options, which include approval of the proposed settlement, making an offer of judgment, or offering another amount as settlement. Mr. Bauerle said that Ms. Gillis would not accept anything less than a total settlement of \$71,900. Ms. Brehmer Lanosa recommended approval of the proposed settlement in the amount of \$71,900.

A motion was made by Mr. Terwilliger and seconded by Ms. Botts to recommend to the Board approval of the proposed settlement in the amount of \$71,995.00 00 in full settlement of all claims for compensation for the acquisition of Parcel 229. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

General Counsel Joseph Passiatore gave an overview of Agenda items 10, 11 & 12.

Mr. Passiatore explained that June 1 is the deadline for the first inspection date. Therefore, by June 1 CFX either needs to extend the inspection date or indicate to the sellers whether or not we are in agreement with the appraised value and selling price. In addition, the lawyers and appraisers need feedback from the Committee whether they are amenable to any portion of this corridor being restricted.

Item 10: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)

Director of Engineering Glenn Pressimone explained the alignment of the multi-modal corridor and future interchange obligations. He reviewed the summary of right of way transactions, the typical sections, incremental cost table and right-of-way exhibits provided to the Committee in their agenda materials.

Item 11: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)

Ms. Brehmer Lanosa reviewed the restrictive covenants that are contained in the current contracts with SLR and FRI.

(The committee took a short break at this time, 4:23 p.m.)

Item 12: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)

Woody Hanson from Hanson Real Estate Advisors, Inc. reviewed his valuations on the SLR and FRI parcels.

The Committee members agreed that there are still several issues to resolve. The Committee considered whether to continue the discussion today or hold a special meeting in early May.

Discussion ensued as to Section 1 and 3.2 of the agreement. Mr. Matthews agreed to delete Section 1 and 3.2.

The Committee went through the Declaration of Covenants, Conditions, Easements and Restrictions and addressed the issues section by section:

Section 1 - (Use Restrictions) – Delete

Section 2 - (Approval of Certain Improvements) - Revise prohibition on above-ground utilities

Section 3 - (Rights Reserved by Declarant)

Section 3.1 - Keep noise restrictions in accordance with CFX policies; remove most of remaining language

Section 3.2 – Remove

Section 3.3 – Revise to require an Interchange Justification Report (IJR) for all new future Interchanges.

Section 3.5 - Utilities should not interfere with CFX uses.

Section 3.6 and 3.7 - Further review by CFX legal needed re: maintenance obligations if AAF goes bankrupt.

Section 4 - (Covenants Relating to ICP and Innovation Way East DRIs) – no changes.

Section 5 - (Misc.) – no changes.

In addition, conforming changes need to be made to the Contract for Sale and Purchase. Also, the indemnity clauses need to be revised to make clear that nothing waives sovereign immunity.

The Committee directed legal staff to draft the changes as discussed and provide a final review of all the documents at a Special Right of Way Committee Meeting.

The Committee members suggested that at the special meeting staff provide a summary of how much of the interchange would be done regardless of the AAF project. It was also suggested that staff provide a brief synopsis of the strong points in each agreement.

The Committee decided to hold a Special Right of Way Committee Meeting on May 4 at 10:30 a.m.

At this meeting the Committee will take action on recommendations for the May 14 Board meeting.

Item 13: OTHER BUSINESS

No other business was discussed.

Item 14: ADJOURNMENT

Chairman May adjourned the meeting at 5:10 p.m.

Pursuant to the Florida Public Records Law and OOCEA 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 or 4974 ORL Tower Road, Orlando, FL 32807.

Tab B

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES CENTRAL FLORIDA EXPRESSWAY AUTHORITY Special Right of Way Committee Meeting May 4, 2015

Committee Members Present:

David May, Osceola County Representative, Committee Chair
Brett Blackadar, Seminole County Representative
Laurie Botts, City of Orlando Representative
Sandy Minkoff, Lake County Representative
John Terwilliger, Orange County Representative

CFX Right of Way Committee Staff Present:

Joseph L. Passiatore, General Counsel
Linda S. Brehmer Lanosa, Deputy General Counsel
Mimi Lamaute, Paralegal/Recording Secretary

Item 1: CALL TO ORDER

The meeting was called to order at 10:30 a.m. by Chairman May.

Item 2: PUBLIC COMMENT

There were no Public Comments.

Item 3: REVIEW OF CONTRACT OF SALE AND PURCHASE OF RAIL LINE EASEMENTS

At the April 2015 Right of Way Committee meeting the Committee requested an overview of the contract between All Aboard Florida and CFX as well as an overview of the Innovation Way Agreement. Ms. Brehmer Lanosa provided the Committee with a brief overview of the Contract of Sale and Purchase as well as the easement over the acquired property and the rail easement over the existing S.R. 528, see attached PowerPoint attached as Exhibit "A."

Mr. Blackadar expressed concerns with the mortgage clause. If All Aboard Florida has the right to assign that exposes CFX to additional risks.

Mr. Terwilliger is also concerned about the mortgage clause and the potential for a third party involvement.

Ms. Botts called attention to the "Events of Default" clause. She is concerned that the 10 years is a long period of time and that failure to operate following commencement should not be on a consecutive basis.

Discussion ensued as to the \$12 million purchase price and closing dates with All Aboard Florida, SLR and FRI. The Committee provided Mr. Myles their comments for the All Aboard Florida contract as follows:

- Allocation of Payments – The \$68 million dollars for the increased incremental cost of construction of interchanges due to intercity passenger rail;
- Shared Use of Rail Improvements – remove the restriction;
- AAF's Right to Mortgage – narrow AAF's right to mortgage;
- Events of Default – failure to complete construction within 10 years. Ten years is a long period of time. and failure to operate following commencement for 3 consecutive years, there should be a limit as to the amount of time.

This was a discussion item no action was taken.

Item 4: S.R. 528 – BEACHLINE PROJECT (PROJECT 528-1240) / CONTRACT OF SALE AND PURCHASE WITH SUBURBAN LAND RESERVE, INC. (SLR) AND FARMLAND RESERVE, INC. (FRI)

Mr. Passiatore described for the Committee the documents in their agenda packages: The Fifth Amendment to Contract of Sale and Purchase including the prior amendments and original agreement, the Revised Declaration of Covenants, Conditions, Easements and Restrictions Agreement drafted by Shutts & Bowen and the letter from Hopping Green & Sams from Mr. Matthews dated April 30, 2015 urging approval of the agreement and declaration.

Mr. Passiatore provided the Committee with a redline version of the Declaration of Covenants, Conditions, Easements and Restrictions containing the changes CFX, SLR and FRI have agreed upon (attached as Exhibit "B"). The changes include those requested by the Right of Way Committee at the April Right of Way Committee meeting.

Mr. Passiatore reviewed the revisions to the agreement. The Committee asked questions and provided comments for the amendments.

Ms. Botts called attention to Section 2. Rights Reserved and inquired as to the reasoning for the restrictions stated in the agreement. She also alluded to the lack of a termination date.

The three open issues for discussions are: 1) the limitation for indemnification, 2) request by SLR and FRI to have the \$12 million dollar purchase price reaffirmed and 3) the allocation of funds for regional transportation purposes.

Mr. Matthews from Hopping Green & Sams addressed the above mentioned issues and informed the Committee that in his April 30th letter there were two omissions. The contribution to the Innovation Way Interchange which stated SLR's contribution to be \$17,750,000 should be \$18,250,000. He omitted the 6.5 million from Orange County. Also, he did not underscore the fact that AAF is providing under their contract \$4 million dollars towards the \$12 million dollar purchase.

The Agreement now includes a clause that requires AAF to close its agreement with CFX simultaneously with the FRI/SLR closing.

Mr. Minkoff expressed his concerns with the restrictions contained in the agreement. He is not able to approve the agreement with the restrictions.

Mr. Terwilliger expressed his concerns with Osceola County Expressway Authority being able to condemn in Orange County.

A motion was made by Mr. Minkoff and seconded by Ms. Botts to recommend to the Board approval of the proposed attached Revision 1 to Execution Version of the Declaration of Covenants, Conditions, Easements and Restrictions attached as Exhibit "B" with the following additional revisions made:

- **Pages 2- 4:** Removal of definitions to the extent that they are no longer necessary;
- **Pages 5-13:** Removal of all the sections on pages 5-12 which include Under Covenants and Restrictions- Remove Section Above-ground Utility Facilities, Sections 1.-4.0, Section 1., 1.1, 4.3, 1.2, Under Rights Reserved by Declarant, Section 2, 2.1.
- **Pages 16-17:** Removal of Section 2.5.

The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Fifth Amendment of Contract and Sale

The Committee discussed their requests for modifications to the Fifth Amendment to Contract of Sale and Purchase Agreement.

- On Page 4 of the Agreement, Paragraph 30 the last sentence that reads: "~~In addition, the maximum limits of liability provided in Section 768.28, Florida Statutes (2014), shall equally apply to both and any contractual liability of Buyer under, and indemnifications granted by Buyer in, this Contract.~~" be deleted.
- Adding the below Paragraph 31:

31. ADDITIONAL REPRESENTATION AND WARRANTY OF SELLER. In addition to Seller's representations, warranties and additional covenants set forth in Paragraph 9(a) above, the Seller further represents and warrants that the Seller's net proceeds hereunder will be made available and used for development, design, engineering, financing, acquisition, permitting, construction and/or equipping of regional transportation improvements within _____(____) years following the date of Closing and Seller's representation and warranty hereunder shall survive Closing. For the purposes of the immediate preceding sentence the term "regional transportation improvements" shall include, but not be limited to, transportation improvements within the Northeast District (as defined in Paragraph 11(a)(iv) above). SLR'S obligations to fund, or actual funding of, a portion of the construction costs under the Innovation Way Interchange Agreement shall not count toward or be applied against Seller's representation and warranty to utilize Seller's net proceeds hereunder as required in this Paragraph 31.

After further discussion Paragraph 31 was amended:

Inserting a 10 year provision with a clause that allows for the extension beyond 10 years for extenuating circumstances.

Deleting the sentence the reads: ~~"For the purposes of the immediate preceding sentence the term "regional transportation improvements" shall include, but not be limited to, transportation improvements within the Northeast District (as defined in Paragraph 11(a)(iv) above)."~~

Addition of the ratification of the \$12 million purchase price with the language:

"Buyer hereby specifically ratifies and confirms buyer's approval of the purchase price for the property as set forth in paragraph 3 of the Agreement as the same may be adjusted as provided therein."

- In Paragraph 6 the extended date of closing is blank in the Agreement provided to the Committee. The date will be filled in. The sentence will now read: The outside closing date (as defined in Paragraph 6 of the Agreement) is hereby extended until 12/31/2015.

A motion was made by Mr. Blackadar and seconded by Mr. Minkoff to recommend to the Board approval of the proposed Fifth Amendment with the revisions cited above. The motion carried unanimously with all five committee members present and voting AYE by voice vote.

Item 5: OTHER BUSINESS

No other business was discussed.

Item 6: ADJOURNMENT

Chairman May adjourned the meeting at 11:30 a.m.

Pursuant to the Florida Public Records Law and OOCEA 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 or 4974 ORL Tower Road, Orlando, FL 32807.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

RIGHT OF WAY MEETING
MAY 4, 2015

CONTRACT BETWEEN
ALLABOARD FLORIDA AND CFX

»»» What is AAF purchasing?

Contract, page 3, para. 2a

- Easement Rights over
 - 100-foot wide strip of SLR/FRI Property (9.6 + 59.1 acres for a 50' strip)(Exh. A-1)
 - over CFX's Existing Property (42 acres) (Exh. A-2)
 - over Additional Property (Exh. A-3) subsequent to CFX entering into one or more contracts
- With Rights to Mortgage, Transfer and Terminate
- Subject to adjusting the property description

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»»» AAF's Purchase Price (para. 3a)

Ranch Property and Existing 528 Easement Price:

- | | |
|-----------------------------------|--------------|
| • Payment towards Ranch Property | \$ 4,000,000 |
| • % for Additional Ranch Property | |
| • Use of Existing CFX Property | \$ 99 |
| • Loss of Toll Revenues | \$ 4,003,848 |
| • Innovation Way/528 Interchange | \$12,100,000 |
| • Contingency | \$ 250,000 |
| • Total | \$20,353,947 |
| • +40% of Additional Property | |

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

EXHIBIT "A"

Allocation of Payments

AAF

- SLR/FRI Property \$ 4M
- CFX Property \$
- Lost Tolls \$ 4M
- Inn. Way/528 \$12.1M
- Contingency \$.25M
- Total \$20.35M
- Additional Property @ 40%
- Osceola Pkwy \$25M

CFX's Responsibilities

- SLR/FRI Property: \$12M
- Future Interchanges: \$68M
- Construct Innovation Way Interchange
- SLR's Cap \$11.75M
- OC \$ 6.5M

DOT's Condition Precedent

- Osceola Pkwy Ext. \$33M

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Closing Date (p. 8, para. 6)

- Outside closing date: June 30, 2015
- Subject to Conditions Precedent unless waived.
- AAF's conditions precedent (para 11):
 - CFX has consummated the purchase of the Ranch Property and the Additional Property.
 - AAF hasn't terminated the Contract.
 - Title to the easement shall be in the condition required by paragraph 8
 - AAF acknowledges Restrictions

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Additional Conditions Precedent (Exhibit F)

- FDOT's written consent per the lease-purchase agreement dated December 1985
- Receipt of a certificate from consulting engineer re: operation
- Receipt of written opinion of counsel re: taxes
- Receipt of the opinion of the Authority's traffic and earnings consultant re: system pledged revenues
- The satisfaction and/or waiver of the escrow release conditions between DOT, AAF and First American Title Insurance Company such that the lease between the Department and AAF shall be delivered and become effective and binding and enforceable against the parties.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»»» Ranch's Conditions Precedent

- Seller and Osceola EA (and possibly DOT and AAF) execute and deliver an agreement for:
 - “an absolute and irrevocable commitment of **\$58M**”
 - in a manner acceptable to Seller
 - for the construction of the Osceola Parkway Extension 2 miles east of the Northeast Connector
 - require remaining funds to be used for the Northeast District
- Agreement between CFX, SLR, and Orange County addressing funding and construction of the Innovation Way - SR 528 Interchange

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»»» Innovation Way / Beachline Interchange Agreement

- In 1986, Orange County approved the International Corporate Park Development Order (DO) for the ICP DRI
 - As part of the DO, SLR is obligated to construct interchanges
- SLR will convey the Interchange Property before the closing for the Super Corridor.
 - SLR will defer payment from OOCEA for the interchange until closing of the Super Corridor Contract.
 - If the Super Corridor Contract closes, OOCEA shall pay and title is subject to Declarations and Restrictions apply.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»»» Innovation Way Interchange: Land for Retention Ponds

- SLR will convey to OOCEA additional lands for stormwater ponds for the expansion of SR 528 at no cost to OOCEA.
 - Additional lands shall be appraised
 - SLR is entitled to a credit
- If the ponds have surplus capacity, SLR has the right to use the super corridor ponds
 - subject to SLR obtaining permits and a joint use agreement.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY



Innovation Way Interchange: Additional Terms

- Condition Precedent to CFX's obligation to construct interchange:
 - Conveyances by SLR/FRI of the super corridor property
- If those conveyances have not occurred by June 30, 2015,
 - then the Innovation Way Interchange Agreement may be terminated by delivering written notice of termination.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY



AAF Contract: Representations, Warranties and Additional Covenants

- CFX makes no warranties or representations relating to the property.
- If CFX purchases the Ranch Property and Additional Property and receives representations, warranties and covenants which are discovered to be untrue, CFX covenants to enforce such representations.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY



Default by AAF (p. 18, para. 13)

- If AAF defaults, CFX, for its sole and exclusive remedy, may retain the deposit.
 - Initial Deposit of \$5000
 - Plus \$5000 at the end of the Inspection Period
- CFX waives and releases any right to sue AAF and covenants not to sue AAF for specific performance or to prove CFX's actual damages.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY



Easements over Acquired Property and Existing SR 528

- AAF has the exclusive right to use Rail Easement for intercity passenger rail
- Term: 50 years + 49 years.
- Construction Schedule: To Be Determined
 - If service does not commence within 10 years
 - Or, if AAF abandons for longer than 3 years,
 - Ten CFX's sole remedy is termination

CENTRAL FLORIDA EXPRESSWAY AUTHORITY



Maintenance of Rail Easement

- AAF shall perform the activities in its maintenance management plan. (p.23)
- If it doesn't, CFX may perform and charge AAF.
- Per its Master Bond Resolution, CFX has an obligation to maintain its system.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY



Shared Use Of Rail Improvements

- CFX cannot use the rail improvements
- If CFX desires to propose the shared use of the rail improvements, including commuter rail service or freight rail service, CFX shall provide to AAF a proposal and AAF agrees to consider such proposal. (p.26)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»»» UTILITIES

- AAF is responsible for locating potential conflicts with utilities and making such adjustments to not disturb the utility with the utility's consent. (p.32)
 - at no cost to CFX
- AAF is responsible for property damage to utilities caused by AAF (p.32)
- Utilities providing a service to AAF shall apply to CFX for a utility permit.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»»» AAF's Ability to Transfer Rights

- AAF shall not assign or transfer any rights without CFX's approval. CFX's interest is not subject to a lien.
- Without CFX's consent, AAF may assign an interest in AAF to:
 - a parent, subsidiary, affiliate, etc.
 - a successor entity, or
 - any transfer by member of a portion of the interest.
- After service for at 3 years, AAF may request an assignment to another and CFX's consent will not be unreasonably withheld if there is no default and the proposed transferee can perform. (p.39)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»»» AAF'S Right to Mortgage

- Without CFX's consent, AAF may mortgage its interest;
- The mortgage is limited to AAF and the Project. (p.40)
 - The Mortgagee shall give notice of default to AAF and CFX. (p.40)
 - The mortgage is subordinate to the rights of CFX.
 - CFX shall not amend or modify this Agreement without the Mortgagee's consent. (p.40)
 - Each Mortgagee, CFX, and AAF shall enter into a consent agreement.
 - If a mortgage exists, CFX shall notify the Mortgagee of any default of AAF (p.39).
 - AAF or any Mortgagee shall notify CFX in writing of a Mortgage and CFX agrees to execute an agreement (p.41)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»» Mortgagee's Right to Cure

- CFX agrees to accept performance and compliance by a Mortgagee. (p.42).
- The Agreement shall not be terminated until:
 - Notice
 - Mortgagee has not cured within 90 days.
 - If not curable or cannot be cured within such time frame, then within 180 days.
- If foreclosure or receivership, the cure period is extended to the duration of the foreclosure proceedings. (p.42)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»» Rights of a Mortgagee

CFX agrees that a Mortgage may contain any of the following:

- Default by AAF is a default under the Mortgage
- Assignment of AAF's right to terminate, cancel, modify, etc.
- Upon the default under any Mortgage:
 - Foreclosure and Sale of AAF's interest (provided that CFX determines that the transferee is capable of performing)
 - Appointment of receiver
 - Right of a Mortgagee to take possession
 - Assignment of AAF's easement interest and to AAF's cash, securities or other property
- Once the Mortgagee goes out of possession of AAF's interest or transfers its interest, it ceases to be responsible.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

»» New Easement After Termination

- CFX agrees to enter into a New Agreement with the Mortgagee for the remainder of the term. . . . (p.43)
- If AAF has outstanding obligations, CFX agrees to enter into a new agreement:
 - for the remainder of the term. (p.44)
 - subject to the same conditions.
 - executed by the parties
 - maintain the same priority
- If AAF refuses to surrender possession, CFX shall, at the Mortgagee's request, institute the appropriate legal remedy to remove AAF. (p.46)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

EVENTS OF DEFAULT

BY AAF:

- Appointment of a receiver
- Creditors' proceedings, bankruptcy, insolvency, etc.
- Failure to complete construction within 10 years (p.32)
- Failure to operate following commencement for 3 consecutive years
- Any failure to comply with the agreement performance actions

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REMEDIES

- CFX may only terminate for failure to complete construction or failure to operate.
- For a termination event of default, termination is CFX's exclusive remedy. (p.35)
- CFX may not terminate for AAF's failure to comply with the insurance requirements.
- **AAF may terminate for any reason or no reason with 90 days written notice.** (p.35)
- AAF cannot seek damages, except for payment obligations and damage caused by CFX, provided that the damages not exceed a yet-to-be-determined cap. (p.36)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Easement over Existing S.R. 528

- Similar to the Easement over the Acquired Property
- Nominal Price

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Summary

- AAF pays:
 - \$20.35M for Rail Easements
 - \$25M towards the Osceola Parkway Extension
 - To relocate Utilities
- AAF receives:
 - a 99-year Rail Easement
 - Rights to Mortgage, Assign or Transfer Certain Interests
 - Ability to terminate for any reason
 - Termination is CFX's exclusive remedy for failure to construct or failure to operate

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REVISION 1 TO EXECUTION VERSION

Prepared by/Return to:

Jason E. Merritt
HOPPING GREEN & SAMS, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32309

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS (this “**Declaration**”) is made effective as of _____, 201__, by FARMLAND RESERVE, INC., a Utah not-for-profit corporation, and SUBURBAN LAND RESERVE, INC., a Utah corporation ~~_(collectively, with their successors and assigns,~~ the “**Declarant**”).

WITNESSETH:

WHEREAS, Farmland Reserve, Inc. is the owner of the property more particularly described on Exhibit A-1 attached hereto and incorporated by reference (the “**Farmland Reserve Property**”); and

WHEREAS, Suburban Land Reserve, Inc. is the owner of the property more particularly described on Exhibit A-2 attached hereto and incorporated by reference (the “**Suburban Land Reserve Property**”); and

WHEREAS, Farmland Reserve, Inc. owns certain property adjacent to the Farmland Reserve Property more particularly described on Exhibit B-1 attached hereto and incorporated by reference herein (the “**Farmland Reserve Retained Property**”); and

WHEREAS, Suburban Land Reserve, Inc. owns certain property adjacent to the Suburban Land Reserve Property more particularly described on Exhibit B-2 attached hereto and incorporated by referenced herein (the “**Suburban Land Reserve Retained Property**” and, together with the Farmland Reserve Retained Property, the “**Retained Property**”); and

WHEREAS, Declarant desires to subject the Property to the covenants, conditions, easements and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Declarant and of the Retained Property; and

WHEREAS, Declarant has agreed to convey the Property to the Central Florida Expressway Authority (“**CFX**”) subject to the covenants, conditions, easements and restrictions imposed by this Declaration, each and every one of which has been negotiated between Declarant and CFX, and each and every one of which is material to Declarant; and

WHEREAS, Declarant would be unwilling to convey the Property to CFX except subject to the covenants, conditions, easements and restrictions imposed by this Declaration; and

WHEREAS, CFX, by its acceptance of deeds to the Property, has agreed to accept the

Property subject to the covenants, conditions, easements and restrictions imposed by this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Property, unless otherwise expressly set forth in this Declaration, together with all improvements now or hereafter located thereon, and all operations thereon and uses made thereof, shall be subject to the covenants, conditions, easements and restrictions hereinafter set forth below; and the Property and any portion thereof shall be transferred, sold, conveyed, leased, hypothecated, encumbered, used, occupied and improved subject to the covenants, conditions, easements and restrictions set forth below, which shall run with the Property and be binding on all parties having any right, title, claim or interest in all or any portion of the Property, their heirs, legal and personal representatives, successors, transferees and assigns, and which shall inure to the benefit of each Declarant and the ~~respective Declarant's~~ successors, ~~heirs~~ and assigns ~~of each Declarant~~.

DEFINED TERMS

~~“Affiliate” means, when used with reference to a specified Person, (a) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a Person, including by means of a non-member manager; (b) any Person that is an officer of, partner in, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (c) any Person that, directly or indirectly, is the beneficial owner of, or controls, ten (10%) percent or more of any class of equity securities of, or otherwise has a substantial beneficial interest (ten percent (10%) or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of ten percent (10%) or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (ten percent (10%) or more); and (d) any relative or spouse of the specified Person.~~

“Commuter Rail Service” means passenger rail service whose ridership consists of passengers traveling within the Orlando-Kissimmee-Sanford Metropolitan Statistical Area, as the same is delineated by the United States Office of Management and Budget as of the date of this Declaration (the “Orlando-Kissimmee-Sanford MSA”) as well as passengers from and within Brevard County, Florida traveling to points within the Orlando-Kissimmee-Sanford MSA and passengers from the Orlando-Kissimmee-Sanford MSA traveling to Brevard County, Florida.

~~“Declarant” means Farmland Reserve, Inc., a Utah not-for-profit corporation, and Suburban Land Reserve, Inc., a Utah corporation, collectively, and their respective successors and assigns.~~

~~“Declaration” means the covenants, conditions, easements and restrictions and all other provisions set forth in this entire document, and in any duly adopted amendments hereto and thereto.~~

“Declarant’s successors and assigns” means any Person who has received an express assignment of Declarant’s rights hereunder. In no event shall there be, at any point in time, more than two (2) Persons constituting Declarant hereunder, which Persons must always be either an

owner of a portion of the Retained Property or an owner's association formed for the purpose of enforcing and invoking this Declaration, among its other purposes. Once a Declarant's successor and assign has succeeded to the Declarant's rights hereunder, then it shall constitute a "Declarant" hereunder until succeeded by another Person receiving an express assignment of rights hereunder from such Declarant. Notwithstanding any other provision of this Declaration, Declarant shall have the right to authorize other Persons from time to time who may own, use or occupy portions of the Retained Property to exercise and invoke any specific right, easement, reservation, and other privilege of the Declarant, but excluding however any rights of Declarant arising pursuant to Section 1 or Section 2.1 hereof, without completely assigning its status as Declarant to such Persons. Such Persons so authorized by Declarant are referred to herein as "Limited Assignees" and such Limited Assignees shall not be deemed to constitute Declarant's successors and assigns for purposes of this Declaration.

"Freight Rail Service" means rail service for the transport of freight or cargo and not passengers.

"Intercity Passenger Rail Service" means passenger rail service whose ridership consists of passengers traveling between two or more metropolitan areas and includes any and all uses and purposes incidental to passenger railroad operations, including without limitation, installing, placing, constructing, occupying, using, operating, altering, maintaining, repairing, renewing and replacing Intercity Passenger Rail Improvements that are reasonably necessary or legally required in connection with the provision of passenger railroad service, operating trains, cars, locomotives and other rail equipment for the movement of such intercity passengers (including excursion and special passenger train service) and the provision of any and all on-board activities that are incidental and related to the transportation of passengers. As of the date of this Declaration, Intercity Passenger Rail Service shall consist of passenger rail service between Miami and Orlando. However, nothing in this Declaration shall be construed as precluding the expansion of the Intercity Passenger Rail Service to other metropolitan areas as destinations (other than destinations the service to which constitutes Commuter Rail Service) and nothing in this Declaration shall be construed as requiring the consent or approval of Declarant for such expansion of the Intercity Passenger Rail Service to other metropolitan areas as destinations.

"Intercity Passenger Rail Improvements" means all tracks, rails, railbeds, ties, ballast, access roads, switches, rail crossovers, utilities, signals and communication facilities, drainage facilities and any other improvements necessary to provide Intercity Passenger Rail Service within the Property, as well as incidental equipment related thereto to provide on-board services for the benefit of on-board rail passengers, such as telecommunication equipment to provide continuous Wi-Fi and cellular access for the benefit of on-board rail passengers. Further, the term **Intercity Passenger Rail Improvements** includes all cables, conduits, wires, antennae, pipes, low-mass poles for positive train control systems, culverts, equipment, fixtures and apparatus which may be or is proposed to be located on, over or under the Property necessary to provide Intercity Passenger Rail Service.

"Owner" means any Person from time to time owning any interest in any portion of the Property together with their successors, heirs and assigns, and shall also include all Persons claiming any right, title or interest in any portion of the Property by through or under such

Owner.

“Person” means any individual, partnership, joint venture, limited liability company, limited partnership, corporation, trust or other entity.

~~“Property” means that certain real property located in Orange County, Florida, which is more particularly described on Exhibit A-1 and Exhibit A-2 attached hereto and made part hereof.~~

“Property” means the Suburban Land Reserve Property and the Farmland Reserve Property, collectively.

“Rail Owners” means the owners or operators of any Intercity Passenger Rail Service or Intercity Passenger Rail Improvements whose ownership interest or operational rights in the Intercity Passenger Rail Service or the Intercity Passenger Rail Improvements is reflected in and can be determined by a search of the Official Records of Orange County, Florida or, alternatively, who have delivered written notice to Declarant of their ownership interest or operational rights in the Intercity Passenger Rail Service or Intercity Passenger Rail Improvements in accordance with Section 54.9 hereof.

~~“Retained Property” means that certain real property which is more particularly described on Exhibit B-1 Suburban Land Reserve Retained Property and Exhibit B-2 attached hereto and made part hereof the Farmland Reserve Retained Property, collectively.~~

“Transportation” means the movement of persons or property ~~by any~~ by any means of conveyance and, for purposes of this Declaration, specifically includes Intercity Passenger Rail Service, Commuter Rail Service and Freight Rail Service, whether or not owned or operated by CFX.

“Transportation Facility or Facilities” means “transportation facilities” as such term is defined in Section 348.752(14), Florida Statutes (2014), including any “Road” or “Structure” as such terms are defined in Section 334.03, Florida Statutes (2014).

“Utility” means the sale, generation, provision, distribution, collection, transport, transmission, or delivery of gas, electricity, heat, water, oil, fuel, sewer service, reclaimed water, telephone service, telegraph service, radio service or telecommunication service, and also the construction, maintenance, repair, replacement, and operation of systems, equipment, fixtures, and other apparatus for sale, generation, provision, distribution, collection, transport or delivery of gas, electricity, heat, water, oil, fuel, sewer service, reclaimed water, telephone service, telegraph service, radio service or telecommunication service.

“Utility Facility or Facilities” means any and all cables, conduits, wires, antennae, pipes, culverts, towers, equipment, fixtures, apparatus and other systems and components owned or operated by a provider of Utility services for the provision of such Utility service which may be or is proposed to be located on, over or under the Property. The term Utility Facility or Utility Facilities expressly excludes utilities necessary to provide Intercity Passenger Rail Service, Freight Rail Service, or Commuter Rail Service within the Property, as well as incidental equipment related thereto to provide on-board services for the benefit of on-board rail

passengers.

COVENANTS AND RESTRICTIONS

1. ~~Use Restrictions.~~ From and after the date of recording this Declaration and subject ~~Above-ground Utility Facilities.~~ Prior to the provisions contained herein, the Property shall only be used for Utility or Transportation purposes and for no other use or purpose. However, the Property may not be used for any Utility Facility ~~construction of any above-ground Utility Facility having a finished height in excess of five feet (5') above grade,~~ which under applicable law or regulation requires improvements constructed on the Retained Property ~~is proposed to be~~ setback an extraordinary distance from any such Utility Facility. For purposes of the foregoing sentence, a setback of extraordinary distance shall mean any setback exceeding the setback which would be applicable under applicable laws or regulations in the absence of such Utility Facility.

2. ~~Approval of Certain Improvements.~~ No above-ground Utility Facility may be located, installed or constructed within the southerly 100 feet of the Property, ~~nor may any above-ground Utility Facility which may hereafter be permitted within the southerly 100 feet of the Property be expanded, replaced or reconstructed unless the~~ plans therefor shall first be reviewed and approved by ~~submitted to~~ Declarant. ~~Provided however, Declarant shall not unreasonably withhold its consent to the location, installation, construction, expansion, replacement or reconstruction of any above-ground Utility Facility should Declarant determine that a proposed above-ground Utility Facility will not have an adverse impact upon the present or future value, marketability, operation and development of the Retained Property including aesthetic considerations as more particularly described below. Further, the repair and maintenance of an approved above-ground Utility Facility on the Property shall not require any consent or for review and approval from Declarant nor shall the replacement of component parts of any such above-ground Utility Facility with identical or substantially similar replacement parts require Declarant's consent or approval. Further, except as this Declaration may provide otherwise, the~~ The construction or placement of a Utility Facility on the Property ~~at or below ground level~~ having a finished height of less than five feet (5') above grade shall not require ~~any review or Declarant's approval by Declarant.~~

3.0 ~~For purposes of clarity and the avoidance of doubt, the limitations applicable to above-ground Utility Facilities contained in this Section 2. Further, Declarant's approval shall not apply to Utility Facilities constructed or proposed to be constructed~~ required before a Utility Facility of any height is located within that portion of the Property lying north of the southerly 100 feet of the Property.

4.0 ~~Any plans submitted for the construction of an above-ground Utility Facility shall include imagery depicting the effect of the proposed above-ground Utility Facility upon the surrounding viewshed including without implied limitation the viewshed from State Road 528 to the Retained Property.~~

1. ~~Declarant reserves the right to comment on any~~ may withhold its consent to a proposed above-ground Utility Facility to be located within the southerly 100 feet of the Property ~~or withhold its approval of any such proposed above-ground Utility Facility~~ and exceeding five feet

(5') above grade primarily or entirely based upon aesthetic considerations.

~~4.1—Should Declarant reserves the right fail to request additional information regarding furnish written comments to any construction plans for a proposed above-ground Utility Facility regulated by this Section 2 in connection with its review which shall promptly be provided to Declarant. For purposes of this Section 2, approval by the Declarant of any above-ground Utility Facility shall mean approval by both Farmland Reserve, Inc. and Suburban Land Reserve, Inc., or their respective successors and assigns.~~

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~~4.2.1.1 Should Declarant fail to furnish written comments or objections to any construction plans for a proposed above-ground Utility Facility regulated by this Section 21 within thirty (30) days after furnishing written receipt thereof (pursuant to Section 5.9 hereof), then Declarant's approval of such plans shall be presumed and Declarant shall thereafter be estopped from raising any objections to such plans. In the event that Declarant furnishes written comments to any proposed plans within such thirty (30) days, revised plans addressing such comments shall be submitted for Declarant's review and approval. Should Declarant affirmatively consent to any proposed plans as provided by this Section 2 or fail to object to any plans submitted to Declarant within the timeframe provided above, then Declarant's approval rights existing under this Section 21 relating to that proposed above-ground Utility Facility shall be deemed satisfied and the proposed plans shall be deemed approved. Provided however, should such plans be subsequently substantially modified, including but not limited to any modification changing the aesthetic aspects of the proposed Utility Facility, then such change shall require approval by Declarant in the manner provided in this Section 2. Any Person seeking Declarant's approval of any proposed plan for an above-ground Utility Facility regulated by this Section 2 shall deliver separate copies thereof to both Suburban Land Reserve, Inc. and Farmland Reserve, Inc., or their respective successors and assigns as the case may be, at the addresses set forth in Section 5.9 below waived.~~

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~~4.3—Declarant's approval of any construction plans (either affirmatively or by virtue of Declarant's failure to object within the aforementioned thirty (30) day period) shall only constitute Declarant's determination that such above-ground Utility Facility does not negatively affect the Retained Property and shall not be deemed as any representation or warranty on the part of Declarant regarding the fitness or completeness of the plans, their compliance with any applicable standards or regulations relating to the design, construction or operation of the above-ground Utility Facility, the suitability or advisability of constructing the proposed above-ground Utility Facility in the location or manner proposed by the plans, or any other type of warranty or representation whatsoever. Accordingly, to the fullest extent permitted by law, Declarant expressly disclaims any and all responsibility and liability with regard to the design, operation, ownership, use, maintenance, repair or construction of any such above-ground Utility Facility. Further, Declarant's approval of any proposed plans shall be in addition to, and not in lieu of, all required approvals by any governmental or quasi-governmental authority having jurisdiction over the construction or operation of the proposed Utility Facility, and the owner or operator of any above-ground Utility Facility shall be obligated to obtain all required governmental or quasi-governmental approvals necessary prior to commencement of construction of any above-ground Utility Facility. The owners and operators of each proposed above-ground Utility Facility regulated by this Section 2 shall indemnify, defend and hold harmless Declarant from all fines, penalties, damages, losses, expenses (including without implied limitation legal and appellate~~

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~~fees and court costs), claims, suits, judgments, and other costs, obligations, and liabilities, that may be incurred by or asserted against Declarant arising from or in relation to Declarant's approval of an above-ground Utility Facility pursuant to this Section 2, or from the construction, repair, replacement, maintenance or operation of any such above-ground Utility Facility, and the Declarant may withhold its approval of any above-ground Utility Facility regulated by this Section 2 in the absence of an indemnification agreement from the owners and operators of each such proposed above-ground Utility Facility in form and content acceptable to Declarant, in its sole but reasonable discretion.~~

~~4.41.2 For the avoidance of doubt, nothing~~ Nothing contained in this Section 21 shall be applicable to the utilities included within the Intercity Passenger Rail Improvements (i.e., those necessary to provide Intercity Passenger Rail Service within the Property, as well as incidental equipment related thereto to provide on-board services for the benefit of on-board Intercity Passenger Rail passengers) ~~or to the utilities included within the Independent Track (hereinafter defined) (i.e., those necessary to provide Commuter Rail Service or Freight Rail Service within the Property, as well as incidental equipment related thereto to provide on-board services for the benefit of on-board Commuter Rail Service passengers).~~

5.2. Rights Reserved by Declarant.

5.2.1 Approval Rights Regarding Intercity Passenger Rail Improvements. In addition to the rights reserved by Declarant contained in Section 21 above, any Intercity Passenger Rail Improvements constructed on, under or within the Property shall conform to the following requirements:

(a) The Intercity Passenger Rail Improvements shall include no more than two (2) tracks, located parallel to one another, and lying within the southerly one hundred feet (100') of the Property. The Intercity Passenger Rail Improvements ~~shall~~ may be constructed at-grade with the exception of the intersection of the Intercity Passenger Rail Improvements with State Road 520, Dallas Boulevard and Monument Parkway/OUC rail facilities, where the Intercity Passenger Rail Improvements will be elevated.

(b) All plans for Intercity Passenger Rail Improvements shall be prepared in a manner which does not preclude the construction of at least one (1) additional track and associated facilities (including, but not limited to, rails, railbeds, access and service roads, switches, utilities, communication facilities and drainage facilities) located southerly of the Intercity Passenger Rail Improvements ~~and,~~ wholly within the Property, and adjoining the southerly boundary thereof (the "Independent Track") which, if constructed, shall be designed and constructed to operate independently of any Intercity Passenger Rail Improvements at the sole cost and risk of the owners and operators of such Independent Track. Further, the plans for Intercity Passenger Rail Improvements shall be prepared in a manner which does not materially and unreasonably increase the cost of construction of the Independent Track, and Declarant, for itself and Declarant's successors and assigns, and CFX (by its acceptance of title to the Property), for ~~themselves~~ itself and on behalf of ~~their respective~~ its successors and assigns, acknowledge that the cost of construction of the Independent Track shall necessarily be increased by the pre-existence of the Intercity Passenger Rail Improvements that will be designed to address different operating

parameters and conditions that may not be conducive for Freight Rail Service. Unless otherwise agreed by the respective owners and operators of the Intercity Passenger Rail Improvements, said owners and operators shall have no financial responsibility or liability in connection with the Independent Track or any Freight Rail Service or Commuter Rail Service conducted thereon. Similarly, unless otherwise agreed by the respective owners and operators of the Independent Track, said owners shall have no financial responsibility or liability in connection with the Intercity Passenger Rail Improvements or the Intercity Passenger Rail Service when said Independent Track is operated independently of the Intercity Passenger Rail Improvements. However, subject to the terms of Section 3-62.5 hereof, nothing contained in this Declaration shall prevent the Intercity Passenger Rail Improvements and the Independent Track from operating as a combined system, for all or any portion of their lengths, on such terms as may be agreed upon by the respective owners and operators of the Intercity Passenger Rail Improvements and the Independent Track. The Intercity Passenger Rail Improvements shall be designed so as not to limit the expansion of State Road 528 as contemplated in the Technical Memorandum SR 528 (Beachline Expressway), Conceptual Eight Laning Study, dated August 22, 2013 by Atkins North America, Inc. ("Atkins"), inclusive of the Conceptual Level Roadway Design Criteria, Drainage Support Documentation, and Concept Plans attached thereto all as modified by that certain Supplement to the Technical Memorandum, dated September 26, 2013 by Atkins (collectively, the "Existing Eight Laning Memorandum").

(c) ~~No portion of the Intercity Passenger Rail Improvements may be located on the Retained Property except as may be agreed to by Declarant.~~ Designs of the Intercity Passenger Rail Improvements will mitigate adverse aesthetic impacts of the Intercity Passenger Rail Service and Intercity Passenger Rail Improvements on the Retained Property and from State Road 528 by incorporating, as required by CFX, the standard aesthetic and landscaping guidelines and elements which are utilized by CFX as of the date of this Declaration (as evidenced by facilities currently constructed and operated by CFX), including, without implied limitation, standard precast wall panels. Noise reduction measures will be incorporated where required by the Federal Railroad Administration ("FRA"). The Intercity Passenger Rail Improvements shall include standard erosion control planting as typical in the following standards, but not any ornamental landscaping: Florida Department of Transportation ("FDOT") Standard Specifications for Road and Bridge Construction located at the Department's website, at <http://www.dot.state.fl.us/specificationsoffice/Implemented/SpecBooks/2013/Files/2013eBook.pdf> ("FDOT Road and Bridge Standards"), and the FDOT's standard Design-Build Guidelines located at FDOT's website <http://www.dot.state.fl.us/construction/DesignBuild/DBRules/DesignBuildGuidelines.pdf>. Declarant reserves the right, at Declarant's expense, to install and maintain additional landscaping within the Property so long as the exercise of such right is conducted in a manner which does not interfere with the safe and uninterrupted operation of the Intercity Passenger Rail Service.

(d) Declarant shall have the right to review and approve all final construction plans for the construction of the Intercity Passenger Rail Improvements (the "Rail Plans") for the limited purpose of ensuring the conformity of such plans with the requirements of

subparagraphs (a) through (c) of this Section 32.1. Provided however, Declarant's approval of the Rail Plans shall not be unreasonably conditioned, withheld or delayed. Declarant shall furnish any comments or requested changes to any plans submitted to it within thirty (30) days after delivery of the Rail Plans to Declarant pursuant to Section 54.9 hereof. Declarant's failure to furnish comments to any plans submitted for review and approval within such thirty (30) days shall be deemed a waiver of Declarant's right to comment on the Rail Plans and Declarant's approval of such plans shall be presumed and Declarant shall thereafter be estopped from raising any objections to such plans. In the event that Declarant furnishes written comments to the Rail Plans within such thirty (30) days, revised versions of the Rail Plans addressing such comments shall be submitted for Declarant's review and approval and Declarant shall have fifteen (15) days after receipt within which to review and comment on the revised versions of the Rail Plans. Declarant's failure to furnish comments to any revised versions of the Rail Plans submitted for review and approval within such fifteen (15) days shall be deemed a waiver of Declarant's right to comment on the revised Rail Plans and Declarant's approval of such plans shall be presumed and Declarant shall thereafter be estopped from raising any objections to such plans. Should Declarant affirmatively consent to the Rail Plans as provided in this Section 32.1 or fail to object to the Rail Plans, or revised Rail Plans, within the time frames provided above, then Declarant's approval rights existing under this Section 32.1 shall be deemed satisfied and the Rail Plans shall be deemed approved. By conducting Intercity Passenger Rail Services on the Property, the operator of such services agrees to make reasonable accommodations to address Declarant's comments or requested changes to the Rail Plans for the Intercity Passenger Rail Improvements. Notwithstanding the Declarant's rights to review the design of the Intercity Passenger Rail Improvements as provided in this Section 32.1, Declarant shall have no financial responsibility in connection with the design, construction, operation, maintenance, repair or replacement of the Intercity Passenger Rail Improvements or any component part thereof. ~~The owner and operator of the Intercity Passenger Rail Improvements~~ Rail Owners shall indemnify, defend and hold harmless Declarant from all fines, penalties, damages, losses, expenses (including without implied limitation legal and appellate fees and court costs), claims, suits, judgments, and other costs, obligations, and liabilities, that are incurred by Declarant to the extent arising solely as a result of Declarant's approval of ~~plans for the Intercity Passenger Rail Improvements~~ Plans. Declarant's approval of the Rail Plans (either affirmatively or by virtue of Declarant's failure to object within the aforementioned periods) shall only constitute Declarant's determination that the Rail Plans comply with the provisions of subparagraphs (a) through (c) above and shall not be deemed as any representation or warranty on the part of Declarant regarding the fitness or completeness of the plans, their compliance with any applicable standards or regulations relating to the design, construction or operation of the Intercity Passenger Rail Improvements, the suitability or advisability of constructing the Intercity Passenger Rail Improvements in the location or manner proposed by the Rail Plans, or any other type of warranty or representation whatsoever. Accordingly, to the fullest extent permitted by law, Declarant expressly disclaims any and all responsibility and liability with regard to the design, operation, ownership, use, maintenance, repair or construction of the Intercity Passenger Rail Improvements.

5.2 — Retained Easement for Operation of Freight Rail Service and/or Commuter Rail Service; Approval Rights Regarding Independent Track.

~~() — Declarant hereby expressly reserves to itself, as well as its successors and assigns, nonexclusive rights and easements, together with the right to assign or grant other Persons such rights and easements, over the southerly fifty feet (50') of the Property for the construction, repair, replacement and maintenance of the Independent Track for, and the operation of, Freight Rail Service or Commuter Rail Service, or both, on the Independent Track. The construction of the Independent Track for, and operation of, Freight Rail Service or Commuter Rail Service, or both, within the southerly fifty feet (50') of the Property (whether by CFX, Declarant, or another Person) shall not materially interfere with the safe and uninterrupted operation of the Intercity Passenger Rail Service (with it being understood that it is material for the owner and operators of the Intercity Passenger Rail Service to be able to operate and maintain the Intercity Passenger Rail Improvements in a safe manner in order to deliver uninterrupted service to passengers); subject, however, to the rights and protections provided in Section 3.1 above relating to the Independent Track and to operations of Commuter Rail Service and Freight Rail Service thereon. With regard thereto, any such access to any portion of the Property upon which the Intercity Passenger Rail Improvements are located may be limited to specific times and will need to be coordinated with the Owners, including the owners and operators of the Intercity Passenger Rail Service, following reasonable notice and shall be subject to standards and requirements for entries onto railroad property, which include, without limitation, the positioning of flag persons, and insurance requirements that are uniformly applicable to contractors performing work within rail corridors. With regard thereto, it is also acknowledged by the Declarant that access to any portion of the Property upon which the Intercity Passenger Rail Improvements are located following the commencement of operations of the Intercity Passenger Rail Service will need to be subject to reasonable rules and procedures in order to protect the safety of the public and prevent injury or loss to Persons and property, including, without limitation, rules and regulations mandated by FRA regarding access to rights of way used for railroad purposes. Nothing contained in this Declaration shall be deemed as granting Declarant or any Owner (excluding however, any Rail Owner) the right to use or access the Intercity Passenger Rail Improvements, or to permit or authorize any use or access of the Intercity Passenger Rail Improvements by any third party, and Declarant and CFX (by its acceptance of title to the Property) expressly acknowledge that any use or access of the Intercity Passenger Rail Improvements by anyone other than the owner of such facilities shall be subject to Section 3.6 hereof and such terms as may be agreed upon by the owner of the Intercity Passenger Rail Improvements and any additional user thereof.~~

~~() — Declarant's rights under this Section 3.2 shall be shared with CFX such that, whichever of CFX and Declarant first undertakes (or causes another Person to undertake) construction of the Independent Track for, and the operation of, Commuter Rail Service or Freight Rail Service over the southerly fifty feet (50') of the Property shall have the superior rights for so long as that construction and operations are continuously conducted in accordance with this Section 3.2. The party first electing to undertake (or to cause another Person to undertake) construction of the Independent Track for, and the operation of, Commuter Rail Service or Freight Rail Service over the southerly fifty feet~~

~~(50') of the Property (the "Prior Operator") shall send written notice of such election to the other party pursuant to the provisions of Section 5.9 hereof (the "Independent Track Construction Notice"). Thereafter, notwithstanding any conflicting provision of this Declaration, the rights to construct the Independent Track and operate Commuter Rail Service or Freight Rail Service thereon, provided under this Section 3.2 to whichever of CFX or Declarant is not the Prior Operator, shall be subordinate and subject to those of the Prior Operator for as long as the construction and operations initiated by the Prior Operator are continuously conducted. For purposes of this provision, construction of the Independent Track shall be deemed continuous if after delivery of the Independent Track Construction Notice the design, permitting, and construction is prosecuted with due diligence, without extraordinary interruption, to full completion. For purposes of this provision, operations of Commuter Rail Service or Freight Rail Service shall be deemed continuous if within a reasonable time after full completion of the Independent Track, trains are operated thereon at least daily according to a regular schedule. If construction of the Independent Track or operations thereon of Commuter Rail Service or Freight Rail Service are not continuous, the Prior Operator (and any Person exercising the rights of the Prior Operator) shall forfeit those prior rights; and CFX and Declarant shall again share equal rights to construct the Independent Track for, and to operate thereon, Commuter Rail Service or Freight Rail Service over the southerly fifty feet (50') of the Property, until a Prior Operator is again established in accordance with this Section 3.2. Notwithstanding the foregoing, a Prior Operator shall have the right from time to time to elect to cease continuous daily operations of Commuter Rail Service or Freight Rail Service without forfeiting its prior rights as Prior Operator provided the total cessation does not exceed two (2) years (in the aggregate). In order to invoke this right, the Prior Operator will deliver prior notice to the other party pursuant to the provisions of Section 5.9. Once continuous operations have ceased for two (2) years (in the aggregate), the Prior Operator shall forfeit its prior rights as provided above. Periods during which operations temporarily cease for reasonable periods for maintenance, repairs, and replacement shall not be included in calculating the foregoing two (2) year limitation. Further, if the Prior Operator's continuous construction and operation of Commuter Rail Service or Freight Rail Service are interrupted by act of God, epidemics, storms, earthquakes, tornadoes, fires, floods, civil commotion, governmental or sovereign conduct (including but not limited to delays in the issuance of permits or approvals), strikes, lock-outs, or other labor or industrial disturbances, or acts of the public enemy (but expressly not including financial difficulties), then the Prior Operator shall be excused from the requirement of continuous construction and operations for a period of time that is reasonably necessary to remedy the effects of the occurrence causing the interruption. Either of Declarant or CFX shall from time to time, within twenty (20) day of receipt of a written request from the other, provide the requesting party a binding certificate confirming this Section 3.2 and the parties' rights hereunder, stating whether a party has qualified as a Prior Operator, explaining any defaults by a party, and providing such other information as the requesting party may reasonably request. Any exercise of the rights to construct the Independent Track over the southerly fifty feet (50') of the Property, and to operate thereon Commuter Rail Service or Freight Rail Service, shall be done in a manner which complies with the requirements of this Section 3.2, including the provisions hereof protecting operations of the Intercity Passenger Rail Service and the~~

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~~Intercity Passenger Rail Improvements. CFX shall not permit or allow the operation of either Freight Rail Service or Commuter Rail Service by the Rail Owners or any Affiliate of the Rail Owners absent the written consent of the Declarant, which may be withheld in Declarant's sole discretion.~~

~~() — No portion of the Independent Track shall be located on the Retained Property except as may be agreed to by Declarant. Designs of the Independent Track will mitigate adverse aesthetic impacts on the Retained Property and from State Road 528 by incorporating, as required by CFX, the standard aesthetic and landscaping guidelines and elements which are utilized by CFX as of the date of this Declaration (as evidenced by facilities currently constructed and operated by CFX), including, without implied limitation, standard precast wall panels. Noise reduction measures will be incorporated where required by the FRA. The Independent Track shall include standard erosion control planting as typical in the following standards: Florida Department of Transportation ("FDOT") Standard Specifications for Road and Bridge Construction located at the Department's website, at <http://www.dot.state.fl.us/specificationoffice/Implemented/SpecBooks/2013/Files/2013eBook.pdf> ("FDOT Road and Bridge Standards"), and the FDOT's standard Design-Build Guidelines located at FDOT's website <http://www.dot.state.fl.us/construction/DesignBuild/DBRules/DesignBuildGuidelines.pdf>. Declarant reserves the right to require that the owners or operators of the Independent Track within the southerly fifty feet (50') of the Property install and maintain additional landscaping within the Property to minimize the impact of the Independent Track and the Freight Rail Service and Commuter Rail Service operations thereon upon the Retained Property.~~

~~() — Declarant shall have the right to review and approve all final construction and operational plans for the Independent Track (the "Independent Track Rail Plans") for the purpose of ensuring the conformity of such plans with the requirements of subparagraphs (a), (b), and (c) of this Section 3.2. Provided however, Declarant's approval of the Independent Track Rail Plans shall not be unreasonably conditioned, withheld or delayed. Declarant shall furnish any comments or requested changes to any plans submitted to it within thirty (30) days after delivery of the Independent Track Rail Plans to Declarant pursuant to Section 5.9 hereof. Declarant's failure to furnish comments to any plans submitted for review and approval within such thirty (30) days shall be deemed a waiver of Declarant's right to comment on the Independent Track Rail Plans and Declarant's approval of such plans shall be presumed and Declarant shall thereafter be estopped from raising any objections to such plans. In the event that Declarant furnishes written comments to the Independent Track Rail Plans within such thirty (30) days, revised versions of the Independent Track Rail Plans addressing such comments shall be submitted for Declarant's review and approval and Declarant shall have fifteen (15) days within which to review and comment on the revised versions of the Independent Track Rail Plans. Declarant's failure to furnish comments to any revised versions of the Independent Track Rail Plans submitted for review and approval within such fifteen (15) days shall be deemed a waiver of Declarant's right to comment on the revised Independent Track Rail Plans and Declarant's approval of such plans shall be presumed and Declarant shall thereafter be estopped from raising any objections to such~~

~~plans. Should Declarant affirmatively consent to the Independent Track Rail Plans as provided in this Section 3.2 or fail to object to the Independent Track Rail Plans, or revised Independent Track Rail Plans, within the time frames provided above, then Declarant's approval rights existing under this Section 3.2 shall be deemed satisfied and the Independent Track Rail Plans shall be deemed approved. By conducting Freight Rail Service or Commuter Rail Service on the Property, the operator or operators of such services agree to make reasonable accommodations to address Declarant's comments or requested changes to the Independent Track Rail Plans for the Independent Track. Notwithstanding the Declarant's rights to review the Independent Track Rail Plans as provided in this Section 3.2, unless Declarant shall expressly undertake the construction of the Independent Track as permitted by this Section 3.2, Declarant shall have no financial responsibility in connection with the design, construction, operation, maintenance, repair or replacement of the Independent Track or any component part thereof. The owner and operator of the Independent Track, if not the Declarant, shall indemnify, defend and hold harmless Declarant from all fines, penalties, damages, losses, expenses (including without implied limitation legal and appellate fees and court costs), claims, suits, judgments, and other costs, obligations, and liabilities, that are incurred by Declarant to the extent arising solely as a result of Declarant's approval of plans for the Independent Track. Declarant's approval of the Independent Track Rail Plans (either affirmatively or by virtue of Declarant's failure to object within the aforementioned periods) shall only constitute Declarant's determination that the Independent Track Rail Plans comply with the provisions of this Section 3.2 and shall not be deemed as any representation or warranty on the part of Declarant regarding the fitness or completeness of the plans, their compliance with any applicable standards or regulations relating to the design, construction or operation of the Independent Track, the suitability or advisability of constructing the Independent Track in the location or manner proposed by the Independent Track Rail Plans, or any other type of warranty or representation whatsoever. Accordingly, to the fullest extent permitted by law, in the event that Declarant does not undertake to construct the Independent Track, Declarant expressly disclaims any and all responsibility and liability with regard to the design, operation, ownership, use, maintenance, repair or construction of the Independent Track.~~

5.72.2 Crossing Rights. ~~Declarant hereby expressly reserves to itself as well as its~~ Crossing Rights. Declarant hereby expressly reserves to itself as well as to Declarant's successors and assigns an easement to cross the Property perpendicularly or diagonally as follows:

(a) *Existing Crossings.* At Dallas Boulevard, Farm Access Road #1, Farm Access Road #2 and Monument Parkway (International Corporate Park Boulevard), all as more particularly depicted on Exhibit C-1 attached hereto and incorporated by reference (the "Existing Crossings"), Declarant shall have the right to enter upon such Existing Crossings and to travel over, on or across the same and, subject to the provisions of ~~Sections 3.3~~ Section 2.2(d), the right to locate, construct, operate, maintain and replace Transportation Facilities and underground Utility Facilities crossing the Property at Existing Crossings. However, at such time as the Intercity Passenger Rail Improvements are constructed at Farm Access Road #1 and Farm Access Road #2, Declarant acknowledges that Declarant shall no longer have the right to cross the Property utilizing

such existing roadways until such time as Declarant constructs improvements to such roadways to permit the elevated crossing of the Intercity Passenger Rail Improvements by such roadways (the design, construction and use of which elevated crossing(s) shall be subject to the provisions of Sections 3-32.2(d) and 3-62.5 hereof).

(b) *Planned Crossings.* At those locations which are generally depicted on Exhibit C-2 attached hereto and incorporated by reference (the "Planned Crossings"), Declarant shall have the right, subject to the provisions of Sections 3-32.2(d), to locate, construct, operate, maintain and replace Transportation Facilities and under-ground Utility Facilities crossing the Property at Planned Crossings.

(c) *New Crossings.* At locations other than at Existing Crossings or Planned Crossings, Declarant may propose such new requested Transportation Facilities or underground Utility Facilities which Declarant or any successor or assign of Declarant deems reasonably necessary in order to facilitate the development, use, maintenance or operation of the Retained Property and other property owned by the Declarant in the vicinity of the Property and the Retained Property (the "New Crossings"), provided that such New Crossings shall not interfere with the safe and uninterrupted operation of the Intercity Passenger Rail Service or any Transportation Facility. Prior to exercising its rights under this Section 3-32.2(c) regarding New Crossings, Declarant or Declarant's successors ~~or~~and assigns shall first exercise best good-faith efforts to utilize any Existing Crossing or Planned Crossing and shall, to the maximum extent feasible, collocate improvements within either Existing Crossings or Planned Crossings so as to minimize the total number of crossings. Upon request for a New Crossing that satisfies the requirements of this Section 3-32.2(c), Declarant, or Declarant's successors ~~or~~and assigns, and the Owners shall reasonably cooperate with one another with regard to the design, construction, operation and maintenance of any improvements or facilities constituting the New Crossing. Should CFX determine that a proposed New Crossing does not satisfy CFX's right of way utilization regulations and procedures, CFX agrees to exercise best efforts to collaborate with Declarant or ~~its~~Declarant's successors ~~or~~and assigns for purposes of addressing any issues identified with regard to the proposed New Crossing.

(d) *General Provisions Relating to Crossing Rights.* The exercise by Declarant, or any successor or assign of Declarant, of any of the rights granted by this Section 3-32.2 shall be subject to the following provisions:

(i) Plans for the construction or installation of Transportation Facilities or underground Utility Facilities which Declarant proposes to locate ~~or~~, construct, operate, maintain or replace on, within, over, under or across any Existing Crossing, Planned Crossing or New Crossing (a "Crossing") and the existing State Road 528 right of way shall be subject to review by CFX in accordance with CFX's standard right of way utilization regulations and procedures: (including to the extent required thereunder, preparation and approval of an "Interchange Justification Report"). CFX, by virtue of acceptance of title to the Property agrees to timely process and consider all such requests for the construction or installation of such Transportation Facilities or underground

Utility Facilities and will not unreasonably withhold, condition or delay approval of the same. Should CFX determine that any such proposed Transportation Facilities or underground Utility Facilities do not satisfy CFX's right of way utilization regulations and procedures, CFX agrees to exercise best efforts to collaborate with Declarant or its Declarant's successors or ~~and~~ assigns for purposes of addressing any issues identified therewith. Further, should such Transportation Facilities or underground Utility Facilities cross the Intercity Passenger Rail Improvements (a "Railway Crossing"), then the improvements constituting such Railway Crossing shall be subject to the review of the Rail Owners as provided in Section ~~3-62.5~~ below. In no event however shall any Rail Owner have the right to object to any Railway Crossing on the basis of its location if it is proposed to be located within an Existing Crossing or any Planned Crossing, subject to the review rights of the Rail Owners set forth in Section ~~3-62.5~~ below. Further, by accepting any interest in the Property, the Rail Owners acknowledge the possibility of construction of Transportation Facilities at Existing Crossings and Planned Crossings in the manner generally depicted on Exhibits C-1 and C-2, respectively. Accordingly, the Rail Owners shall design the Intercity Passenger Rail Improvements in a manner to accommodate the Existing Crossings and Planned Crossings depicted on Exhibits C-1 and C-2.

(ii) Any construction, operation, maintenance, repair or replacement of any Transportation Facility or underground Utility Facility or Transportation Facility permitted within a Crossing or the existing State Road 528 right of way shall be performed in accordance with applicable laws, including CFX's applicable rules, regulations and procedures.

(iii) Subject to Section ~~3-62.5~~ below, any Transportation Facility or underground Utility Facility which Declarant may request to locate ~~or~~, construct, operate, maintain or replace at a Crossing may include rights of structural support as necessary for any such Transportation Facility or underground Utility Facility deemed necessary by Declarant or Declarant's successors and assigns for the construction of such Transportation Facility or underground Utility Facility within the Crossing.

5.82.3 Right to Construct Rail Spurs. Declarant hereby expressly reserves to itself as well as to its Declarant's successors and assigns an easement under, through, over, across, upon, and above the Property for the purpose of constructing, repairing, replacing, maintaining, and operating rail spurs and necessary related facilities from the Retained Property to the Property which rail spurs may connect to the Independent Track ~~even if Declarant is not the Prior Operator.~~ This Declaration does not provide Declarant with the right to connect any such rail spur to the Intercity Passenger Rail Improvements. Any connection of a rail spur to the Intercity Passenger Rail Improvements shall be subject to Section ~~3-62.5~~ hereof and such terms as may be agreed upon by the Rail Owners and the owner of such Independent Track, including, among other things, terms that recognize the priority access rights of the Intercity Passenger Rail Service to use of the Intercity Passenger Rail Improvements, and terms that may, among other purposes, allow such spurs to be utilized for purposes of providing service to stations for Intercity Passenger Rail Service constructed upon the Retained Property (with the terms of such

service to such stations also subject to such terms as may be agreed upon by the Rail Owners and Declarant or Declarant's successors and assigns).

5.92.4 Reservation of Utility Rights. In the event that CFX ~~subsequently~~ establishes a dedicated corridor for Utility Facilities within the boundaries of the Property or the existing State Road 528 right of way, as the same exists as of the date of this Declaration (a "Utility Corridor"), Declarant and Declarant's successors and assigns shall have the right to locate under-ground Utility Facilities within any such Utility Corridor in the same manner and upon the same terms as CFX permits third parties to occupy any such Utility Corridor. ~~Provided however, Declarant, but only for and to the extent that Declarant's, or its Declarant's successors and assigns shall not be obligated to pay CFX any rent or any other monetary charge in connection with the use and occupancy of such Utility Corridor even though CFX may collect rent or monetary charges from other parties occupying the Utility Corridor.~~ for Utility service is approved by CFX in accordance with CFX's right of way utilization regulations and procedures (including if space permits). However, nothing contained in this Section 3.52.4 shall be deemed to obligate CFX to create a Utility Corridor. If a Utility Corridor is established and Declarant or ~~its~~ Declarant's successors and assigns exercise their rights under this Section 3.52.4, such rights shall include, but shall not be limited to, the right to construct, install, inspect replace, operate, maintain and repair potable and reclaimed water transmission and distribution Utility Facilities within such Utility Corridor. ~~Declarant and its, subject to CFX's review and approval in accordance with CFX's right of way utilization regulations and procedures.~~ Declarant and Declarant's successors and assigns shall also have the right, subject to compliance with CFX's right of way utilization regulations and procedures, to connect to any Utility Facility owned by a third party Utility provider which may be constructed within any such Utility Corridor for purposes of furnishing Utility service to the Retained Property or additional property owned by Declarant in the vicinity of the Property and the Retained Property. The exercise of the right to connect to Utility Facilities owned by third parties shall be subject to such terms as may be agreed upon by the owner of the subject Utility Facility and Declarant or Declarant's successors ~~or~~ and assigns, as the case may be. Further, Declarant and Declarant's successors and assigns shall not exercise such rights in a manner which interferes with the safe and uninterrupted operation of the Intercity Passenger Rail Service or any Transportation Facility or Utility Facility on the Property. The rights of Declarant and Declarant's successors and assigns under this Section 3.52.4 shall not include the right to connect to any Utility Facility (including any communication facility, system or network) which exclusively provides services to the Intercity Passenger Rail Service.

5.102.5 Use and Coordination with Intercity Passenger Rail Improvements. Nothing contained in this Declaration shall be construed as requiring or committing the Rail Owners to relocate the Intercity Passenger Rail Improvements or to permit the use of or access to the Intercity Passenger Rail Service or Intercity Passenger Rail Improvements. Further, as an express condition precedent to any use of or access to the Intercity Passenger Rail Improvements through the Independent Track or any rail spur, the Rail Owners must execute a separate written agreement acceptable to the Rail Owners (in their sole but reasonable discretion) regarding the terms and conditions governing the use and operation thereof, which terms and conditions shall, among other things, recognize the priority access rights of the Intercity Passenger Rail Service to use of the Intercity Passenger Rail Improvements. In addition, it is acknowledged by Declarant that the Rail Owners shall have the right to review and approve the final construction plans and operation plans (which shall address indemnification, insurance and maintenance obligations) ~~for~~

~~the Independent Track~~, for any rail spur and for any Rail Crossing contemplated hereunder (the "Plans") for the limited purpose of ensuring the conformity of such Plans with the requirements of this Declaration (including confirmation that the Plans will not interfere with the safe and uninterrupted operation of the Intercity Passenger Rail Service) and to confirm that such Plans comply with all applicable laws related to such improvements, including, without limitation, rules and regulations mandated by the FRA regarding railroads. Provided however, the Rail Owners' approval of any such Plans shall not be unreasonably conditioned, withheld or delayed. The Rail Owners shall furnish any comments or requested changes to any Plans submitted to it within thirty (30) days after delivery of the Plans to such Rail Owner. A Rail Owner's failure to furnish comments to any Plans submitted for review and approval within such thirty (30) days shall be deemed a waiver of such Rail Owner's right to comment on the Plans and that Rail Owner's approval of such Plans shall be presumed and that Rail Owner shall thereafter be estopped from raising any objections to such Plans. In the event that any Rail Owner furnishes written comments to the Plans within such thirty (30) days, revised versions of the Rail Plans addressing such comments shall be submitted for such Rail Owner's review and approval and such Rail Owner shall have fifteen (15) days within which to review and comment on the revised versions of the Plans. A Rail Owner's failure to furnish comments to any revised versions of the Plans submitted for review and approval within such fifteen (15) days shall be deemed a waiver of that Rail Owner's right to comment on the revised Plans and that Rail Owner's approval of such Plans shall be presumed and that Rail Owner shall thereafter be estopped from raising any objections to such Plans. Should any Rail Owner affirmatively consent to the Plans as provided in this Section or fail to object to the Plans, or revised Plans, within the time frame provided above, then that Rail Owner's approval rights existing under this Section shall be deemed satisfied and the Plans shall be deemed approved. The Declarant agrees to make reasonable accommodations to address the Rail Owners' comments or requested changes to the Plans. Notwithstanding the Rail Owners' rights to review the design of improvements as provided in this Section ~~3.62.5~~, Rail Owners shall have no financial responsibility in connection with the design, construction, operation, maintenance, repair or replacement of such improvements or any component part thereof. The ~~Person constructing the Independent Track~~Declarant shall indemnify, defend and hold harmless Rail Owners from all fines, penalties, damages, losses, expenses (including without implied limitation legal and appellate fees and court costs), claims, suits, judgments, and other costs, obligations, and liabilities, that are incurred by Rail Owner to the extent arising solely as a result of Rail Owner's approval of ~~plans for such improvements~~the Plans. A Rail Owner's approval of the Plans (either affirmatively or by virtue of Rail Owner's failure to object within the aforementioned periods) shall only constitute Rail Owner's determination that the Plans comply with the provisions of this Declaration and shall not be deemed as any representation or warranty on the part of Rail Owner regarding the fitness or completeness of the Plans, their compliance with any applicable standards or regulations relating to the design, construction or operation of those improvements, the suitability or advisability of constructing the improvements in the location or manner proposed by the Plans, or any other type of warranty or representation whatsoever. Accordingly, to the fullest extent permitted by law, the Rail Owners shall be understood to have disclaimed any and all responsibility and liability with regard to the design, operation, ownership, use, maintenance, repair or construction of such improvements. For the avoidance of doubt, this Section ~~3.62.5~~ shall not be deemed to apply to the activities or operations of CFX in furtherance of its statutory purpose.

~~5.112.6~~ Maintenance. ~~The Intercity Passenger Rail Improvements shall be~~

~~maintained in a manner consistent with FRA regulations applicable to FRA Class 6 and American Railway Engineering and Maintenance of Way Association ("AREMA") standards. Without limiting the foregoing sentence, the Intercity Passenger Rail Improvements shall be generally kept and maintained in good working order and safe condition and repair at the expense of the Rail Owners, and the Rail Owners shall keep the portion of the Property upon which the Intercity Passenger Rail Improvements are located free and clear of the overgrowth of grass, weeds, brush, and debris of any kind, so as to prevent the same becoming dangerous, inflammable, or objectionable. Similarly, the Independent Track shall be generally kept and maintained in good working order and safe condition and repair at the expense of the owners and operators of the Independent Track and the owners and operators of the Independent Track shall keep the portion of the Property upon which the Independent Track is located free and clear of the overgrowth of grass, weeds, brush, and debris of any kind, so as to prevent the same becoming dangerous, inflammable, or objectionable. Maintenance and use of the Intercity Passenger Rail Improvements and Independent Track, respectively, shall be accomplished in a manner so as to cause no unreasonable interference with the use of the Property or the Retained Property. Declarant shall have no duty to inspect or maintain any of the Intercity Passenger Rail Service or the Independent Track (unless the Declarant is the owner or the operator of the same as permitted by this Declaration). If proper maintenance has not been performed by the Rail Owners as to the Intercity Passenger Rail Improvements or the owners and operators of the Independent Track as to the Independent Track, and the responsible owners and/or operators of the subject facility do not cure the failure within thirty (30) days of the date of its receipt of written notice from the Declarant regarding such failure, then the Declarant may perform or have others perform such maintenance and charge the reasonable and necessary cost of such maintenance to the responsible owners and/or operators of the subject facility, with it being understood and agreed that the use of the Property for rail purposes (including without limitation train noise and emissions) in accordance with applicable laws shall not require remedial action. Upon delivery of written notice from the Declarant to the responsible owners and/or operators of the subject facility pursuant to Section 5.9 of such charges reasonably and necessarily incurred by the Declarant for the performance of maintenance pursuant to this Section, such charges shall become due and payable within thirty (30) days.~~ For so long as the Intercity Passenger Rail Improvements are owned by the Rail Owners, the Rail Owners shall maintain the portion of the southerly one hundred feet (100') of the Property (and any improvements thereon) utilized for Intercity Passenger Rail Service, and CFX shall maintain the southerly one hundred feet (100') of the Property (and any improvements thereon), except that portion utilized for Intercity Passenger Rail Service. At such time, if ever, that the Intercity Passenger Rail Improvements may be owned by CFX, then CFX shall thereafter assume responsibility for maintaining the portion of Property formerly utilized for Intercity Passenger Rail Service; provided however, such maintenance responsibility shall not obligate CFX to maintain any portion of the Intercity Passenger Rail Improvements in an operable condition. For purpose of this Section 2.6, the terms "maintain" or "maintaining" shall mean keeping the subject property or improvements in a clean, safe, and sanitary condition, free and clear of trash and debris of any kind, and of overgrowth of grass, weeds, brush, and other growth, consistent with CFX maintenance standards for its system generally. For so long as the Intercity Passenger Rail Improvements are owned by the Rail Owners and are being utilized for Intercity Passenger Rail Service, the Intercity Passenger Rail Improvements shall be maintained in a manner consistent with FRA regulations applicable to FRA Class 6 and American Railway Engineering and Maintenance of

Way Association ("AREMA") standards.

~~All improvements, including Transportation Facilities and underground Utility Facilities, owned by Declarant (which term is defined to include the Declarant's successors and assigns) within the Property (the "Declarant Improvements") shall be generally kept and maintained in good working order and safe condition and repair at the expense of the Declarant, and the Declarant shall keep the portion of the Property upon which such Declarant Improvements are located free and clear of the overgrowth of grass, weeds, brush, and debris of any kind, so as to prevent the same becoming dangerous, inflammable, or objectionable. Maintenance shall be accomplished in a manner so as to cause no unreasonable interference with the use of the Property. Rail Owners shall have no duty to inspect or maintain any of the Declarant Improvements. If proper maintenance has not been performed by the Declarant and the Declarant does not cure the failure within thirty (30) days of the date of its receipt of written notice from the Rail Owners regarding such failure, then the Rail Owners may perform or have others perform such maintenance and charge the reasonable and necessary cost of such maintenance to the Declarant, with it being understood and agreed that the use of the Property for rail purposes (including without limitation train noise and emissions) in accordance with applicable laws shall not require remedial action. Upon delivery of written notice from the Rail Owners to the Declarant pursuant to Section 5.9 of such charges reasonably and necessarily incurred by the Rail Owners for the performance of maintenance pursuant to this Section, such charges shall become due and payable within thirty (30) days. Without limiting the foregoing, any successor or assign of Declarant acquiring title to any portion of the Declarant Improvements shall be irrebuttably presumed to have accepted and be bound by the provisions of this Section and shall hold title to any such portion of the Property subject to the provisions of this Section, including, without limitation, the owners and operators of the Independent Track (but only to the extent that the same is constructed by the Declarant or any assignee thereof) and such rail spur that Declarant should permit same pursuant to the terms and conditions of this Declaration.~~

7.3. Covenants Relating to the International Corporate Park and Innovation Way East Developments of Regional Impact. No Owner shall succeed to or otherwise receive any of the rights, authority, or interests arising from or relating to the International Corporate Park Development of Regional Impact (the "DRI") or to the proposed Innovation Way East Development of Regional Impact (collectively, the "DRI") or arising from the Development Order issued pursuant thereto, and all such rights are hereby reserved to Suburban Land Reserve, Inc. ("SLR"). Without limiting the foregoing, no Owner shall receive any vehicle trips or other capacity, services, or development rights whatsoever, provided by or permitted under the DRI. Any and all Owners shall execute and deliver such documents, and take such other actions, as SLR may reasonably require in order to remove the Suburban Land Reserve Property from the DRI and demonstrate that Owner receives no rights arising from or with respect thereto. Likewise, to the extent required by law, SLR will execute and deliver such documents, and take such other actions as any Owner may reasonably require in order to amend and modify the DRI to clarify and confirm that the Property may be used for road and/or rail purposes and that no Owner shall have any obligations under or related to the DRI or arising from the Development Order issued pursuant thereto. Relating to the DRI, any Owner, by its acceptance of title or any other interest in and to the Property agrees as follows:

No Owner shall have any right to amend or modify the Development Order, or to preclude,

obstruct, challenge, or otherwise impede any effort by SLR, or any successor or assign of SLR, to amend or modify the Development Order, except to the extent that any such amendment or modification precludes, in a material and adverse way the enjoyment of rights expressly granted to such Owner pursuant to this Declaration.

No Owner shall have any right to use or invoke rights relating to, existing governmental permits, development approvals, development orders, developer agreements, certificates, prepaid impact fees and impact fee credits, zoning approvals and amendments, land use approvals and amendments, reservations and other commitments for utilities services, and other entitlements.

Owners shall make reasonable efforts to retain, detain, and treat on the Property all surface waters originating on the Property. SLR and any Owner may also agree to reasonably consider paying for and sharing stormwater facilities if such sharing would be mutually beneficial to both parties. No Owner shall have any right to drain such surface waters in master stormwater facilities located on the Retained Property, without Declarant's written approval.

SLR hereby discloses to any and all Owners SLR's intentions to develop the Suburban Land Reserve Retained Property as well as properties that belong to FRI and that SLR has, or may hereafter acquire, the right to purchase. Those lands may be developed for diverse uses, including without implied limitation, single family residential, multifamily residential, professional office, commercial retail, and industrial. Any Owner acquiring title or any other interest in and to any portion of the Property agrees by virtue of its acquisition of such title or any other interest subject to the provisions of this Declaration that such Owner shall not at any time hereafter, directly or indirectly, challenge, oppose, or otherwise obstruct or impede SLR's (or its successors in interest's) efforts to develop adjacent lands, including without implied limitation efforts to secure governmental approvals and entitlements for such developments, precludes except to the extent that such efforts or such development preclude in a material and adverse way the enjoyment of rights expressly granted to such Owner pursuant to this Declaration.

4. **Miscellaneous.**

4.1 **Enforcement.** Declarant or Declarant's successors and assigns ~~who have received an express assignment of any or all of Declarant's rights hereunder,~~ may enforce the rights arising hereunder, by any proceeding at law or in equity against any Person or Persons violating any of the same, either to restrain or enjoin violation, or the threatened violation, or to recover damages, or both, and to enforce any right created pursuant to this Declaration; and the failure or forbearance by Declarant or Declarant's successors and assigns to enforce any of such rights shall in no event be deemed a waiver of the right to do so thereafter. Likewise, each Owner, including each Rail Owner, may enforce the rights arising hereunder, by any proceeding at law or in equity against any Person or Persons violating any of the same, including the Declarant, either to restrain or enjoin violation, or the threatened violation, or to recover damages, or both, and to enforce any right created pursuant to this Declaration; and the failure or forbearance by any such Owner or such Owner's successors and assigns to enforce any of such rights shall in no event be deemed a waiver of the right to do so thereafter. Any Owner acquiring title to any portion of the Property shall be irrebuttably presumed to have accepted and be bound by the provisions of this Declaration and hold title to any such portion of the Property subject to the

provisions of this Declaration. Any successor or assign of Declarant acquiring rights under this Declaration shall be irrebuttably presumed to have accepted and be bound by the provisions of this Declaration and its rights shall be subject to the provisions of this Declaration.

54.2 Attorney's Fees. Should any litigation arise between Declarant or Declarant's successors ~~or~~and assigns, and any Owner or other third party subject to the terms of this Declaration concerning or arising out of this Declaration, including, but not limited to, actions for damages, specific performance, declaratory, injunctive or other relief, and whether at law or in equity, and including appellate and bankruptcy proceedings as well as the trial level, the prevailing party in any such litigation or proceeding shall be entitled to recover reasonable attorneys' fees and costs. Provided however, this Section 4.2 shall not apply to any Owner which is a governmental agency (a "Governmental Owner"); therefore, attorney's fees shall not be assessed against any Governmental Owner pursuant to this Section 4.2 nor may attorney's fees be recovered by any Governmental Owner pursuant to this Section 4.2.

54.3 Amendment. This Declaration may be amended, modified or restated only upon the recordation of an instrument executed by (a) Declarant or a successor or assign of Declarant who has received an express assignment of any or all of Declarant's rights hereunder and (b) the then-current Owners of the Property.

4.4 Severability. Invalidation of any part of this Declaration by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

4.5 Captions. The captions contained in this Declaration are for convenience only, are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

4.6 Beneficiaries of Rights and Privileges.

(a) The rights and privileges established, created and granted by this Declaration shall to Declarant shall continue for so long as this Declaration shall remain in effect and be for the benefit of, and restricted solely to, the Declarant, Limited Assignees (but only to the extent of their express authorization by a Declarant), and Declarant's successors and assigns who have received an express assignment of Declarant's right arising hereunder and the, but shall not run with title to or benefit the Retained Property.

(b) The rights, privileges, benefits, and burdens established, created and granted by this Declaration to Owners shall be for the benefit of then current Owners of the Property ~~and~~, shall be perpetual, shall run with title to and bind the Property, and shall survive any destruction, reconstruction and relocation of the physical structures and facilities which from time to time may be located thereon, unless the other terms and provisions of the Declaration specifically provide that such rights or privileges shall terminate.

4.7 Duration. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by (a) the Declarant or any

successor or assign of Declarant who has received an express assignment of Declarant's rights hereunder and (b) the then current Owners, until December 31, 2063, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless at least one (1) year before the then scheduled termination date an instrument signed by Declarant and the then Owners is recorded in the Official Records of Orange County, Florida changing or terminating said covenants and restrictions in whole or in part.

4.8 Applicable Law. This Declaration shall be construed under and in accordance with the laws of the State of Florida. Venue for any lawsuit filed relating to this Declaration shall be exclusively in the state courts located within Orange County, Florida.

4.9 Address for Furnishing Notices to Declarant. Any notice, including any request for approval of any proposed plans for the construction of above-ground Utility Facility as required by Section 21 hereof, or for the construction of Intercity Passenger Rail Improvements pursuant to Section 3.1, ~~or for the construction of the Independent Track pursuant to Section 3.22.1,~~ shall be deemed to have been fully delivered when made in writing and personally delivered by hand, sent by registered or certified mail, postage prepaid, return receipt requested, or sent by nationally recognized commercial courier for next business day delivery to, as applicable, (a) the last known address of each Owner as reflected in any recorded instrument filed in the Official Records of Orange County, Florida evidencing each such Owner's interest in the Property or, alternatively, as reflected in any written notice to delivered to Declarant hereunder describing such Owner's interest in the Property, or (b) the addresses for each Declarant and CFX as set forth below.

If to Suburban Land Reserve, Inc:

Suburban Land Reserve, Inc.
79 S. Main Street, Suite 500
Salt Lake City, Utah 84111
Attention: _____

If to Farmland Reserve, Inc: Farmland Reserve, Inc.
79 S. Main Street, Suite 1000
Salt Lake City, Utah 84111
Attention: _____

Notices to SLR and FRI also to be copied to:

Office of the General Counsel
50 East North Temple Street 2WW
Salt Lake City, Utah 84150
Attention: Associate General Counsel
(Domestic)
Telephone: (801) 240-6100
Facsimile: (801) 240-2200

If to CFX: Central Florida Expressway Authority
4974 ORL Tower Road

Orlando, Florida 32807
Attention: Executive Director

Any Owner, which for purposes of this Section 54.9 includes a Rail Owner, and either Suburban Land Reserve, Inc. or Farmland Reserve, Inc. may change the address at which to receive notices under this Declaration or the party to whom any notice required hereunder should be directed by filing a notice to such effect in the Real Property Records of Orange County, Florida and by delivering a copy of such notice to Declarant and CFX at the addresses set forth above (or at such current address which may then apply).

4.10 Nature of Declaration. The terms of this Declaration have been negotiated at arm's length between Declarant and CFX, and this Declaration is a part of a larger transaction for the voluntary sale of the Property by the Declarant to CFX. Accordingly, this Declaration and each and every provision hereof is an integral component of the overall transaction for the sale of the Property and in the absence of each and every provision of this Declaration, Declarant would not have proceeded with the sale of the Property. By its acceptance of the deeds to the Property, CFX acknowledges and agrees that it has accepted and consented to each and every provision of this Declaration.

4.11 Sovereign Immunity. Nothing in this Declaration shall constitute or be construed as a waiver by CFX, or by any subsequent Owner that is a state agency or subdivision (as defined in Section 768.28(2), Florida Statutes (2014)), of its right to assert sovereign immunity as set forth in Section 768.28, Florida Statutes (2014), as amended, (or other statutes or law which may be applicable to CFX or any such Owner) either as to whether the cause of action exists under Florida law or as to the maximum limits of liability thereunder.

4.12 Exhibits. The following Exhibits are attached to this Declaration and by this reference made a part hereof:

- | | |
|-------------|--|
| Exhibit A-1 | Legal Description of the Farmland Reserve Property |
| Exhibit A-2 | Legal Description of the Suburban Land Reserve Property |
| Exhibit B-1 | Legal Description of the Farmland Reserve Retained Property |
| Exhibit B-2 | Legal Description of the Suburban Land Reserve Retained Property |
| Exhibit C-1 | Existing Crossings |
| Exhibit C-2 | Planned Crossings |

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

Signed, sealed and delivered
in the presence of:

FARMLAND RESERVE, INC.
a Utah not-for-profit corporation

Witness Signature

Print Name

Witness Signature

Print Name

By: _____

Print Name: _____

Title: _____

79 S. Main Street, Suite 1000
Salt Lake City, Utah 84111
Attn: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by _____ as _____ of FARMLAND RESERVE, INC., a Utah not-for-profit corporation, on its behalf.

Signature of Notary Public

(SEAL)

Name of Notary Public
(Typed, Printed or Stamped)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

Signed, sealed and delivered
in the presence of:

SUBURBAN LAND RESERVE, INC., a
Utah corporation

Witness Signature

Print Name

Witness Signature

Print Name

By: _____

Print Name: _____

Title: _____

79 S. Main Street, Suite 500

Salt Lake City, Utah 84111

Attn: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 201__, by _____ as _____
of SUBURBAN LAND RESERVE, INC., a Utah corporation, on its behalf.

Signature of Notary Public

(SEAL)

Name of Notary Public
(Typed, Printed or Stamped)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced: _____

EXHIBIT A-1

LEGAL DESCRIPTION OF THE FARMLAND RESERVE PROPERTY

[To be inserted upon completion of survey]

EXHIBIT A-2

LEGAL DESCRIPTION OF THE SUBURBAN LAND RESERVE PROPERTY

[To be inserted upon completion of survey]

EXHIBIT B-1

LEGAL DESCRIPTION OF THE FARMLAND RESERVE RETAINED PROPERTY

[To be inserted upon completion of survey]

EXHIBIT B-2

**LEGAL DESCRIPTION OF THE SUBURBAN LAND RESERVE RETAINED
PROPERTY**

[To be inserted upon completion of survey]

EXHIBIT C-1

EXISTING CROSSINGS

EXHIBIT C-2

PLANNED CROSSINGS


Tab C



Founded 1910

MEMORANDUM

TO: Central Florida Expressway Authority
Right-of-Way Committee

FROM: David A. Shontz, Esq., Right-of-Way Counsel 

DATE: May 20, 2015

RE: State Road 429 Wekiva Parkway, Project 429-203; Parcel 203
Settlement

Shutts & Bowen LLP, Right-of-Way Counsel, seeks the recommendation of the Right-of-Way Committee of a negotiated settlement agreement between JDC Plants, Inc. (the "Owner") and the Central Florida Expressway Authority (the "CFX") for the acquisition of Parcel 203 (the "Taking" or "Property") for the construction of State Road 429 Wekiva Parkway, Project 429-203.

DESCRIPTION AND BACKGROUND

Parcel 203 is a whole taking acquisition consisting of 9.558± acres. The property is located in unincorporated Orange County at 3366 West Kelly Park Road, Apopka, Florida. The property is improved with several building structures, including a single-family house, three (3) greenhouse structures, and metal sheds and is utilized as a plant nursery. Two greenhouse/shade buildings contain a total of 38,829 square feet.

The CFX's appraisal of the property was prepared by Walter Carpenter of Pinel & Carpenter, Inc. Mr. Carpenter estimated the value of the taking to be \$1,450,000 (Land \$1,250,000, and Improvements \$200,000). Comparable land sales of \$1.66 to \$6.48 per square foot were utilized by Mr. Carpenter. Mr. Carpenter opined the subject property value is \$3.00 per square foot or \$130,680 per acre.

JDC Plants, Inc. is represented by Jay Small who was in the process of appraising the taking on behalf of JDC Plants. In an effort for an early settlement, Mr. Small reviewed and argued that taking the mid-point of Mr. Carpenter's sales would provide a value of at least \$4.25 per square foot, or \$1,769,500. Additionally, JDC Plants would agree to not dispute the contributory value of the improvements at \$200,000. Accordingly, Mr. Small offered an early

settlement in an effort to avoid incurring significant expert fees totaling \$2,140,935 (\$1,969,500 for taking and \$171,435 statutory attorney's fee) plus expert fees and costs.

In response to JDC Plant, Inc's settlement offer, CFX made a global counter-offer inclusive of all attorneys fees and costs and expert fees and costs in the amount of \$1,900,000, which was accepted by JDC Plants, Inc.

A recommendation for approval by the Right-of-Way Committee is requested of the global settlement of \$1,900,000 and is in the CFX's best interest. It will eliminate risks and unnecessary expenses for expert fees, court costs and attorney's fees that the CFX will ultimately incur if it is required to litigate the valuation determination to resolve Parcel 203.

RECOMMENDATION

We respectfully request that the Right-of-Way Committee recommend to the CFX Board the approval of the negotiated settlement agreement of \$1,900,000, inclusive of all fees and costs in full settlement of all claims for compensation for the acquisition of Parcel 203.

ATTACHMENTS

Exhibit "A" – Sketch of Subject Property

ORLDOCS 14034997 1

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY
WEKIVA PARKWAY - PROJECT NO. 429-203
LIMITED ACCESS RIGHT OF WAY
ESTATE: FEE SIMPLE

LEGAL DESCRIPTION:

PART A

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 5/8" IRON ROD WITH NO IDENTIFICATION LOCATED IN A WELL BOX MARKING THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE NORTH 88°20'47" EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 679.45 FEET TO ITS INTERSECTION WITH THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER AS MONUMENTED AND OCCUPIED; THENCE DEPARTING SAID NORTH LINE RUN SOUTH 00°20'58" EAST ALONG SAID WEST LINE, A DISTANCE OF 102.98 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST LINE RUN NORTH 87°44'58" EAST, A DISTANCE OF 633.98 FEET; THENCE SOUTH 02°15'02" EAST, A DISTANCE OF 209.57 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 839.24 FEET, A CHORD DISTANCE OF 344.01 FEET AND A CHORD BEARING OF SOUTH 09°34'35" WEST; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°39'13", A DISTANCE OF 346.47 FEET; THENCE DEPARTING SAID CURVE RUN SOUTH 88°20'47" WEST, A DISTANCE OF 581.44 FEET TO THE AFORESAID WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE NORTH 00°20'58" WEST ALONG SAID WEST LINE, A DISTANCE OF 540.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.845 ACRES, MORE OR LESS

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

NOTE:

THIS SKETCH OF DESCRIPTION WAS PREPARED WITH THE BENEFIT OF CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY AS TO FILE NO. 2037-2770437 DATED 07/02/2012.


LEGEND & ABBREVIATIONS

CB = CHORD BEARING
C.C.R. = CERTIFIED CORNER RECORD
CH = CHORD LENGTH
COR. = CORNER
(C) = CALCULATED DISTANCE
D.B. = DEED BOOK
ESMT = EASEMENT
EXIST. = EXISTING
FND. = FOUND
FFC = FLORIDA POWER CORPORATION
(F) = FIELD DISTANCE

ID. = IDENTIFICATION
I.R. = IRON ROD
L. = ARC LENGTH
L.A. = LIMITED ACCESS
LB = LICENSED SURVEY BUSINESS
LT = LEFT
NO. = NUMBER
O.R.B. = OFFICIAL RECORDS BOOK
P.C. = POINT OF CURVATURE
PG./PGS. = PAGE / PAGES

P.I. = POINT OF INTERSECTION
P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCEMENT
PROJ. = PROJECT
P.T. = POINT OF TANGENCY
(P) = PLAT
R = RADIUS
R.B.M. = ROAD BOND MAP
RT = RIGHT
R/W = RIGHT OF WAY

(R) = RADIAL
SEC. = SECTION
TITF = TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
W/ = WITH
P.L. = PROPERTY LINE
S.P.O. = SAME PROPERTY OWNER
Δ = DELTA (CENTRAL ANGLE)
○ = CHANGE IN DIRECTION
+ + + = LIMITED ACCESS R/W LINE
R/W LINE

DATE: NOVEMBER 18, 2013		CERTIFICATION OF AUTHORIZATION No. LB 1333		SKETCH OF DESCRIPTION. THIS IS NOT A BOUNDARY SURVEY.	PARCEL 203
DRAWN BY: M.ROLLINS		 520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32801 (407) 843-5120 FAX 407-649-8664			
CHECKED BY: S.WARE					
BSA PROJECT NO. EA11-J1				SHEET 1 OF 4	
REVISION		BY		DATE	

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY
WEKIVA PARKWAY - PROJECT NO. 429-203
RIGHT OF WAY
ESTATE: FEE SIMPLE


LEGAL DESCRIPTION:

PART B


A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A FOUND 5/8" IRON ROD WITH NO IDENTIFICATION LOCATED IN A WELL BOX MARKING THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA; THENCE NORTH 88°20'47" EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 679.45 FEET TO ITS INTERSECTION WITH THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER AS MONUMENTED AND OCCUPIED; THENCE DEPARTING SAID NORTH LINE RUN SOUTH 00°20'58" EAST ALONG SAID WEST LINE, A DISTANCE OF 22.93 FEET TO ITS INTERSECTION WITH THE EXISTING SOUTH RIGHT OF WAY LINE OF KELLY PARK ROAD AS DEPICTED ON ORANGE COUNTY ROAD BOND MAP PROJECT NO. 49-E FOR THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST LINE RUN ALONG SAID SOUTH RIGHT OF WAY LINE THE FOLLOWING THREE COURSES AND DISTANCES: THENCE NORTH 87°44'58" EAST, A DISTANCE OF 83.85 FEET; THENCE SOUTH 00°20'58" EAST, A DISTANCE OF 7.95 FEET; THENCE NORTH 88°20'47" EAST, A DISTANCE OF 594.56 FEET TO ITS INTERSECTION WITH THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER AS MONUMENTED AND OCCUPIED; THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE RUN SOUTH 00°14'36" EAST ALONG SAID EAST LINE, A DISTANCE OF 613.52 FEET; THENCE DEPARTING SAID EAST LINE RUN SOUTH 88°20'47" WEST, A DISTANCE OF 95.81 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 839.24 FEET, A CHORD DISTANCE OF 344.01 FEET AND A CHORD BEARING OF NORTH 09°34'35" EAST; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°39'13", A DISTANCE OF 346.47 FEET TO THE POINT OF TANGENCY; THENCE DEPARTING SAID CURVE RUN NORTH 02°15'02" WEST, A DISTANCE OF 209.57 FEET; THENCE SOUTH 87°44'58" WEST, A DISTANCE OF 633.98 FEET TO AN INTERSECTION WITH AFORESAID WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID NORTHEAST QUARTER; THENCE RUN NORTH 00°20'58" WEST ALONG SAID WEST LINE, A DISTANCE OF 80.04 FEET TO THE POINT OF BEGINNING.

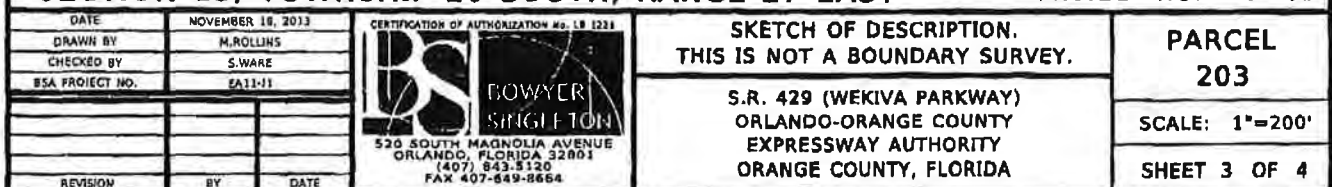
CONTAINING 1.713 ACRES, MORE OR LESS

DATE	NOVEMBER 18, 2013	 CERTIFICATION OF AUTHORIZATION No. LS 1221 DOWYER SINGLETON 520 SOUTH MAGNOLIA AVENUE ORLANDO, FLORIDA 32801 (407) 843-5120 FAX 407-649-8664	SKETCH OF DESCRIPTION. THIS IS NOT A BOUNDARY SURVEY.	PARCEL 203
DRAWN BY	M.ROLLINS			S.R. 429 (WEKIVA PARKWAY) ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY ORANGE COUNTY, FLORIDA
CHECKED BY	S.WARE		SHEET 2 OF 4	
BSA PROJECT NO.	EA11-J1			
REVISION	BY		DATE	

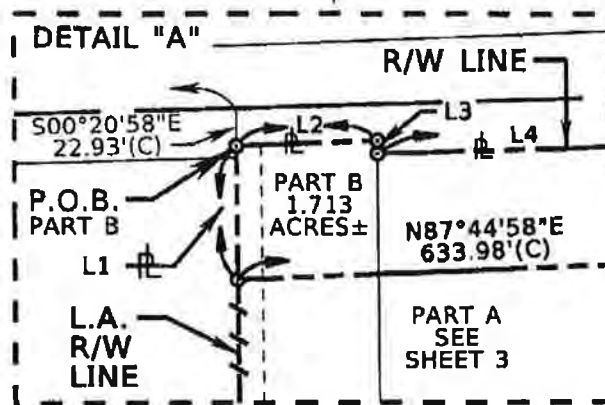
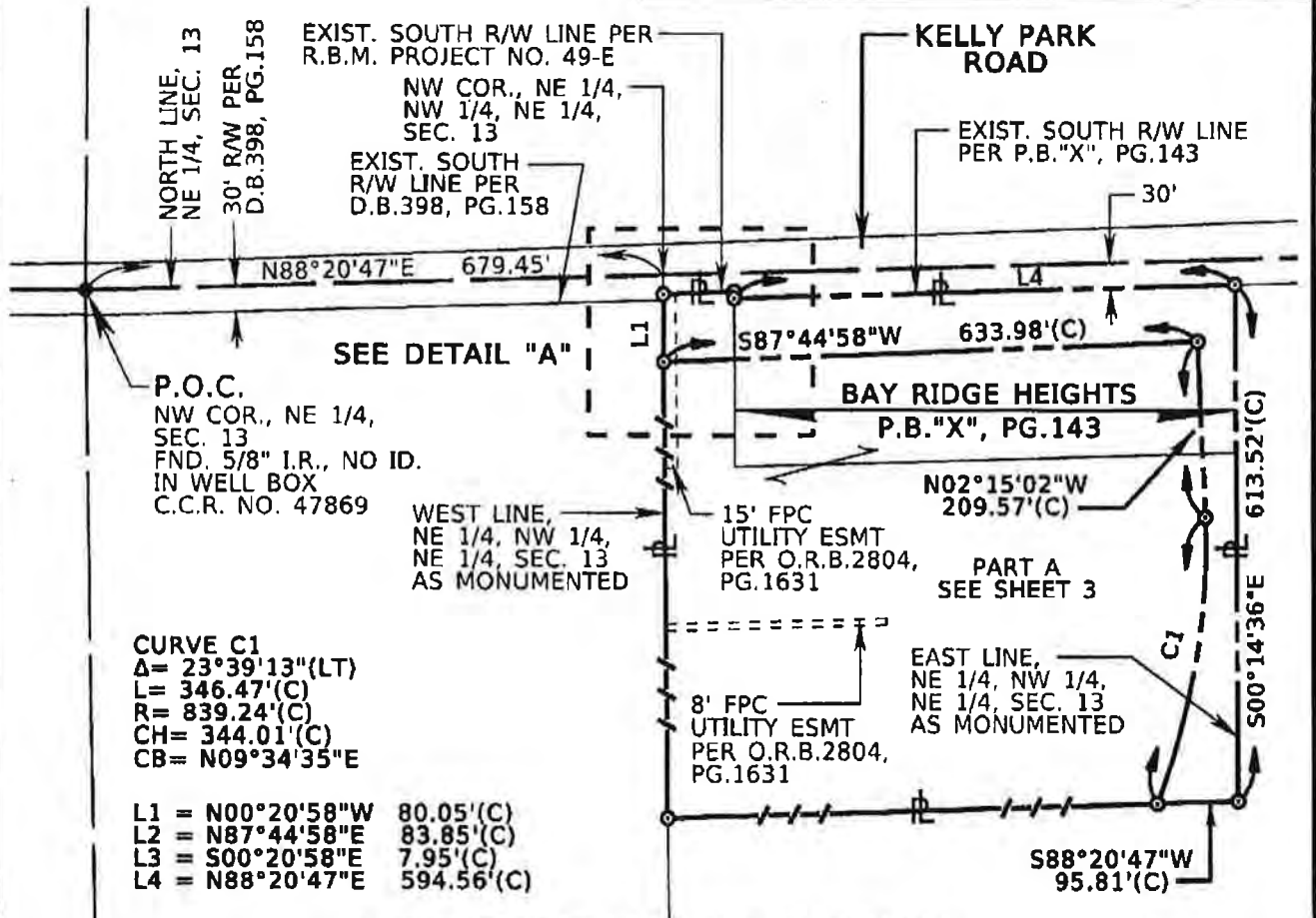
SCALE: 1" = 200'



A horizontal scale bar with a black and white alternating pattern. It is marked with '0' at the left end, '100' in the middle, and '200' at the right end.



BEARING STRUCTURE BASED ON THE NORTH LINE OF THE NORTHEAST 1/4 OF SEC. 13-20-27, BEING N88°20'47"E, FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983/2007 ADJUSTMENT.



SCALE: 1" = 200'

0 100 200

SECTION 13, TOWNSHIP 20 SOUTH, RANGE 27 EAST

PROJECT NO. 429-203

I HEREBY CERTIFY THAT THIS SKETCH OF DESCRIPTION IS IN ACCORDANCE WITH THE "MINIMUM TECHNICAL STANDARDS" AS REQUIRED BY CHAPTER 51-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

William E. Byrd 11/18/13
 WILLIAM E. BYRD, P.S.M.
 LICENSE NUMBER 5442

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

CERTIFICATION OF AUTHORIZATION No. LA 1221

BS BOWLER SINGLETON
 520 SOUTH MAGNOLIA AVENUE
 ORLANDO, FLORIDA 32801
 (407) 843-5120
 FAX 407-649-8664

SKETCH OF DESCRIPTION.
 THIS IS NOT A BOUNDARY SURVEY.

S.R. 429 (WEKIVA PARKWAY)
 ORLANDO-ORANGE COUNTY
 EXPRESSWAY AUTHORITY
 ORANGE COUNTY, FLORIDA

PARCEL
 203

SCALE: 1"=200'

SHEET 4 OF 4

Tab D

WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

FROM: James Edward Cheek, III, Right of Way Counsel
Winderweeidle, Haines, Ward & Woodman, P.A.

DATE: May 20, 2015

RE: S.R. 429 Wekiva Parkway, Project 429-202; Parcel 800 (Parts A & B) -
Recommendation for Board Approval of Settlement and
Recommendation for Board Approval of Offer of Judgment

Winderweeidle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Right of Way Committee's recommendation of Board approval of a settlement with multiple landowners for the acquisition of their fee simple interest in Parcel 800 (Parts A & B) (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-202. We also seek a recommendation of Board approval to serve Offers of Judgment for the remaining interests in this Parcel. CFX filed its eminent domain action on August 12, 2014. Due to the number of potential fee owners named in the eminent domain proceedings, the Court entered three (3) separate Orders of Taking on September 24, 2014, two of which were stipulated.

DESCRIPTION and BACKGROUND:

This case involves the taking of an easement interest over portions of Southfork Drive west of Plymouth Sorrento Road. It consists of 1.95 gross acres and is utilized as a private right-of-way with multiple ownership interests which provides access to ten individual lots. **Parcel 800 (Part A)** involves the taking of a perpetual easement interest in 17,436 square feet of land for construction of the elevated limited access right-of-way for S.R. 429 to bridge over Southfork Drive as well as for perpetual maintenance. Specifically, CFX has acquired a perpetual air-rights easement above the plane that is fourteen feet, six inches (14'6") above the highest point of the property. The highway facilities will be elevated over the Property, allowing continued access to and from Plymouth Sorrento Road both during and after construction, and will allow for the use of the land surface for other uses that do not interfere with the Authority's easement rights. **Parcel 800 (Part B)** is an easement interest in 3,528 square feet of land to be used by Duke Energy Florida, Inc. for a transmission line.

CFX's appraisal of the property was prepared by Mr. Christopher D. Starkey of Integra Realty Resources-Orlando, with a date of value of February 7, 2014. Mr. Starkey used the "Across the Fence" valuation technique to appraise this property, since the property is vacant and

too small to be used as a stand-alone parcel. The "Across the Fence" methodology assumes that the subject property is typical, in all respects, to the adjoining property use. Based on this assumption, the appraiser develops a unit of value for the typical adjoining property, and then applies this unit of value in developing an estimate of value for the subject property.

Since the ten adjoining properties are predominately improved with single-family residences and nurseries, the reasonable use of the subject property would be similar. The ten parcels are zoned A-1, Citrus Rural district and have a future land use designation of rural. Mr. Starkey concluded that the Property's highest and best use is continued access road right-of-way. Mr. Starkey estimated the value of the Taking to be **\$13,200.00**.

EXPERT AND ATTORNEY FEES:

None of the landowners are to receive payment for appraisal or other expert fees or costs in this proposed settlement.

CFX retained the appraisal services of Christopher D. Starkey, MAI, of Integra Realty Resources. Mr. Starkey has submitted invoices in a total amount of \$5,125.00 to appraise the subject property.

Robert Grossenbacher, Scott and Todd Grossenbacher, Carolyn Ditch, Marky Frisbie and Elizabeth Townsend retained the legal services of Joseph Hanratty of Forman Hanratty & Montgomery. Mr. Hanratty has agreed to accept \$3,000.00 in total compensation for his representation of all of the aforementioned landowners. He has no other costs or fees for this parcel.

Earl D. Wilson and Adelaida Diaz Wilson, husband and wife, retained the legal services of Kurt Bauerle from the law firm of Harris Harris Bauerle Ziegler & Lopez, P.A. Mr. Bauerle has agreed to accept \$2,000.00 in total compensation for representing their interests. He has no other costs or fees as it relates to these property owners for this parcel.

Patrick Rogers Connelly and James Ted Smith did not retain counsel and therefore have not submitted a claim for attorneys' fees or costs.

In sum, the landowner fees in this case would total **\$5,000.00** for the parties that have agreed to a negotiated settlement. Counsel has reviewed the amounts sought by the owners' counsel and paid to CFX's experts and believes them to be reasonable.

PROPOSED SETTLEMENT:

Counsel has been participating in settlement negotiations with several different landowners and landowner attorneys and have reached a proposed agreement for most of the interests in Parcel 800 (Parts A & B). The parties have conditionally agreed to the following settlement terms, subject to Right of Way Committee recommendation and final CFX Board approval:

LANDOWNERS/ATTORNEYS	PROPOSED SETTLEMENT
ROBERT M. GROSSENBACHER	\$2,000.00
SCOTT GROSSENBACHER and TODD GROSSENBACHER	\$2,000.00
CAROLYN DITCH	\$2,000.00
MARY K. FRISBIE	\$2,000.00
ELIZABETH G. TOWNSEND	\$2,000.00
EARL D. WILSON, JR. and ADELAIDA DIAZ WILSON, husband and wife	\$2,000.00 ¹
PATRICK ROGERS CONNELLY and the HEIRS OF JANET R. CONNELLY	\$3,500.00
JAMES TED SMITH and the HEIRS OF TEDDY LAWRENCE SMITH	\$3,500.00

The above-named landowners are not entitled to relocation benefits under the Federal Relocation Act for the acquisition of the subject Property.

CFX has already deposited \$13,200.00 into the Court Registry as its Good Faith Deposit. The above described settlement totaling \$24,000.00 (\$19,000.00 for the real estate interests + \$5,000.00 for attorneys' fees) would necessitate an additional payment of \$10,800.00, inclusive of fees and costs.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorneys' fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowners' compensation as provided by Florida Statutes §73.091 and §73.092. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case.

¹ The Wilson's were paid \$3,825.00 for a previous interest in the property through a purchase agreement, but construction changes necessitated the acquisition of additional property rights in this action.

OFFERS OF JUDGMENT

The above settlement proposal will resolve most of the potential real estate interests in the subject taking. For the remaining interest, it is requested that this ROW Committee recommend Board approval to authorize service of an Offer of Judgment. Offers of Judgment are authorized in eminent domain actions under §73.032, Florida Statutes, which provides that if a defendant rejects an Offer of Judgment and the verdict or judgment is less than the amount of that offer, the court shall not award any costs incurred by the defendant after the date the Offer was rejected. A defendant has up to 30 days after an Offer of Judgment is served to reject the offer. A defendant is also entitled to serve an Offer of Judgment on the Petitioner for an amount that is under \$100,000.00. If the judgment or verdict is equal to or more than the amount of the Offer, landowner's counsel can recover attorneys fees based on the factors set forth in §73.092(2) and (3) (which considers attorney time and labor, difficulty of the case, etc.), rather than on statutory betterment.

The undersigned counsel seeks the ROW Committee's recommendation of Board approval to serve an Offer of Judgment in the amount of \$3,500.00 to Freddy T. Jones and Eula Jones, as husband and wife, and Sandra L. Jones, and \$3,500.00 to Itay Shruga Guy. Each of these landowners have an ownership interest in Parcel 800 (Parts A & B) and own land adjoining the subject Property.

RECOMMENDATION:

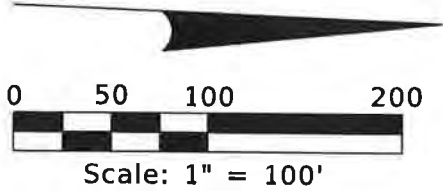
We respectfully request that the Right of Way Committee recommend CFX Board approval of the proposed settlement in the amount of \$24,000.00 in full settlement of all claims for compensation by the various landowners identified above for the acquisition of Parcel 800 (Parts A & B).

We further respectfully request that the Right of Way Committee recommend CFX Board approval for service of Offers of Judgment totaling \$7,000.00 for the remaining landowner interests in this case. Specifically, \$3,500.00 to Freddy T. Jones and Eula Jones, as husband and wife, and Sandra L. Jones, and \$3,500.00 to Itay Shruga Guy.

ATTACHMENTS:

Sketch of Subject Property
Map Depicting Location of Property

SKETCH OF DESCRIPTION



SECTION 36,
TOWNSHIP 20 SOUTH,
RANGE 27 EAST

LOT 7
BLOCK P

LOT 2
BLOCK P

MAP OF PLYMOUTH
PB B, PGS 17-18

EXITING LA R/W LINE
N02°19'28"W 545.26'(F)
APPROXIMATE
CITY LIMITS LINE

SOUTHFORK DRIVE - PRIVATE
(LANDS PER ORB 3157, PG 702)

N02°20'29"W 642.86'(F)

N05°53'47"W 40.18'(C)

800
PART A
PERMANENT
EASEMENT

LOT 8
CITY OF
APOPKA

LOT 1
BLOCK P

P.O.C.
PART A & B
SE CORNER OF
SECTION 36-20-27
FND 6"x6" CM
WITH 3/4" IP BROKEN
NO IDENTIFICATION
CCR 41737

SEE DETAIL A

P.O.B.
PART A

P.O.B.
PART B

N00°07'25"E 447.75'(F)
427.02'(F)(D)
EXISTING LA R/W LINE

LOT 6
BLOCK D

BLOCK D
LOT 3

LOT 2

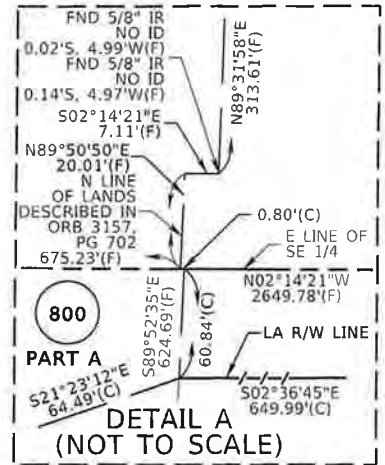
SOUTHFORK DRIVE - PRIVATE

800
PART B
PERMANENT
EASEMENT

PART A EASEMENT AREA = 17,436 SQ FEET±
PART B EASEMENT AREA = 3,528 SQ FEET±

SECTION 31,
TOWNSHIP 20 SOUTH,
RANGE 28 EAST

SHEET 2 OF 3



SEE SHEET 1 FOR LEGAL DESCRIPTIONS
SFF SHEET 3 FOR GENERAL NOTES AND LEGEND

ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY
DATE: APRIL 25, 2013
PROJECT NO.: H20-01
DRAWN: PMM CHECKED: JMS

STATE ROAD 429
OOCEA PROJECT NO. 429-202
PARCEL NO. 800

GEODATA CONSULTANTS, INC.
SURVEYING & MAPPING
1349 SOUTH INTERNATIONAL PARKWAY
SUITE 2401
LAKE MARY, FLORIDA 32746
VOICE: (407) 732-6965
LAND SURVEYOR BUSINESS LICENSE NO. 6556

Tax Map (Parent Tract)



Aerial Map (Parent Tract)



Tab E

WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

FROM: James Edward Cheek, III, Right of Way Counsel *HC*
Winderweedle, Haines, Ward & Woodman, P.A.

DATE: May 20, 2015

RE: S.R. 429 Wekiva Parkway, Project 429-204;
Parcels 249 and 256 - Recommendation of Board Approval for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Right of Way Committee's recommendation for Board approval of a settlement with A. Tanner Scofield, III, and Cathleen P. Scofield ("Owners"), for the acquisition of Parcels 249 and 256 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-204. A Stipulated Order of Taking was entered by the Court on April 28, 2015.

DESCRIPTION and BACKGROUND:

Parcel 256 is a total taking of a 4.912 acre piece of property located along Ondich Road in unincorporated Orange County. The property is improved with a 1,686 square foot log cabin residence that was constructed in 1987. There is also a large, unfinished addition containing 610 square feet attached to the residence. Construction of this addition was abandoned after notification of the impending taking. Other site improvements include a greenhouse, in-ground irrigation, several sheds and animal pens, two wells and pumps, field wire fencing, a metal gate, shell/asphalt/concrete drive and landscaping. The property is zoned A-1, Citrus Rural District by Orange County, and the future land use designation is Rural/Agricultural, with a maximum of one dwelling unit per ten acres.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall issued his first appraisal on October 31, 2012, with a date of value of October 18, 2012. This report estimated that the amount of compensation owed for the subject property was \$229,000.00. Mr. Hall issued a second report on November 22, 2013, with a date of value of November 19, 2013, and an updated appraisal amount of \$296,800.00. He issued a third report on February 9, 2015, with a date of value of February 4, 2015 and a final updated appraisal amount of \$304,700.00.

Mr. Hall arrived at his most recent valuation conclusions by examining the highest and best use of the property. First, Mr. Hall valued the property as though vacant, with a highest and best use for rural residential development. He considered six vacant sales that ranged in value from \$22,874.00 per acre to \$30,021.00 per acre, and reconciled on a value of \$30,000.00 per acre for the subject property, or a total of \$147,400.00 for 4.912 acres. Next, Mr. Hall evaluated the contributory value of the improvements. He considered four improved home sites which indicated a value between \$72.08 and \$79.67 per square foot of living area. Mr. Hall reconciled on a value of \$79.00 per square foot of living area, which yields \$133,194.00 (rounded) for the home (1686 sq. ft of living area x \$79.00 per foot), plus an additional \$24,095.00 for the unfinished addition. The appraiser therefore concluded that the total compensation owed to the Scofields for Parcel 256 is **\$304,700.00** (\$147,000.00 for land + \$157,300.00 for improvements).

Parcel 249 is a whole take of a hiatus parcel within Parcel 256. This parcel was mistakenly created by a scrivener's error through past deed transfers. It contains .076 acres, or 3,462 square feet. The "Across the Fence Method" ("ATF") was utilized to value this property. The ATF Method measures the value of the subject by valuing the adjoining land. Since Parcel 249 is a hiatus strip that runs through the center of a rural residential homesite, the hiatus strip was valued as a portion of this homesite. Using the same methodology described above, Mr. Hall concluded that the total compensation owed to the Scofields for Parcel 249 is **\$2,400.00**.

As this settlement was negotiated in conjunction with the Order of Taking, the landowners have not submitted a final appraisal report. However, the Scofields have retained the services of Rick Dreggors, whose preliminary valuation was substantially higher than CFX's offer. The Scofields initially made a demand in the amount of **\$610,000.00** for this property. In addition, the Scofields are seeking federal relocation assistance.

EXPERT AND ATTORNEY FEES:

The Scofields retained the appraisal services of Richard Dreggors from the firm of Calhoun, Dreggors & Associates, Inc. An invoice has been submitted for appraisal services in the amount of \$13,737.00. However, during settlement negotiations, Mr. Dreggors agreed to accept \$10,000.00 for his services related to this parcel.

The Scofields also retained the services of PSG Construction to conduct a RCN analysis and prepare an estimate. PSG has submitted an invoice in the amount of \$1,900.00. During settlement negotiations, PSG agreed to accept \$1,400.00 for these services.

The Scofields also retained the services of Daniel L. Morris, P.E. of m e i civil, LLC to review the appraisal and to provide an analysis on the boundary overlap issue. Mr. Morris has submitted an invoice in the amount of \$3,018.75. During settlement negotiations, Mr. Morris agreed to accept \$2,000.00 for these services.

Lastly, the Scofields retained the services of Lakemont Group to prepare a market analysis as a pre-condemnation blight analysis. Lakemont Group has submitted an invoice amount of \$3,465.00. During settlement negotiations, Lakemont Group agreed to accept \$2,500.00 for its services.

CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. Mr. Hall has submitted invoices in a total amount of \$14,570.00 to appraise the subject property. This includes 37.5 hours at \$150.00 per hour for appraisers, 21 hours at \$40.00 per hour for administrative assistance, and a flat fee of \$4,500.00 for an appraisal update for Parcel 256 and \$3,500.00 for an appraisal update on Parcel 249.

The Scofields retained the legal services of Thomas P. Callan, from The Callan Law Firm, P.A. Mr. Callan is seeking to recover attorney's fees based on the standard "betterment" payment described in § 73.092(1)(c), *Florida Statutes*, which provides for attorneys to receive 33% of the difference between the last written offer made by the condemning authority before the defendant hires an attorney (or, if no such offer is made, the first written offer after a landowner hires an attorney) and the amount of the settlement or final judgment. The last written offer CFX made to the Scofields before they hired an attorney was in the amount of \$299,200.00. The statutory attorney fee formula results in an award of \$51,414.00 for attorneys fees ($\$455,000.00 - \$299,200.00 = \$155,800.00 \times .33 = \$51,414.00$).

Counsel has reviewed the amounts sought by the owners' experts and paid to CFX's experts and believes them to be reasonable.

PROPOSED SETTLEMENT:

The parties have been participating in settlement negotiations and have reached a proposed agreement on the purchase price for the acquisition of Parcels 249 and 256 and expert fees and costs. The parties have conditionally agreed to the following settlement terms, subject to Right of Way Committee recommendation and final CFX Board approval:

Total Settlement Proposal for Parcels 249 and Parcel 256:

Scofields (landowners):	\$455,000.00
Rick Dreggors (appraiser):	10,000.00
PSG Construction:	1,400.00
m e i civil, LLC	2,000.00
Lakemont Group:	2,500.00
<u>Thomas Callan (attorney):</u>	<u>51,414.00</u>
Total	\$522,314.00

CFX has already deposited \$307,100.00 into the Court Registry as its Good Faith Deposit. The above-described settlement would necessitate an additional payment of \$213,214.00, inclusive of all fees and costs.

In addition to the above settlement amount, the Owners are entitled to relocation benefits under the Federal Relocation Act. These benefits will include moving costs and other incidental costs related to their residential relocation. Total relocation costs have not yet been determined since the Scofields have extended occupancy until June 30, 2015. The relocation costs will be actual, documented expenses that will either be reimbursed or paid directly to vendors on the Scofields behalf after they file claims for reimbursement.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney's fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowner's compensation as provided by §73.091 and §73.092, *Florida Statutes*. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case. The proposed settlement will resolve all pending matters in this case, including the property owner's attorney's fees and expert costs.

RECOMMENDATION:

We respectfully request that the Right of Way Committee recommend CFX Board approval of the proposed settlement in the amount of \$522,314.00 in full settlement of all claims for compensation for the acquisition of Parcels 249 and 256.

ATTACHMENTS:

Sketches of Subject Property
Map Depicting Location of Property

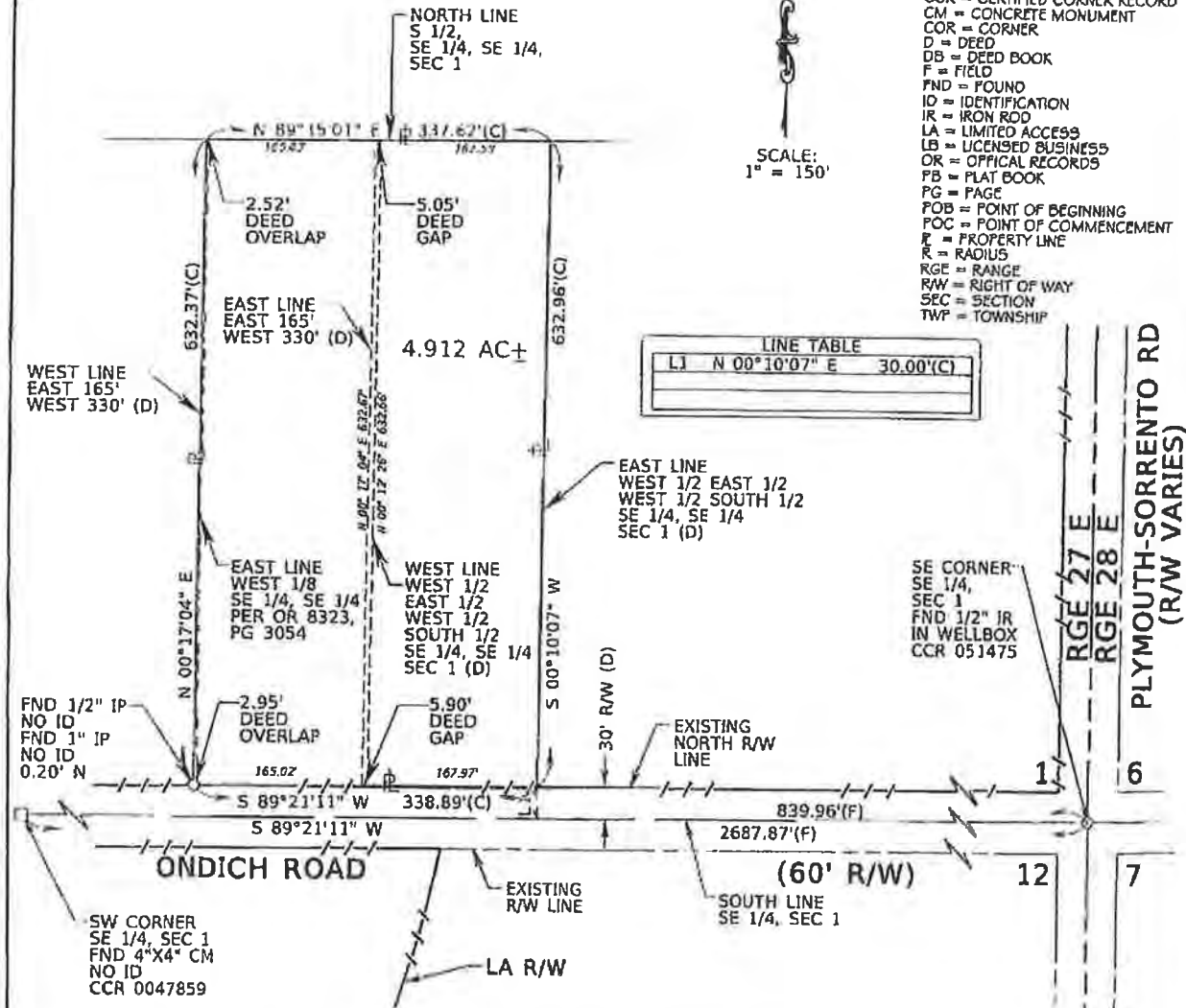
SKETCH OF DESCRIPTION

PARCEL 256

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

TOWNSHIP 20 SOUTH RANGE 27 EAST



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 SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" WEST.
2. THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
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 OCTOBER 4, 2012, FILE NO. 2037-2831151 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

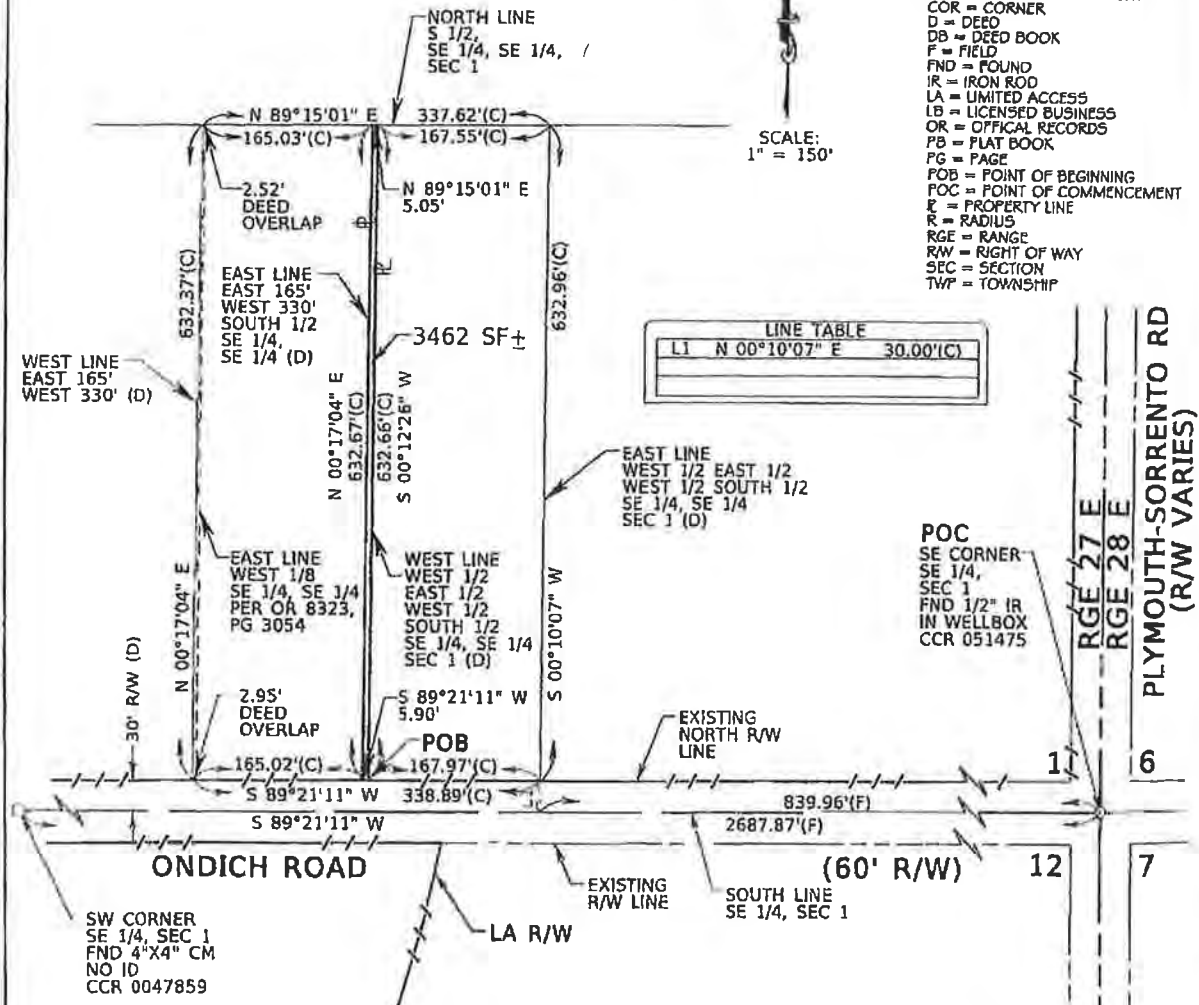
FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAD 429	
DESIGNED BY: RJM	DATE: 12/18/13	URS URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	REVISIONS:
DRAWN BY: DJK	JOB NO:		
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204		SHEET: 2 OF 2

SKETCH OF DESCRIPTION
PARCEL 256

SKETCH OF DESCRIPTION

PARCEL 249
PURPOSE: LIMITED ACCESS RIGHT OF WAY
ESTATE: FEE SIMPLE

TOWNSHIP 20 SOUTH RANGE 27 EAST



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 SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" 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 OCTOBER 4, 2012, FILE NO. 2037-2531151 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: 12/18/13	URS URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	REVISIONS:
DRAWN BY: DJK	JOB NO:		
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204		SHEET: 2 OF 2

SKETCH OF DESCRIPTION
PARCEL 249

SIZE OF LAND:

Before: 3,462 Square Feet (.079 Acre)

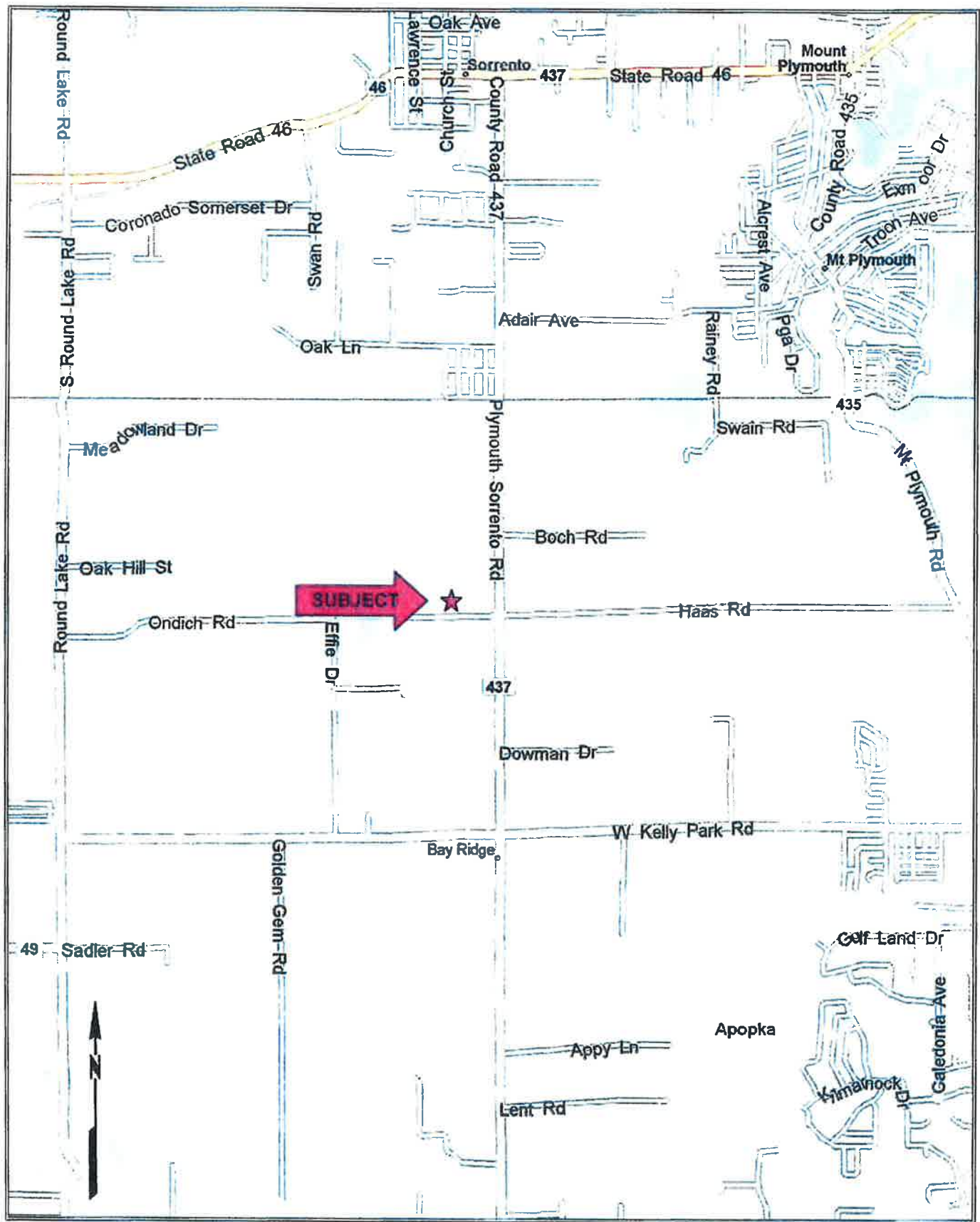
Taking: 3,462 Square Feet (.079 Acre)

Remainder: Whole Take

FOR VISUAL AID
NOT TO SCALE



PARCEL SKETCH



SUBJECT LOCATION MAP

Tab F

WINDERWEEDLE, HAINES, WARD & WOODMAN, P.A.
329 Park Avenue North
Second Floor
Post Office Box 880
Winter Park, Florida 32790-0880
Telephone (407) 423-4246
Facsimile (407) 645-3728

MEMORANDUM

TO: Central Florida Expressway Authority Right of Way Committee

FROM: James Edward Cheek, III, Right of Way Counsel He
Winderweedle, Haines, Ward & Woodman, P.A.

DATE: May 20, 2015

RE: S.R. 429 Wekiva Parkway, Project 429-204; Parcels 266 and 866 -
Recommendation for Board Approval for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Right of Way Committee's recommendation for Board approval of a settlement with Warren M. Ackley and Wendy Ann Lindsey Ackley ("Owners") and Ryan Ackley ("tenant"), for the acquisition of Parcels 266 and 866 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-204. The Petition in Eminent Domain was filed on May 5, 2015.

DESCRIPTION and BACKGROUND:

Parcel 266 involves a partial taking of 4.707 acres of land from a 5.157 acre property, leaving a .450 acre remainder. **Parcel 866** is a permanent easement over 600 square feet of property. The subject is located along Plymouth Sorrento Road in unincorporated Orange County. It is improved with a 2,750 square foot residence that was constructed in 1999. Other site improvements include 1,593 square foot shop building, 1066 square foot barn, 164 square foot air-conditioned studio with loft, a gazebo, underground sprinkler system and extensive landscaping. There is also a 672 square foot manufactured home that was remodeled in 2012 and is owned and used as a residence by the Owners' adult son, Ryan Ackley. The property is zoned A-1, Citrus Rural District by Orange County, and the future land use designation is Rural/Agricultural, with a maximum of one dwelling unit per ten acres.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall issued his first appraisal on April 9, 2013, with a date of value of April 4, 2013. This report estimated that the amount of compensation owed for the subject property was \$446,400.00. This initial appraisal calculated compensation based on a total take. Mr. Hall issued a second report on March 13, 2014, with a date of value of February 25, 2014, and an updated appraisal amount of \$486,800.00. This second report also estimated compensation based on a total take. Mr. Hall issued a third report on January 28, 2015, with a date of value of January 16, 2015 and a final updated appraisal amount of \$475,600.00. This report estimates the value based on the current acquisition of a partial take (per Owners' request). A Letter Addendum

attached to this report additionally estimates the value of the mobile home to be \$29,000.00.

Mr. Hall arrived at his most recent valuation conclusions by examining the highest and best use of the property. First, Mr. Hall valued the property as though vacant, with a highest and best use for single-family residential development. He considered six vacant sales that ranged in value from \$21,604.00 per acre to \$28,520.00 per acre, and reconciled on a value of \$28,500.00 per acre for the subject property, or a total of **\$134,200.00** for 4.707 acres of land. Next, Mr. Hall evaluated the contributory value of the improvements. He considered three improved home sites which indicated a value between \$117.10 and \$120.03 per square foot of living area. Mr. Hall reconciled on a value of \$120.00 per square foot of living area, which yields a value of **\$330,000.00** (rounded) for the home (2,750 square feet of living area x \$120.00 per foot). Mr. Hall also found severance damages in the amount of **\$11,400.00** and a value of **\$400.00** for the easement interest in Parcel 866. The appraiser therefore concluded that the total compensation owed to Warren and Wendy Ackley for Parcels 266 and 866 is **\$476,000.00** (\$134,200.00 for land + \$330,000.00 for improvements + \$11,400.00 for severance damages + \$400 for the easement interest).

Mr. Hall also completed a separate Letter of Addendum which separately valued the manufactured home which is owned and used by Ryan Ackley. The manufactured home contains 672 square feet, and was remodeled in 2012. It has a screened rear porch, front wood deck and a septic system. Mr. Hall considered four comparable sales and concluded that the mobile home had a value of \$35.00 per square foot, or \$23,500.00. He further attributed \$5,500.00 to the Economic Land Unit on which the mobile home sits. This creates a total value of \$29,000.00 for the value of the mobile home and a total appraised value of **\$505,000.00** for Parcels 266 and 866.

As this proposed settlement was negotiated in conjunction with the Order of Taking, the landowners have not submitted a final appraisal report. However, the Ackleys have retained the services of Rick Dreggors, whose preliminary valuation was substantially higher than CFX's offer. The Ackleys have submitted a compensation claim of **\$750,000.00** for this property in addition to seeking federal relocation assistance.

In addition, the Ackleys have asserted that a business is operating on the site. Warren Ackley is in the business of buying and selling bulk construction items, which are stored on-site. A Notice to Business Owner was served on May 4, 2015. A business damage report has not yet been submitted and would not be due under § 73.015(2)(c), *Florida Statutes* until 180 days after receipt of the Notice to Business Owner.

EXPERT AND ATTORNEY FEES:

The Ackleys retained the legal services of Kurt Bauerle from the law firm of Harris Harris Bauerle Ziegler & Lopez, P.A. Mr. Bauerle is seeking to recover attorney's fees based on the standard "betterment" payment described in § 73.092(1)(c), *Florida Statutes*, which provides for attorneys to receive 33% of the difference between the last written offer made by the condemning authority before the defendant hires an attorney (or, if no such offer is made, the first written offer after a landowner hires an attorney) and the amount of the settlement or final judgment. The last written offer CFX made to the Ackleys before they hired an attorney was in the amount of \$476,000.00. The statutory attorney fee formula results in an award of \$55,770.00 for attorneys

fees (\$645,000.00 - \$476,000.00 = \$169,500.00 x .33 = \$55,770.00). The Ackleys have agreed not to submit any expert fees in this case if this negotiated settlement is approved.

CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. Mr. Hall has submitted invoices in a total amount of \$14,835.00 to appraise the subject property. This includes 44 hours at \$150.00 per hour for appraisers, 8 hours at \$40.00 per hour for administrative assistance, 3 hours at \$75.00 per hour for an assistant appraiser, and a flat fee of \$4,500.00 for an appraisal update and \$900.00 for a letter addendum.

CFX also retained the services of Andy Holland at ParkLand International Realty, Inc. to estimate the real estate and rental value of the mobile home. ParkLand submitted invoices in the total amount of \$1,275.00. This includes 7 hours at \$150.00 per hour for realtor services and 3 hours at \$75.00 per hour for the services of an assistant.

Counsel has reviewed the amounts sought by Owners' counsel and paid to CFX's experts and believes them to be reasonable.

PROPOSED SETTLEMENT:

The parties have been participating in settlement negotiations and have reached a proposed agreement on the purchase price for the acquisition of Parcels 266 and 866 and expert fees and costs. The parties have conditionally agreed to the following settlement terms, subject to Right of Way Committee recommendation and final CFX Board approval:

Total Settlement Proposal for Parcels 266 and 866:

Warren and Wendy Ackley (real estate interests):	\$647,500.00
Ryan Ackley (mobile home owner):	23,500.00
Warran Ackley d/b/a Warren Ackley: (business damages)	0.00
<u>Kurt Bauerle (attorney):</u>	<u>55,770.00</u>
Total	\$726,770.00

This settlement would resolve any business damage claims that the Ackleys could otherwise assert, and avoid the payment of expert fees and costs.

In addition to the above settlement amount, the Owner is entitled to relocation benefits under the Federal Relocation Act. These benefits will include moving costs and other incidental costs related to their residential relocation. Total relocation costs have not yet been determined since, pursuant to an extended possession agreement, the Ackleys have not yet moved from the property. The relocation costs will be actual, documental expenses that will either be reimbursed or paid directly to vendors on the Ackleys behalf after they file claims for reimbursement.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney's fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowner's compensation as provided by §73.091 and §73.092, *Florida Statutes*. In addition, this settlement will resolve any potential business damage claims as well. Acceptance of the proposal will

eliminate further risk and unnecessary expenses for CFX in this case. The proposed settlement will resolve all pending matters in this case, including the property owner's attorney's fees and expert costs.

RECOMMENDATION:

We respectfully request that the Right of Way Committee recommend CFX Board approval of the proposed settlement in the amount of \$726,770.00 in full settlement of all claims for compensation for the acquisition of Parcels 266 and 866.

ATTACHMENTS:

Sketch of Subject Property
Map Depicting Location of Property

SKETCH OF DESCRIPTION

PARCEL 266

PURPOSE: LIMITED ACCESS RIGHT OF WAY

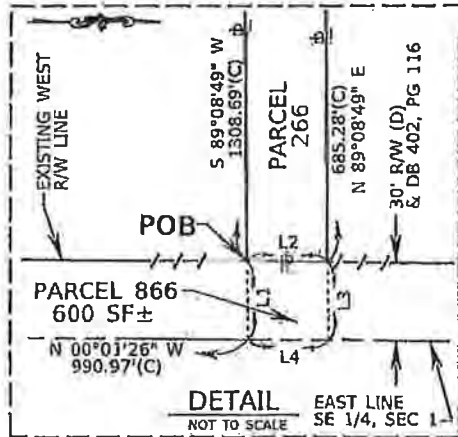
ESTATE: FEE SIMPLE

PARCEL 866

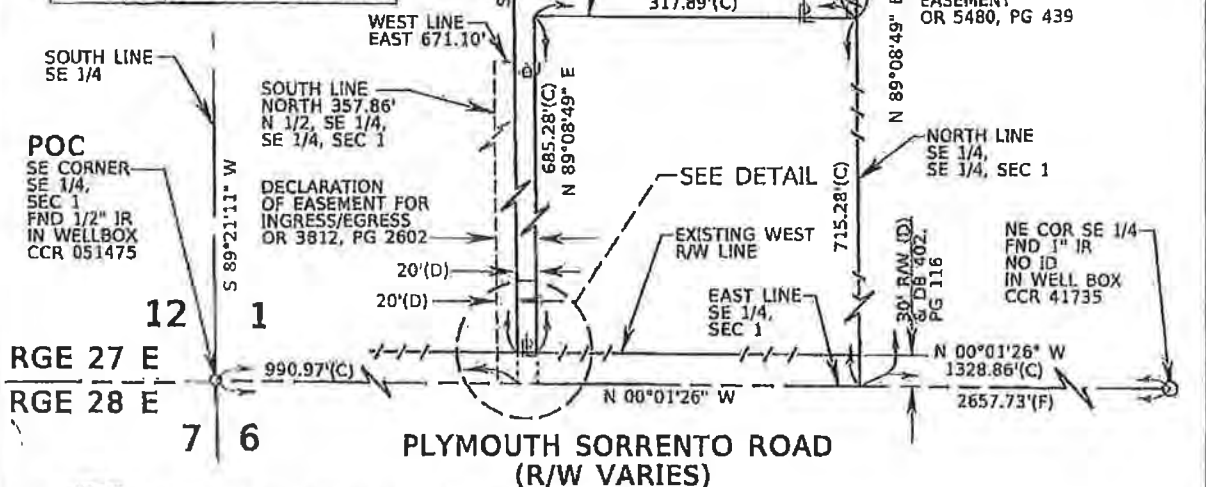
PURPOSE: PERMANENT EASEMENT

ESTATE: PERMANENT EASEMENT

TOWNSHIP 20 SOUTH RANGE 27 EAST



LINE	BEARING	DISTANCE
L1	S 89°08'49" W	30.00'(C)
L2	S 00°01'26" E	20.00'(C)
L3	N 89°08'49" E	30.00'(C)
L4	N 00°01'26" W	20.00'(C)

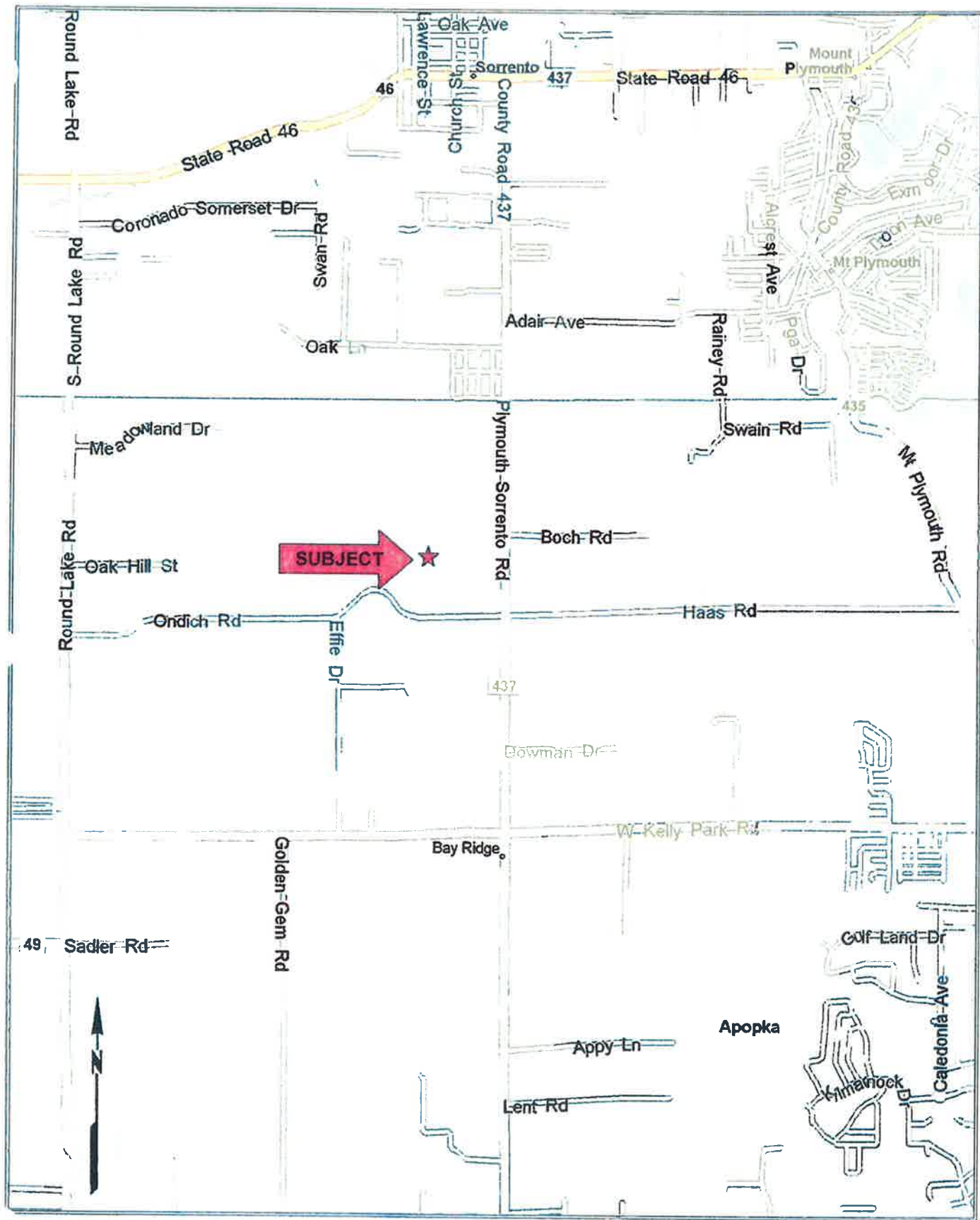


GENERAL NOTES:

- THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" 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 "FIDELITY NATIONAL TITLE INSURANCE COMPANY" DATED JUNE 3, 2013. ORDER NO. 4350360 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY		STATE ROAD 429	
DESIGNED BY: RJM	DATE: 1/03/15	URS URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	REVISIONS:
DRAWN BY: DJK	JOB NO:		
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204		SHEET: 3 OF 3

SKETCH OF DESCRIPTION
PARCELS 266/866




**SUBJECT LOCATION MAP
PARCEL 266**

Tab G

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Right of Way Committee Members

FROM: Linda S. Brehmer Lanosa, Deputy General Counsel 

DATE: May 21, 2015

RE: *Central Florida Expressway Authority v. William and Dessie Calhoun*
Case No. 2014-CA-003590-O, Project: 429-203, Parcel 217
Owners: William and Dessie Calhoun
Location: 3509 West Kelly Park Road, Apopka, Florida 32712
Size of Land: Before: 7.379± gross/net acres
Taken: 7.379± gross/net acres

INTRODUCTION

Section 73.032 of the Florida Statutes allows a condemning authority to serve an offer of judgment in an eminent domain case. The purpose of the offer is to shift liability for expert fees and costs. If the judgment obtained is equal to or less than the offer of judgment, the trial court is prohibited from awarding costs incurred by the property owner after the date the offer of judgment was rejected. If the judgment obtained is greater than the offer of judgment, the offer does not limit expert fees and costs.

To be effective, an offer of judgment must be greater than the ultimate judgment or jury verdict, including interest through the date of the offer. Although the Expressway Authority does not have the owner's appraisal report, an offer of judgment would not be as effective in limiting costs if the Expressway Authority waited until after all of the expert reports were completed and associated costs incurred before serving an offer of judgment.

DESCRIPTION OF PARCEL 217

The parent tract contains 7.379± gross and net developable acres. All areas of the property are considered to be uplands and to be usable. Based on the upland acreage, the parent tract is irregular in shape. Primary access is available on the north side of West Kelly Park Road. The topography of the parent tract is comprised of sloping terrain, with the entire parent tract designated as a depression.

The entire parent tract is located within Flood Zone X, an area of minimal flood hazard. According to the available data, the soil and drainage conditions appear to be adequate for a variety of uses. Water utilities are located approximately 180'± east of Plymouth Sorrento Road on West Kelly Park Road, and sewer utilities are located approximately 1,140± linear feet to the

Project: 429-203, Parcel 217
Owners: William and Dessie Calhoun

east of Plymouth Sorrento Road on West Kelly Park Road. The subject parent tract does not currently utilize water or sewer systems. According to public records, the parent tract was improved with a manufactured home, greenhouse and accessory building as of the date of inspection. The manufactured home and accessory building were assumed to be in average condition; however, from Orange County Property Appraiser's GIS aerial photographs, the greenhouse was assumed to be in poor condition.

The subject acquisition consists of a total taking of the 7.379± acre parent tract. Walter N. Carpenter, Jr., MAI, CRE, appraised the property. He concluded that the highest and best use of the parent tract as though vacant is for continued agricultural use or residential/commercial use when economic conditions improve and as dictated by market demand. The highest and best use as improved is for continued residential use. Based upon the comparable sales, Mr. Carpenter estimated a land value for the parent tract at \$1.50 per square foot with a land value of \$480,000.

The existing manufactured home improvements are assumed to be in average condition. The existing improvements (manufactured home/greenhouse) are considered to be an interim use to the site and thus have a contributory value under its highest and best use until such time in the future (five to seven years) that the improvements are fully depreciated and/or the property is positioned for redevelopment. In order to estimate the contributory value of the improvements, Mr. Carpenter considered the Sales Comparison Approach which would be the contributory value of the improvements added to the land value under the highest and best use. Considering the age and assumed average condition of the subject manufactured home, a contributory value for the improvements of \$30,000 has been concluded. Mr. Carpenter estimated full compensation as the sum of the following:

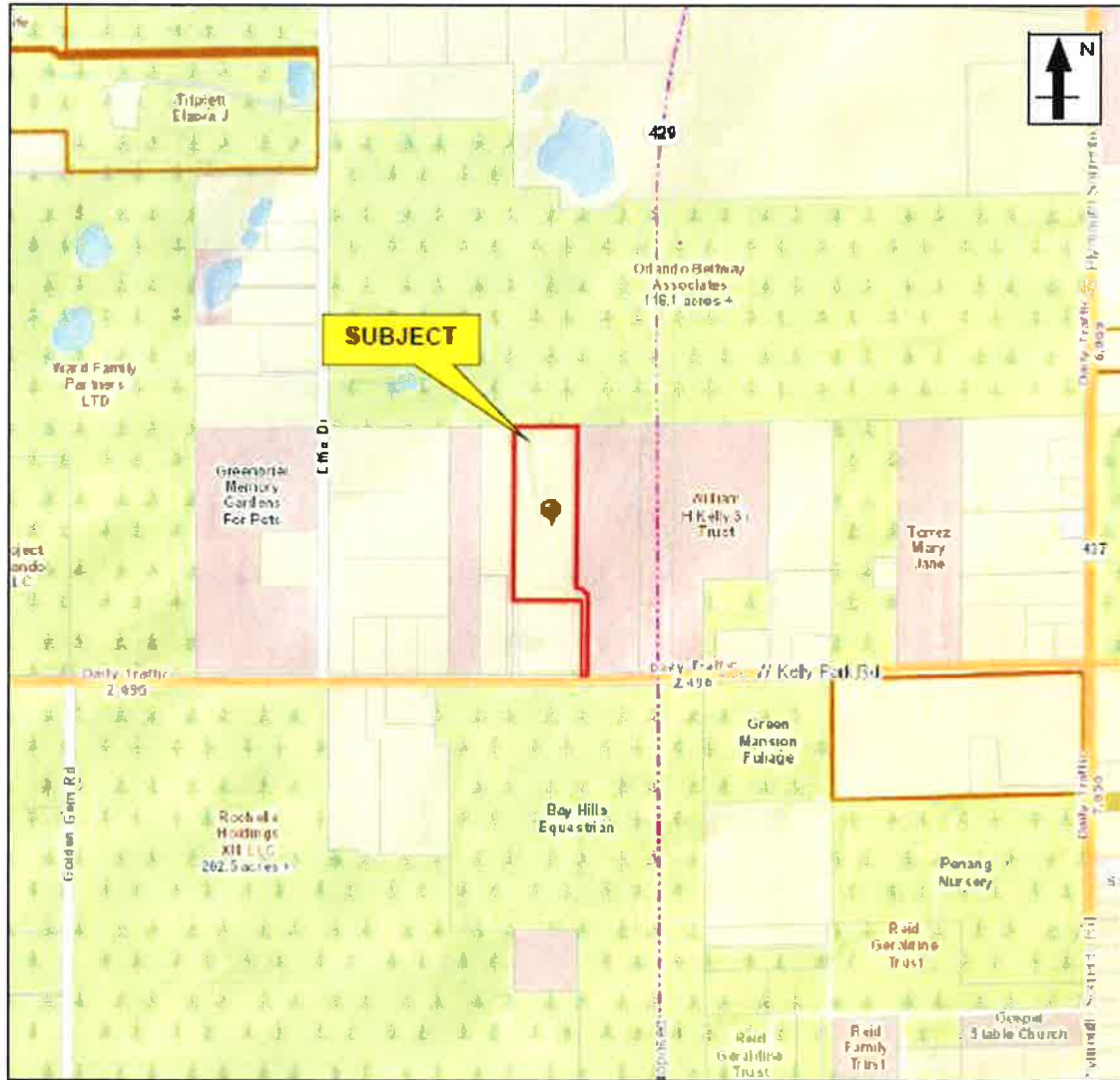
	Appraised Value
Land (7.379 acres)	\$ 480,000
Improvements	\$ 30,000
Total for Parcel 217	\$ 510,000

REQUEST

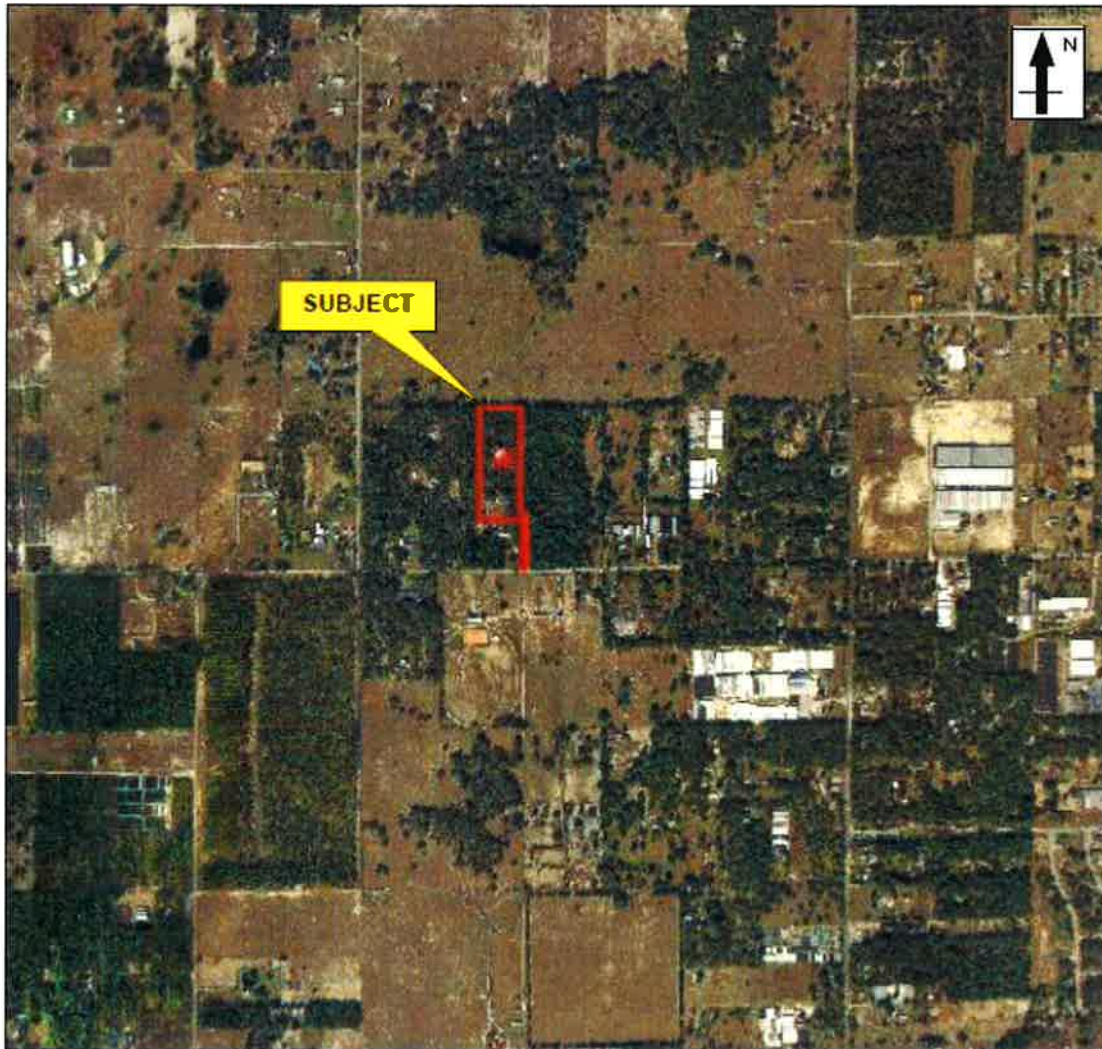
We request the Committee's recommendation for Board approval of an offer of judgment in the amount of **\$561,000**, or some other amount determined by the Committee to be in the best interest of the Authority.

ATTACHMENTS

Excerpt of Appraisal Report



Approximate Representation
Source: Orange County Property Appraiser




*Approximate Representation
Source: Orange County Property Appraiser*

Tab H

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Right of Way Committee Members

FROM: Linda S. Brehmer Lanosa, Deputy General Counsel 

DATE: May 21, 2015

RE: *Central Florida Expressway Authority v. Orlando Beltway Associates, et al.*
Case No. 2014-CA-003590-O, Project: 429-203, Parcel 235
Owner: Orlando Beltway Associates
Location: 5401 Effie Drive, Apopka, Florida 32712
Size of Land: Before: 118.094± gross/net acres
Taken: 10.643± acres
Remainder: 107.451± gross/net acres

INTRODUCTION

Section 73.032 of the Florida Statutes allows a condemning authority to serve an offer of judgment in an eminent domain case. The purpose of the offer is to shift liability for expert fees and costs. If the judgment obtained is equal to or less than the offer of judgment, the trial court is prohibited from awarding costs incurred by the property owner after the date the offer of judgment was rejected. If the judgment obtained is greater than the offer of judgment, the offer does not limit expert fees and costs.

To be effective, an offer of judgment must be greater than the ultimate judgment or jury verdict, including interest through the date of the offer. Although the Expressway Authority does not have the owner's appraisal report, an offer of judgment would not be as effective in limiting costs if the Expressway Authority waited until after all of the expert reports were completed and associated costs incurred before serving an offer of judgment.

DESCRIPTION OF PARCEL 235

The parent tract contains 118.094± gross and net developable acres. All of the property is considered to be uplands and to be usable. Based on the acreage, the parent tract is irregular in shape with 1,171± feet of frontage along the west side of Plymouth Sorrento Road and 1,620± feet of frontage along the east side of Effie Drive. Primary access is along both the west side of Plymouth Sorrento Road and the east side of Effie Drive. The topography of the parent tract is somewhat sloping from the eastern property line to a higher elevation on the western property line. The entire parent tract is located within a Zone "X", an area of minimal flood hazard.

Project: 429-203, Parcel 235
Owner: Orlando Beltway Associates

According to the available data, the soil and drainage conditions appear to be adequate for a variety of uses. A 16" potable water main is located on the south side of Kelly Park Road, approximately 180 feet east of the east right-of-way line of Plymouth Sorrento Road and approximately 1,420± feet from the southeast corner of the subject property. A 6" force main is located on the north side of Kelly Park Road approximately 1,140 feet east of the east right-of-way line of Plymouth Sorrento Road and approximately 2,320± feet from the southeast corner of the subject property. The subject property is currently unimproved and, to the appraiser's knowledge, does not rely upon either private well or septic tanks or public utilities. The parent tract was unimproved on the date of the inspection.

The taking consists of 10.643 acres and is located in the mid portion of the parent tract.

Walter N. Carpenter, Jr., MAI, CRE, appraised the property. He concluded that the highest and best use of the parent tract is currently for agricultural/residential use, the legally probable use to hold until demand for future rural low density residential development permits, economic conditions must improve and are dictated by market demand. Based upon the comparable sales approach, Mr. Carpenter considered sales ranging from \$19,826 per acre to \$78,969 per acre. He estimated the market value for the parent tract and the part taken at \$60,000 per acre. Mr. Carpenter estimated the market value for Parcel 235 as of June 6, 2014, as follows:

	Appraised Value
Land (10.643 acres)	\$ 638,600
Improvements	\$ 0
Damages	\$ 508,640
Cost to Cure	\$ 0
Total for Parcel 235	\$1,147,240

With respect to severance damages, the remainder is comprised of two non-contiguous tracts which are irregular in shape. The eastern remainder parcel will retain its access along Plymouth Sorrento Road, but will be reduced in size to 56.513± gross acres and will have a depth of 2,057.51 to 2,091.52± between the eastern border along Plymouth Sorrento Road and the limited access right-of-way line of the Wekiva Parkway (along its western border). Mr. Carpenter estimated the damages at 15% of the remainder as part of the whole.

The western remainder parcel will be approximately 50.936± gross acres. This parcel will also retain the same frontage along Effie Drive as in before the taking. The land use for the western remainder can be modified according to the Apopka Wekiva Parkway Interchange Plan due to the fact that the Parkway will be constructed in front of the remainder. This western remainder will have a projected land use known as Employment District which will allow for a higher density development than its low density residential in the before state. These uses will likely include mixed-use development, including office and light industrial commercial. Due to the fact that these types of uses are prevalent along other portions of the western beltway in close proximity to

Project: 429-203, Parcel 235
Owner: Orlando Beltway Associates

the subject property, Mr. Carpenter determined that there will be no diminution in value to the western remainder.

REQUEST

We request the Committee's recommendation for Board approval of an offer of judgment in the amount of **\$1,270,000**, or some other amount determined by the Committee to be in the best interest of the Authority.

ATTACHMENTS

Excerpt of Appraisal Report

Tab I

FOURTH AMENDMENT TO CONTRACT FOR SALE AND PURCHASE
OF RAIL LINE EASEMENTS

THIS FOURTH AMENDMENT TO CONTRACT FOR SALE AND PURCHASE OF RAIL EASEMENTS ("Fourth Amendment") is effective as of _____, the Amendment Effective Date, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, as successor in interest to the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority" or "Seller") and All Aboard Florida – Operations LLC, a Delaware limited liability company ("AAF" or "Buyer" and collectively with the Authority referred to as the "Parties").

RECITALS:

WHEREAS, Seller and Buyer heretofore entered into that certain Contract of Sale and Purchase of Rail Line Easements dated as of its Effective Date (the "Agreement" or "Contract"); and

WHEREAS, Seller and Buyer acknowledge that the Additional Property is suitable and necessary for the Project as well as other public uses proposed by Seller;

WHEREAS, Seller has, to date, been unable to acquire the Additional Property through voluntary transactions with its owners;

WHEREAS, Seller and Buyer desire to amend the Agreement in certain respects to provide for the potential that condemnation proceedings may become necessary to acquire the Additional Property or portion(s) thereof;

WHEREAS, Seller and Buyer agree that ~~the conditions precedent numbered 4, 5, 6 and 7 within Exhibit F to the Agreement have been met and that~~ all other conditions precedent to the Agreement are likely to be met on or before the Outside Closing Date, as amended herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

- 1. Recitals.** The recitals set forth above are true and correct and are hereby incorporated into this Fourth Amendment in their entirety.
- 2. Definitions.** All capitalized terms used herein but otherwise not defined herein, which are defined in the Agreement, shall have the same meaning ascribed to them herein as in the Agreement.
- 3. Conflicting Provisions.** To the extent there are any conflicts between the terms and provisions contained in this Fourth Amendment and those contained in the Agreement, the terms and provisions of this Fourth Amendment shall control.

4. **Correction to Section 2(b) pof Agreement.** The words "Buyer entering" in the first line of Section (2)(b) shall be hereby deleted and amended to read as follows: Seller entering.

5. **Outside Closing Date.** The extension of the Outside Closing Date to December 31, 2015 is hereby ratified. Accordingly, the second sentence of Section 6 of the Agreement is hereby amended to read as follows:

However, absent the written consent of Buyer and Seller, the Closing Date shall not be later than December 31, 2015 (the "Outside Closing Date") and should the Conditions Precedent not have occurred or been waived by the Outside Closing Date, then this Contract may be terminated as provided in Paragraph 11.

In light of the foregoing, Seller shall work diligently and in good faith to coordinate the transfer of title to the Additional Property, whether by voluntary acquisition or condemnation, to correspond to the Closing Date under the Agreement, all as reasonably practicable.

6. **Title Commitment.** The Buyer has received the Title Commitment and provided Seller with the Survey and Initial Notice and Seller furnished Buyer with its response to the Initial Notice. As such, the second, third and fourth sentences of Section 8(a)(iii) of the Agreement are hereby deleted and replaced with the following sentence:

Buyer shall make the election by November 3~~4~~⁰, 2015.

7. **Voluntary Acquisition.** In the event that Seller executes a voluntary agreement for the purchase of the Additional Property, or any portion(s) thereof, with the property owner(s) that has been approved, in writing, by the Buyer through the execution (in its sole discretion) of an Amendment for such Additional Property as described in Section 2(b) of the Agreement and for which the closing date(s) for the voluntary acquisition of such Additional Property is to occur prior to the Outside Closing Date pursuant to such Amendment, then Buyer shall deliver an additional deposit(s) to the Seller or the Escrow Agent (at Buyer's option) in an amount equal to an allocation of forty percent (40%) of the consideration to be paid for such Additional Property ("Supplemental Deposit(s)"), which Supplemental Deposits (if delivered to Escrow Agent) shall be held and disbursed by the Escrow Agent in the same manner as the Deposit pursuant to the Agreement. If the Supplemental Deposit is delivered to Seller, then Seller shall promptly convey to Buyer an Easement on the applicable Additional Property, in conformance with the Easement attached to this Agreement. Otherwise, voluntary acquisitions shall be addressed in accordance with the Agreement.

8. **Condemnation.** In the event that a voluntary agreement for the purchase of any portion(s) of the Additional Property is not reached with the respective property owner(s) thereof by June 1, 2015, Seller shall consider and vote upon a resolution to condemn, pursuant to Chapters 73 and 74, Florida Statutes, all such Additional Property that has not yet been voluntarily acquired. It is currently anticipated that the resolution will be acted upon at the Seller's July 9, 2015 board meeting. Thereafter, Seller will utilize its best efforts to initiate and progress condemnation proceedings so that the Additional Property to be condemned will be

~~transferred to Seller prior to the Outside Closing Date. If not already completed, Buyer and Seller shall jointly obtain a title report with respect to the Additional Property to be condemned prior to the initiation of a Petition for eminent domain, at its board meeting scheduled for June 11, 2015. If a resolution to condemn is entered by the board, Seller shall have all appraisals completed and initial offers made on or before June 25, 2015. In any event, Seller shall have all statutory prerequisites necessary to initiate condemnation proceedings completed on or before July 31, 2015. Immediately upon completion of all of the pre-suit requirements, but no later than July 31, 2015, the petition(s) in eminent domain (each, a "Petition") and declaration(s) of taking shall be filed and properly served pursuant to the requirements of Chapters 73 and 74, Florida Statutes. With the filing of the Petition, Seller shall seek an expedited hearing date for entry of the order of taking, on September 1, 2015 or as soon thereafter as the court allows. Then:~~

- (a) Upon receipt from Seller of a conformed or certified copy of the order of taking(s) entered by the court for any portion(s) of the Additional Property, Buyer shall deliver to Escrow Agent an additional deposit ("Buyer's Order of Taking Deposit"). The amount of the Buyer's Order of Taking Deposit shall be equal to 40% of the total deposit(s) required by the order of taking(s), pursuant to Section 74.051(2), Florida Statutes, for the transfer of title to Seller, which Buyer's Order of Taking Deposit shall be held and disbursed by the Escrow Agent in the same manner as the Deposit pursuant to the Agreement.
- (b) If the final judgment(s) for the condemnation of the Additional Property, or any portion(s) thereof, has not been entered prior to the Closing Date, then the Seller and Buyer agree that the following reconciliation shall be conducted within forty five (45) days after the Closing Date, the obligation for which shall survive the Closing:
 - i. If, after jury trial and exhaustion of appeals, forty percent (40%) of the full compensation awarded to the property owner(s) in the final judgment(s), exclusive of attorneys' fees and costs, is greater than the Buyer's Order of Taking Deposit, Buyer shall deliver a supplemental payment to Seller equal to the difference, plus 40% of any prejudgment statutory interest awarded to the property owner(s) pursuant to Section 74.061, Florida Statutes.
 - ii. In the event that forty percent (40%) of the compensation awarded in the final judgment, exclusive of attorneys' fees and costs, is less than the Buyer's Order of Taking Deposit, then Seller shall deliver a supplemental payment to Buyer equal to the difference, plus any interest recovered from the property owners on said amount, if any.

9. Deposits. On the Closing Date, any and all Supplemental Deposit(s) and Buyer's Order of Taking Deposit(s) made by Buyer shall, together with the Initial Deposit and Additional Deposit, be applied as partial payment of the Purchase Price, as such amount may be adjusted pursuant to any Amendment(s) executed prior to such Closing Date. If the Contract is terminated prior to Closing, the entire Deposit and the Supplemental Deposit(s) and Buyer's Order of Taking Deposit(s) shall be refunded to Buyer as established in the Agreement.

10. Future Amendments to Agreement Resulting From Condemnation of Additional Property. If the Additional Property, or any portion(s) thereof, is acquired by Seller through condemnation proceedings, as set forth above in Section 8, then the Closing shall proceed on or by the Outside Closing Date after title to all of the Additional Property has transferred to Seller. As with Amendments to be executed pursuant to Section 2(b) of the Agreement with regard to Additional Property to be acquired through voluntary agreements, Buyer and Seller acknowledge that subsequent to Seller acquiring title to the Additional Property or any portion(s) thereof through condemnation proceedings but prior to and as a condition to Closing and the disbursement of any Buyer's Order of Taking Deposit(s) held by the Escrow Agent, the Parties shall execute an Amendment pursuant to Section 2(b) which shall, inter alia, (i) incorporate the Additional Property Easement for such condemned Additional Property and thereby amend the definition of "Easement" and the "Property" in the Contract, (ii) amend the Purchase Price, as defined in Section 3 of the Contract, and the Deposit, as defined in Section 4 of the Contract, to address the inclusion of the Additional Property Easement in the Contract, and (iii) provide a period commencing as of the effective date of such Amendment and terminating a reasonable period thereafter within which Buyer may provide the Initial Notice and the Subsequent Notice regarding its examination of the updates to the Title Commitment and Survey obtained for each such Additional Property; provided that the Buyer shall not have the right in any such Subsequent Notice as to each Additional Property to object to any matters reflected in versions of the Title Commitment or Survey referenced in the Initial Notice as to such Additional Property and, provided further that the Buyer's rights to object to any matters reflected in the version of the Title Commitment or Survey obtained under Section 8 of the Contract regarding the OOCEA Property and the Ranch Property shall be governed by Section 8 of the Contract and not by any such Amendment.

11. Future Amendment to Agreement Resulting From Design, Pursuant to Section 2 (c) of the Agreement. In accordance with Section 2 (c) of the Agreement, the description of the Property shall be amended, only to the extent necessary, to accommodate the design, uses, improvements and construction limits depicted on the plans attached as Exhibit to this Fourth Amendment. The necessary changes to the description of the Property include, but are not limited to, changes necessary to accommodate the siting, construction, maintenance and protection of the embankments depicted within the areas labeled "Varies Easement" on the referenced Exhibit.

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12. Amendment to Easement. With respect to the form Rail Line Easement document attached to this Agreement, in Section 8, f. i. the third sentence shall be deleted and the following sentence shall be substituted in lieu thereof: However, and in any event, should Construction not commence within five (5) years from the Effective Date of this Agreement (subject to extension for Force Majeure Events), the Authority, as its sole and exclusive remedy, may unilaterally terminate this Agreement as provided below.

13. Amendment to Purchase Price. The amendment to the Purchase Price required by this Fourth Amendment or Section 2(b) of the Agreement for any portion of the Additional Property condemned shall be calculated pursuant to Section 3(c), except that " "Buyer's Order of Taking Deposit", shall be substituted in place of "forty percent (40%) of the per acreage consideration". Supplemental payments for the difference between the Buyer's Order of Taking

Deposit and forty percent (40%) of the compensation awarded in the final judgment, exclusive of attorneys' fees, appraiser fees, engineer fees, land planner fees and costs, awarded by final judgment after a jury trial shall be made pursuant to Section 8(b) of this Fourth Amendment.

124. Condemnation Fees and Costs. Buyer shall reimburse Seller for 40% of those fees reasonably and necessarily incurred by Seller to pay attorneys, engineers, appraisers, land planners and other litigation costs after January 1, 2015 that are directly related to the condemnation of the Additional Property. The amount incurred to date for such fees is \$ _____. Prior to incurring any such fees from and after the date of this Fourth Amendment, Seller shall provide Buyer with copies of the contracts with each such party for review and approval, which contracts shall be subject to lump sum or not-to-exceed sums. Also, Seller shall provide Buyer with ~~quarterly~~ ~~monthly~~ reports with regard to the status of all such fees incurred to date and projected to be spent, as well as monthly invoices for amounts incurred, with supporting documentation acceptable to Buyer, in its reasonable discretion. In addition to the foregoing, Buyer shall pay 40% of the statutory attorneys' fees as well as reasonable fees for engineers, appraisers, land planners and other compensable costs awarded by the court pursuant to Sections 73.091 and 73.092, Florida Statutes, that are directly related to the condemnation of the Additional Property or any portion(s) thereof.

153. Declaration of Restrictions. The Declaration of Restrictions attached as Exhibit D to the Agreement shall be deleted and the Declaration of Restrictions attached hereto as Exhibit 1 to this Fourth Amendment shall be inserted in its place. Seller hereby agrees that no further changes to the attached form of Declaration of Restrictions shall be made by Seller without the Buyer's involvement or prior written consent.

164. Waiver. In consideration for this Fourth Amendment, both Seller and Buyer unconditionally waive any right to claim or assert that the other has not timely and fully performed and observed all obligations accrued to date under the Agreement.

157. Ratification. Except as herein amended, the Agreement is hereby ratified and affirmed in its entirety by Seller and Buyer.

168. Counterparts; Email Signatures. This Fourth Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of such counterparts shall constitute one amendment. To facilitate execution of this Fourth Amendment, Seller and Buyer may execute and exchange by email as a portable document format or other electronic imaging, counterparts of the signature page, which shall be deemed original signatures for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, this Third Amendment has been duly executed by the Buyer and Seller as of the respective dates indicated below.

BUYER

ALL ABOARD FLORIDA- OPERATIONS
LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

Date executed by Buyer: _____,
20154

SELLER

CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, as successor in interest to the
ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY, a body
corporate and politic existing pursuant to
Chapter 348, Florida Statutes

By: _____
Name: _____
Title: _____

Date executed by Seller: _____,
20154

APPROVED AS TO FORM AND
LEGALITY

By: _____
Name: _____
Title: _____

Date executed by Legal _____,
20154

FOURTH AMENDMENT TO CONTRACT FOR SALE AND PURCHASE
OF RAIL LINE EASEMENTS

THIS FOURTH AMENDMENT TO CONTRACT FOR SALE AND PURCHASE OF RAIL EASEMENTS ("Fourth Amendment") is effective as of _____, the Amendment Effective Date, by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, as successor in interest to the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority" or "Seller") and All Aboard Florida – Operations LLC, a Delaware limited liability company ("AAF" or "Buyer" and collectively with the Authority referred to as the "Parties").

RECITALS:

WHEREAS, Seller and Buyer heretofore entered into that certain Contract of Sale and Purchase of Rail Line Easements dated as of its Effective Date (the "Agreement" or "Contract"); and

WHEREAS, Seller and Buyer acknowledge that the Additional Property is suitable and necessary for the Project as well as other public uses proposed by Seller;

WHEREAS, Seller has, to date, been unable to acquire the Additional Property through voluntary transactions with its owners;

WHEREAS, Seller and Buyer desire to amend the Agreement in certain respects to provide for the potential that condemnation proceedings may become necessary to acquire the Additional Property or portion(s) thereof;

WHEREAS, Seller and Buyer agree that all conditions precedent to the Agreement are likely to be met on or before the Outside Closing Date, as amended herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are hereby incorporated into this Fourth Amendment in their entirety.

2. Definitions. All capitalized terms used herein but otherwise not defined herein, which are defined in the Agreement, shall have the same meaning ascribed to them herein as in the Agreement.

3. Conflicting Provisions. To the extent there are any conflicts between the terms and provisions contained in this Fourth Amendment and those contained in the Agreement, the terms and provisions of this Fourth Amendment shall control.

4. Correction to Section 2(b) of Agreement. The words “Buyer entering” in the first line of Section (2)(b) shall be hereby deleted and amended to read as follows: Seller entering.

5. Outside Closing Date. The extension of the Outside Closing Date to December 31, 2015 is hereby ratified. Accordingly, the second sentence of Section 6 of the Agreement is hereby amended to read as follows:

However, absent the written consent of Buyer and Seller, the Closing Date shall not be later than December 31, 2015 (the “Outside Closing Date”) and should the Conditions Precedent not have occurred or been waived by the Outside Closing Date, then this Contract may be terminated as provided in Paragraph 11.

In light of the foregoing, Seller shall work diligently and in good faith to coordinate the transfer of title to the Additional Property, whether by voluntary acquisition or condemnation, to correspond to the Closing Date under the Agreement, all as reasonably practicable.

6. Title Commitment. The Buyer has received the Title Commitment and provided Seller with the Survey and Initial Notice and Seller furnished Buyer with its response to the Initial Notice. As such, the second, third and fourth sentences of Section 8(a)(iii) of the Agreement are hereby deleted and replaced with the following sentence:

Buyer shall make the election by November 30, 2015.

7. Voluntary Acquisition. In the event that Seller executes a voluntary agreement for the purchase of the Additional Property, or any portion(s) thereof, with the property owner(s) that has been approved, in writing, by the Buyer through the execution (in its sole discretion) of an Amendment for such Additional Property as described in Section 2(b) of the Agreement and for which the closing date(s) for the voluntary acquisition of such Additional Property is to occur prior to the Outside Closing Date pursuant to such Amendment, then Buyer shall deliver an additional deposit(s) to the Seller or the Escrow Agent (at Buyer’s option) in an amount equal to an allocation of forty percent (40%) of the consideration to be paid for such Additional Property (“Supplemental Deposit(s)”), which Supplemental Deposits (if delivered to Escrow Agent) shall be held and disbursed by the Escrow Agent in the same manner as the Deposit pursuant to the Agreement. If the Supplemental Deposit is delivered to Seller, then Seller shall promptly convey to Buyer an Easement on the applicable Additional Property, in conformance with the Easement attached to this Agreement. Otherwise, voluntary acquisitions shall be addressed in accordance with the Agreement.

8. Condemnation. In the event that a voluntary agreement for the purchase of any portion(s) of the Additional Property is not reached with the respective property owner(s) thereof by June 1, 2015, Seller shall consider and vote upon a resolution to condemn, pursuant to Chapters 73 and 74, Florida Statutes, all such Additional Property that has not yet been voluntarily acquired. It is currently anticipated that the resolution will be acted upon at the Seller’s July 9, 2015 board meeting. Thereafter, Seller will utilize its best efforts to initiate and progress condemnation proceedings so that the Additional Property to be condemned will be

transferred to Seller prior to the Outside Closing Date. If not already completed, Buyer and Seller shall jointly obtain a title report with respect to the Additional Property to be condemned prior to the initiation of a Petition for eminent domain. With the filing of the Petition, Seller shall seek an expedited hearing date for entry of the order of taking.

- (a) Upon receipt from Seller of a conformed or certified copy of the order of taking(s) entered by the court for any portion(s) of the Additional Property, Buyer shall deliver to Escrow Agent an additional deposit ("Buyer's Order of Taking Deposit"). The amount of the Buyer's Order of Taking Deposit shall be equal to 40% of the total deposit(s) required by the order of taking(s), pursuant to Section 74.051(2), Florida Statutes, for the transfer of title to Seller, which Buyer's Order of Taking Deposit shall be held and disbursed by the Escrow Agent in the same manner as the Deposit pursuant to the Agreement.
- (b) If the final judgment(s) for the condemnation of the Additional Property, or any portion(s) thereof, has not been entered prior to the Closing Date, then the Seller and Buyer agree that the following reconciliation shall be conducted within forty five (45) days after the Closing Date, the obligation for which shall survive the Closing:
 - i. If, after jury trial and exhaustion of appeals, forty percent (40%) of the full compensation awarded to the property owner(s) in the final judgment(s), exclusive of attorneys' fees and costs, is greater than the Buyer's Order of Taking Deposit, Buyer shall deliver a supplemental payment to Seller equal to the difference, plus 40% of any prejudgment statutory interest awarded to the property owner(s) pursuant to Section 74.061, Florida Statutes.
 - ii. In the event that forty percent (40%) of the compensation awarded in the final judgment, exclusive of attorneys' fees and costs, is less than the Buyer's Order of Taking Deposit, then Seller shall deliver a supplemental payment to Buyer equal to the difference, plus any interest recovered from the property owners on said amount, if any.

9. Deposits. On the Closing Date, any and all Supplemental Deposit(s) and Buyer's Order of Taking Deposit(s) made by Buyer shall, together with the Initial Deposit and Additional Deposit, be applied as partial payment of the Purchase Price, as such amount may be adjusted pursuant to any Amendment(s) executed prior to such Closing Date. If the Contract is terminated prior to Closing, the entire Deposit and the Supplemental Deposit(s) and Buyer's Order of Taking Deposit(s) shall be refunded to Buyer as established in the Agreement.

10. Future Amendments to Agreement Resulting From Condemnation of Additional Property. If the Additional Property, or any portion(s) thereof, is acquired by Seller through condemnation proceedings, as set forth above in Section 8, then the Closing shall proceed on or by the Outside Closing Date after title to all of the Additional Property has transferred to Seller. As with Amendments to be executed pursuant to Section 2(b) of the Agreement with regard to Additional Property to be acquired through voluntary agreements, Buyer and Seller acknowledge that subsequent to Seller acquiring title to the Additional Property

or any portion(s) thereof through condemnation proceedings but prior to and as a condition to Closing and the disbursement of any Buyer's Order of Taking Deposit(s) held by the Escrow Agent, the Parties shall execute an Amendment pursuant to Section 2(b) which shall, inter alia, (i) incorporate the Additional Property Easement for such condemned Additional Property and thereby amend the definition of "Easement" and the "Property" in the Contract, (ii) amend the Purchase Price, as defined in Section 3 of the Contract, and the Deposit, as defined in Section 4 of the Contract, to address the inclusion of the Additional Property Easement in the Contract, and (iii) provide a period commencing as of the effective date of such Amendment and terminating a reasonable period thereafter within which Buyer may provide the Initial Notice and the Subsequent Notice regarding its examination of the updates to the Title Commitment and Survey obtained for each such Additional Property; provided that the Buyer shall not have the right in any such Subsequent Notice as to each Additional Property to object to any matters reflected in versions of the Title Commitment or Survey referenced in the Initial Notice as to such Additional Property and, provided further that the Buyer's rights to object to any matters reflected in the version of the Title Commitment or Survey obtained under Section 8 of the Contract regarding the OOCEA Property and the Ranch Property shall be governed by Section 8 of the Contract and not by any such Amendment.

11. Future Amendment to Agreement Resulting From Design, Pursuant to Section 2 (c) of the Agreement. In accordance with Section 2 (c) of the Agreement, the description of the Property shall be amended, only to the extent necessary, to accommodate the design, uses, improvements and construction limits depicted on the plans attached as Exhibit ____ to this Fourth Amendment. The necessary changes to the description of the Property include, but are not limited to, changes necessary to accommodate the siting, construction, maintenance and protection of the embankments depicted within the areas labeled "Varies Easement" on the referenced Exhibit.

12. Amendment to Easement. With respect to the form Rail Line Easement document attached to this Agreement, in Section 8. f. i. the third sentence shall be deleted and the following sentence shall be substituted in lieu thereof: However, and in any event, should Construction not commence within five (5) years from the Effective Date of this Agreement (subject to extension for Force Majeure Events), the Authority, as its sole and exclusive remedy, may unilaterally terminate this Agreement as provided below.

13. Amendment to Purchase Price. The amendment to the Purchase Price required by this Fourth Amendment or Section 2(b) of the Agreement for any portion of the Additional Property condemned shall be calculated pursuant to Section 3(c), except that " "Buyer's Order of Taking Deposit", shall be substituted in place of "forty percent (40%) of the per acreage consideration". Supplemental payments for the difference between the Buyer's Order of Taking Deposit and forty percent (40%) of the compensation awarded in the final judgment, exclusive of attorneys' fees, appraiser fees, engineer fees, land planner fees and costs, awarded by final judgment after a jury trial shall be made pursuant to Section 8(b) of this Fourth Amendment.

14. Condemnation Fees and Costs. Buyer shall reimburse Seller for 40% of those fees reasonably and necessarily incurred by Seller to pay attorneys, engineers, appraisers, land planners and other litigation costs after January 1, 2015 that are directly related to the

condemnation of the Additional Property. The amount incurred to date for such fees is \$_____. Prior to incurring any such fees from and after the date of this Fourth Amendment, Seller shall provide Buyer with copies of the contracts with each such party for review and approval, which contracts shall be subject to lump sum or not-to-exceed sums. Also, Seller shall provide Buyer with quarterly reports with regard to the status of all such fees incurred to date and projected to be spent, as well as monthly invoices for amounts incurred, with supporting documentation acceptable to Buyer, in its reasonable discretion. In addition to the foregoing, Buyer shall pay 40% of the statutory attorneys' fees as well as reasonable fees for engineers, appraisers, land planners and other compensable costs awarded by the court pursuant to Sections 73.091 and 73.092, Florida Statutes, that are directly related to the condemnation of the Additional Property or any portion(s) thereof.

15. Declaration of Restrictions. The Declaration of Restrictions attached as Exhibit D to the Agreement shall be deleted and the Declaration of Restrictions attached hereto as Exhibit 1 to this Fourth Amendment shall be inserted in its place. Seller hereby agrees that no further changes to the attached form of Declaration of Restrictions shall be made by Seller without the Buyer's involvement or prior written consent.

16. Waiver. In consideration for this Fourth Amendment, both Seller and Buyer unconditionally waive any right to claim or assert that the other has not timely and fully performed and observed all obligations accrued to date under the Agreement.

17. Ratification. Except as herein amended, the Agreement is hereby ratified and affirmed in its entirety by Seller and Buyer.

18. Counterparts; Email Signatures. This Fourth Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of such counterparts shall constitute one amendment. To facilitate execution of this Fourth Amendment, Seller and Buyer may execute and exchange by email as a portable document format or other electronic imaging, counterparts of the signature page, which shall be deemed original signatures for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, this Third Amendment has been duly executed by the Buyer and Seller as of the respective dates indicated below.

BUYER

ALL ABOARD FLORIDA- OPERATIONS
LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

Date executed by Buyer: _____, 2015

SELLER

CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, as successor in interest to the
ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY, a body
corporate and politic existing pursuant to
Chapter 348, Florida Statutes

By: _____
Name: _____
Title: _____

Date executed by Seller: _____, 2015

APPROVED AS TO FORM AND
LEGALITY

By: _____
Name: _____
Title: _____

Date executed by Legal _____, 2015

CONTRACT OF SALE AND PURCHASE OF RAIL LINE EASEMENTS

THIS CONTRACT OF SALE (this "Contract"), dated as of the Effective Date, is by and between the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, a body corporate and politic existing pursuant to Chapter 348, Florida Statutes (the "Authority" or "Seller") and All Aboard Florida – Operations LLC, a Delaware limited liability company ("AAF" or "Buyer" and collectively with the Authority referred to as the "Parties"). The effective date of this Contract (the "Effective Date") shall be the last date on which this Contract shall be signed by Seller or Buyer, as indicated below by their respective executions hereon.

RECITALS:

A. Seller is the owner of certain real property within the limited access right-of-way of the Orlando-Orange County Expressway System on State Road 528 from the point where State Road 528 first abuts the property that is owned by the City of Orlando, Florida and operated by the Greater Orlando Aviation Authority, to a point where State Road 528 abuts the west side of its intersection with State Road 520 in Orange County, Florida, such property to be more particularly described in Exhibit "A" to the OOCEA Property Easement (as defined below) (the "OOCEA Property").

B. Seller is currently negotiating the purchase of certain real property generally located in Section 36, Township 23 South, Range 31 East and in Section 31, Township 23 South, Range 32 East in Orange County, Florida (the "SLR Property") and generally located in Sections 32, 33, 34, 35 and 36, Township 23 South, Range 32 East and in Sections 31, 32, 33, 34, 35 and 36, Township 23 South, Range 33 East in Orange County, Florida (the "FRI Property") (collectively, the SLR Property and FRI Property are referred to herein as the "Ranch Property").

C. Seller also intends to acquire approximately 200 acres of certain real property generally located in Section 31, Township 23 South, Range 31 East; in Section 32, Township 23 South, Range 31 East; in Sections 32, 33, 34 & 35, all in Township 23 South, Range 31 East and in section 31, Township 23 South, Range 32 East, all in Orange County, Florida (collectively, the "Additional Property").

D. Seller is a body corporate and politic existing pursuant to Chapter 348, Florida Statutes, and is charged with the responsibility of operating the "Orlando-Orange County Expressway System" as the same is more particularly defined in Part III of Chapter 348, Florida Statutes.

E. Among the facilities operated by Seller is that portion lying west of State Road 520 of a certain expressway commonly known as the "Martin Anderson Beachline Expressway," which is designated by the Florida Department of Transportation ("DOT") as State Road 528 ("SR 528"), which lies within the OOCEA Property.

F. SR 528 is in the vicinity of the OOCEA Property, SLR Property, the FRI Property and the Additional Property.

G. Seller, in conjunction with DOT, has conducted preliminary studies regarding the feasibility of expanding SR 528 from its present configuration to 8 lanes.

H. Buyer, Seller and DOT acknowledge that AAF has proposed the creation of "Intercity Passenger Rail Service" (also referred to herein the "Project") as such term is more particularly defined in the Easement (as defined herein) and the Declaration of Restrictions referenced in Paragraph 8(c) below.

I. Buyer desires to acquire easement rights over portions of the OOCEA Property, and, once acquired, over portions of the Ranch Property and the Additional Property, permitting the use of such properties (collectively, the "Property" as more particularly defined below), by the Buyer for purposes of operating the Intercity Passenger Rail Service.

J. Seller is agreeable to selling to Buyer certain easement interests in the Property on the terms and conditions contained herein.

K. The Parties acknowledge that as of the Effective Date there remains ongoing the designing, planning, engineering and development of the alignment of the Project along the State Road 528 right-of-way and that the final design and construction of the Project may require adjustment of the description of the Property and agree to amend the description to reflect the actual portions of the Property to which easements rights are granted to AAF under this Agreement.

L. The Parties further (i) acknowledge that one of the Conditions Precedent that must occur prior to Closing hereunder is the filing of a certificate with the Authority by its Consulting Engineer (as such term is defined in the Authority's Amended and Restated Master Bond Resolution adopted by the Authority's governing Board on February 3, 2003, as supplemented and amended from time to time, hereinafter referred to as the "Master Bond Resolution") stating, in the opinion of such Consulting Engineer, that the grant of the easement to the Property as finally described does not impede or restrict the operation by the Authority of the Orlando-Orange County Expressway System and (ii) agree that, as of the Effective Date, there is not sufficient information as to the description of the Property or the Project under which the Consulting Engineer can issue such opinion.

M. The Parties acknowledge that, notwithstanding any provision of this Contract to the contrary, no provision of this Contract shall inure to the benefit of or be enforceable by any third party not a party hereto, it being the express intent of Seller and Buyer that there be no third party beneficiary to this Contract and, as such, further acknowledge with regard to third party lenders and/or potential investors that (i) any lenders or potential investors in or to the Project proceed at their own risk from the Effective Date based on their own knowledge and experience in financial and business matters of this nature and have or should make their own independent evaluation of the risk and merits of investing, lending or expending funds now or hereafter for or in relation to the Project and the potential satisfaction of the Conditions Precedent set forth in Exhibit F, (ii) in no event shall the Authority shall be responsible for any expenditures, loans, investment or reimbursement thereof made by any such lenders or potential investors, (iii) the Authority's approval, execution and delivery of this Contract shall not be deemed to be, and the Authority does not make, any representation or warranty to any such lenders or potential lenders as to the likelihood that any or all of the Conditions Precedent set forth on Exhibit F will be satisfied, and (iv) this Contract should not be used as, deemed or treated as an offering circular,

solicitation, prospectus or official statement on which lenders, potential lenders or other third parties may rely.

IT IS THEREFORE agreed by the Parties hereto, in consideration of TEN DOLLARS (\$10.00) in hand paid, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each being legally advised in the premises and intending to be legally bound hereby, as follows:

1. RECITALS. The foregoing recitals are true and are incorporated as terms.
2. PURCHASE AND SALE OF EASEMENT.

(a) Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, (a) the easement rights set forth in that certain Rail Line Easement – Ranch Property in the form as is attached hereto as Exhibit A-1 (the “Ranch Property Easement”) and (b) the easement rights set forth in that certain Rail Line Easement –OOCEA Property in the form as is attached hereto as Exhibit A-2 (the “OOCEA Property Easement”) (collectively, both the Ranch Property Easement and the OOCEA Property Easement are referred to herein as the “Easement”) over all those certain lots, tracts or parcels of real estate more particularly described in the legal descriptions attached to such Easement, which shall, initially, include portions of the OOCEA Property and the Ranch Property (the “Property”). It is the express intent of Buyer and Seller that (i) the Ranch Property Easement shall be within a tract measured from the southernmost boundary of the Ranch Property, and (ii) the Ranch Property Easement shall run generally parallel to said southernmost boundary and shall extend the width of one hundred (100) feet, or, in some cases, more in areas where the final design of the “Rail Improvements” necessitates and/or in order to accommodate the “Maintenance Access Road” all as shall be reflected in the “Approved Plans” (as such terms are more particularly defined in the Ranch Property Easement).

(b) Buyer and Seller acknowledge that, subsequent to Buyer entering into one or more contracts for the purchase and sale of the Additional Property and prior to Closing, the Parties intend to execute certain amendment(s) to this Contract (each, an “Amendment”) which shall, *inter alia*, (i) incorporate certain additional easement agreement(s) over one or more portions of the Additional Property as Exhibit A-3, which shall be in substantially the same form as the Ranch Property Easement (the “Additional Property Easement”) and thereby amend the definition of “Easement” and the “Property”, (ii) amend the Purchase Price, as defined in Section 3 below, and the Deposit, as defined in Section 4 below, to address the inclusion of the Additional Property Easement in this Contract, (iii) provide a period commencing as of the effective date of such Amendment and terminating a reasonable period thereafter (the “Additional Inspection Period”), in which Buyer may determine, in Buyer’s sole discretion, whether the Additional Property is suitable to Buyer and within which Buyer may determine that any portion of the Additional Property is unsuitable for any reason whatsoever, and may terminate this Contract by giving written notice thereof to Seller on or before the last day of the Additional Inspection Period (in which event ONE HUNDRED AND NO/100 DOLLARS (\$100.00) of the Initial Deposit shall be delivered to Seller as consideration for Seller’s execution of and entry into this

Contract, with the balance of the Deposit refunded to Buyer immediately upon request to the Escrow Agent, if Buyer gives Escrow Agent notice of Buyer having elected to terminate this Contract pursuant to that Amendment, pursuant to the same terms and conditions under which the Escrow Agent shall be, and is hereby absolutely, unconditionally and irrevocably authorized, directed and instructed to disburse the Initial Deposit in Paragraph 5(b), following which all rights and obligations of the parties under this Contract shall expire, and this Contract shall become null and void) and (iv) provide a period commencing as of the effective date of such Amendment and terminating a reasonable period thereafter within which Buyer may provide the Initial Notice and the Subsequent Notice regarding its examination of the updates to the Title Commitment and Survey obtained for each such Additional Property; provided that the Buyer shall not have the right in any such Subsequent Notice as to each Additional Property to object to any matters reflected in versions of the Title Commitment or Survey referenced in the Initial Notice as to such Additional Property and, provided further that the Buyer's rights to object to any matters reflected in the version of the Title Commitment or Survey obtained under Section 8 hereof regarding the OOCEA Property and the Ranch Property shall be governed by Section 8 and not by any such Amendment.

(c) Buyer and Seller further acknowledge that, prior to Closing, the description of the Property may need to be revised or adjusted in order to accommodate revisions in Buyer's right-of-way needs as design work progresses for expansion of SR 528 to eight lanes and for the construction of rail facilities for the Intercity Passenger Rail Service. Buyer and Seller agree to cooperate with one another to accommodate such revisions or adjustments to the description of the Property as may be reasonably necessary. Provided, however, any revision or adjustment to the description of the Property agreed upon by Buyer and Seller shall be memorialized by an amendment to this Contract. Further, Buyer and Seller acknowledge that at such time that Buyer obtains a survey of the Property that is approved by Buyer and Seller, which approval shall not be unreasonably withheld, the legal description of the Property, as provided on the survey, may be substituted for the description of the Property set forth on the legal descriptions attached to and made a part of the Easement, as the same may be amended by the Parties. Further, Seller shall have no obligation to increase or otherwise modify the description of the Property to the extent it falls within the boundaries of the International Corporate Park Development of Regional Impact or the proposed Innovation Way East Development of Regional Impact (collectively, the "DRI") and any amendment to the legal descriptions attached to and made a part of the Easement relating to portions of the Property located within the DRI boundaries shall be made in Seller's sole discretion.

3. PURCHASE PRICE.

(a) The purchase price for the Ranch Property Easement and OOCEA Property Easement shall be TWENTY MILLION THREE HUNDRED FIFTY THREE THOUSAND NINE HUNDRED FORTY SEVEN AND NO/100THS DOLLARS (\$20,353,947.00) (the "Purchase Price") payable in U.S. Dollars.

(b) Notwithstanding the foregoing, if the total gross area of the SLR Property (including any such area needed for drainage ponds and/or floodplain mitigation)

ultimately exceeds 46.15 acres, then the Purchase Price Buyer shall pay shall increase by a percentage of \$65,000.00 for each additional acre (and the appropriate percentage of that amount for each fractional acre) based on the Buyer's proportionate utilization or need of such additional acreage to accommodate the Rail Improvements and/or the Maintenance Access Road (as such terms are more particularly defined in the Ranch Property Easement) within the Ranch Property Easement. Further, if the total gross area of the FRI Property (including any such area needed for drainage ponds and/or floodplain mitigation) ultimately exceeds 280 acres, then the Purchase Price Buyer shall pay shall increase by a percentage of \$32,000.00 for each additional acre (and the appropriate percentage of that amount for each fractional acre) based on the Buyer's proportionate utilization or need of such additional acreage to accommodate the Rail Improvements and/or the Maintenance Access Road within the Ranch Property Easement. The Purchase Price shall not be reduced, however, for any reason, including without implied limitation the gross area contained within the Property, environmental constraints affecting the Property, other conditions affecting the suitability of the Property for Buyer's intended purpose, or other matters.

(c) In the event this Contract is amended to include the Additional Property Easement, the Amendment shall amend the Purchase Price to address the inclusion of the Additional Property in this Contract by allocating to Buyer forty percent (40%) of the per acreage consideration for such Additional Property.

(d) The net balance of the Purchase Price due Seller shall be paid by funds wire transferred to the account designated by Seller at Closing hereunder (subject to Paragraph 7).

4. DEPOSIT.

(a) Within three (3) business days after the Effective Date, Buyer shall deliver to FIRST AMERICAN TITLE INSURANCE COMPANY, as escrow agent ("Escrow Agent") the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) (which sum, together with all interest actually earned thereon during the term of this Contract, is herein called the "Initial Deposit"). If Buyer does not terminate this Contract pursuant to Paragraph 5, then within three (3) business days after expiration of the Inspection Period, Buyer shall deliver to Escrow Agent the additional sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) (which sum, together with all interest actually earned thereon during the term of this Contract, is herein called the "Additional Deposit"). (The Initial Deposit and the Additional Deposit are herein sometimes collectively called the "Deposit.")

(b) Throughout the term of this Contract, Escrow Agent shall hold and disburse the Deposit in accordance with the terms and conditions of this Contract, including, without limitation, the terms and conditions set forth on Exhibit B attached hereto.

(c) On the Closing Date, the Deposit will be applied as partial payment of the Purchase Price.

5. INSPECTIONS.

(a) Access.

(i) OOCEA Property. From and after the Effective Date, Buyer shall have the continuing right to enter upon the OOCEA Property at any time for the purpose of performing surveying, engineering, environmental tests and studies, test borings and such other investigatory work as Buyer shall consider appropriate and to conduct any tests necessary to satisfy Buyer as to the suitability of the OOCEA Property for Buyer's purposes, and Seller hereby grants to Buyer (and its consultants and representatives) a limited right of access to permit Buyer's examinations and inspections (including access through all applicable gated entrances as may be necessary to reach the OOCEA Property), subject to the terms and provisions hereof. Buyer shall provide Seller prior notice of any entry onto the OOCEA Property by Buyer or its agents in accordance with the terms of this Contract. In the event any of Buyer's or inspections require that the condition of the OOCEA Property be materially changed from that which presently exists, Buyer shall be responsible for seeing that the OOCEA Property is promptly restored to substantially its condition as of the Effective Date. Further, no invasive environmental testing upon the OOCEA Property may be conducted by Buyer absent the written consent of Seller, which consent will not be unreasonably withheld, conditioned or delayed, and in any event shall not be withheld if such invasive testing is based upon the recommendation of a qualified environmental consultant and Buyer furnishes evidence of such recommendation together with a proposed scope of work for such invasive testing (which scope of work shall also be subject to Seller's reasonable review and approval). Buyer agrees to defend, indemnify and hold Seller harmless from any loss, damages, liability, obligations, costs, expenses and fees (including reasonable attorneys' and paralegals' fees) resulting from: (i) claims for injury to person or damage to property, to the extent directly resulting from the activities of Buyer or Buyer's agents or designees on the OOCEA Property; or (ii) liens on the Property filed by contractors, materialmen or laborers performing work and test(s) for Buyer.

(ii) Ranch Property. Buyer and Seller acknowledge that Buyer and the owners of the Ranch Property have entered into those certain Agreements Granting Right of Way Entry, copies of which are attached hereto as Exhibits C-1 and C-2 and incorporated herein by reference (the "Entry Agreements"). Buyer agrees to adhere to the terms of the Entry Agreements and shall defend, indemnify and hold Seller harmless from any loss, damages, liability, obligations, costs, expenses and fees (including reasonable attorneys' and paralegals' fees) resulting from: (A) claims for injury to person or damage to property, to the extent (1) such claims directly result from the activities of Buyer or Buyer's agents or designees on the Ranch Property and (2) such claims are made against Seller; or (B) liens on the Ranch Property filed by contractors, materialmen or laborers performing work and test(s) for Buyer to the extent any party attempts to cause Seller to satisfy any such lien.

(iii) Additional Property. Buyer and Seller acknowledge that Seller is engaged or shall soon engage in the process of negotiating one or more contracts for the sale and purchase of the Additional Property. Seller shall use its best reasonable efforts to cause the owners of the Additional Property to enter into entrance agreements with Buyer to grant Buyer (and its consultants and representatives) a limited right of access to permit Buyer's examinations and inspections (including access through all applicable gated entrances as may be necessary to reach the Additional Property) on terms reasonably similar to those set forth in the Entry Agreements. In the event Buyer and the owners of the Additional Property enter into one or more such entry agreements, Buyer agrees to adhere to the terms of such entry agreements and shall defend, indemnify and hold Seller harmless from any loss, damages, liability, obligations, costs, expenses and fees (including reasonable attorneys' and paralegals' fees) resulting from: (A) claims for injury to person or damage to property, to the extent (1) such claims directly result from the activities of Buyer or Buyer's agents or designees on the Additional Property and (2) such claims are made against Seller; or (B) liens on the Additional Property filed by contractors, materialmen or laborers performing work and test(s) for Buyer to the extent any party attempts to cause Seller to satisfy any such lien.

(b) Inspection Period; Termination. Subject to its rights of entry onto the Ranch Property and Additional Property as set forth in Section 5(a) above, Buyer shall have a period commencing as of the Effective Date and terminating on March 1, 2014 (the "Inspection Period"), in which to determine, in Buyer's sole discretion, whether the OOCEA Property and the Ranch Property is suitable to Buyer. In the event that Buyer shall determine that any portion of either the OOCEA Property or the Ranch Property is unsuitable for any reason whatsoever, then Buyer shall have the right, at Buyer's option, to terminate this Contract by giving written notice thereof to Seller on or before the last day of the Inspection Period. In such event, ONE HUNDRED AND NO/100 DOLLARS (\$100.00) of the Initial Deposit shall be delivered to Seller as consideration for Seller's execution of and entry into this Contract, the balance of the Initial Deposit shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Contract shall expire, and this Contract shall become null and void. Seller acknowledges that Buyer will, at its sole risk, expend time, money and other resources in connection with the examination and investigation of the Property, and that, notwithstanding Buyer's right to terminate this Contract pursuant to this Paragraph 5(b), such time, money and other resources expended, together with the payment of the portion of the Initial Deposit hereinabove described to be paid to Seller in the event of a termination of this Contract, constitute good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Contract. If Buyer gives Escrow Agent notice of Buyer having elected to terminate this Contract pursuant to this Paragraph 5(b), then: (i) Escrow Agent shall be, and is hereby absolutely, unconditionally and irrevocably authorized, directed and instructed to disburse the Initial Deposit as set forth in this Paragraph 5(b) immediately upon receipt of a copy of such notice, without any inquiry as to the propriety, effectiveness or timeliness of such termination and without the requirement of any further authorization, direction or instruction from either Seller or Buyer; and (ii) Seller covenants and agrees not to delay, hinder or impede in any manner whatsoever the disbursement of the Initial Deposit as set

forth in this Paragraph 5(b). Any entry on the Property made by or on behalf of Buyer (or the employees, agents, representatives, or other persons acting on behalf of or at the request of Buyer) shall be at the sole risk of Buyer. Buyer shall pay for all work and inspections performed on or in connection with the Property, and shall not permit the creation of any lien against the Property (or any portion thereof) in favor of any contractor, materialman, mechanic, surveyor, architect, laborer, or any other lienor performing services or supplying materials to the Property on behalf or at the request of Buyer. Buyer shall employ only appropriately licensed and insured professionals for entries on the Property and performance of the investigations, surveys, tests, and the like permitted under this Contract and the Entry Agreements, including any entry agreements entered into with respect to the Additional Property.

(c) Delivery of Reports, Studies, Etc. Should Buyer elect to terminate this Contract for any reason other than a breach or default by Seller, then Buyer shall promptly, but in any event no later than ten (10) days following such termination, deliver to Seller copies of any and all third-party created studies, reports, surveys and other due diligence materials obtained by Buyer in connection with its examination and inspection of the Property. The materials delivered pursuant to this Paragraph 5(c) will be delivered without any representation or warranty of any kind or nature whatsoever by Buyer.

6. CLOSING. The closing of the purchase and sale of the Easement ("Closing"), shall be held at such location, date and time as may be agreed upon by the parties, which date shall be within ten (10) days following the occurrence or waiver of the last of the Conditions Precedent identified in Paragraph 11 (the "Closing Date"). However, absent the written consent of Buyer and Seller the Closing Date shall not be later than June 30, 2014 (the "Outside Closing Date") and should the Conditions Precedent not have occurred or been waived by the Outside Closing Date, then this Contract may be terminated as provided in Paragraph 11. Notwithstanding any other provision of this Contract, time is of the essence with respect to the Closing Date and the Outside Closing Date. No grace period, notice, or tender shall be required as a condition to declaring a party in immediate default for failure timely to close.

7. COSTS OF CLOSING. Seller shall pay for the cost of: (i) the fees of Seller's attorneys; and (ii) any real estate brokerage fee arising from an agreement entered into by Seller. Buyer shall pay for the cost of (i) recording the Easement; (ii) charges for the Survey; (iii) documentary stamp tax on the Easement; and (iv) charges for the title search and Title Commitment, and the title insurance premium for the Title Policy; (v) fees of Buyer's attorneys; and (vi) any real estate brokerage fee arising from an agreement entered into by Buyer.

8. TITLE.

(a) Title Commitment and Survey. Within thirty (30) days after the Effective Date, Buyer shall obtain, at Buyer's expense, and deliver to Seller an ALTA commitment for the Title Policy (the "Title Commitment") issued on behalf of First American Title Insurance Company ("Title Company") to insure the easement rights set forth in the Easement. The Title Commitment shall name Buyer as the proposed insured, be in the amount of the Purchase Price, and include copies of all documents referenced therein as exceptions (the "Exception Documents"). Within ninety (90) days after the Effective

Date, Buyer may, at Buyer's expense, cause the OOCEA Property and Ranch Property to be surveyed by a Florida licensed surveyor (the "Survey"). In the event this Contract is amended to include the Additional Property Easement, Buyer shall have twenty (20) days after the effective date of such Amendment to update the Title Commitment to include the Additional Property Easement, and shall have ninety (90) days after the effective date of such Amendment to update the Survey to include the Additional Property.

(i) Buyer shall have until one hundred fifty (150) days after the Effective Date in which to examine the Title Commitment, the Exception Documents and the Survey, and in which to give Seller written notice (the "Initial Notice") of objections which render Seller's title unsuitable or less than good and marketable to convey the easement rights set forth in the Easement in the OOCEA Property and the Ranch Property. Thereafter, Buyer shall have until the Closing Date in which to have the Title Commitment and/or Survey updated and in which to give Seller written notice (each such notice, a "Subsequent Notice") of any additional objections disclosed by such update; provided, however, that Buyer shall not have the right in any such Subsequent Notice to object to any matters reflected in the version of the Title Commitment referenced in the Initial Notice.

(ii) Seller shall have until the Closing Date in which to cure and satisfy all objections specified in the Initial Notice or any Subsequent Notice. Seller shall have no obligation to cure and satisfy any such title objections; provided however, that Seller shall have the option to (i) remove by payment any mortgage lien or other monetary lien created by Sellers' actions or omissions against the Property which are capable of removal by payment of money on or before Closing, or (ii) cause any such lien to be subordinated to the Easement in form and content acceptable to Buyer and the Title Company, in their sole and absolute discretion. Within thirty (30) days of receipt of the Initial Notice, Seller shall furnish notice to Buyer of whether Seller will attempt to cure or elect not to cure any objection identified in the Initial Notice. Within thirty (30) days of receipt of a Subsequent Notice or until the Closing Date, whichever first occurs, Seller shall furnish notice to Buyer of whether Seller will attempt to cure or elect not to cure any objection identified in a Subsequent Notice. Should Seller elect to attempt to cure an objection identified in the Initial Notice or in a Subsequent Notice and be unable to do so, then Seller shall deliver notice of such fact to Buyer before the Closing Date.

(iii) If Seller does not cure and satisfy all of Buyer's title objections, then, at the option of Buyer, Buyer may, as Buyer's sole and exclusive remedies: (i) terminate this Contract, in which event the Deposit shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Contract shall expire and this Contract shall become null and void; or (ii) waive such cure and satisfaction and consummate the purchase and sale of the Easement without reduction of the Purchase Price. Buyer shall make the election within thirty (30) days after receiving notice from Seller that Seller either has been unable to cure, or elects not to cure, an objection, and the Closing Date (but not the Outside Closing Date) shall be extended as may be necessary to afford Buyer

the opportunity to make such election. If the Outside Closing Date occurs within such thirty (30) day period, then Buyer shall have until the Outside Closing Date to make such election. If Buyer fails within those thirty (30) days or by the Outside Closing Date, as the case may be, to expressly to make its election, then Buyer shall be deemed to have waived the objection.

(b) Permitted Exceptions. Seller covenants to grant to Buyer at Closing the Easement insurable as an easement interest by the Title Company, at then current standard rates under the ALTA 6-17-2006 (Florida Modified Form) Owner's Policy of Title Insurance Form, without exception other than for the Permitted Exceptions (the "Title Policy"). For the purposes of this Contract, the term "Permitted Exceptions" shall mean:

(i) Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Easement that would be disclosed by an accurate and complete survey of the Property.

(ii) Taxes and assessments for the year of Closing and subsequent years.

(iii) The nature or extent of riparian and littoral rights.

(iv) As to lands located in or within the Property, neither the (A) title to the beds or bottoms of lakes, or other bodies of water, nor (B) the title to any artificially filled in lands, nor (C) title to any portion of the Property lying below the ordinary high water mark shall be guaranteed or warranted.

(v) Zoning, restrictions, prohibitions and other requirements imposed by governmental authority.

(vi) Any mineral rights leased, granted or retained by prior owners of the Property other than Seller or Seller's corporate parents, subsidiaries or affiliates.

(vii) The Declaration of Restrictions (as defined in Paragraph 8(c) below).

(viii) Matters reflected on the Title Commitment and Survey to which Buyer does not furnish written notice of objections to Seller as required by Paragraph 8(a)(i), or to which Buyer waives its objections.

(c) Declaration of Restrictions. Buyer acknowledges that, prior to Closing, a restrictive covenant against the Ranch Property substantially in the form attached hereto as Exhibit D (the "Declaration of Restrictions") shall be executed and recorded in the Official Records of Orange County, Florida. The Declaration of Restrictions shall be recorded before the Easement (at no cost or expense to Buyer) and shall constitute an equitable servitude running with title to the Ranch Property. Notwithstanding the foregoing or anything to the contrary in this Contract, the Seller agrees that (i) any and all changes made to the form attached hereto as Exhibit D before the execution and

recording of the Declaration of Restrictions require the prior approval of the Buyer, and (ii) if changes are made to the form attached hereto as Exhibit D before the execution and recording of the Declaration of Restrictions without such approval by the Buyer, the Buyer may terminate this Contract, in which event the Deposit shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Contract shall expire and this Contract shall become null and void.

9. REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS.

(a) The Authority warrants, represents and covenants that:

(i) The Authority has the power and authority to enter into this Contract, consummate the transactions contemplated by this Contract and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof. The Authority has approved the execution and delivery of this Contract and authorized the performance of its obligations hereunder.

(ii) This Contract has been duly authorized, executed and delivered by the Authority and constitutes a valid and legally binding obligation of the Authority, enforceable against the Authority in accordance with the terms hereof.

(iii) Subject to the Conditions Precedent set forth on Exhibit F, no consent is required to be obtained by the Authority from, and no notice or filing is required to be given by the Authority to or made by the Authority with, any person (including any Governmental Authority) in connection with the execution, delivery and performance by the Authority of this Contract which has not been obtained.

(iv) To the Authority's Actual Knowledge on the Effective Date, it has no knowledge of any action, suit or proceeding, at law or in equity, or before or by any governmental authority, pending against the Authority as of the Effective Date which would (i) have a material adverse effect on the Property or (ii) materially affect the validity or enforceability of this Contract.

(v) To the Authority's Actual Knowledge on the Effective Date, it has no knowledge of any pending or threatened claims against the Authority as of the Effective Date arising out of hazardous substances the outcome of which could have a material adverse effect on the OOCEA Property or this Contract. The Authority has no duty to supplement this representation at any time. It is the intention of the Authority that the representations and warranties contained in this subparagraph be limited to the OOCEA Property.

(vi) As of the Effective Date, the Authority is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would

currently restrain or enjoin it from entering into, or complying with, this Contract, in any material respect.

(vii) To the Authority's Actual Knowledge: (1) no portion of the OOCEA Property has been used for the storage, processing, treatment or disposal of Pollutants in a manner in violation of any law, code regulation, statute, order, permit, or other restriction applicable thereto; (2) no portion of the OOCEA Property being used for the storage, processing, treatment or disposal of Pollutants in a manner in violation of any law, code regulation, statute, order, permit, or other restriction applicable thereto prior to the period of its ownership of the OOCEA Property; (3) no Pollutants have been placed on such OOCEA Property during the period of the Authority's ownership of the OOCEA Property, by or at the direction of the Authority in a manner in violation of any law, code regulation, statute, order, permit, or other restriction applicable thereto; (4) no Pollutants have been released, introduced, spilled, discharged or disposed of on, in or under the OOCEA Property, during the period of its ownership of the OOCEA Property in a manner in violation of any law, code regulation, statute, order, permit, or other restriction applicable thereto; (5) there are no pending claims, administrative proceedings, judgments, declarations or orders, relating to the presence of Pollutants on, in or under the OOCEA Property; (6) the Authority has no knowledge of any violations of any applicable federal, state and local laws, regulations, orders and requirements regarding the regulation of Pollutants with respect to the OOCEA Property; and, (7) there are no underground storage tanks located on or in the OOCEA Property. As used in this Contract, "Pollutants" mean any material or substance, or combination of materials or substances, which by reason of quantity, concentration, composition or characteristic is regulated under any federal, state or local environmental or common law, rule, regulation, ordinance or requirement, as may be amended, replaced or superseded, and shall include, without limitation, any material or substance, or combination of materials or substances displaying any explosive, volatile, radioactive, toxic, corrosive, flammable, ignitable or reactive characteristic or which may cause a nuisance, injury, harm or degradation to human health, welfare or the environment. It is the intention of Seller that the representations and warranties contained in this subparagraph be limited to the OOCEA Property.

(viii) To the Authority's Actual Knowledge, the OOCEA Property is not in violation of, and the Authority has received no notice of any violation, or potential violation, of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the OOCEA Property. It is the intention of the Authority that the representations and warranties contained in this subparagraph be limited to the OOCEA Property.

The phrase "Authority's Actual Knowledge," shall be deemed to refer exclusively to matters within the actual knowledge of the persons serving as the Authority's Executive Director as of the Effective Date and the Authority's Deputy Executive Director (responsible for

engineering, operations, construction and maintenance of the Orlando-Orange County Expressway System) as of the Effective Date (the "Authority's Knowledge Individuals") with respect to Subsections 9(a), (iv), (v), (vii) and (viii). The Authority's Knowledge Individuals have no obligation to engage in any independent due diligence, investigation or inquiry with respect to any of the representations and warranties contained in this Contract. Without limiting the foregoing, Buyer acknowledges that the Authority's Knowledge Individuals have not performed and are not obligated to perform any investigation or review of any files or other information in the possession of the Authority, or to make any inquiry of any persons, to take any other actions in connection with the representations and warranties of the Authority set forth in this Contract, or to supplement the applicable representations at any time and that the Authority's Knowledge Individuals shall have no personal liability with regard to the representations and warranties contained in this Contract.

THE AUTHORITY MAKES NO WARRANTIES OR REPRESENTATIONS RELATING TO THE PROPERTY, ITS OPERATIONS, THE COST OR FEASIBILITY OF DEVELOPING THE PROPERTY, OR OTHER MATTERS EXCEPT THE WARRANTIES AND REPRESENTATIONS THAT ARE EXPRESSLY STATED IN THIS CONTRACT OR THE EASEMENT; THE AUTHORITY DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, AND GUARANTIES; AND BUYER AGREES NO OTHER WARRANTIES, REPRESENTATIONS, OR GUARANTIES FROM THE AUTHORITY SHALL BE IMPLIED. EXCEPT AS THIS CONTRACT OR THE EASEMENT EXPRESSLY PROVIDES OTHERWISE, BUYER AGREES TO RECEIVE THE PROPERTY AS IS, WHERE IS, AND SUBJECT TO ALL FAULTS AND DEFECTS. BUYER AGREES THAT, EXCEPT WITH RESPECT TO CONDITIONS AND ISSUES THAT ARE THE EXPRESS SUBJECTS OF EXPRESS WARRANTIES HEREIN, BUYER SHALL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE AUTHORITY, ITS AGENTS, OR CONTRACTORS. EXCEPT AS SET FORTH IN THIS CONTRACT OR THE EASEMENT, THE AUTHORITY SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY, OR TO THE OPERATION OF THE PROPERTY, FURNISHED BY ANY PARTY PURPORTING TO ACT ON BEHALF OF THE AUTHORITY. NOTWITHSTANDING THE FOREGOING, OR ANYTHING TO THE CONTRARY SET FORTH IN THIS CONTRACT, THE PARTIES AGREE THAT UPON THE CLOSING CONTEMPLATED HEREIN, THE EASEMENT SHALL BE FULLY ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AND CONDITIONS.

NOTWITHSTANDING ANY OF THE FOREGOING REPRESENTATIONS, BUYER ACKNOWLEDGES THAT THE AUTHORITY DOES NOT CURRENTLY OWN THE RANCH PROPERTY OR THE ADDITIONAL PROPERTY, AND THAT THE ACQUISITION OF THE RANCH PROPERTY AND THE ADDITIONAL PROPERTY REQUIRES THE ACTIONS OF THIRD PARTIES OVER WHICH THE AUTHORITY HAS NO CONTROL (INCLUDING THE CONDITION PRECEDENT SET FORTH IN SECTION 11(a)(iv) OF THAT CERTAIN CONTRACT OF SALE AND PURCHASE BETWEEN SLR, FRI AND OOCEA THAT WAS APPROVED BY OOCEA'S GOVERNING BOARD ON AUGUST 28, 2013 FOR THE PURCHASE OF THE RANCH PROPERTY). CONSEQUENTLY, TO THE EXTENT THAT ANY REPRESENTATION, WARRANTY OR COVENANT GIVEN BY THE AUTHORITY IN

THIS CONTRACT COULD BE CONSTRUED TO BE FALSE BASED ON THE INABILITY OF THE AUTHORITY TO CONSUMMATE THE TRANSACTIONS TO ACQUIRE THE RANCH PROPERTY AND / OR THE ADDITIONAL PROPERTY DUE TO (1) THE FAILURE OF SUCH THIRD PARTIES TO SATISFY CONDITIONS PRECEDENT OUTSIDE OF THE AUTHORITY'S CONTROL AND DESPITE THE AUTHORITY'S GOOD FAITH AND DILIGENT EFFORTS TO ENFORCE THE TERMS AND CONDITIONS OF THE TRANSACTIONS TO ACQUIRE THE RANCH PROPERTY AND/OR THE ADDITIONAL PROPERTY, (2) THE AUTHORITY EXERCISING ITS RIGHTS TO TERMINATE THE CONTRACTS FOR THE ACQUISITION OF THE RANCH PROPERTY AND / OR THE ADDITIONAL PROPERTY PURSUANT TO THEIR RESPECTIVE TERMS, OR (3) THE AUTHORITY'S INABILITY TO ENTER INTO ONE OR MORE CONTRACTS FOR THE ACQUISITION OF ALL OR ANY PORTION OF THE ADDITIONAL PROPERTY WITH THE OWNER(S) OF THE ADDITIONAL PROPERTY DESPITE THE AUTHORITY'S GOOD FAITH AND COMMERCIALY REASONABLE EFFORTS TO DO SO, THE AUTHORITY SPECIFICALLY DISCLAIMS ANY SUCH REPRESENTATION, WARRANTY OR COVENANT.

(b) Buyer warrants, represents and covenants that:

(i) Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is duly qualified to conduct business in the State of Florida.

(ii) Buyer has full power and authority to enter into this Contract and to comply with the provisions of this Contract.

(iii) This Contract has been duly authorized, executed and delivered by Buyer and constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof.

(iv) No consent is required to be obtained by Buyer from, and no notice or filing is required to be given by Buyer to or made by Buyer with, any person (including any Governmental Authority) in connection with the execution, delivery and performance by Buyer of this Contract. The foregoing does not apply to the necessary licenses, permits, and other approvals to be applied for by Buyer in connection with the Project.

(v) Buyer currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in material default of, or otherwise subject to, any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which would currently restrain or enjoin it from entering into, or complying with, this Contract, in any material respect.

(vi) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of Buyer's knowledge, threatened, which seeks to restrain or enjoin Buyer from entering into or complying with this Contract.

(vii) The execution, delivery, and performance of this Contract will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, bank loan, credit agreement, or other agreement or contract of any kind or nature to which Buyer is a party or by which Buyer may be bound.

(viii) Buyer has obtained or reasonably expects that it will obtain all required permits for the construction and operation of the Project on the Property and is not aware of any circumstance presently existing that would materially adversely affect Buyer from obtaining any such permits.

(c) In the event Seller purchases the Ranch Property and the Additional Property and receives representations, warranties and covenants from the owners of the Ranch Property and / or the Additional Property (or any portion thereof), and thereafter any such representation, warranty or covenant is discovered to be untrue or incorrect, and has a material adverse effect on the Property or the Project, Seller hereby covenants to enforce such corresponding representation, warranty or covenant that was made to Seller by the previous owner(s) of the respective portion(s) of the Property to the fullest extent allowed by law, at the Buyer's request and at the Buyer's expense, in order to hold Buyer harmless therefrom and provide Buyer with the protections afforded thereby.

(d) The representations, warranties and covenants made by Seller and Buyer solely under this Paragraph 9 titled "Representations, Warranties and Additional Covenants", including the Seller's covenant to enforce representations, warranties and covenants pursuant to Paragraph 9(c), shall survive Closing for a period of one (1) year following the Closing Date.

10. CLOSING DOCUMENTS. At Closing, the following documents and instruments shall be executed and delivered between Seller and Buyer (the "Closing Documents"):

(a) Seller's Documents. At the Closing, Seller shall execute or cause to be executed by the appropriate persons and/or delivered to Buyer the following:

(i) A counterpart of Closing Statement;

(ii) The Easement;

(iii) A certificate from Seller stating that its representations and warranties made herein are true as of the Closing Date;

(iv) Such corrective instruments as may be required to convey good and marketable title to the easement rights set forth in the Easement pursuant to the provisions of Paragraph 8;

(v) Seller's affidavits for the Property in the form attached hereto as Exhibit E;

(vi) Non-foreign affidavits evidencing that Buyer shall not be liable for transfer liability under Section 1445 of the Internal Revenue Code, as amended;

(vii) Evidence in form and substance satisfactory to the Title Company that Seller has the power and authority to have executed and entered into this Contract and to grant the Easement; that any and all actions required to authorize and approve the execution of and entry into this Contract by Seller; the performance by Seller of all respective duties and obligations under this Contract; the execution and delivery by Seller of all documents and other items to be delivered to the Title Company or Buyer at Closing have been accomplished; and that the person executing the Closing Documents on behalf of Seller has full right, power and authority to do so;

(viii) Written notice executed by the Executive Director for the Authority to the escrow agent under that certain Document Escrow Agreement (as hereinafter defined) whereby such escrow agent is instructed to deliver the Escrow Documents (as defined in such Document Escrow Agreement) to the Parties at the place and time designated by the Parties in such joint break of escrow instructions; and

(ix) Any other documents reasonably necessary to consummate the transactions contemplated hereby.

(b) Buyer's Documents. At the Closing, Buyer shall execute or cause to be executed by the appropriate persons and/or delivered to Seller the following:

(i) A counterpart of Closing Statement;

(ii) Evidence in form and substance satisfactory to the Title Company that any and all actions required to authorize and approve the execution of and entry into this Contract by Buyer, the performance by Buyer of all of Buyer's duties and obligations under this Contract, and the execution and delivery by Buyer of all documents and other items to be delivered to the Title Company or Seller at Closing have been accomplished, and that the person executing the Closing Documents on behalf of Buyer has full right, power and authority to do so;

(iii) A certificate from Buyer stating whether or not Buyer's representations and warranties made herein are true as of the Closing Date;

(iv) The net cash balance of the Purchase Price due at Closing for the Easement, pursuant to the Closing Statement;

(v) Written notice executed by the President of AAF to the escrow agent under that certain Document Escrow Agreement whereby such escrow agent is instructed to deliver the Escrow Documents (as defined in such Document Escrow Agreement) to the Parties at the place and time designated by the Parties in such joint break of escrow instructions; and

(vi) Any other documents reasonably necessary or advisable to consummate the transactions contemplated hereby.

11. CONDITIONS PRECEDENT TO CLOSING. Seller's and Buyer's obligation to consummate the purchase and sale of the Easement on the Closing Date shall be subject to the satisfaction or waiver (any such waiver to be in the sole discretion of the waiving Party) of those certain conditions precedent enumerated on Exhibit F, attached hereto and made a part hereof, as well as the satisfaction or performance of the following terms and conditions (collectively, those set forth on Exhibit F and below, the "Conditions Precedent"), any one or more of which may be waived in writing by the Party in whose favor such conditions run, in whole or in part, on or as of the Closing Date:

(a) Seller's Conditions Precedent to Closing.

(i) Buyer shall have fully and completely kept, observed, performed, satisfied and complied with all material terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Contract to be kept, observed, performed, satisfied or complied with by Buyer before, on or as of the Closing Date.

(ii) The representations and warranties of Buyer in this Contract shall be true and correct in all material respects, and certified by Buyer to Seller as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(iii) Seller shall not have terminated this Contract pursuant to an express right to so terminate set forth in this Contract.

(b) Buyer's Conditions Precedent to Closing.

(i) Seller shall have consummated the purchase of the Ranch Property and the Additional Property;

(ii) Seller shall have fully and completely kept, observed, performed, satisfied and complied with all material terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Contract to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date.

(iii) The representations and warranties of Seller in this Contract shall be true and correct in all material respects, and certified by Seller to Buyer as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date.

(iv) Buyer shall not have terminated this Contract pursuant to an express right to so terminate set forth in this Contract.

(v) Title to the Easement shall be in the condition required by Paragraph 8, and no matters affecting Easement shall have been filed or recorded between the effective date of Buyer's most recent update of the Title Commitment and recordation of the Easement, and the Title Company shall have irrevocably committed to issue the Title Policy, without exception other than for the Permitted Exceptions.

(vi) On the Closing Date, the Property shall be in substantially the same condition as it was at the expiration of the Inspection Period.

(c) If any of the Conditions Precedent have not been satisfied or performed or waived in writing by the party in whose favor such conditions run on or as of the Outside Closing Date, unless such Outside Closing Date has been extended pursuant to Section 6 of this Contract, such party shall have the right, at such party's option, either: (i) to terminate this Contract by giving written notice to the other party, in which event all rights and obligations of Seller and Buyer under this Contract shall expire, and this Contract shall become null and void and Buyer shall receive the return of its Deposit; or (ii) to waive such condition in writing and proceed with Closing.

12. POSSESSION. Subject to the terms hereof, including the Permitted Exceptions, possession of the Easement, subject to the terms set forth therein, shall be delivered to Buyer at Closing.

13. DEFAULT.

(a) In the event that:

(i) any of Seller's representations and warranties contained herein are not true and correct; or

(ii) Seller fails to perform in any respect any of the covenants and agreements contained herein to be performed by Seller within the time for performance as specified herein (including Seller's obligation to consummate the transactions contemplated hereby), but specifically excluding:

1. the refusal to waive the satisfaction of one or more of the Conditions Precedent, when such waiver may be withheld in the sole discretion of the Seller,
2. any inability of the Authority to consummate the transactions to acquire the Ranch Property and/or the Additional Property due to (A) the failure of third parties to satisfy conditions precedent to the consummation thereof that are outside of the Authority's control (including the condition precedent set forth in Section 11(a)(iv) of that certain Contract of Sale and Purchase between SLR, FRI and OOCEA that was approved by OOCEA's governing Board on August 28, 2013 for the purchase of the Ranch Property), despite the Authority's good faith and diligent

efforts to enforce the terms and conditions of the transactions to acquire the Ranch Property and/or the Additional Property, (B) the Authority exercising its rights to terminate any contract for the acquisition of the Ranch Property and/or the Additional Property pursuant to their respective terms, or (C) the Authority's inability to enter into one or more contracts for the acquisition of all or any portion of the Additional Property with the owner(s) of the Additional Property despite the Authority's good faith and commercially reasonable efforts to do so; or

(iii) the purchase and sale of the Easement is otherwise not consummated in accordance with the terms and provisions of this Contract due to circumstances or conditions which constitute a default by Seller under this Contract,

Buyer shall have and may exercise only the following rights and remedies: (Y) Buyer shall have the right to terminate this Contract, in which event the Deposit shall be refunded to Buyer immediately upon request as agreed upon liquidated damages for expenses incurred and not as a penalty or forfeiture, actual damages being difficult or impossible to measure, whereupon the Parties shall be relieved of any further obligation or liability hereunder and all rights and obligations of the Parties under this Contract shall expire and this Contract shall become null and void; or (Z) Buyer shall have the right to sue Seller for specific performance of this Contract.

Seller and Buyer understand that the remedy of liquidated damages is a proper and mutually acceptable negotiated remedy for the Parties due to the fact that the damages suffered by Buyer are not ascertainable at the time of execution of this Contract and that the foregoing liquidated damages take into account the peculiar expenses and risks assumed by each Party. Buyer hereby waives and releases any right to sue Seller, and hereby covenants not to sue Seller, to prove that Buyer's actual damages under this Agreement exceed the Deposit which is herein provided to Buyer as full liquidated damages. The foregoing liquidated damages shall not apply to limit the Buyer's right to sue Seller for specific performance of this Contract, which rights Buyer may enforce to the fullest extent provided for or allowed by law or in equity. For the avoidance of doubt, the Buyer's remedy to sue the Authority for specific performance of this Contract shall not extend to compelling the Authority to purchase or otherwise acquire the Ranch Property and/or the Additional Property where the particular sale and purchase contracts pertaining thereto provides for rights and conditions under which the Authority need not close and not be in default thereunder and the Authority has exercised such right or such condition has occurred.

(b) If the purchase and sale of the Easement is not consummated in accordance with the terms and provisions of this Contract due to circumstances or conditions which constitute a default by Buyer under this Contract (specifically excluding the refusal to waive the satisfaction of one or more of the Conditions Precedent, when such waiver may be withheld in the sole discretion of the Buyer), then Seller, as and for its sole and exclusive remedy, shall be entitled to receive and retain the Deposit previously delivered to Escrow Agent as agreed upon liquidated damages for withholding the Property from

the market and for expenses incurred and not as a penalty or forfeiture, actual damages being difficult or impossible to measure, whereupon the Parties shall be relieved of any further obligation or liability hereunder and all rights and obligations of the Parties under this Contract shall expire and this Contract shall become null and void. Seller and Buyer understand that the remedy of liquidated damages is a proper and mutually acceptable negotiated remedy for the Parties due to the fact that the damages suffered by Seller are not ascertainable at the time of execution of this Contract and that such remedy takes into account the peculiar expenses and risks assumed by each Party. Seller hereby waives and releases any right to sue Buyer, and hereby covenants not to sue Buyer, for specific performance of this Contract or to prove that Seller's actual damages exceed the Deposit which is herein provided Seller as full liquidated damages. The foregoing liquidated damages shall not apply to any liability of Buyer under the indemnification provisions of Paragraphs 5 or 21, as to all of which Seller shall have all rights and remedies provided for or allowed by law or in equity.

14. RISK OF LOSS AND INSURANCE. The risks and obligations of ownership and loss of the Property, to the extent owned by Seller, and the correlative rights against insurance carriers and third parties, shall at all times belong to Seller or, after Closing, as otherwise set forth in the Easement. In the event of the damage or destruction of any portion of the Property prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Contract by giving written notice thereof to Seller prior to Closing, in which event the Deposit shall be refunded to Buyer immediately upon request, all rights and obligations of Seller and Buyer under this Contract shall expire, and this Contract shall become null and void except for such obligations which specifically survive such termination. If Buyer does not so terminate this Contract, the Purchase Price shall not be reduced by reason of such damage or destruction.

15. FURTHER ASSURANCES; SURVIVAL. At Closing, and from time to time thereafter, the Parties shall do all such additional and further acts, and shall execute and deliver all such additional and further documents as the Title Company may reasonably require to assure Buyer's rights under the Easement to the full extent contemplated by this Contract and otherwise to effectuate the purchase and sale of the Easement as contemplated by and provided for in this Contract and the obligation to do so shall survive the consummation of the purchase and sale of the Easement on the Closing Date, the delivery of the Easement to Buyer and the payment of the Purchase Price; provided, however, the survival of the representations, covenants, and warranties contained in the Paragraph above titled "Representations, Warranties and Additional Covenants" shall survive for one year. Notwithstanding any provision of this Contract to the contrary, the indemnification provisions of Paragraphs 5 and 21 shall survive any termination of this Contract.

16. ATTORNEYS FEES AND COSTS. In the event of any litigation between Buyer and Seller arising under or in connection with this Contract, the prevailing party shall be entitled to recover from the other party the expenses of litigation (including reasonable attorneys' fees, paralegals' fees, expenses and disbursements whether incurred at trial, on appeal or in bankruptcy) incurred by the prevailing party. For purposes of this Paragraph 16, the phrase "prevailing party" shall mean the party who receives substantially the relief desired, whether by dismissal, summary judgment, judgment, settlement or otherwise.

17. NOTICES. Whenever any notice, demand or request is required or permitted under this Contract, such notice, demand or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the address for each party set forth below, or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile to the number for each party set forth below, or to such other numbers as are specified by written notice given in accordance herewith:

(a) If to Seller, then to:

Orlando-Orange County Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attention: Max Crumit
Telephone: (407) 690-5000
Facsimile: (407) 690-5011

With a copy to:

Orlando-Orange County Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attention: Joseph Passiatore, Esq.
Telephone: (407) 690-5000
Facsimile: (407) 690-5011

And a copy to:

Shutts & Bowen LLP
300 South Orange Avenue, Suite 1000
Orlando, Florida 32801
Attention: Kenneth W. Wright, Esq.
Telephone: (407) 835-6911
Facsimile: (407) 425-8316

(b) If to Buyer, then to:

All Aboard Florida – Operations LLC
2855 Le Jeune Road, 4th Floor
Coral Gables, FL 33134
Attention: P. Michael Reininger

With copies to:

All Aboard Florida – Operations LLC
2855 Le Jeune Road, 4th Floor
Coral Gables, FL 33134
Attention: Kolleen O. P. Cobb

Akerman Senterfitt
350 East Las Olas Boulevard, Suite 1600
Fort Lauderdale, FL 33301
Attention: Eric D. Rapkin

(c) If to Title Company:

First American Title Insurance Company
National Commercial Services Division
420 S. Orange Avenue, Suite 250
Orlando, Florida 32801
Attn: Keren Marti

All notices, demands or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile shall be deemed given on the date of facsimile transmittal.

18. ASSIGNMENT. Buyer shall not assign this Contract without the prior written consent of Seller, which consent may be withheld or conditioned in Seller's sole discretion. No assignment shall relieve Buyer of its obligations hereunder.

19. TIME. Time is of the essence of this Contract. Should any time period referenced herein expire on a Saturday, Sunday or "Legal Holiday" (days upon which either National Banks or the Orange County, Florida Courthouse are closed for usual business), such time period shall be extended to 5:00 P.M. on the next full business day. The final day of any time period under this Contract or any deadline under this Contract shall be the specified day or date, and shall include the period of time through and including such specified day or date.

20. MISCELLANEOUS. This Contract shall be construed in accordance with and governed in all respects by the internal laws of the State of Florida. Neither this Contract nor any term, covenant or condition hereof may be modified or amended, except by written agreement signed by both Parties. The headings of the paragraphs and subparagraphs hereof are for purposes of convenience only and shall in no way affect the construction. Each and all of the exhibits hereto are attached to this Contract and are hereby incorporated herein in full. This Contract and the Exhibits hereto comprise the entire agreement between the parties hereto, provided, however, that it is expressly acknowledged and agreed by the Parties that the following agreement has also been executed in connection with the Project and that such agreement is expressly intended by Buyer and Seller to survive the execution of this Contract and to remain

enforceable in accordance with the terms and conditions thereof, notwithstanding the execution of this Contract, unless and until the Closing occurs, at which time the Parties shall provide the joint break of escrow instructions as contemplated in Paragraph 10 hereof: that certain Document Escrow Agreement made as of July 1, 2013 (the "Document Escrow Agreement Effective Date"), by and between the Authority, AAF and the Escrow Agent, pursuant to which there is being held in escrow that certain Lease Agreement between the Authority and AAF (the "Lease" or the "Authority's Lease") regarding a portion of the Authority's right-of-way on State Road 528. No promises, covenants, representations, or warranties of any kind, other than those expressly set forth herein and in the agreements attached as Exhibits hereto, have been made to induce either party to enter into this Contract. This Contract and all of the terms, covenants and conditions hereof and of the various instruments executed and delivered pursuant hereto shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns. Notwithstanding any statutory or decisional law to the contrary, a facsimile transmittal or electronic transmittal of a .pdf shall constitute an original and be deemed to be "written" and a "writing" for all purposes of this Contract. Capitalized terms used in this Contract shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used. Wherever appropriate in this Contract, personal pronouns shall be deemed to include the other genders and the singular to include the plural. Failure by any party to complain of any action, non-action or breach of any other party shall not constitute a waiver of any aggrieved party's rights hereunder. Waiver by any party of any right arising from any breach of any other party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future. This Contract may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Notwithstanding any provision of this Contract to the contrary, no provision of this Contract shall inure to the benefit of or be enforceable by any third party not a party hereto, it being the express intent of Seller and Buyer that there be no third party beneficiary to this Contract.

21. CONTRACT NOT RECORDABLE. Neither this Contract nor any evidence of the existence of this Contract shall be recorded in the public records of any county in the State of Florida; provided, however, that the foregoing shall not prohibit or restrict Buyer from filing for record a *lis pendens* or other record notice of the existence of this Contract in connection with Buyer's exercise of its rights and remedies in the event of default by Seller. **Any attempt to record this Contract or any memorandum hereof or any reference hereto by Buyer or any agent or representative of Buyer in violation of this prohibition shall, at the sole option of Seller, constitute a material default by Buyer. Seller shall have the unilateral right to terminate any such recording; and third-parties shall have the absolute and unconditional right to rely on any such unilateral termination without confirmation by Buyer. In addition to all other remedies Seller may invoke, if Buyer violates this provision, Buyer shall indemnify, defend, and hold harmless Seller from all claims, demands, causes of action, suits, liabilities, debts, fines, penalties, setoff, torts, negligence, damages (including without implied limitation consequential damages), judgments, obligations, losses, costs and expenses (including without limitation attorneys' and paralegals' fees and costs of litigation before all tribunals), and remedies or claims for relief of any nature whatsoever, incurred by or asserted against Seller caused by, with respect to, or arising out of Buyer's**

violation of this provision. Notwithstanding any provision herein to the contrary, Seller and Buyer acknowledge that Seller is a public entity subject to the laws of the State of Florida, including the Florida Public Records Laws and that this Contract is and will remain a public document, has and will be discussed in public meetings, will be recorded in Seller's minutes and will be available for review and inspection by the public.

22. BROKER'S COMMISSION. Seller represents to Buyer that Seller has not engaged the services of any real estate broker in connection with the transaction contemplated by this Contract. Buyer represents to Seller that Buyer has not engaged the services of any real estate broker in connection with the transaction contemplated by this Contract. Buyer shall indemnify and hold harmless the Seller from and against any loss, damages, liability, obligations, costs, expenses and fees (including reasonable attorneys' and paralegals' fees) arising out of any and all claims or demands with respect to any brokerage fees or agent's commissions or other compensation asserted by any person, firm or corporation in connection with this Contract or the transaction contemplated hereby arising from any action on the part of Buyer. Seller shall indemnify and hold harmless the Buyer from and against any loss, damages, liability, obligations, costs, expenses and fees (including reasonable attorneys' and paralegals' fees) arising out of any and all claims or demands with respect to any brokerage fees or agent's commissions or other compensation asserted by any person, firm or corporation in connection with this Contract or the transaction contemplated hereby arising from any action on the part of Seller.


23. PRESS RELEASES; PUBLIC ANNOUNCEMENTS. Buyer and Seller agree that neither of them shall distribute any press release or make any other public announcement regarding the existence or terms of this Agreement without first providing notice to the other party and affording the other party a reasonable opportunity to participate and comment with regard to the nature and substance of the proposed press release or public announcement.

24. INNOVATION WAY INTERCHANGE. Buyer shall not cause or allow the course of constructing its tracks and facilities on the Property, to materially delay, disrupt, or impede the construction of the new interchange planned for SR 528 and Innovation Way ("Innovation Way Interchange").

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set forth below their signatures.

BUYER

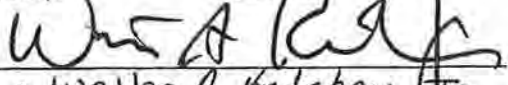
ALL ABOARD FLORIDA- OPERATIONS
LLC, a Delaware limited liability company

By: 
Name: P. Michael Peininger
Title: President

Date executed by Buyer: Dec. 20, 2013

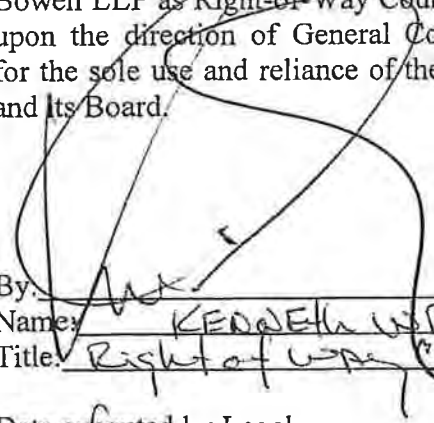
SELLER

ORLANDO-ORANGE COUNTY
EXPRESSWAY AUTHORITY, a body
corporate and politic existing pursuant to
Chapter 348, Florida Statutes

By: 
Name: Walter A. Ketcham, Jr.
Title: Chairman

Date executed by Seller: Oct. 11, 2013

APPROVED AS TO FORM AND
LEGALITY based upon review by Shutts &
Bowen LLP as Right-of-Way Counsel, acting
upon the direction of General Counsel, and
for the sole use and reliance of the Authority
and its Board.

By: 
Name: KENNETH W. PUGH
Title: Right of Way Counsel

Date executed by Legal
Oct. 16, 2013

Exhibits

- Exhibit A-1** – Rail Line Easement of the Ranch Property
- Exhibit A-2** – Rail Line Easement of the OOCEA Property
- Exhibit A-3** – Rail Line Easement of the Additional Property
- Exhibit B** – Escrow Agent Terms
- Exhibit C-1** – Agreement Granting Right of Way Entry (SLR Property)
- Exhibit C-2** – Agreement Granting Right of Way Entry (FRI Property)
- Exhibit D** – Form of Declaration of Restrictions
- Exhibit E** – Form of Seller's Affidavit
- Exhibit F** – Conditions Precedent

JOINDER OF ESCROW AGENT

The undersigned, as Escrow Agent, hereby joins in the execution of this Contract solely for the purpose of: (i) acknowledging and agreeing to its responsibilities as the escrow agent hereunder; and (ii) acknowledging receipt from Buyer of the Initial Deposit, subject to collection and clearance.

FIRST AMERICAN TITLE INSURANCE
COMPANY

By: Kara M. Grassi
Name: Kara M. Grassi
Title: V.P.

Exhibit A-1
Rail Line Easement of the Ranch Property

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Laura Kelley
Executive Director

FROM: Linda Lanosa *Linda L. Lanosa*
Deputy General Counsel

Robert Johnson
Manager of Procurement

SUBJECT: Right-of-Way Counsel Services
Contract No. 001116
Recommendation for Award of Contract

DATE: May 18, 2015

A Request for Proposals (RFP) from qualified firms to provide the subject services was advertised on February 15, 2015. Responses to the request were received from two (2) firms (Mateer & Harbert, P.A., and Adorno Law Firm, P.L.) by the May 8, 2015, deadline for submittal of technical proposals. Since less than three submittals were received, the Deputy Executive Director, Deputy General Counsel, and the Manager of Procurement met (in accordance with the Procurement Procedures Manual) on May 8, 2015, and agreed that the review and evaluation process for the two submittals should proceed.

Copies of the technical proposals were distributed to the Evaluation Committee for review and scoring. Price proposals from the firms were received on May 8, 2015. The Committee met on May 18, 2015, to discuss the proposals, open the price proposals and record the scores. That scoring resulted in the following ranking of the firms: 1) Mateer & Harbert, P.A.; 2) Adorno Law Firm, P.L.

In accordance with the Procurement Procedures Manual, Article V, Procurement Processes, as it relates to a recommendation of award when less than three sealed proposals are received, and for the reasons stated in the Manager of Procurement's memo to the file dated, May 4, 2015, it is our joint recommendation that the contract be awarded to Mateer & Harbert, P.A. in the amount of \$930,500.00. We believe that the Authority's best interests would be served by awarding the contract to Mateer & Harbert, P.A.

Accept Recommendation ☒ Reject Recommendation ☐

[Signature]
Laura Kelley, Executive Director

5-18-15
Date

If rejected, reason(s) for rejection:

RFP-001116 Committee Meeting May 18, 2015 Minutes

Evaluation Committee for **Right-of-way Counsel, 001116**, held a duly noticed meeting on Monday, May 18, 2015, commencing at 10:04 a.m. in the Pelican Conference Room at the CFX Administrative Bldg., Orlando, Florida.

Committee Members Present:

Joe Passiatore, General Counsel, CFX
Linda Lanosa, CFX Deputy General Counsel
William Chip Turner, Orange County, Assistant County Attorney
Laurie Botts, City of Orlando, Real Estate Director

Other Attendees:

Robert Johnson, Manager of Procurement, CFX

Discussion and Motions:

Robert commenced the meeting with introductions, collected the committee member disclosure forms, and explained the RFP process and the purpose of today's meeting which was to finalize the technical and price proposal evaluations, and make a final recommendation to the Board with regard to Right of Way Counsel.

Proposal Evaluation Portion:

Robert stated the evaluation portion of the meeting is open to the public in accordance with Florida Statutes. The committee members were given the opportunity to discuss the technical proposals prior to submitting their evaluation forms. General discussion ensued about the proposals that were submitted. The committee members submitted their evaluations to Robert for tallying. Robert Johnson tallied the score sheets utilizing the raw scores assigned by each committee member for each Proposal received. Attached are the summary results of the individual committee member scores. Robert Johnson tallied the committee member score sheets utilizing the raw scores assigned by each Committee member and averaged the raw scores for each Proposal received onto the final summary sheet.

Pricing, Total Points and Rankings

Upon completion of the evaluation of the technical portion, Robert opened the pricing proposals and scored the pricing proposals in accordance with the RFP requirements. See attached final summary sheet for pricing, total points and ranking results.

Committee recommends CFX Board approve ranking and award the contract to the top ranked firm, Mateer & Harbert P.A.. The Committee agreed that Linda Lanosa would review and approve the minutes on behalf of the committee.

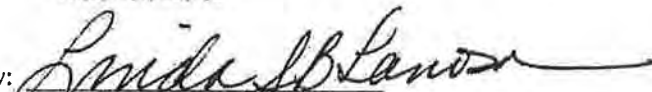
There being no other business to come before the Committee; the meeting was adjourned at 10:30am.

These minutes are considered to be the official minutes of the Technical Review Committee meeting held Monday, May 18, 2015, and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:


Robert Johnson

Approved by:


Linda Lanosa Linda Lanosa

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
TECHNICAL AND PRICE PROPOSAL SCORING SUMMARY
ROW COUNSEL SERVICES RFP-001116

EVALUATOR	Adorno Law Firm, PL	Mainer & Harbert, P.A.	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE	TECHNICAL	PRICE
Linda Lamosa	35	80										
Joe Passalunghi	68	78										
William Chilo Turner	25	65										
Laurie Bots	33	80										
TOTAL	163	303										
AVG. TECH. POINTS	40.75	75.75										
PRICE PROPOSAL SUMMARY												
PROPOSER	PROPOSAL AMOUNT	POINT VALUE	PROPOSER	TECHNICAL POINTS	PRICE POINTS	TOTAL POINTS	FINAL RANKING	PROPOSER	TECHNICAL POINTS	PRICE POINTS	TOTAL POINTS	FINAL RANKING
Adorno Law Firm, PL	\$742,300.00	20.00	Adorno Law Firm, PL	40.75	20.00	60.75	2	Mainer & Harbert, P.A.	75.75	15.95	91.70	1
Mainer & Harbert, P.A.	\$820,500.00	15.95										

Committee Members:

Monday, November 17, 2014
Monday, November 17, 2014
Monday, November 17, 2014
Monday, November 17, 2014

George Ball
David Lamosa
Joe Passalunghi
Laurie Bots

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: File

FROM: Robert Johnson
Manager of Procurement

SUBJECT: Right-of-Way Counsel Services
Contract No. 001116

DATE: May 4, 2015

As required by the Procurement Procedures Manual, this memo documents the results of a meeting held on May 4, 2015, between the Deputy Executive Director of Finance and Administration, Deputy General Counsel, and the Manager of Procurement regarding the fact that only two submittals were received for the subject contract on the due date of May 4, 2015. The purpose of the meeting was to decide if the RFP review process should continue for the two submittals or if the proposals should be rejected and the contract re-advertised.

The submittals were received from Mateer & Harbert, P.A., and Adorno Law Firm, P.L. Based on staff's knowledge of the number of law firms notified of this RFP, the number of law firms conflicted out for one reason or another, and the time constraints imposed to have the properties acquired through an expedited schedule, it was the opinion of staff that re-advertising the solicitation to generate more participation would not be successful and would possibly cause a delay in acquiring the properties by the end of the year.

Based on the above, it was agreed that the RFP review process should continue for the two responses received.

AGREEMENT

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
MATEER & HARBERT, P.A.**

RIGHT OF WAY COUNSEL SERVICES

CONTRACT NO. 001116

CONTRACT AMOUNT: \$930,500.00

**CENTRAL FLORIDA
EXPRESSWAY AUTHORITY**

**AGREEMENT
FOR
RIGHT OF WAY COUNSEL SERVICES**

CONTRACT NO. 001116

June 2015

Members of the Board

**Welton G. Cadwell, Chairman
S. Scott Boyd, Vice Chairman
Brenda Carey, Secretary/Treasurer
Fred Hawkins, Jr., Board Member
Teresa Jacobs, Orange County Mayor
Buddy Dyer, City of Orlando Mayor
Walter A. Ketcham, Jr., Board Member
Jay Madara, Member
S. Michael Scheeringa, Member
Diane Guitierrez-Scaccetti, Non-Voting Advisor**

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Technical Proposal	TP-1 to TP-56

**AGREEMENT
RIGHT OF WAY COUNSEL SERVICES
CONTRACT NO. 001116**

THIS AGREEMENT ("Agreement") is entered into as of June 11, 2015, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and corporate, and an agency of the State of Florida, 4974 ORL Tower Road, Orlando, Florida 32807 ("AUTHORITY"), and MATEER & HARBERT, P.A. ("COUNSEL").

WITNESSETH:

WHEREAS, the AUTHORITY desires to retain the services of competent and qualified legal counsel to provide right-of-way counsel services on an as-needed basis;

WHEREAS, on April 12, 2015, the AUTHORITY issued a Request for Proposals for Right of Way Counsel Services for the acquisition of four parcels along State Road 528 for, in part, All Aboard Florida's proposed intercity passenger rail. The four parcels are described below.

Parcel No.	Owner	Preliminary Estimate of Area Needed	Draft Appraised Value (Restricted)
102	Bal Bay Realty LTD	17.63-Acres	\$ 1,765,000
104	Mattamy (Jacksonville) Partnership	3.05-Gross Acres	\$ 100,000
105	Carlsbad Orlando LLC	166.65-Acres	\$12,500,000
108	B & M Investment LLC	111,078-Net Sq. Ft.	\$ 360,000

WHEREAS, based upon the recommendation of the Evaluation Committee at its meeting held on May 18, 2015, and the recommendation of the Right of Way Committee at its meeting held on May 27, 2015, the Board of Directors of the AUTHORITY at its meeting held on June 11, 2015, selected COUNSEL to serve as Right of Way Counsel; and

WHEREAS, COUNSEL is competent, qualified and duly authorized to practice law in the State of Florida and desires to provide professional legal services to the AUTHORITY according to the terms and conditions stated herein.

WHEREAS, to avoid the need for change orders, COUNSEL has assumed the worst-case scenario for each parcel, including the cost of a trial, and provided a not-to-exceed amount for the condemnation of each of these four parcels.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, the AUTHORITY and COUNSEL agree as follows:

SECTION 1. SERVICES. The AUTHORITY does hereby retain COUNSEL to furnish professional services and perform those tasks generally described as legal services related to AUTHORITY right of way matters as further described in the Scope of Services attached hereto and incorporated herein as Exhibit "A."

SECTION 2. NO ASSURANCE REGARDING SCOPE OR QUANTITY OF SERVICE.

(a) Although the AUTHORITY currently anticipates using the services of COUNSEL, the AUTHORITY provides no assurance to COUNSEL regarding the amount or quantity of legal services that COUNSEL will provide the AUTHORITY under this Agreement.

(b) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement may arise from time to time. The AUTHORITY designates the AUTHORITY's General Counsel or Deputy General Counsel as the AUTHORITY employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representatives shall have the authority to transmit instructions, receive information, and interpret and define the AUTHORITY's policy and decisions pertinent to the work covered by this Agreement. The AUTHORITY may, from time to time, notify COUNSEL of additional employees to whom communications regarding day-to-day conduct of this Agreement may be addressed.

SECTION 3. RESPONSIBILITIES OF COUNSEL.

(a) COUNSEL agrees to timely provide the professional services and facilities required by the Scope of Services and to assist the AUTHORITY in other areas of responsibility as deemed necessary by the AUTHORITY. COUNSEL represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. All of the services required herein under shall be performed by COUNSEL or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under the federal, state and local law to perform such services.

(b) COUNSEL shall keep abreast of statutes, regulations, codes, tax codes and applicable case law in all areas of responsibility at its sole expense.

(c) COUNSEL designates _____, as the primary attorney to provide services to the AUTHORITY and will be assisted from time to time by other members of the firm, as (he) (she) deems appropriate to the needs of the particular activity.

(d) COUNSEL agrees to utilize associates and legal assistants/paralegals, under the supervision of COUNSEL, where appropriate to accomplish cost effective performance of services.

(e) It shall be the responsibility of COUNSEL to specifically request all required information and to provide itself with reasonably sufficient time to review all information so as not to delay without good cause performance under this Agreement.

(f) COUNSEL shall be responsible for the professional quality, technical accuracy, competence and methodology of the work done under this Agreement.

(g) In providing Services under this Agreement, COUNSEL will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by

members of the same profession currently practicing under similar circumstances. Upon notice by the AUTHORITY, COUNSEL will correct those Services not meeting such a standard. COUNSEL agrees to notify the AUTHORITY in writing of ANY members of the firm that may be reprimanded, suspended, disbarred or otherwise disciplined by the Florida Supreme Court during the course of this Agreement.

SECTION 4. PAYMENT FOR SERVICES AND BILLING.

In consideration of the promises and the faithful performance by COUNSEL of its obligations, the AUTHORITY agrees to pay COUNSEL a fee based on the hourly rates times the number of hours, with a not-to-exceed amount, attached hereto as Exhibit A, subject to any alternate billing methods set forth in the negotiated price sheet. COUNSEL agrees to only utilize the named in Exhibit A at the rates set forth therein. No other individuals may provide services under this Contract unless specifically authorized by the General Counsel in writing.

(a) The AUTHORITY will not provide a retainer and there will be no increase in the rates during the three year term of the agreement. The AUTHORITY, through its General Counsel, reserves the right to contest any charge or charges including a request for greater clarification and detail on any line item submitted for payment. The parties agree that the AUTHORITY reserves the sole right to determine if any discrepancies in billing practices or invoices are significant. If deemed significant, the AUTHORITY unilaterally reserves the right to terminate the Agreement pursuant to the termination provisions contained in this Agreement.

(b) Reimbursable expenses shall be paid in addition to the payment due under subsection (a) above and shall include actual expenditures made by COUNSEL, its employees or its professional consultants in the interest of the work effort for the expenses listed in the following subsections; provided; however, that all reimbursements of expenses shall be subject to the AUTHORITY's policies and procedures, including those for travel expenses:

(1) Reasonable expenses of transportation, when traveling outside of Orange, Lake, Seminole, or Osceola Counties, pursuant to Section 112.061, Florida Statutes.

(2) COUNSEL will be reimbursed for the following out-of-pocket expenses, but only at cost and with the submittal of receipts in support of the expenses, and only to the extent they are incurred directly in connection with the Scope of Services: court reporters, deposition transcripts, exhibits. COUNSEL will not be reimbursed for expenses such as telecopy, local or long-distance telephone, internal word processing, data processing, computer research, courier, scanning, copies, meals, or other service that would be deemed to be part of your firm's overhead expenses. However, COUNSEL will notify the General Counsel's Office of any large copy and print jobs in order for a determination to be made as to how the copying will be handled and expensed.

(3) Express approval by the AUTHORITY's Board is required before the retention of consultants equal to or in excess of \$25,000. Written authorization from the General Counsel's Office is required for consultant or expert contracts less than \$25,000.

(c) COUNSEL will not bill the AUTHORITY for duplicate services, such as the attendance of more than one attorney to prepare for and attend attorney conferences,

meetings, depositions, hearings, mediations, and trial, unless approved by the General Counsel in advance. COUNSEL will not bill the AUTHORITY for secretarial or clerical work such as typing, filing, scheduling, and other such tasks.

(d) COUNSEL will not bill the AUTHORITY for travel time or mileage within Orange, Lake, Seminole, or Osceola County, or travel time to court appearances, mediations, hearings, or meetings.

SECTION 5. TIME OF ESSENCE. Time is of the essence concerning the performance of all terms and conditions of this Agreement.

SECTION 6. GENERAL TERMS AND PAYMENT.

(a) Invoices should provide a concise summary of each entry which will sufficiently describe the particular entry. COUNSEL shall record and bill time in one-tenth of an hour increments (or *every* six minutes). The AUTHORITY shall reserve the right request additional documentation for any charge and the parties may agree to delete, strike or waive any disputed charges submitted. The AUTHORITY also reserves the right to request new invoicing be submitted, if necessary, at no additional charge.

(b) The AUTHORITY will pay COUNSEL within thirty (30) days of receipt of a valid invoice.

(c) COUNSEL agrees to maintain any and all books, documents, papers, accounting records and other evidences pertaining to services performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under this Agreement.

SECTION 7. OWNERSHIP OF DOCUMENTS. All legal opinions or any other form of written instrument or document that may result from COUNSEL's services or have been created during the course of COUNSEL's performance under this Agreement shall become the property of the AUTHORITY after final payment is made to COUNSEL; however, COUNSEL retains the right to retain copies of its work product and to use same for appropriate purposes. COUNSEL shall incorporate a similar provision into any subcontracts.

SECTION 8. TERM. This Agreement shall become effective _____, 2015, and, unless earlier terminated as provided for herein, shall run for a term of three (3) years, with two one-year renewals at the AUTHORITY's option. The options to renew are at the sole discretion and election of the AUTHORITY. Renewals will be based, in part, on a determination by the AUTHORITY that the value and level of service provided by COUNSEL are satisfactory and adequate for the AUTHORITY's needs. If a renewal option is exercised, the AUTHORITY will provide COUNSEL with written notice of its intent at least 90 days prior to the expiration of the initial 3-year Contract Term.

SECTION 9. CONFLICT OF INTEREST. COUNSEL hereby certifies that no officer, agent or employee of the AUTHORITY has any "material interest" (as defined in Section 112.312(15), Florida Statutes) either directly or indirectly, in the business of COUNSEL, and that no such person shall have any such interest at any time during the term of this Agreement.

(a) COUNSEL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for COUNSEL to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for COUNSEL, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

SECTION 10. COUNSEL further represents that no person having any interest shall be employed for said performance. COUNSEL shall promptly notify the AUTHORITY of all potential conflicts of interest for any prospective business association, interest or other circumstances which may influence or appear to influence COUNSEL's judgment or quality of services being provided hereunder. COUNSEL shall also notify the AUTHORITY in writing, of any potential conflicts regarding the representation of the AUTHORITY and any other clients COUNSEL may represent. The disclosure and ability to waive or not waive any conflicts shall be at the sole discretion of the AUTHORITY and pursuant to any professional rules of conduct promulgated by either the Supreme Court or the Florida Bar governing potential or actual conflicts.

SECTION 11. NO ASSIGNMENT. The parties fully understand and agree that the professionalism and specialization involved in serving as Right-of-Way Counsel is of paramount importance and that this Agreement would not be entered into by the AUTHORITY except for its confidence in, and assurances provided for, the character, abilities, and reputation of COUNSEL. Therefore, COUNSEL shall not assign or transfer their rights, duties and obligations provided for herein, nor allow such assignment or transfer by operation of law or otherwise without the prior written approval of the AUTHORITY.

SECTION 12. AMENDMENT. No waiver, alterations, consent or modification of any of the provisions of this Agreement, including any change in the Scope of Services, shall be binding unless made in writing and duly approved and executed by the parties hereto.

SECTION 13. LOSS OF ESSENTIAL LICENSE. The parties agree that any occurrence, whether within or beyond the control of COUNSEL, which renders one or more key personnel incapable of performing the duties and obligations required hereunder, including the loss or suspension of license to practice law in Florida, shall constitute an extraordinary breach of this Agreement and shall give the AUTHORITY the right to terminate this Agreement immediately upon written notice to COUNSEL. It shall be solely within the discretion of the AUTHORITY whether the affected member of COUNSEL's law firm is considered key personnel for purposes of this Agreement. This Section shall apply irrespective of the reason for the loss or suspension of any essential license.

SECTION 14. INDEPENDENT CONTRACTOR. COUNSEL shall be considered as an independent contractor with respect to all services performed under this Agreement and in no event shall anything contained within this Agreement or the Scope of Services be construed to create a joint venture, association, or partnership by or among the AUTHORITY and COUNSEL (including its officers, employees, and agents), nor shall COUNSEL hold itself out as or be considered an agent, representative or employee of the AUTHORITY for any purpose, or in any

manner, whatsoever. COUNSEL shall not create any obligation or responsibility, contractual or otherwise, on behalf of the AUTHORITY nor bind the AUTHORITY in any manner.

SECTION 15. INSOLVENCY. If COUNSEL shall file a petition in bankruptcy or shall be adjudged bankrupt, or in the event that a receiver or trustee shall be appointed for COUNSEL, the parties agree that the AUTHORITY may immediately terminate this Agreement with respect to the party in bankruptcy or receivership.

SECTION 16. INSURANCE. COUNSEL, at its own expense, shall keep and maintain at all times during the term of this Agreement:

- (a) Professional Liability or Malpractice Insurance with coverage of at least One Million Dollars (\$1,000,000) per occurrence.
- (b) Workers' Compensation Coverage as required by Florida law.

COUNSEL shall provide the AUTHORITY with properly executed Certificate(s) of Insurance forms on all the policies of insurance and renewals thereof in a form(s) acceptable to the AUTHORITY. The AUTHORITY shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action.

All insurance policies shall be issued by responsible companies licensed and authorized to do business under the laws of the State of Florida and having a financial rating of at least B+ Class VI and a claims paying ability rating of at least A+ from Best, or equivalent ratings from another nationally recognized insurance rating service.

SECTION 17. INDEMNIFICATION. COUNSEL shall indemnify and hold harmless THE AUTHORITY, its officers, agents, and employees harmless from and against all claims, suits, actions, damages and/or cause of action which may arise from any negligent act or omission of COUNSEL, its agents, servants, or employees as a result of the performance of services under this Contract, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof. Nothing in the Contract shall be deemed to affect the rights, privileges and immunities of the AUTHORITY as set forth in Section 768.28, Florida Statutes.

SECTION 18. ALTERNATIVE DISPUTE RESOLUTION. In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among all parties participating.

SECTION 19. WAIVER. The failure of the AUTHORITY to insist upon strict and prompt performance of any of the terms and conditions of this Agreement shall not constitute a waiver of the AUTHORITY's right to strictly enforce such terms and conditions thereafter.

SECTION 20. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return

receipt requested, addressed to the party to whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

For the AUTHORITY:

Mr. Joseph Passiatore, General Counsel
Ms. Linda Brehmer Lanosa, Deputy General Counsel
Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807

For COUNSEL:

SECTION 21. TERMINATION. The AUTHORITY may, by written notice to COUNSEL terminate this Agreement, in whole or in part, at any time, with or without cause. Upon receipt of such notice, COUNSEL shall:

- (a) immediately discontinue all services affected (unless the notice directs otherwise); and
- (b) deliver to the AUTHORITY all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by COUNSEL in performing this Agreement, whether completed or in process.

SECTION 22. COMPLIANCE WITH LAWS; EQUAL OPPORTUNITY EMPLOYMENT. COUNSEL shall conform and comply with and take reasonable precaution to ensure that every one of their directors, officers and employees abides by and complies with all applicable laws of the United States and the State of Florida, and all local laws and ordinances. Furthermore, COUNSEL agrees to and shall comply with all federal, state and local laws and ordinances prohibiting discrimination with regard to race, color, national origin, ancestry, creed, religion, age, sex, marital status or the presence of any sensory, mental or physical handicap or other disability, and will take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment; promotion; demotion; transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SECTION 23. SEVERABILITY. Should any term, provision, covenant, condition or other portion of this Agreement be held illegal or invalid, the same shall not affect the remainder of this Agreement, and the remainder shall continue in full force and effect as if such illegality or invalidity had not been contained herein.

SECTION 24. ENTIRE AGREEMENT. It is understood and agreed that the entire Agreement of the parties is contained herein (including all attachments, exhibits and appendices) and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof.

SECTION 25. PUBLIC ENTITY CRIMES. COUNSEL hereby acknowledges that it has been notified that under Florida Law a person or affiliate, as defined in §287.133, Florida Statutes, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in §287.017, Florida Statutes, for CATEGORY TWO, for a period of 36 months from the date of being placed on the convicted vendor list.

SECTION 26. RIGHTS AT LAW RETAINED. The rights and remedies of the AUTHORITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

SECTION 27. APPLICABLE LAW; VENUE. This Agreement shall be construed in accordance with and governed by the Laws of the State of Florida. Venue for any action brought hereunder, in law or equity, shall be exclusively in Orange County, Florida.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties as of the day and year first above written. This Contract was awarded by the Authority's Board of Directors at its meeting on June 11, 2015.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

Print Name: _____

MATEER & HARBERT, P.A.

By: _____

Print Name: _____

Title

ATTEST: _____ (Seal)

Approved as to form and execution, only.

General Counsel for the AUTHORITY

Exhibit A

SCOPE OF SERVICES RIGHT OF WAY COUNSEL

This Scope of Services is a general guide and is not intended to be a complete list of all work and materials that may be required by the Authority. Services are non-exclusive and shall apply to those future right of way matters not currently assigned to other counsel. Services to be performed by Counsel include, but are not limited to, the acquisition of four parcels along State Road 528 for, in part, All Aboard Florida's proposed intercity passenger rail. The parcels are described below.

Parcel No.	Owner	Preliminary Estimate of Area Needed	Draft Appraised Value (Restricted)
102	Bal Bay Realty LTD	17.63-Acres	\$1,765,000
104	Mattamy (Jacksonville) Partnership	3.05-Gross Acres	\$100,000
105	Carlsbad Orlando LLC	166.65-Acres	\$12,500,000
108	B & M Investment LLC	111,078-Net Sq. Ft.	\$360,000

Assuming the worst-case scenario (each case is tried) the services to be rendered may include:

- Assist with negotiations for the acquisition of real property, as requested
- Prepare and review proposed real estate contracts and agreements, as requested
- Order title reports and commitments, as needed, and issue title opinions for any parcels that are acquired through voluntary negotiations
- Review the project and plans and provide recommendations, advice, and direction for condemnation proceedings
- Review the Contract for Purchase of a Rail Easement and associated easement and provide input, recommendation, direction, and modifications or amendments, as needed
- Hire and retain consultants such as appraisers, land use experts, etc., with General Counsel approval (Note that Woody Hanson, MAI, and Hal Collins, AICP, have been retained by the Authority)
- Telephone or in person consultations with Authority staff Provide legal opinions, as needed, on issues or cases relevant to the acquisition of the property
- Initiate and represent the Authority in eminent domain proceedings for each of these parcels, as needed, including:
 - Pre-Order of Taking services
 - Post-Order of Taking services
 - Trial
- Provide estimated fees and costs for each case assigned to the law firm, upon request
- Provide no less than monthly reporting to the General Counsel on pending matters

- Transmit each parcel file to the Authority upon closure
- Such other matters as may arise as part of the acquisition of the S.R. 528 corridor or other matters (based upon the proposed hourly rates and subject to further negotiation)

PRICE PROPOSAL
RIGHT OF WAY COUNSEL SERVICES
CONTRACT NO. 001116

PRICE PROPOSAL OF

Mateer & Harbert, P.A.

(NAME)

225 E. Robinson Street, Suite 600, Orlando, FL 32801 (407) 425-9044

(ADDRESS)

(TELEPHONE NUMBER)

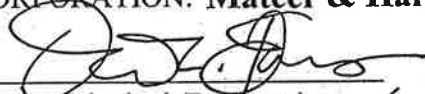
Submitted **May 1, 2015**

Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

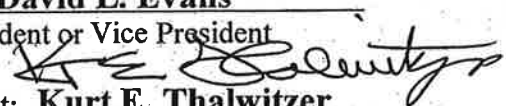
We, the undersigned, hereby declare that no person or persons, firm or corporation, other than the undersigned, are interested in this Price Proposal as principals, and that this Price Proposal is made without collusion with any person, firm or corporation. We have carefully and to our full satisfaction examined the Scope of Services and Contract included in the RFP package. We hereby agree to furnish all labor, equipment, and materials, as specified in the Scope of Services. We will fully complete all necessary work in accordance with the Scope of Services, Contract and addenda, if any, and the requirements under them for the not-to-exceed amounts shown on the Price Proposal sheet.

I (We), the undersigned, hereby certify that I (we) have carefully examined this Price Proposal after the same was completed, and have verified each item placed thereon; and I (we) agree to indemnify, defend, and hold harmless the Authority against any cost, damage, or expense which it may incur or be caused by any error in my (our) preparation of same.

CORPORATION: **Mateer & Harbert, P.A.**

, President
Principal (Proposer)

By: **David L. Evans**
President or Vice President


Attest: **Kurt E. Thalwitzer**
Secretary or Assistant Secretary
(Affix
Corporate
Seal)

INDIVIDUAL OR FIRM TRADING AS:

Principal (Proposer)

Signature: _____
Individual or Owner

Witness: _____

Witness: _____

PARTNERSHIP:

Principal (Proposer)

Signature: (1) Co-Partner or General Partner

Signature: (2) Co-Partner or General Partner

Witness: (1) _____

Witness: (1) _____

Witness: (2) _____

Witness: (2) _____

(If Partnership, list names and addresses of each partner on separate sheet and attach.)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
PRICE PROPOSAL
RIGHT-OF-WAY COUNSEL SERVICES - CONTRACT NO. 001116

ITEM NO.	PARCEL	NOT-TO-EXCEED AMOUNT
1	PARCEL 102 - BAL BAY REALTY, LTD	\$ 250,000.00
2	PARCEL 104 - MATTAMY (JACKSONVILLE) PARTNERSHIP	\$ 150,000.00
3	PARCEL 105 - CARLSBAD ORLANDO LLC	\$ 150,000.00
4	PARCEL 108 - B&M INVESTMENT LLC	\$ 380,500.00
TOTAL PROPOSAL AMOUNT		\$ 930,500.00

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

PRICE PROPOSAL

RIGHT-OF-WAY COUNSEL SERVICES - CONTRACT NO. 001116

NAME	CLASSIFICATION	TASKS TO BE PERFORMED	HOURLY RATE
Jay W. Small	Principal attorney	See Exhibit "A" attached	\$250.00
James R. Lussier	Partner	See Exhibit "A" attached	\$250.00
Thomas R. Harbert	Partner	See Exhibit "A" attached	\$250.00
Matthew J. Brown	Senior Associate	See Exhibit "A" attached	\$200.00
Leslie A. Evans	Associate	See Exhibit "A" attached	\$160.00
Melissa Cupps Battles	Senior Associate	See Exhibit "A" attached	\$200.00
Shannon M. Marshall	Paralegal	See Exhibit "A" attached	\$85.00
DeAnna Malinowski	Paralegal	See Exhibit "A" attached	\$85.00

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
PRICE PROPOSAL
RIGHT-OF-WAY COUNSEL SERVICES - CONTRACT NO. 001116

Exhibit "A"

NAME	TASKS TO BE PERFORMED
Jay W. Small	Pre-suit negotiations, depositions, expert witness management and coordination, attendance at meetings, mediation, hearings and trial.
James R. Lussier	Pre-suit negotiations, depositions, expert witness management and coordination, attendance at meetings, mediation, hearings and trial.
Thomas R. Harbert	Review of legal documents, contracts, title policies and opinions, drafting closing documents, attendance at required meetings.
Matthew J. Brown	Drafting of pleadings, discovery, factual investigation, depositions as assigned by litigation partners.
Leslie A. Evans	Drafting of pleadings, discovery, factual investigation, legal research.
Melissa Cupps Battles	Negotiating and drafting purchase and sale agreements and closing documents, due diligence, title review, environmental assessment review.
Shannon M. Marshall	Organize calendars, schedule meetings and telephone conferences, organize and manage files, draft pleadings and correspondence, prepare timelines, review title searches, draft title commitments and policies.
DeAnna Malinowski	Document management, discovery, indexing depositions, organizing case law and documents for hearings, mediation and trial.



A T T O R N E Y S A T L A W

TECHNICAL PROPOSAL

(Original)

Proposal For: RIGHT-OF-WAY COUNSEL SERVICES
Contract No.: 001116
Submitted To: CENTRAL FLORIDA EXPRESSWAY AUTHORITY
Submitted By: MATEER & HARBERT, P.A.
225 E. ROBINSON STREET, SUITE 600
ORLANDO, FL 32801
(407) 425-9044
JAY W. SMALL
JSMALL@MATEERHARBERT.COM
MAY 1, 2015



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9. Acknowledgment of Standard of Conduct and Code of Ethics
- ~~10. Acknowledgment of Addendums~~

Tab 1



A T T O R N E Y S A T L A W

ORLANDO • OCALA

JAY W. SMALL
E-MAIL ADDRESS
jsmall@mateerharbert.com

DIRECT LINE
(407) 377-6174

May 1, 2015

Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Claude Miller, Director of Procurement

Re: Authority Contract No. 001116; Right of Way Counsel; Transmittal Letter

Dear Mr. Miller:

Thank you for your consideration of Mateer & Harbert, P.A.'s response to the Request for Proposals ("RFP") for right-of-way counsel services, Contract No. 001116. This Transmittal Letter includes the information required by Section 3.1 A. of the RFP. I am the partner who is responsible for this response. Please direct any questions, comments, or requests for additional information to me regarding this response. In addition, this letter has been signed by an officer of the firm authorized to commit the firm's resources to this representation as required by Section 3.1.A of the RFP.

Mateer Harbert has the continuity and expertise to provide the Central Florida Expressway Authority ("CFX") with right-of-way counsel services for the All Aboard Florida ("AAF") project. Since it was founded in 1960, Mateer Harbert has represented public and private clients in a wide variety of condemnation cases in Central Florida and throughout the state. Its lawyers have litigated and tried to jury verdict numerous cases for public and private clients for acquisitions involving right-of-way, rail corridors, airport expansion, the construction of public educational facilities, flood control, community redevelopment, county and municipal purposes, inverse condemnation cases involving physical and regulatory takings, and disputes under the Bert J. Harris, Jr., Private Property Rights Protection Act, Chapter 70, Fla. Stat. (2015).

The two litigation partners who will be responsible for managing the right-of-way counseling assignment under this contract cumulatively have over 50 years of experience practicing in the area of condemnation law. Each is a member of the eminent domain committee of the Florida Bar, and Mr. Small frequently writes and lectures about condemnation and property rights issues. Each has represented public and private clients in condemnation cases. Mateer Harbert has never focused its practice upon representing exclusively condemners or condemnees. This affords CFX the unique benefit of retaining counsel who are capable of developing case management strategies and trial plans that anticipate the legal positions and tactics which may be taken by opposing counsel.

MATEER HARBERT

Central Florida Expressway Authority
May 1, 2015
Page 2

Although Mateer Harbert approaches each condemnation case it handles for a condemnor as if the case will involve a taking challenge or a jury trial, the firm is mindful that ultimately public dollars are being spent to acquire land and to pay for the fees and costs to acquire that land. Mateer Harbert understands that its role also includes being a proper steward of public dollars. Consequently, while Mateer Harbert's lawyers are prepared to try cases when needed, they also recognize the need to explore every opportunity to negotiate reasonable settlements for CFX so that its right-of-way acquisition dollars are spent on land, not attorneys' fees and costs.

As will be detailed further in the Technical Proposal section of this response, Mateer Harbert is aware of CFX's need to secure title to the land necessary for AAF as soon as possible. Based on the information attached in the RFP appendix, Mateer Harbert has developed a timeline and case management plan for obtaining title to the property. Mateer Harbert has already committed the manpower resources necessary to represent CFX in all transactional and litigation aspects of this project.

With its experience in this practice area and its scoping of this project, Mateer Harbert is prepared to represent CFX. Its lawyers have worked with the in-house counsel of its private institutional clients, and they have worked with the legal departments of similarly sized governmental entities. Its lawyers are familiar with how public entities operate and the need to comply with public meeting agenda deadlines and public records law. They are aware of the need to provide CFX's General Counsel, Right-of-Way Committee, and Board with detailed and timely information regarding the strengths and weaknesses of CFX's case and the owners' cases. Finally, Mateer Harbert is committed to providing the finest legal services, in a timely and responsive manner, at a reasonable cost.

Thank you for your consideration of this proposal.

By: _____

David L. Evans, President

Very truly yours,

Jay W. Small

JWS:mmm

4832-8463-2611, v. 1

Tab 2

TECHNICAL PROPOSAL

I. Experience of the Firm - Section 3.1.B. of the RFP

Although the RFP does not request inclusion of business licenses in the Technical Proposal, Mateer Harbert affirmatively represents that it is authorized to do business in the State of Florida and meets the qualification requirements of Section 1.6. of the RFP.

Mateer Harbert is capable of assisting CFX in a wide range of areas. Since 1960, Mateer Harbert has been a full service law firm with a practice in administrative and governmental law, condemnation, corporate and business law, real estate and land development, construction litigation, and governmental relations. It can handle the matters in the Scope of Services attached as Exhibit "A" to the RFP.

The same skills and legal services Mateer Harbert provides to its private institutional clients will assist in the CFX representation. Some significant real estate transactions the firm has handled include the preparation of title work and the issuance of a loan title policy for a \$218,000,000.00 bond closing in metropolitan Orlando. It has represented a seller in a \$92,000,000.00 sale of a mixed use commercial, retail, and residential project in Orlando and a seller of medical office buildings in excess of \$20,000,000.00.

The transactions described above are just a few examples of the types of transactions that have been handled by the real estate department of Mateer Harbert. The firm has more than 25 years of experience in drafting, negotiating, and finalizing documents to consummate complex commercial real estate transactions. The firm's duties in that regard have also included the oversight of due diligence, title review (including resolving complex title defects), comprehensive plan and zoning compliance, environmental assessment review, and other related matters.

Mateer Harbert's experience representing governmental transportation-related planning and other governmental agencies will assist in the CFX representation. Since 1977, Mateer Harbert has served as general counsel to Metroplan Orlando. In the past, Mateer Harbert has represented Orange County in its right-of-way acquisitions, for a period of time in excess of 5 years, and has represented the Florida Department of Transportation in limited access takings. It has also represented the Greater Orlando Aviation Authority in condemnations related to the construction of new runways and clear zone protection. Although not condemnation related, it also represents the Orange County Tax Collector and the Orange County Property Appraiser. By virtue of this public sector practice, the firm is familiar with public records request compliance and complying with the administrative policies of public entities.

Although it has not recently represented governmental entities that acquire right-of-way, the firm has extensive experience representing the School Board of Orange County and Orange County Public Schools ("OCPS") in condemnation cases since 2005. In 2013, OCPS issued a Request for Proposal for legal services. Although several other law firms competed for that work, Mr. Small was part of one of the highly ranked joint proposals awarded the legal services contract. When he left his prior firm, the legal services contract with OCPS was assigned to

Mateer Harbert by the District's General Counsel. Thus since 2005, the lawyers comprising Mateer Harbert's legal team have represented the District in complex condemnation cases totaling in excess of \$50,000,000.00 in value.

The acquisition of real estate for educational purposes by OCPS is initiated by OCPS's Real Estate Manager and the Facilities Department. When negotiations are unsuccessful, OCPS and its legal counsel review the scope of the proposed public improvement project. Rarely does OCPS have construction plans available at this stage. In this preliminary phase, Mateer Harbert's responsibilities include recommending ways to minimize the impacts of the acquisition on the parcels that are needed. OCPS staff establishes a date by which it needs property to open a new school or renovate an existing campus.

Mateer Harbert then provides the Office of the General Counsel and senior OCPS staff with a detailed "worst case scenario" litigation budget which estimates the costs of land acquisition, including the value of the part taken and, when feasible, damages, along with soft costs such as owners' anticipated attorneys' fees and costs and OCPS's anticipated attorneys' fees and costs. The lawyers of Mateer Harbert have handled several OCPS condemnation cases which have involved multiple parcels with numerous parties represented by separate law firms. With this litigation background, Mateer Harbert has the experience to estimate effectively the litigation costs of high dollar amount condemnation cases. Mateer Harbert also regularly deals with accelerated condemnation schedules. This experience will assist CFX in this project.

Mateer Harbert retains the District's expert witnesses, provides them with legal instructions and direction, and manages the coordination and delivery of multiple appraisal and expert witness reports. Some of the District's acquisitions involved partial takings without construction plans. Mateer Harbert is experienced in dealing with projects, the engineering details of which are not final at the beginning.

Specific examples of cases demonstrating Mateer Harbert's expertise as condemnor's counsel follow:

1. **Gotha Middle School Expansion.** The District condemned three (3) acres of property from Joy and Michael McGinty, well known and sympathetic property owners who operated an aquatics and swim academy on Morton Jones Road. The property was surrounded on all sides by Gotha Middle School. The owners contested the taking and valuation of their property. The jury trial was extensively covered by WFTV TV. OCPS's trial position was \$1,050,000.00, and the owners sought \$2,500,000.00. OCPS successfully obtained a jury verdict of \$1,150,000.00.

2. **Edgewater High School Expansion.** This involved the successful representation of the District in one of the most complex condemnation cases involving a single parcel of property in the history of Orange County, Florida. As a result of this representation, the District saved in excess of \$10,000,000.00 in property acquisition costs and fees. OCPS was considering purchasing a shopping center north of the existing high school to expand the campus. While OCPS was identifying its property needs, the owners, Edgewater 3348, LLC, represented by GrayRobinson, P.A., purchased additional property, increasing the size of the parent tract and

making it more suitable for mixed used development. This litigation strategy by the owners and their counsel was designed to increase the District's land acquisition costs, and the owners made a pre-suit settlement demand of \$35,000,000.00, exclusive of fees and costs. Before receiving this settlement proposal, the office of the General Counsel, the Superintendent, and senior OCPS staff were provided with a detailed analysis estimating that the owners would seek compensation of between \$30,000,000.00 and \$33,000,000.00. Despite the owner's efforts to increase the District's land acquisition costs, the litigation strategy and valuation theory pursued by counsel successfully resulted in a favorable settlement for the District. Notwithstanding the owner's position and their efforts to increase the cost of the acquisition, the District retained marketing experts to forecast the demand for future mixed use development and likely absorption time. The District was then able to argue that, despite the property's land use, the period of time it would take to develop the property was so long that it did not support the owner's theory of valuation. The owner's theory was anticipated and countered even before the owner made its initial demand. The ability to anticipate the owner side's argument will assist CFX. The owners settled the case for \$27,860,000.00, only \$932,635.00 higher than the initial offer. The matter also involved a challenge to the taking and an inverse condemnation counterclaim. The District ultimately obtained a final judgment on its appraised value and defeated the inverse taking claim.

3. Evans High School Expansion. This condemnation involved the assemblage of multiple parcels of property from separate owners along the north side of Silver Star Road for the Evans High School expansion. The attorneys coordinated and reviewed numerous appraisal reports, land planning reports, contractor reports, billboard appraisals, and cell tower appraisals. Regarding the cell-tower appraisals, despite the fact that co-locator value data from cell tower owners was virtually impossible to obtain, a valuation analysis was developed which accurately reflected the value of the cell tower. This assisted OCPS staff in reconfiguring its design to avoid condemning the cell tower, thereby saving the District approximately \$1,250,000.00 to \$1,500,000.00 in property acquisition costs. In addition, because of the discovery of subsurface groundwater on approximately eight (8) acres of property originally sought for the project, the District abandoned the original proposed taking and redesigned the project. Notwithstanding these changes, title to all properties was acquired eight (8) months in advance of the date by which OCPS needed to begin construction on the property. During the litigation, Orange County indicated its interest in acquiring land for the future widening of Pine Hills Road. An inter-local agreement was negotiated with Orange County, Florida, which allowed OCPS to obtain reimbursement of a portion of its land acquisition costs from the County when the County widened Pine Hills Road. This also decreased the District's land acquisition costs by \$250,000.00. The total condemnation project, which involved multiple parties and parcels and a change in the project scope, was brought in under the litigation budget of \$13,365,000.00 and ahead of schedule. The ability to move quickly, shift direction rapidly, and provide cost effective service will also assist CFX.

4. Wekiva High School. This representation involved a joint condemnation of property by the District and the Orlando/Orange County Expressway Authority. The District condemned property needed for a new high school to relieve overcrowded conditions at Apopka High School. This condemnation occurred while OOCEA was acquiring title to property for the Maitland Extension. The District was assisted in coordinating the timing of its project with

OOCEA, and the representation assured that the OOCEA project would not adversely impact the school site.

5. **Horizon's West High School.** This matter involved the condemnation of 38.24 acres of property as part of an assemblage of property acquired by the District in 2004. The owner expressed an interest in retaining about 10 acres of property, and an agreement was negotiated under which the owner waived any severance damage claims, fees and costs, and accepted \$1,372,800.00 less than the District's appraised value of \$5,740,000.00.

6. **Florida Department of Transportation — Hungerford Elementary Acquisition.** This involved the representation of the Board and OCPS when the Florida Department of Transportation acquired a portion of the Hungerford Elementary School site while OCPS was in sensitive negotiations with the City of Eatonville to sell the site to the City. The Department's acquisition was for a retention pond in the uplands portion of the property. The pond location caused significant severance damages to the remainder because its location would have interfered with the future development of the property and would have adversely affected its value, thereby impacting OCPS's negotiations with the City. Mateer Harbert negotiated a joint pond utilization and modification agreement with the Department. That agreement allowed the reconfiguration or joint use of the pond when the property was ultimately developed, thereby mitigating severance damages. That joint use pond agreement has become a template used by District V for other acquisitions. The Department still paid the Board \$6,442,900.00 for the property, \$640,000.00 higher than the Department's initial appraisal. Mateer Harbert has the ability to negotiate complex development agreements in connection with condemnations which will assist CFX in this case.

Per Section 3.1.B.2. of the RFP, the following list specifically identifies eminent domain matters handled by Mateer Harbert for other governmental agencies within the last 3 years:

1. **Dr. Phillips Relief; 80-H-SW-4.** Mateer Harbert developed a detailed cost estimate which included land and improvement costs, severance damages, owners' expert fees and attorneys' fees, and the District's estimated expert fees, costs, and attorneys' fees for several different land acquisition options to build a new high school in the Dr. Phillips area. Depending on the option, the cost estimate could be well in excess of \$20,000,000.00. The acquisition will require the reengineering of a large 400 plus acre residential P.D. in the Dr. Phillips area located on the east and west side of Apopka-Vineland Road. The property owner had previously conveyed land for a middle school site to the District as part of a Capacity Enhancement Agreement. This land is located along the property's Apopka-Vineland Road frontage. In connection with pre-suit negotiations, OCPS staff and Mateer Harbert presented the owner with a proposal which involved the District returning the middle school site to the owner in exchange for dedicating other land in the P.D. to the District. The land to be conveyed by the owner will be adjacent to other property the District will purchase. These parcels will then be contiguous to one another and will allow for the joint use of some facilities for the middle school and high school. The pre-suit settlement will not require the District to buy new land from the developer, will afford the owner greater frontage along Apopka-Vineland Road, and will locate all educational facilities in an area of the development removed from the residences. The approach

pursued by Mateer Harbert avoids the need to file suit, benefits the private property owner, preserves the owner's development, and decreases litigation costs.

2. **Ocoee Elementary School Expansion; School No. 200-E-N-7.** Mateer Harbert represented the District in a condemnation case with Tom West, Inc. The District condemned about 6.5 acres to permit the expansion of Ocoee Elementary School. The Board's initial written offer was in the amount of \$710,000.00, although its trial position was \$599,875.00. The owner sought \$1,116,500.00, exclusive of fees and costs. Issues were raised concerning land use, the reasonable probability that the owner can obtain a land use change, the market demand for various uses of property, and the highest and best use of the property before the taking and after the taking. The District's exposure for compensation and fees and costs was in excess of \$1,275,000.00. The case was settled for a lump sum payment to the owner of \$975,000.00, including fees and costs.

3. **K-8; School No. 131-K-SW-5; Parramore Area.** As part of another pre-suit acquisition, Mateer Harbert provided legal support to OCPS's Real Estate Department for the acquisition of multiple parcels of property for a new K-8 school located next to the new Creative Arts Village. This acquisition was complicated by the fact that the school's timely opening was a high priority to the Board, the District's public and private partners, and the District's staff. Mateer Harbert was responsible for coordinating the delivery of and reviewing appraisal reports valuing over 20 separate ownership interests. The District successfully negotiated the purchase of all parcels, avoided condemnation, and did so without any delay to the construction start date.

4. **Akira Wood, Inc., etc. v. Environmental Consulting & Technology, Inc.; Case No.: CA 2012-710; Eighteenth Judicial Circuit.** Within in the past month, Mateer Harbert was retained to represent the State of Florida, Department of Environmental Protection ("DEP"), a named defendant in a multi-count complaint alleging various legal theories including strict liability, promissory estoppel, and inverse condemnation, including physical and regulatory takings. The plaintiffs are seeking compensation for damages to their large commercial and industrial buildings allegedly caused by sheet pile driving on the property. The sheet pile driving was performed as part of the remediation of on-site contaminants like coal-tar, petroleum, and other pollutants. The plaintiffs have presented a novel legal theory. They contend that DEP's mere approval of a remediation plan, which is required by statute and regulation, can subject it to liability under an inverse condemnation theory even if DEP does not supervise, manage, or direct the remediation plan. DEP reviews remediation plans for regulatory compliance and technical sufficiency, and it relies on the expertise of private remediation contractors in developing and executing the plan. It assumes no responsibility for directing or managing the remediation. This case presents important legal questions because it would make DEP the guarantor against damages for the actions of private entities over which DEP exercises no control merely because DEP is statutorily and by regulation required to approve a remediation plan. Under the plaintiff's theory, if the remediation plan was technically sufficient, DEP would be liable for damages if the remediation contractor negligently implemented the plan. Mateer Harbert filed a motion to dismiss the complaint and will begin the discovery phase of the representation.

Since Mateer Harbert does not confine its condemnation practice to public sector clients, it views any potential case for public clients by taking into account the perspective of the

property owner and private owners' legal counsel. Representing the District from this perspective has assisted the District in anticipating the owner's theory of the case. In the Dr. Phillips case, Mateer Harbert's ability to view a case from the perspective of an owner has proven invaluable in developing a case management plan which avoids litigation and decreases acquisition costs. Mateer Harbert believes this sort of case managing would assist CFX in this project.

Mateer Harbert has represented property owners in a wide variety of condemnation cases, including an owner whose property was bisected by a nearly one mile long corridor of a railroad right-of-way that serves the Curtis Stanton Power Plant. The case was tried to a jury on the issues of the value of the land taken and severance damages. The jury returned a verdict which adopted Mateer Harbert's theory of severance damages. The firm also represented at trial a property owner whose property was severely impacted by the Osceola Parkway and obtained a multi-million dollar verdict. In addition to right-of-way takings, the lawyers comprising the Mateer Harbert team have represented owners in valuation trials in regulatory takings cases and under the Bert J. Harris Property Protection Act. The firm represented an owner in a case involving the taking of several hundred acres of property in Escambia County acquired for the treatment of tertiary treated effluent. Collectively, the lawyers comprising the Mateer Harbert team have tried to jury verdicts over two dozen condemnation cases for private and public clients.

Notable results obtained by the lawyers of Mateer Harbert are not limited to merely monetary benefits. To represent private owners effectively in condemnation cases, particularly involving right-of-way takings, Mateer Harbert's lawyers need to have the competence to review construction plans and transportation planning reports and negotiate with the condemning authority to change plans. For many private clients, having their property impacted as little as possible is even more important than having a large monetary settlement or final judgment.

Significant non-monetary benefits have been obtained by Mateer Harbert. Obtaining non-monetary benefits requires focusing on a private client's objectives while assisting the governmental sector in achieving its objectives. The firm represented WESH-TV2 in pre-suit negotiations to convey land for the I-4 Ultimate project to the Florida Department of Transportation. This representation resulted in the preservation of WESH-TV2's helicopter landing pad. The firm also negotiated a pre-suit settlement on behalf of South Seminole Hospital for the S.R. 434 widening project. Its representation resulted in the Department redesigning an intersection in front of the property and adding additional turn lanes not originally included in the Department's design.

Another representation resulting in a significant non-monetary benefit involved the representation of Clear Channel Outdoor, Inc., during the I-4 widening project. The Department intended to acquire several billboards in Clear Channel's portfolio of outdoor advertising structures. An innovative approach was developed to create a pilot relocation program that allowed for the relocation of these structures instead of their outright acquisition. This program allowed Clear Channel to relocate sign structures and be paid for the costs of moving the structures and compensated for their decreased value because of impaired visibility. The program involved coordination with the state, District V, the Department Central Office, and the

City of Orlando. The Department initially estimated that the value of the structures was \$3,351,000.00, and Clear Channel estimated their value at \$6,629,635.00. The pre-suit settlement, which included fees and costs, permitted the relocation of the billboards and decreased the Department's costs by \$3,278,635.00.

In connection with the Department's I-75 widening project, the firm represented Mr. Rickie Fincher, the owner of approximately 100 acres of property on the east side of I-95, west of Dade City in Pasco County. The property had tremendous topography and extensive lake frontage. The parent tract had a future land use designation of EC, Economic Center, a mixed use land use category permitting residential, professional/office, and light industrial uses designed to encourage high density development at interchanges. Because of market conditions, the highest and best use of the property was for long term holding and investment pending future demand. The property owner lived on the property and maintained it as an equine estate, improved with a high end custom home, riding trails, and stables. This represented an interim use until the property was ripe for development. Of the 100 acres, about 60 acres was jurisdictional wetlands along the perimeter of the property leaving 40 acres of uplands in the middle.

The Department's plan to construct a 20 acre retention pond and compensating storage area in the middle of the uplands portion of the property would have seriously damaged the remainder's short-term and long-term development potential. Based on this proposed pond location, the Department's initial offer was \$556,000.00. Mateer Harbert resolved the case by identifying alternative locations for two new ponds on the property in lieu of the Department's original location. This case required coordination of revised construction plans developed by the civil engineer retained by Mateer Harbert and an understanding of pond siting design criteria and pond sizing calculations. Mateer Harbert needed to understand how the location of the 100-year flood plain elevation and the functional classification of wetlands on the property affected the alternative pond locations. The firm also prepared a detailed analysis demonstrating to the Department that its original design would result in the owner's trial position exceeding \$1,300,000.00. Although constructing two smaller ponds had somewhat higher construction costs for the Department, these additional costs were more than offset by the greater land acquisition costs which would have been spent based on the original design. The revised pond design is currently being constructed by the Department. The redesign suggested and coordinated by Mateer Harbert saved the Department money, allowed the project to proceed without delay, and preserved the owner's property.

In 2014, Mateer Harbert was retained by Meritage Homes of Florida, Inc., ("Meritage") and KB Home of Florida, LLC, ("KB Home") to represent them concerning the proposed extension of Osceola Parkway by the Osceola County Expressway Authority ("OCX"). Meritage was the owner and developer of two subdivisions, Fells Landing on Narcoossee Road and Lake Preserve on Ward Road. Fells Landing was substantially developed at the time of the representation. Meritage had obtained PSP approval of Lake Preserve and was constructing model homes and marketing the property at the time of the representation.

OCX was, and still is, in the PD & E study phase to consider several alignments for the extension of the Osceola Parkway, a component of which is a proposed western connector from

Osceola Parkway to S.R. 417. One proposed alignment along the existing Ward Road alignment would have bisected the Lake Preserve development. Lake Preserve, when completely platted, would have had 309 lots. The Ward Road alignment would have eliminated approximately 40 lots and left 269 non-contiguous landlocked lots in a subdivision bisected by a high speed elevated limited access roadway. KB Home had a property under contract just south of the Lake Preserve development. The proposed Ward Road alignment would have resulted in the loss of 24 lots and damages to 32 remaining lots. The drainage systems and internal roadways for both developments also would have had to be redesigned and reengineered.

Mateer Harbert extensively researched public records of OCX, the Orlando-Orange County Expressway Authority, the City of Orlando, Orange County, and the Greater Orlando Aviation Authority to develop a comprehensive project history. Mateer Harbert then developed a matrix for OCX's consulting engineer to consider concerning the project's costs, its consistency with local comprehensive land use plans, and the environmental impacts of the Ward Road alignment. The matrix demonstrated that the environmental impacts of the Ward Road alignment were greater than the impacts of the Boggy Creek alignment. A consulting engineer retained by the owners then proposed a different concept for the Western Connector adjacent to Boggy Creek Road.

The public records indicated that OCX did not include in its project cost estimates anything other than the right-of-way costs of properties directly impacted by the alignments. Acquisition cost factors (legal fees, etc.), severance damages, and business damages were not included. OCX estimated that its land acquisition costs for the Ward Road alignment of the Western Connector were about \$67,000,000.00. Mateer Harbert prepared an estimate considering the value of the lots lost, damages, and the acquisition costs that OCX would have to pay for its attorneys and experts and the owners' attorneys and experts. This estimate exceeded \$221,000,000.00. Relying on this information, OCX has recently re-estimated the land acquisition costs for the Ward Road alignment and found them to be in excess of \$230,000,000.00. Its Board and consultants have now indicated their preference for the Boggy Creek Road alignment. This representation required the firm to develop a solution which considered the concerns of its clients, major land-owning stakeholders along Boggy Creek Road, and OCX.

These examples demonstrate Mateer Harbert's desire to structure innovative ways to complete the project efficiently and in a financially responsible manner and its understanding of the governmental sector's planning of large scale public projects will assist CFX.

Per Section 3.1.B.3 of the RFP, there are no disciplinary, administrative, or malpractice claims or proceedings involving any of the lawyers or professional staff who will provide services to CFX under this proposal.

II. Experience of the Attorneys Assigned and Availability - Section 3.1.C. of the RFP

This section of the Technical Proposal provides information concerning the key personnel in Mateer Harbert who will be responsible for the representation of CFX. Included with this Technical Proposal are resumes of the key personnel at Tab 3. Mateer Harbert

proposes to manage the representation of CFX with two partners in its Condemnation and Property Rights Practice Group and one partner in its Real Estate Practice Group. The key personnel in the Mateer Harbert team are identified below.

This section of the Technical Proposal outlines (1) the proposed function of the individuals involved in the representation, (2) their accessibility and availability during the course of the representation, and (3) their office location. This section contains information for both lawyers and paralegals.

Mateer Harbert will appropriately staff the case to avoid unnecessary duplication of attorney time. To achieve that goal, specific areas of responsibility have been identified for each member of the team. Each team member is located in the Orlando office. Each will be available and accessible to CFX during the course of the representation. All live locally and are available to work for CFX outside normal business hours. Each lawyer will provide the General Counsel, Deputy General Counsel, and senior CFX staff with personal cell phone numbers to be available on a round-the-clock basis. Each is committed to effective and aggressive representation of CFX.

Lawyers

Jay W. Small

Function. Jay W. Small, who has practiced primarily in the area of condemnation and property rights since being admitted to the bar in 1986, will be primarily responsible for this response. He has tried, to jury verdict, condemnation cases for condemning authorities and private property owners throughout the State of Florida, and he has argued, as chief appellate lawyer, cases before the Fifth and First District Courts of Appeal.

He also has significant experience dealing with real estate appraisals. He was appointed by Governor Jeb Bush to serve as a consumer member on the Florida Real Estate Appraisal Board and served as the Board's Vice-Chairman and Chairman. While serving as Chair, the Board completed a substantial rewrite of its administrative regulations. He is a frequent instructor for the Appraisal Institute. Last year was the primary instructor and course material author for an Appraisal Institute course dealing with the condemnation valuation of property and the reasonably probability of a comprehensive land use amendment.

He currently serves as the Chairman of the Orange County Bar Association's Real Property Committee, and in May he will be the instructor and instructional materials author for a major Orange County Bar Association CLE course dealing with development exactions and unlawful land use conditions.

He will act as the partner-in-charge during the term of this contract. He will assume responsibility for assuring all invoicing of legal services is in accordance with the contract and CFX policies and procedures and will have authority to address any questions or concerns which may arise with respect to billing. He will be the primary point of contact between CFX, the expert witnesses, and the Right of Way Committee and CFX Board. He will coordinate the case

management plans for acquisition. He will act as lead trial counsel and coordinate assigning all legal work to Mateer Harbert's lawyers.

James R. Lussier

Function. With almost thirty years' experience in eminent domain matters, James R. Lussier will provide senior case management assistance to Mr. Small in all aspects of the anticipated legal services. Mr. Lussier will work on all aspects of the assigned cases from the beginning of this representation through trial and appeal, if any. To the extent the workload will be divided between Mr. Small and Mr. Lussier, it will be continuously coordinated so that consistent methodologies and case prosecution result.

Matthew J. Brown

Function. Matthew J. Brown's background and experience is in litigation, real estate, and development, with over forty past trials, most of which were before juries. He will be the senior litigation associate providing litigation support under this contract.

Mr. Brown will be responsible for producing drafts of complaints, legal memoranda, and other pleadings, as well as resolutions. He will also be responsible for researching legal issues when necessary. Mr. Brown will be directly involved in fact investigation and discovery matters, including review of public records, site visits, and evaluations, and both propounding and responding to written discovery requests. As directed he will be responsible for select court hearings, depositions, and obtaining witness statements, and he will coordinate work product of experts. Mr. Brown may assist at trial or evidentiary hearings.

Leslie A. Evans

Function. Leslie A. Evans is a junior associate who will assist with the litigation aspects of this contract. She will be responsible for conducting legal research, preparing legal memoranda, and drafting pleadings, along with any other assignments delegated to her by Messrs. Small and Lussier. She will participate in fact investigations and discovery matters as directed.

Thomas R. Harbert

Function. Thomas R. Harbert is the managing partner in charge of the firm's Real Estate Practice Group. He will be responsible for managing and supervising all aspects of the transactional portion of this representation, as well as personally handling specific acquisitions at the request of the client.

Mr. Harbert has over 25 years of experience practicing real estate law, both in Florida and Georgia. His practice specializes in negotiating and closing large commercial real estate transactions of both vacant and developed property. He also represents lenders in complex commercial real estate lending transactions. Mr. Harbert has extensive experience resolving title and survey matters and has relationships with several large title insurance underwriters in the

Central Florida area. He has also negotiated and drafted closing documents related to the pre-condemnation acquisition of private property by public entities.

Melissa Cupps Battles

Function. Melissa Cupps Battles is an associate in the firm's real estate practice group. She will provide counsel on all aspects of the transactional portion of this representation, as well as handle specific acquisitions at the request of the client. Ms. Battles has eight years of experience practicing in the area of commercial real estate. She counsels clients on a wide range of complex real estate matters, including all aspects of the acquisition, disposition, development, leasing, and operation of commercial properties. Her duties will include negotiating and drafting purchase and sale agreements and closing documents, as well as due diligence, title review, and may include environmental assessment review.

Paralegals

Shannon Marshall

Function. Ms. Marshall will be working closely with the attorneys and assisting them in the representation of CFX in the condemnation process, both prior to initiation of condemnation proceedings and during those proceedings. She will manage the attorneys' calendars and schedule meetings, telephone conferences, site visits, and deadlines. She will organize and manage the files both electronically and through hard copy filing and will assist in the drafting of pleadings, correspondence, and any other requested documents.

She is also experienced in handling commercial and residential real estate transactions and condemnation cases and will assist with review of contracts, prepare timelines, review title searches and surveys, assist attorneys to clear title and survey objections, draft title commitments and policies, and draft real estate closing documents.

DeAnna Malinowski

Function. Ms. Malinowski's background and experience is in litigation, including complex construction, foreclosures, condemnation, administrative, real estate, civil rights, and malpractice cases. She has managed documents for numerous state and federal court trials. She will provide legal support to all attorneys under this contract. Primarily, Ms. Malinowski will be responsible for document management, discovery, and organization such as indexing depositions and organizing case law and documents for hearings, mediation, and trial as necessary and directed by the attorneys under this contract.

Per Section 3.C.2 of the RFP, required client references are included in this proposal at Tab 4.

III. Approach to Assignment. - Section 3.1.D of the RFP

This section of Mateer Harbert's response describes its approach to quality control and effective and efficient client servicing, along with the availability of the attorneys to attend group work sessions, scheduled meetings, and impromptu discussions. It also provides a preliminary case management plan for the representation and, to the extent possible given the information provided in the RFP, a plan for each parcel through closure.

The experience of the partners managing this representation is the chief determinant of quality legal representation. Quality control also requires that the client be fully informed about the management and progress of its case. In recognition of this, the firm culture of Mateer Harbert includes the commitment by its lawyers to be client focused and results driven. That commitment contemplates that CFX's staff, consultants, and General and Deputy General Counsel will be integral members of the case team. It is, and always has been, the firm's practice to assure that its clients are fully informed about the status of their case and copied on all substantive correspondence. Discussed below is the firm's plan to schedule regular status conferences, at least through the earliest stages of the representation. This will afford CFX an opportunity to monitor the progress of the representation.

Furthermore, Mateer Harbert will provide no less than quarterly written status reports to the General Counsel and Deputy General Counsel discussing significant legal and valuation issues, the progress of the case in terms of pre-suit actions, court filings, and hearings, and a description of future actions required to be undertaken as part of the representation. In addition, Mateer Harbert recommends that either the General Counsel or Deputy General Counsel appear as co-counsel in any condemnation case the firm files. Finally, if requested by CFX and if feasible depending on systems compatibility, Mateer Harbert can provide the General Counsel and Deputy General Counsel with a secure, encrypted access link to the firm's Intranet system so that CFX has round-the-clock access to the firm's electronic files pertaining to the representation.

Mateer Harbert is also committed to delivering efficient and cost effective legal services to CFX. The firm is committed to containing litigation costs. Mateer Harbert's practice has been, and will continue to be, to staff cases appropriately. Without prior CFX approval, the firm will not bill CFX for more than one attorney to prepare for and attend depositions. It will not bill CFX for multiple attorneys to attend hearings or mediation. It will not bill for joint attorney conferences or meetings. Mateer Harbert is prepared to continue these practices as part of its agreement with CFX. These are not insubstantial concerns. Recent Florida appellate court decisions have raised justifiable concerns about the attorney's fees incurred by condemnors because these can have a direct relationship on the attorney's fees incurred by condemnees. Ultimately, all of these fees are borne by the public, and Mateer Harbert remains cognizant that CFX is a steward of public funds.

Mateer Harbert is aware that CFX has already retained expert witnesses and charged them with the responsibility of producing appraisal reports. Without knowing the scope of their assignments or the data upon which their reports are prepared, no opinion can be offered about their legal sufficiency or persuasiveness to a jury. Absent an early pre-suit settlement, these

reports will need to be updated before suit is filed. Given CFX's need to complete this project in a timely manner and therefore the need to assure sufficient reports, it is Mateer Harbert's plan to schedule regular meetings or conference calls, no less than on a bi-weekly basis, to assure that all updated appraisal reports and expert witness reports are coordinated and delivered in a timely manner. It is anticipated that participants in those regular meetings or conference calls will include counsel, a representative of the Office of General Counsel, the expert witnesses, Ms. Deborah D. Keeter, Mr. William K. Hurt, Jr., and CFX's engineering consultants.

The availability of the lawyers to attend group meetings is largely covered in the response to Section 3.1.C.1. of the RFP. Mateer Harbert is confident that it has dedicated the man-power resources to this potential representation to guarantee the availability of one of the senior attorneys from the list above who is knowledgeable about the case. It would be our expectation, however, that Messrs. Small or Lussier will be primarily responsible for attending any meetings described in section 3.1.D. of the RFP.

Per Section 3.1.D of the RFP, the case management plan is included in this proposal at Tab 5.

4847-8108-1635, v. 1

Tab 3

RESUMÉ

JAY W. SMALL

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: jsmall@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2013-present)

Partner

Practice in eminent domain, administrative, and land use law.

Wilson, Garber & Small, P.A. (2002-2013)

Partner

Practice in eminent domain and administrative law.

Wilson, Leavitt & Small, P.A. (1993-2002)

Partner

Practice in eminent domain and administrative law.

Brigham, Moore, Gaylord, Wilson, Ulmer, Schuster & Sachs, P.A. (1990-1993)

Litigation Associate

Practice in eminent domain.

Foley & Lardner, van den Berg, Gay, Burke, Wilson & Arkin (1986-1990)

Litigation Associate

Practice in eminent domain; commercial foreclosure; and general commercial litigation.

Foley & Lardner, van den Berg, Gay, Burke, Wilson & Arkin (1985)

Law Clerk

Responsibilities included drafting research memoranda, filing court pleadings and general file investigation. Assignments involved litigation, real estate and corporate law.

John A. Barley & Associates, Tallahassee (1984)

Law Clerk

Responsibilities included legal research, drafting and filing pleadings and appellate briefs and general file investigation.

EDUCATION

J.D. (1985) **University of Florida** (Gainesville, FL) *(with Honors)*

B.A. (1982) **University of Florida** (Gainesville, FL) English, 3.74 GPA

PROFESSIONAL

Public Clients

School Board of Orange County and Orange County Public Schools regarding acquisition of approximately \$50,000,000.00 worth of property for expansion of school facilities including Apopka Relief High School, Edgewater High School, Evans High School, Gotha Middle School, Walker Middle School, Ocoee Elementary School.

Greater Orlando Aviation Authority acquisition of property for expansion, additional runways and clear-zone protection.

St. Johns River Water Management District acquisition of property for upper St. Johns River Water Management District.

City of Ocoee, City of Orlando, City of Deltona, City of Port Orange regarding expansion of municipal facilities, community redevelopment, and inverse condemnation claims.

Private Clients

Twenty-five (25) years of experience representing property owners and condemning authorities in condemnation cases throughout the state of Florida. Trial and appellate court experience representing private developers, landfill owners and operators, national convenience store owners, retail establishments and single family residential homeowners, outdoor advertising companies and cellular communication tower owners.

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (1986)

Eminent Domain Committee (1989-present)

Environmental and Land Use Committee

U.S. District Court, Middle District of Florida (1988)

United States Circuit Court of Appeals, Eleventh Circuit (2000)

Member Orange County Bar Association

Chairman, Real Property Committee

American Bar Association

Litigation Section

AV rated by Martindale-Hubbell

Association of Eminent Domain Professionals

Best Lawyer's in America since 2007

Orlando's Best Lawyers since 2007

Foundation for Seminole County Public Schools (2013-present)

Florida Real Estate Appraisal Board (2003-2008)

Vice-Chairman (2004-2005)

Chairman (2006-2007)

PUBLICATIONS AND PRESENTATIONS

Author, "*Eminent Domain Case Law Update*," Association of Eminent Domain Professionals, Winter 2013.

Author, "*Severance Damages*," ALI-ABA CLE course, Fall 2013,

Author, "*Valuation of Property During Abnormal Market Conditions*," East Florida Chapter of the Appraisal Institute, July 2011.

Lecturer, Appraiser as an Expert Witness, The Appraisal Institute, June 2011.

Author and Speaker, "*The Role of Uniform Standards of Professional Appraisal Practice ("USPAP") in Litigation*," The Appraisal of Real Estate Seminar, May 10-11, CLE- International 2004.

Speaker, Current Issues Regarding Chapter 457, Part II, Fla. Stat. 6131 Florida Administrative Code and Condemnation Appraisals, ALI-ABA CLE course, Spring 2004.

Co-Author, "*Community Redevelopment Projects - Recent Case Law & Practical Guide*," Eminent Domain Seminar, ALI-ABA, January 2002.

Speaker, Ethics in Appraising, Association of Eminent Domain Professionals, June 22, 2001.

Speaker, Orange County Bar Association and Central Florida Association of Environmental Professionals, March 15, 2001.

Author, "*Florida Condemnation Valuation and Appraiser Liability*," Seminar for East Florida Chapter of the Appraisal Institute, April 1997; Seminar for Appraisal Institute, August 1997; Seminar for National Business Institute, October 1997.

Instructor, Florida Eminent Domain Valuation and Appraiser Liability, The Appraisal Institute, May 19, 1997.

Author, "*Special Benefits and Project Enhancement*," Seminar for Association of Eminent Domain Professionals, March, 1995.

COLLEGE HONORS AND ACTIVITIES

Law

Moot Court - Best Brief Award for Outstanding Written Argument, Fall, 1983

Intramural Cup Competition

Vice-chairman for Moot Court Board Administration, Spring Semester 1985

Semi-finalist ABA Law Student Division National Appellate Advocacy

Championship, Washington D.C., August, 1985

Dean's List, four semesters
Honors in Appellate Advocacy, Spring Semester 1983

Pre-Law

Dean's List 9 terms, President's List 2 terms
Phi Eta Sigma and Sigma Tau Sigma honor societies
English department representative on college student council
Director of College of Liberal Arts and Sciences composition tutor service

4833-6577-2579, v. 1

RESUMÉ

JAMES R. LUSSIER

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: jlussier@mateerharbert.com

EMPLOYMENT

Mateer Harbert (1985 - present)

Partner

Practice in eminent domain, intellectual property, real estate, land use law, civil litigation, arbitration.

Administrative Office of the U.S. Courts

Judicial Law Clerk (1983-1985)

Honorable John A. Reed, Jr., U.S. District Court Judge (deceased)

United States Navy

(1974-1980 active duty; 1980 – 1983 reservist)

Lieutenant Commander

Naval Aviator (SH-3 Aircraft Commander)

U.S. Naval Officer Programs Recruiter

EDUCATION

J.D. (1982) **University of Florida** (Gainesville, FL)

B.A. (1974) **University of Notre Dame** (South Bend, In.)

PROFESSIONAL

Jim Lussier's initiation to the legal profession as a judicial law clerk at the U.S. District Court exposed him to numerous areas of practice, many of which he has been able to pursue over his thirty year career. Eminent domain work has made up a significant portion of his practice. He has represented dozens of land owners and worked on hundreds of parcels. His civil practice otherwise includes a wide variety of litigation and transactional matters. He has tried over a dozen cases to juries, and numerous more before judges and arbitrators. His cases have ranged from large, multi-party construction disputes to inverse condemnation and direct condemnation matters. He regularly handles intellectual property litigation and administration in the areas of trade secrets, copyright and trademarks. He has been involved in a wide variety of commercial matters, including contracts, real estate, and other business disputes. His office practice includes residential and commercial real estate contracts and closings, corporate formation and other business matters. He regularly serves as an arbitrator for the American Arbitration Association.

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (1983)
Eminent Domain Committee (1990-present)
U.S. District Court, Middle District of Florida (1985)
United States Circuit Court of Appeals, Eleventh Circuit (2004)
Orange County Bar Association (1985)
Young Lawyers Section (Chair, 1987)
American Bar Association
Intellectual Property Section
Arbitrator, American Arbitration Association (Construction and Commercial)
AV rated by Martindale-Hubbell
Commercial Pilot (fixed wing and helicopter)
City of Orlando
Board of Zoning Adjustment, Chair
Public Arts Advisory Board, Co-Chair
Downtown Orlando Partnership (President, 1997)
Downtown Arts District, Inc. (President, 2004)
Central Florida Theatre Alliance (Director)
Orlando Visual Artists' League, Inc. (President 2004-6).

PRESENTATIONS

Mr. Lussier regularly makes presentations to business and civic groups on legal topics, including:

Trademark and Copyright Issues and Protections.
Cybersecurity liability and Protections
Electronic Discovery

Groups addressed include:

Florida Writer's Association Convention
SNAP! Photographer's Forum
Florida Institute of CPAs (Orlando and State meetings)
International Christian Film Festival

RESUMÉ

MATTHEW J. BROWN

225 E. Robinson Street, Suite 600
Orlando, Florida 32801
(407) 425-9044
Cell (407) 619-1281
E-mail: mbrown@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2007 – Present)

Associate Attorney

Practice in civil litigation, real property, business, contracts, and construction.

Examples of civil litigation subjects include various property title defense cases, actions to quiet title, commercial landlord/tenant disputes and evictions, business and breach of contract, and past county tax collection in eminent domain matters.

WB Development Services, LLC and O & B Commercial Development, LLC (2003-2007)

In-House Counsel/Project Manager

Various duties including contract preparation, review and negotiation, land use and zoning, legal research, and project management.

J.A. Jurgens, P.A. (2002-2003)

Litigation Attorney

Practice in environmental and commercial litigation.

Seminole County State Attorney's Office (1998 – 2003)

Assistant State Attorney/Prosecutor

Positions included case intake and filing decisions, police department liaison (Winter Springs, Oviedo, Longwood, and Altamonte Springs) and trial attorney (misdemeanor and felony).

Tried over 40 cases, mostly before juries.

1999 Top DUI Enforcement Award from MADD

Internship with Circuit Judge Dave Seth Walker (1998)

Judicial Intern

Research legal issues and report same to Judge.

Stetson University College of Law (1997)

Teaching Fellow/Research Assistant for Research and Writing I

Preparing research assignments and review of student work.

WELBRO Construction Co. (now WELBRO Building Corp., Inc.) (1986-1997)

Various positions in Family-owned business, including laborer, runner, mason's tender, marketing assistant, accounting assistant, and estimating assistant.

PROFESSIONAL

Matthew Brown grew up and worked in various areas and aspects of the construction industry, the son of a local commercial contractor. After completing his BSBA in Economics and his Juris Doctorate Degree, Matthew worked as an Assistant State Attorney in Seminole County. While there he tried numerous jury cases at both the misdemeanor and felony levels, and was for a time the liaison to several police departments. Briefly turning to civil law, Matthew then took advantage of an economic opportunity to work in real estate development in new family businesses. In addition to assisting in project management, he handled many of the companies' legal matters including contracts, real estate concurrency, variances, and other applications to and approvals from government entities. Developments included small box, triple-net leases for established chains, shopping centers, and work on condominium projects prior to the slowdown in the economy. He joined Mateer Harbert in 2007.

His practice includes civil litigation in the areas of real estate, business, contracts, construction. Landlord/tenant matters, tax collection (including in eminent domain proceedings) and assessment issues for the Orange County Property Appraiser and the Orange County Tax Collector, tort, contract and construction lien litigation.

EDUCATION

J.D. (1998) Stetson University College of Law (St. Petersburg, FL)
Graduated *Cum Laude*; Honors in Research and Writing
B.S.B.A. (1995) University of Central Florida (Orlando, FL)
Economics; 3.44 GPA

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (1998)
U.S. District Court, Middle District of Florida
Orange County Bar Association
Kiwanis Club of Central Orlando – Current President and Past Vice President
Orlando Jaycees/Junior Chamber of Commerce – Past Board Member and Member

RESUMÉ

LESLIE A. EVANS

225 E. Robinson Street, Suite 600
Orlando, Florida 32801
(407) 425-9044
E-mail: levans@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2014 - present)

Associate Attorney

Practice in civil litigation, real estate and land development, intellectual property, and health care

PROFESSIONAL

In her third year of law school, Leslie served as an Articles Editor of the Wake Forest University Journal of Business and Intellectual Property Law. She managed fifteen journal staffers and meticulously reviewed and revised articles prior to their publication in the Journal. She also participated as a student clinician in the Wake Forest University Community Law and Business Clinic. During her time at the Clinic, under the supervision of the Clinic director, she assisted local small businesses with various matters including drafting agreements, forming business entities, and negotiating an amendment to an existing trademark registration. She additionally gave presentations on intellectual property law to a local artists' organization and to art students at the nearby Winston-Salem State University.

After completing law school, she joined Mateer Harbert. She practices in the areas of civil litigation, real estate and land development, intellectual property and healthcare law.

EDUCATION

J.D. (2014) Wake Forest University (Winston-Salem, NC)

Articles Editor, Journal of Business and Intellectual Property Law (2013 – 2014)

B.S. (2010) Florida State University (Tallahassee, FL)

Economics with a minor in Information Technology, summa cum laude, 2010

Finance, summa cum laude, 2010

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (2014)

Orange County Bar Association

2013-14 Recipient of the North Carolina Association of Women Attorneys Scholarship

4844-5681-5907, v. 1

RESUMÉ

THOMAS R. HARBERT

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: tharbert@mateerharbert.com

EMPLOYMENT

Mateer Harbert (1993 - present)

Partner; Firm Executive Committee/Managing Partner

Practice in Real Estate & Land Development; Corporate & Business; Banking; Contracts

Robinson & Harbert (1987 - 1993)

Partner

Practice in General Civil Matters; Real Estate & Land Development; Corporate & Business

PROFESSIONAL

After being raised in Orlando, Tom Harbert began his legal career in Atlanta, Georgia. His small firm handled commercial real estate matters as well as general business transactions and civil litigation. Family ties and professional opportunities in Orlando caused him to return to Orlando in 1993, when he joined the firm his father founded in 1960. Tom has assumed the leadership of the firm as Managing Partner. He has helped manage the Firm's growth to its current 30 lawyers in two cities.

His practice focuses on complex real estate transactions. His duties include drafting and negotiating closing documents, due diligence, title review, remedy complex title defects, comprehensive plan and zoning compliance, environmental assessment review and other related matters. He has served as closing agent and title agent in numerous multi-million dollar real estate transactions. His practice includes all aspects of commercial loan closings including drafting of all loan documents, due diligence, acting as closing agent and other related lending matters. He represents landlords and tenants in negotiation of complex commercial leases, commercial lenders, large institutional land owners, and development entrepreneurs. His expertise extends to areas of banking and bond finance.

EDUCATION

J.D. (1987) **Emory University** (Atlanta, GA)

BA (1984) **Vanderbilt University** (Nashville, TN) Economics

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (1989)
Georgia Bar Member (1987)
U.S. District Court, Northern District of Georgia (1988)
U.S. District Court, Middle District of Florida (1989)
Orange County Bar Association
American Bar Association
Rotary Club of College Park (President, 1999)
Vistage (2009 – present)
NAIOP (2009 – present)
AV rated by Martindale-Hubbell
St. Michael's Episcopal Church (Warden & Vestry member)

4810-8452-9955, v. 1

RESUMÉ

MELISSA CUPPS BATTLES

225 E. Robinson Street, Suite 600
Orlando, Florida 32801
(407) 425-9044
E-mail: mbattles@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2007 - present)

Associate Attorney

Practice in Real Estate & Land Development; Contracts; Health Care

Mateer Harbert (2006)

Summer Associate

Perform legal research and draft legal documents. Assist in all aspects of representation with regard to various civil matters.

Judicial Internship, Thirteenth Judicial Circuit, Hillsborough County, Florida (2005)

Intern to Judge Ronald Ficarrota

Perform legal research and draft legal documents. Observe court proceedings.

PROFESSIONAL

A graduate of the University of Central Florida, Ms. Battles began her legal career after graduation from the University of Florida law school. A summer associate position at Mateer Harbert turned into an offer for full time employment after graduation.

Her practice focuses on commercial real estate transactions. She counsels clients on a wide range of complex real estate matters, including all aspects of the acquisition, disposition, development, leasing, and operation of commercial properties. Her duties include negotiating and drafting purchase and sale agreements and closing documents, as well as due diligence, title review, environmental assessment review, Florida transaction taxes, and related matters. She represents landlords and tenants in negotiation of complex commercial leases, including office, retail, and industrial leases, and the resolution of lease disputes. She has extensive experience handling real estate matters for a large hospital system, including the negotiation of purchase and sale contracts and leases, ensuring compliance with state and federal healthcare regulations, and resolving issues regarding tax assessments and exemptions.

EDUCATION

JD, *cum laude* (2006) **University of Florida** (Gainesville, Florida)

Journal of Law and Public Policy

BA (2003) **University of Central Florida** (Orlando, Florida) Political Science

SGA Judicial Advisor, SGA Senator, Greek Woman of the Year 2002, Golden Rule Review Committee, Admissions and Standards Committee, SOAR Advisor

BAR ADMISSIONS, ASSOCIATIONS AND RECOGNITIONS

Florida Bar Member (2007)
Orange County Bar Association
Orange County Bar Association, Real Property Committee Executive Council
NAIOP (2012 – present)
Leadership Orlando, Class 76
Legal Aid Society of the Orange County Bar Association, Volunteer (2007 – present)

4831-1248-0547, v. 1

RESUMÉ

SHANNON M. MARSHALL
225 E. Robinson Street, Suite 600
Orlando, Florida 32801
(407) 425-9044
smarshall@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2010 - Present)

Paralegal

Assist a team of attorneys in all matters regarding condemnation/eminent domain, including drafting pleadings, client correspondence and other necessary documents, managing document collection by both electronic and hard copy filing, communicating with team to ensure proper documents are received and in order, research property records, prepare timelines, organize depositions, consultations, hearings, and conferences by maintaining the attorneys' calendars. Assist with real estate transactions including negotiations, contracts, leases, pre-closing, closing and post-closing. Review title commitments and surveys and assist in the clearing of title/survey objections. Prepare title policies, endorsements, and closing binders and indexes. Perform similar duties for other forms of civil litigation and arbitration. Assist in administration of firm's intellectual property practice. Experience with probate and estate matters. Proficient in information technology and trial presentation technology. Preserve client relationships by providing excellent customer service and protecting their confidential information.

Akerman Senterfitt (2006-2009)

Commercial Real Estate Paralegal

Duties included assisting in all matters regarding commercial real estate, including negotiations, reviewing contracts, amendments, and leases. Prepared checklists, title commitments, title/survey summaries, all closing documents, and title policies, endorsements, and closing binders and indexes.

Pierce and Associates, P.A. (2005-2006)

Legal Secretary

Performed administrative duties such as court filings and preparation of legal documentation, and heavy filing. Managed calendar and organized client consultations, depositions, hearings and real estate closings.

EDUCATION

Valencia Community College (2006)
Associates in Arts degree

RESUMÉ

DeANNA L. MALINOWSKI

225 E. Robinson Street, Suite 600

Orlando, Florida 32801

(407) 425-9044

E-mail: dmalinowski@mateerharbert.com

EMPLOYMENT

Mateer Harbert (2009 – Present)

Litigation Paralegal

Provide support to attorneys in firm with all aspects of civil litigation. Examples of civil litigation subjects include various condemnation, malpractice, construction, product liability, in both state and federal court. Work involves indexing depositions, organizing discovery responses, case management, preparation of case law and documents for hearings, mediation and trial.

Cooney, Mattson, *et al.* (2005-2009)

Litigation Paralegal

Involved in providing assistance to attorneys in malpractice, construction litigation and insurance defense cases.

Gurney & Handley, P.A. (1994-2005)

Litigation Paralegal

Involved in providing assistance to attorneys in malpractice, civil rights and insurance defenses cases.

EDUCATION

B.S. (1986) University of Central Florida (Orlando, FL)

(Allied Legal Services)

A.A. (1984) Edison Community College (Ft. Myers, FL)

(General Business)

ASSOCIATION AND RECOGNITION

Orlando Jaycees/Junior Chamber of Commerce – Past President and Member

Florida Jaycees – Past Board Member and Member

Christian Service Center Volunteer

Junior Chamber International Senator #60050

Notary Public 1982 to Present

Florida Real Estate Sales License 1982-1992

Tab 4

References

Per section 3.1 C.2.b., this section of the Technical Proposal provides the firm's references.

1. **Orange County Public Schools**
445 West Amelia Street
Orlando, FL 32801
Diego Rodriguez "Woody"
General Counsel
(407) 317-3335
2. **Orange County Public Schools**
445 West Amelia Street
Orlando, FL 32801
Eileen D. Fernandez
Associate General Counsel
(407) 317-3200 x 2945
3. **MetroPlan Orlando**
315 East Robinson Street
Orlando, FL 32801
Harold W. Barley
Executive Director
(407) 481-5672 x313

Tab 5

Case Management Plan - Section 3.1.D of the RFP

The development of a case management plan requires input from CFX's staff and General Counsel or Deputy General Counsel. It would be our expectation that the following preliminary case management plan will be revised based on their input. In developing a case management plan, it is assumed that the reports that CFX is already obtaining will not require significant changes. Although many aspects of the representation will be handled in parallel with one another, Mateer Harbert's initial focus will be directed to the following tasks, and they merit a brief separate discussion. To avoid the disclosure of attorney work-product/mental impressions and because only documents provided in RFP have been reviewed, the discussion is necessarily general in nature. Mateer Harbert anticipates accomplishing the tasks listed below within the first sixty (60) days of its being retained.

1. Public Purpose and Statutory Delegation. Rendering a legal opinion on public purpose will be one of the first tasks to be accomplished in the representation. In the Draft Environmental Impact Statement ("DEIS"), AAF concedes that its project is dependent on the ability of CFX to condemn property to accommodate the proposed rail corridor since AAF, as a private entity, has not been delegated eminent domain powers by the Legislature. Because of the public-private nature of the AAF project, after the amendment of Article X, Section (6) of the Florida Constitution, CFX may face a public purpose challenge, especially if an owner wants to leverage a challenge to achieve a high settlement. Subject to direction by the General Counsel or Deputy General Counsel, a legal opinion will also need to confirm CFX's delegated authority to acquire the land for the stated purposes and for operation of an intermodal transportation corridor.

2. Easement Review. Related to the preceding task, another task to be accomplished early in the representation is a review of the terms of the proposed easements described in the Scope of Services attached as Exhibit "A" to the RFP. Unless directed otherwise by CFX, it is anticipated that these instruments will be reviewed, not only to determine whether they create any public purpose issues, but also for legal sufficiency. Review of the legal sufficiency of the easement will be handled under the supervision of Thomas R. Harbert, who will coordinate the transactional part of the representation.

3. Construction Plan Review and Appraisal Review. Review of these documents is necessary to determine construction and necessity issues. Review of the construction plans is also important in evaluating the sufficiency of the appraisal reports because severance damages can only appropriately be estimated based on the type of public improvements to be constructed within the new right-of-way. Since each of the proposed takings is a partial taking, severance damages must be considered by CFX's appraiser. There is not enough information provided to allow for a definitive opinion whether the takings cause damages or the amount thereof. However, it should be anticipated that the owners' counsel will raise the issue of severance damages. Severance studies may need to analyze sales of properties located next to similar high speed inter-city rail corridors with similar highest and best uses, future land uses, and densities as the subject properties. Consideration may also have to be given to the intermodal nature of the facilities to be constructed in the right-of-way including the fact that potentially they will allow for the construction, operation, and maintenance of freight and commuter rail transit.

Additionally, Mateer Harbert has developed a case management plan for the potential representation which contemplates several target dates. This case management plan is based solely on the information provided in the RFP. These target dates are provided for planning purposes only and are subject to revision. These dates do not account for unforeseen circumstances. Any case management plan is dependent on numerous factors beyond the control of counsel such as the sufficiency of expert witness reports already being obtained, the review of the items separately identified above, the court's docket, the dates and agenda deadlines of CFX's Board, and the cooperation of the property owners and their counsel. The case management plan divides the scope of the representation into three distinct phases: (1) pre-suit; (2) pre-order of taking and order of taking; and (3) post-order of taking and trial.

Pre-Suit

Task	Target Date
Review and update title work, initial meetings with experts	30 days after retention
Pre-suit notices	30 days after retention
Prepare preliminary suit package	30 days after retention
Resolution of necessity	July 31, 2015
Initial offer	August 3, 2015
Pre-suit negotiations	September 11, 2015
Update title work	September 11, 2015

The tasks above will be performed in parallel to the tasks discussed on pages 11 and 12 of this Technical Proposal.

Pre-order of Taking and Order of Taking

Task	Target Date
File suit	September 14, 2015
Order of taking	December 14, 2015
Notice of deposit	January 4, 2016

Either shortly before or after suit is filed, follow up meetings with experts will be scheduled to prepare them to testify at the order of take hearing. During this phase, appraisals may need to be updated to account for the passage of time or the availability of new information.

Post-order of Taking and Trial

To bring each parcel to closure, Mateer Harbert proposes to file a motion for a case management conference 4 months after the date that title to the property is obtained. The exact date of a case management conference will be dependent on factors such as the likelihood of negotiating settlements with the owners, the court's docket, and the judge to whom the case is assigned. Based on our past experience, a case management order should have dates by which the parties are required to identify expert witnesses, exchange written reports summarizing the experts' trial opinions, identify rebuttal experts, and require the exchange of written rebuttal reports. Since a property owner may also be permitted to testify at trial, the case management

order should require disclosure of whether the owner will testify and the nature and amount of compensation the owner will seek. This will avoid unnecessary surprise during the litigation and at mediation.

A separate mediation order should also require the owner's counsel to provide expert witness invoices at least 30 days before the mediation. Mateer Harbert has found this useful in achieving a settlement of compensation and owner's fees and costs issues at mediation. Barring a settlement, Mateer Harbert is committed to trying these cases as soon as possible.

Some very preliminary observations can be made regarding each parcel. The draft restricted appraisal reports were prepared without right-of-way maps, legal descriptions of the parent tracts and remainders, construction plans, discussion of the comparable sales, or land-planning reports, or consideration of severance damages. Moreover, except in the most general terms, the DEIS does not describe the precise nature of the improvements to be constructed in the right of way.

Regarding the Mattamay (Jacksonville) Partnership property, parcel 104, the CFX taking will require its appraisers and land planners to consider whether the developer's Preliminary Subdivision Plan ("PSP") and development plan will need to be amended. The PSP was designed without consideration of the proposed AAF rail corridor. The elevated rail corridor will be visible from the northern portions of the development, especially as its elevation increases when the rail line begins to cross S.R.417. Although the proposed taking appears to only impact the property's storm water management system, CFX should anticipate the owner's claim for severance damages. Since the Mattamay property has an approved PSP, the appraisers and lawyers need to formulate an opinion of the relevant parent tract to estimate damages. The firm is familiar with various aspects of the Randal Park development. During Mateer Harbert's representation of the District in a recent condemnation case, a parcel of property within the development was used as a comparable sale. As part of its investigation of this comparable sale, the firm has had the occasion to review many of Orange County's development files regarding Randall Park.

Parcel 102, owned by Bal Bay Realty, Ltd., contains over 530 gross acres with primary access available from Narcoossee Road. Its future land use designation includes Urban Activity Center, Mixed Use Development - Commercial, Residential Low, and Conservation. The draft restricted report estimated the value of the property at \$1,765,000.00, based on a gross per acre value estimate of \$100,000.00 per acre. The underlying data for this estimate has not been provided.

Issues unique to parcel 102 may include the future demand for the mixed-use development. The allowable development of the property includes 1000 - dwelling units, 1.387 million square feet of commercial, 207,600 square feet of office, and 300 hotel rooms. Although south-east Orange County has one of the stronger real estate markets, that strength has largely been driven by the Lake Nona development. Additional future competitive properties are within the Osceola County Northeast Sector Study Area, an area which will benefit from the Osceola County Expressway Authority's Osceola Parkway Extension project, a key component of that agency's 2040 Master Plan. In light of this competitive environment, a question arises

concerning the time period for absorption of development on parcel 102, and consideration should be given to retaining a market consultant to assist the appraiser in determining the maximally productive component of highest and best use.

Additionally, given the different uses, consideration should be given to the determination of highest and best use of the parent tract. Presumably, the owner may argue that the impact of the rail corridor may be more severe for one property use as opposed to another.

Parcel 105, owned by Carlsbad Orlando, LLC, based on a draft restricted appraisal report, is subject to a remediation agreement precluding the issuance of development permits without a prior inspection to determine the presence of unexploded ordinance. Given the size of the property and the timing of the extension of Innovative Way, a case management plan should consider the stigma and impacts, if any, that may attach to the property because of this remediation agreement and the future demand for the property. Consideration should also be given to the effect the lack of public utilities has on the development of the property and the timing of that development. The extraordinary development costs of providing utilities should be considered in the property's valuation.

Parcel 108, owned by B&M Investments, LLC, is a partial taking from a parent tract containing about 3.05 acres of developable land with an Industrial future land use designation. A portion of the parent tract is improved with about .5 acres of a retention pond. The property is contiguous to another parcel which contains about 18.5 non-developable acres.

The proposed use to which parcel 108 will be put may not adversely impact the property from a highest and best use stand point. Since the remainder's future land use designation is industrial, issues raised by the taking include consideration of the impacts of the taking on the property's stormwater management plan and retention pond system and how the taking will impact the remainder. As with the other parcels, there are issues that concern the timing of the development of the property, which may require the assistance of a marketing consultant.

Tab 6

MAY 1, 2015
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
POTENTIAL CONFLICT DISCLOSURE FORM

Project: SR 528 Multi-Modal Corridor

Name/Company: Mateer & Harbert, P.A.
Address: 225 E. Robinson Street, Suite 600
Orlando, FL 32801

Relationship to CFX: ☐ Board or Committee Member ☐ Employee ☒ Consultant/Vendor

1. Disclosure of Relationships (Refer to Section 348.753(8))		
Do you have any relationship which affords a current or future financial benefit to you or to your relative or business associate and which a reasonable person would conclude has the potential to create a prohibited conflict of interest?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If yes, check the applicable relationships below and provide the full names, addresses, and relationships on page 4.		
Self	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Relative (as defined in Section 112.312(21), Fla. Stat.), including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, any other natural person having the same legal residence as you.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Business Associate, as defined in Section 112.312(4), Fla. Stat., includes any person or entity engaged in or carrying on a business enterprise with you as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Other (explain) _____ _____ _____ _____	Yes <input type="checkbox"/>	No <input type="checkbox"/>

2.	Disclosure of Lobbyists (Refer to Section 348.753(8)) Do you have a relative who is a registered lobbyist?	Yes ___	No <u>X</u>
	If yes, list the full names and addresses of the lobbyist and the lobbyist's clients on page 4.		
3.	Disclosure of Property Interests within a Project (Section 348.753(8)) Do you or any of your relatives (as defined in Section 112.312(21), Fla. Stat.), principals, clients, or business associates have any interest in real property located within any actual or prospective Authority project? The actual or prospective Authority projects include the Wekiva Parkway and All Aboard Florida. The corridor maps and property ownership lists reflecting the ownership of all real property within the disclosure areas, or alignment maps with lists of associated owners, are attached hereto or available upon request.	Yes ___	No <u>X</u>
	If yes, check the applicable relationship types and disclose the full names and addresses and identify the real property on page 4.		
	Self	Yes ___	No ___
	Relative (as defined in Section 112.312(21), Fla. Stat.), including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, any other natural person having the same legal residence as you.	Yes ___	No ___
	Principal or Client	Yes ___	No ___
	Business Associate, as defined in in Section 112.312(4), Fla. Stat., includes any person or entity engaged in or carrying on a business enterprise with you as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.	Yes ___	No ___
	Other (explain) _____	Yes ___	No ___

4.	<p>Disclosure of Property Interests Within a One-Half Mile Radius of a Project (but Outside of a Project) (Refer to Section 348.753(8))</p> <p>Do you or any of your relatives (as defined in Section 112.312(21), Fla. Stat.), principals, clients, or business associates have any interest in real property located within a one-half mile radius of any actual or prospective Authority project, but outside of any actual or prospective Authority project?</p> <p>The actual or prospective authority projects include the Wekiva Parkway and All Aboard Florida. The corridor maps and property ownership lists reflecting the ownership of all real property within the disclosure areas, or alignment maps with lists of associated owners, are attached hereto or available upon request.</p>	Yes ___	No <u>X</u>
	<p>If yes, check the applicable relationship types and disclose the full names and addresses and identify the real property on page 3.</p>		
	<p>Self</p>	Yes ___	No ___
	<p>Relative (as defined in Section 112.312(21), Fla. Stat.), including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household, any other natural person having the same legal residence as you.</p>	Yes ___	No ___
	<p>Principal or Client</p>	Yes ___	No ___
	<p>Business Associate, as defined in in Section 112.312(4), Fla. Stat., includes any person or entity engaged in or carrying on a business enterprise with you as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.</p>	Yes ___	No ___
	<p>Other (explain) _____</p>	Yes ___	No ___

5.	Solicitation or Acceptance of Gifts Have you solicited or accepted anything of value, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that your action or judgment regarding Authority business would be influenced thereby? (For reference, see Section 112.313(2), Florida Statutes)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
6.	Unauthorized Compensation Have you or your spouse or minor child accepted any compensation, payment, or thing of value when you knew, or, with the exercise of reasonable care, should know, that it was given to influence your action regarding Authority business? (For reference, see Section 112.313(4), Florida Statutes)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
7.	Misuse of Position Have you used or attempted to use your position with the Authority or any property or resource which may be within your trust, to secure a special privilege, benefit, or exemption for you or others? (For reference, see Section 112.313(6), Florida Statutes)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
8.	Conflicting Employment or Contractual Relationship Do you have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the Authority, that will create a continuing or frequently recurring conflict between your private interests and the performance of your duties to the Authority or that would impede the full and faithful discharge of your duties to the Authority, subject to the exemptions set forth in Section 112.313(12) & (15), Florida Statutes? (For reference, see Section 112.313(7), Florida Statutes)	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

If you answered any of the above questions in the affirmative, provide a detailed explanation below. Attach additional sheets as necessary.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

May 1st 2015

Signature:

Jay W. Small

Print Name: Jay W. Small

Print Title: Partner

Return this form by mail, email or fax to:

Darleen Mazzillo, Executive Assistant
Central Florida Expressway Authority
4974 ORL Tower Road, Orlando, FL 32807
Phone: 407-690-5310 Fax: 407-690-5034
Email: Darleen.Mazzillo@CFXWay.com

Tab 7

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CONFLICT/NONCONFLICT OF INTEREST STATEMENT

CHECK ONE

☒ To the best of our knowledge, the undersigned firm has no potential conflict of interest due to any other clients, contracts, or property interest for this project. The Authority's Potential Conflict of Interest Disclosure Form is attached.

OR

☐ The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other clients, contracts or property interest for this project.

LITIGATION SUMMARY

PLEASE DISCLOSE AND PROVIDE A SHORT SUMMARY AND DISPOSITION OF ANY CIVIL LITIGATION IN FLORIDA INVOLVING THE FIRM OR THE ATTORNEYS WHO MAY BE ASSIGNED TO THIS MATTER AS A NAMED PARTY OR PARTIES WITHIN THE LAST FIVE (5) YEARS.

ALSO DISCLOSE ANY ACTIONS AGAINST THE FIRM OR THE ATTORNEYS WHO MAY BE ASSIGNED TO THIS MATTER BY THE FLORIDA BAR, THE DEPARTMENT OF PROFESSIONAL REGULATION, ANY OTHER FEDERAL, STATE OR LOCAL REGULATORY AGENCY AND THE DISPOSITION OF SAME. DISCLOSE ANY CLAIMS INVOLVING MALPRACTICE, WRONGDOING OR OVERCHARGING AGAINST THE FIRM OR THE ATTORNEYS WHO MAY BE ASSIGNED TO THIS MATTER AND THE DISPOSITION OF SAME.

CHECK ONE

☐ The undersigned firm has had no litigation, actions by regulatory agencies, or claims involving malpractice or wrongdoing in the last five (5) years.

OR

☒ The undersigned firm, **BY ATTACHMENT TO THIS FORM**, submits a summary and disposition of individual cases of litigation in Florida during the past five (5) years; actions by any Federal, State, and local agency, or claims involving malpractice, wrongdoing, or overcharging

Mateer & Harbert, P.A.

COMPANY NAME


AUTHORIZED SIGNATURE

Jay W. Small

NAME (PRINT OR TYPE)

Partner

TITLE

Failure to check the appropriate blocks above may result in disqualification of your proposal. Likewise, failure to provide documentation of a possible conflict of interest, or a summary of past litigation, may result in disqualification of your proposal.

ATTACHMENT TO FORM
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CONFLICT/NONCONFLICT OF INTEREST STATEMENT

1. Everette Weaver vs. Mateer and Harbert, P.A., et al
Case No. 5:09-cv-514-Oc-34TBS

On November 23, 2009, after unsuccessfully prosecuting a case in state court, Mr. Everette Weaver filed a *pro se* lawsuit in federal district court (Case No. 5:09-cv-514-Oc-34TBS) against Mateer Harbert, Ms. Renee Thompson, a lawyer in the firm's Ocala office, Florida State Circuit Court Judge Jack Singbush, AAA Reporting Inc., and others. Among the numerous allegations were counts for fraud and conspiracy. As a precaution Mateer Harbert reported this action to its professional liability carrier but requested that the firm undertake the defense of the claim. Mr. Rick Allen, a partner in the firm, represented Mateer Harbert and Ms. Thompson in the case and elected to conduct minimal discovery. After the court ordered time for discovery had expired, Mateer Harbert filed a motion for summary judgment. On July 27, 2012, Judge Marcia Morales Howard granted Mateer Harbert's motion and entered judgment in its favor. That judgment absolved Mateer Harbert of any liability. The plaintiff appealed that summary judgment to the 11th Circuit Court of Appeals which affirmed Judge Howard's ruling.

In order to preserve the privacy of the complainants identified in the following matters which were investigated by the Florida Bar, initials of the complainants have been used in lieu of proper names.

1. Complaint filed with the Florida Bar by M. H. against Ms. Sharon Jablonski Henry - RFA No.: 14-2642

M.H., a *pro se* plaintiff in a medical malpractice case, filed a complaint against Ms. Sharon Jablonski Henry, a partner in Mateer Harbert's Orlando office which arose out of her representation of Orlando Health, Inc. M. H. was the husband of a patient, and he had pursued a loss of consortium claim against Orlando Health, Inc. M. H. sent two letters to the Florida Bar in this matter, RFA No.: 14-2642. The initial complaint, dated August 2, 2013, occurred after M. H., who was incarcerated at the time, attended a hearing by telephone on Orlando Health's motion to dismiss the case. Orlando Health's motion was granted. The court asked directed Ms. Henry to prepare a detailed order of the court's ruling, and she did after receiving the hearing transcript to ensure accuracy. M. H., who is still incarcerated, was unhappy that the proposed order was not prepared as quickly as he would have liked. He filed a grievance with the Florida Bar which responded by noting that it was unclear exactly what M. H. was alleging. The Bar concluded that the matters referenced in his complaint did not constitute violations of the Rules of Professional Conduct and, thereby, did not fall within the purview of the grievance system framework. The matter was closed by letter dated August 19, 2013.

M. H. subsequently mailed a "Request for Appeal of Decision of August 19, 2013, to Executive Director, For Final Action. Sharon K. Duncan FRA No. 14-2642" dated August 23, 2013. This Request appeared to be asking the Florida Bar to reconsider its decision to close the complaint. The Florida Bar found there was no basis to reopen the file as there was "no evidence

that Ms. Duncan violated the rules adopted by the Supreme Court of Florida which govern attorney conduct.” The file remained closed.

2. Complaint filed with the Florida Bar by G.L. against Mr. Francis E. Pierce, III - Florida Bar File No. 2014-30,439(9E)

In November of 2013, G. L., a client discharged by Mr. Francis E. Pierce, III, filed a complaint with the Florida Bar. Mr. Pierce discharged her as a client in a potential personal injury case because, after conducting a thorough factual investigation of the matter and after receiving an independent expert toxicologist’s report, it was his opinion that no facts supported filing any cause of action on her behalf. In January of 2014, Mr. Pierce responded to complaint in Florida Bar File No. 2014-30,439(9E). After a complete investigation by the Bar Counsel, the Florida Bar concluded that there was no evidence to support a grievance compliant against him for violating any Florida Bar rule. The file was then closed.

Tab 8

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
DRUG-FREE WORKPLACE FORM**

The undersigned, in accordance with Florida Statute 287.087 hereby certifies that

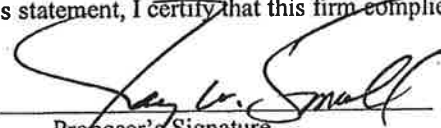
Mateer & Harbert, P.A.

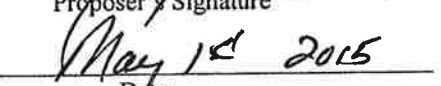
does:

Name of Business

1. Publish a statement of notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in Paragraph 1.
4. In the statement specified in Paragraph 1, notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employees will abide by the terms of a statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Florida Statute 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction of, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1 thru 5.

As the person authorized to sign this statement, I certify that this firm complies with the above requirements.



Proposer's Signature


Date

Tab 9

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
RIGHT-OF-WAY COUNSEL SERVICES
CONTRACT NO. 001116**

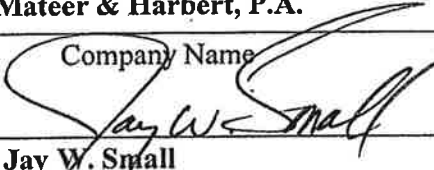
**ACKNOWLEDGMENT OF STANDARD OF CONDUCT AND
CODE OF ETHICS**

If awarded the Contract, the undersigned covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes, Chapter 112, Part III, and Sections 348.753, and 104.31, as it relates to work performed under the Contract, which standards will by reference be made a part of the Contract as though set forth in full. The undersigned agrees to incorporate the provisions of this requirement in any subcontract into which it might enter with reference to the work performed or services provided.

The undersigned further acknowledges that it has read the Authority's Code of Ethics and, to the extent applicable to the undersigned, agrees to abide with such policy.

Mateer & Harbert, P.A.

Company Name

By:  5/1/15

Jay W. Small



Title: Partner

(Note: Failure to execute and submit this form may be cause for rejection of the submittal as non-responsive.)

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Right of Way Committee Members
Central Florida Expressway Authority Board Members

FROM:  Joseph L. Passiatore, General Counsel
 Linda S. Brehmer Lanosa, Deputy General Counsel

DATE: May 22, 2015

RE: *Central Florida Expressway Authority v. Mattamy Homes USA*, Parcel 104
Location: Southwest Quadrant of the S.R. 528 / S.R 417 Interchange
Size of Acquisition: 2.77 acres plus Temporary Construction Easement

CFX staff has been negotiating with Mattamy Homes U.S.A. for the acquisition of a 2.77-acre parcel located generally at the southwest quadrant of the S.R. 528 / S.R 417 Interchange, as part of pre-acquisition process for the multi-modal corridor.

This matter is being brought to the Committee at the direction of the Executive Director because of the time constraints attached to the counteroffer and the development schedule and ongoing construction work of the property owner.

Attached please find a ten-page email string which outlines the negotiations for this parcel and a draft appraisal report dated May 18, 2015.

If approved by the Committee and the Board, the transaction will proceed to closing on May 29, 2015, for the all-inclusive purchase price of \$3.5 million.

This matter has been scheduled for an emergency session with the Board on Thursday, May 28, 2015, at 8:30 a.m.

cc: Laura Kelley, Executive Director

Joe Passiatore

From: Kent L. Hipp <Kent.Hipp@gray-robinson.com>
Sent: Thursday, May 21, 2015 5:38 PM
To: Linda Lanosa
Cc: Tom McCarthy; Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore; Rachael M. Crews; Jim Leiferman (Jim.Leiferman@mattamyhomes.com)
Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - COMMUNICATIONS IN AID OF SETTLEMENT

Linda,

Per our call of just now, this will confirm that Jim Leiferman authorized me to convey to CFX that Mattamy will agree to drop the sound wall and indemnification requirements (items 3 and 4 in my below email) but he cannot change either the overall price of \$3,500,000 or the May 29th deadline for the reasons we discussed during our call. If CFX can meet those 2 requirements then we have a deal.

You indicated that you thought the time requirement could be met, so to me it comes down to whether CFX staff believes that a deal that is approximately 10% over its appraisal (inclusive of all attorney's fees, experts' fees and costs) is a good deal. It would be hard for me to believe that staff wouldn't agree to recommend that. Moreover, the real question should be whether CFX will be able to complete this acquisition in the future condemnation case for that amount or less. I believe that everyone involved in this matter for both parties knows that that will not be the case for a number of reasons – not the least of which is that the Mattamy property will be developed before CFX can take the property. Thus, all of the appraisers will be estimating damages to improved homes rather than vacant lots. That said, we will look forward to hearing from you either way.

Best regards,
Kent

Kent L. Hipp | Shareholder
GRAY | ROBINSON

301 East Pine Street, Suite 1400 | Orlando, Florida 32801
T: 407-843-8880 | **F:** 407-244-5690
[E-mail](#) | [Website](#) | [Bio](#) | [vCard](#)

[Facebook](#) | [LinkedIn](#) | [Twitter](#)

From: Linda Lanosa [mailto:Linda.Lanosa@CFXWay.com]
Sent: Thursday, May 21, 2015 4:56 PM
To: Kent L. Hipp
Cc: Tom McCarthy; Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore; Rachael M. Crews; Jim Leiferman (Jim.Leiferman@mattamyhomes.com)
Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - COMMUNICATIONS IN AID OF SETTLEMENT

Kent,

CFX staff is unable to recommend acceptance of Mattamy's counteroffer at this time. As a result, the item did not make the agenda for the May 27th Right-of-Way Committee meeting. Nevertheless, if your client will accept CFX's oral offer, please advise and we will seek approval to send out a supplement to the agenda.

We seriously appreciate the dialogue with Mattamy's representatives and remain hopeful that discussion will lead to an amiable resolution in relatively short order.

Linda

.....
Linda Brehmer Lanosa
Deputy General Counsel

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
(o) 407.690.5000
(d) 407.690-5382
(f) 407.690.5034
Linda.Lanosa@cfxway.com

PLEASE NOTE: Florida has a very broad public records law (F.S. 119). All e-mails to and from the Expressway Authority are kept as a public record. Your e-mail communications, including your e-mail address, may be disclosed to the public and media at any time.

From: Kent L. Hipp [<mailto:Kent.Hipp@gray-robinson.com>]
Sent: Thursday, May 21, 2015 11:28 AM
To: Linda Lanosa
Cc: Tom McCarthy; Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore; Rachael M. Crews; Jim Leiferman (Jim.Leiferman@mattamyhomes.com)
Subject: Re: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - COMMUNICATIONS IN AID OF SETTLEMENT

Linda,

Other than my last email - do you need anything from Mattamy to get on the agenda and go to the Right-of-way Committee? Please advise.

Thanks for your continued efforts.
Kent

Sent from my BlackBerry 10 smartphone.

From: Kent L. Hipp

Sent: Thursday, May 21, 2015 8:02 AM

To: Linda Lanosa

Cc: Tom McCarthy; Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore; Rachael M. Crews; Jim Leiferman (Jim.Leiferman@mattamyhomes.com)

Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - COMMUNICATIONS IN AID OF SETTLEMENT

Linda,

This will confirm our communications of yesterday and set the ground for the settlement of this matter.

During our first call of late yesterday afternoon you provided me with CFX's oral settlement offer as follows:

1. CFX to pay Mattamy \$3,120,000 plus attorney's fees, expert fees and costs for the proposed approximately 3 acre taking inclusive of all severance damage and other claims that could be made for the taking except for the attorney's fees, experts' fees and costs. You indicated that the figure was based upon appraiser Woody Hanson's verbal indication of the amount of his forthcoming appraisal. You also indicated that the offer was contingent upon all of the following items:
2. Agreement on all attorney's fees, experts' fees and costs or a total global settlement number inclusive of those fees and costs;
3. Mattamy to provide CFX with a Quit Claim Deed for the approximately 50 feet of acknowledged encroachment area where a portion of Mattamy's existing retention pond berm sits;
4. Mattamy to agree to cooperate in CFX's efforts to obtain a utility subordination from FP&L for the existing power line easement;
5. Mattamy to grant CFX a Temporary Construction Easement over the portion of the existing Mattamy retention pond that is not within the 3 acres being acquired in fee by CFX;
6. Agreement contingent upon CFX receipt of appraiser Woody Hanson's appraisal report (please email me a copy of this report upon your receipt of same);
7. Agreement contingent upon CFX Right-of-Way Committee approval; and
8. Agreement contingent upon CFX full Board approval.

In response, and during our second call, I advised you that Jim on behalf of Mattamy authorized me to provide you with his bottom line response as follows:

1. CFX to pay Mattamy a global settlement amount of \$3,500,000 inclusive of all claims that Mattamy could make for the taking of the 3 acres AND inclusive of ALL attorney's fees, experts' fees and costs and Mattamy agrees to items 3-8 above contingent upon the following items which are absolute:
2. Payment MUST be RECEIVED by Mattamy by close of business on Friday, May 29, 2015. If this condition is not met the deal is voided and none of the contents of the deal may be used by either party in future proceedings;
3. CFX/AAF to build an appropriate sound wall at the northern edge of the taking parcel as part of its project (the distance to be covered appears to be about 900 feet from Mattamy's western property line to the existing conservation area). Like the I-4 project and other major infrastructure projects abutting existing residential communities the AAF

project may already have this incorporated but we could not tell from our quick review of the project materials available on-line. If it is not already included in the project, it will be a de minimis expense to add it in the context of the overall AAF project; and

4. CFX to indemnify Mattamy from any fees or costs from Thorpe Early who apparently was an intermediary retained earlier by CFX or its outside counsel to attempt to broker a settlement deal between CFX and Mattamy on the previously proposed 12 acre taking. Jim was not in charge of this matter for Mattamy and my firm and I had not yet been retained so that is all of the information that we have at this time.

I believe that covers everything for now. We thank all of you for your efforts to date and stand ready to assist in the preparation of the appropriate settlement documents (Purchase Agreement, Fee Simple Deed for the 3 acres, Temporary Construction Easement, Quit Claim Deed for the encroachment area, etc.) and otherwise also stand ready to assist in completing all of the above necessary steps to timely complete this deal.

Best regards,
Kent

Kent L. Hipp | Shareholder
GRAY | ROBINSON

301 East Pine Street, Suite 1400 | Orlando, Florida 32801
T: 407-843-8880 | **F:** 407-244-5690
[E-mail](#) | [Website](#) | [Bio](#) | [vCard](#)

[Facebook](#) | [LinkedIn](#) | [Twitter](#)

From: Linda Lanosa [<mailto:Linda.Lanosa@CFXWay.com>]

Sent: Wednesday, May 20, 2015 1:25 PM

To: Jim Leiferman; Kent L. Hipp

Cc: Tom McCarthy; Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hcollins@kcgcorp.com); Joe

Passiatore; Rachael M. Crews

Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - Communication in aid of Settlement

Kent,

Are you available for a telephone conference this afternoon? If so, when and what number shall I call?

Linda

From: Jim Leiferman [<mailto:Jim.Leiferman@mattamyhomes.com>]

Sent: Monday, May 18, 2015 7:06 PM

To: Kent L. Hipp; Linda Lanosa

Cc: Tom McCarthy; Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore; Rachael M. Crews

Subject: Re: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - Communication in aid of Settlement

Kent/Linda

I will be in meetings or traveling the bulk of the day tomorrow but will try to make myself available to the extent practical. There doesn't seem to be much in the way of a sense of urgency from my perspective unless pushing a potential offer from the Authority to the last possible day is some rookie negotiating ploy? We burned 50% of the time remaining before an agreed to offer would go on the public notice for the next agenda for the Right-of-Way Committee meeting answering requests for a "clearer" plat document and responding to queries regarding legal fees.

Best

Jim Leiferman
President - Mattamy Homes USA
1900 Summit Tower Blvd., Suite 500
Orlando, FL. 32810

Office - (407) 599-2228
Cell - (407) 810-1921

On May 18, 2015, at 4:32 PM, Kent L. Hipp <Kent.Hipp@gray-robinson.com> wrote:

Linda,

Please make an offer to Mattamy for what CFX believes is the appropriate compensation amount based on what it knows at this time. Has Woody Hanson provided you with his estimated compensation amount so that you can make an offer? I thought that was the reason we had the meeting with your experts.

Again, I am sure that if we are able to reach consensus between CFX and Mattamy - we can resolve the fee and cost items.

Thanks,
Kent

Kent L. Hipp | Shareholder
GRAY | ROBINSON

301 East Pine Street, Suite 1400 | Orlando, Florida 32801
T: 407-843-8880 | **F:** 407-244-5690
[E-mail](#) | [Website](#) | [Bio](#) | [vCard](#)

[Facebook](#) | [LinkedIn](#) | [Twitter](#)

From: Linda Lanosa [<mailto:Linda.Lanosa@CFXWay.com>]
Sent: Monday, May 18, 2015 3:59 PM
To: Kent L. Hipp
Cc: Jim Leiferman (Jim.Leiferman@mattamyhomes.com); Tom McCarthy (Tom.McCarthy@mattamyhomes.com); Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore
Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - Communication in aid of Settlement

Kent,

Thank you for agreeing to negotiate with CFX without a finished appraisal report and without an official first written offer. I don't think that CFX can agree to base attorney's fees on a draft of an appraisal report that has not been reviewed. When there is no official first written offer and the parties are able to reach a resolution as to full compensation with the owner, what do you typically expect in attorney's fees? Do you base fees on the number of hours times a reasonable hourly rate? Or, do you make all-in offers?

Linda

From: Kent L. Hipp [<mailto:Kent.Hipp@gray-robinson.com>]
Sent: Monday, May 18, 2015 2:08 PM
To: Linda Lanosa
Cc: Jim Leiferman (Jim.Leiferman@mattamyhomes.com); Tom McCarthy (Tom.McCarthy@mattamyhomes.com); Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore
Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - Communication in aid of Settlement

Linda,

Thank you for your email. I have discussed this matter with Jim and we agree that the Authority should provide us with an offer – oral or in an email – it doesn't matter to us. Last week Woody Hanson advised us during our Joint Meeting that he would have his appraisal report submitted early this week. I have known and worked with and against Woody for 25 years. I am quite certain that he has or could disclose his approximate appraisal opinion to the Authority and that CFX can make its offer to Mattamy on that basis - even without having Woody's full formal written report in hand and reviewed. We will agree to base the statutory attorney's fee on whatever amount Woody's appraisal report estimates. In this fashion, the amount paid by CFX and received by Mattamy is the issue and the attorney's fee is not. We also have some expert fees which we will need to address but Jim is confident that all of the fee and cost issues can be resolved if the compensation and timing issues are resolved.

Finally, as we reviewed in detail at our meetings – while we are working under a tight time constraint based upon Mattamy's fiscal year end - there are clearly benefits to BOTH parties if this matter can be timely completed. To that end, we look forward to continuing our efforts with you and receiving the offer and, soon after that, the appraisal that Woody said would be submitted.

Thanks and
Best regards,
Kent

Kent L. Hipp | Shareholder
GRAY | ROBINSON

301 East Pine Street, Suite 1400 | Orlando, Florida 32801
T: 407-843-8880 | **F:** 407-244-5690
E-mail | **Website** | **Bio** | **vCard**

Facebook | **LinkedIn** | **Twitter**

From: Linda Lanosa [<mailto:Linda.Lanosa@CFXWay.com>]
Sent: Monday, May 18, 2015 12:40 PM
To: Kent L. Hipp
Cc: Jim Leiferman (Jim.Leiferman@mattamyhomes.com); Tom McCarthy (Tom.McCarthy@mattamyhomes.com); Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com); Joe Passiatore
Subject: RE: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - Communication in aid of Settlement

Kent,

Thank you and your client for meeting with us. We appreciate the opportunity to have an open dialogue with you. Would you consider any other forms of negotiation besides the issuance of a written offer? For example, given your client's time constraints, would you and your client consider oral negotiations involving price before an appraisal report is completely written and reviewed?

I understand that your concern may be one of attorney's fees, which are based on the first written offer. Is there any other means of addressing your attorney's fees that would allow the parties to discuss full compensation for the property owner without having to wait for a completed appraisal report and tendering a first written offer?

Thank you for your consideration.

Linda

.....
Linda Brehmer Lanosa
Deputy General Counsel

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
(o) 407.690.5000

(d) 407.690-5382
(f) 407.690.5034
Linda.Lanosa@cfxway.com

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From: Kent L. Hipp [<mailto:Kent.Hipp@gray-robinson.com>]
Sent: Sunday, May 17, 2015 10:48 PM
To: Linda Lanosa
Cc: Jim Leiferman (Jim.Leiferman@mattamyhomes.com); Tom McCarthy (Tom.McCarthy@mattamyhomes.com); Keeter, Deborah D; Laura Kelley; Woody Hanson; Hal Collins (hhcollins@kcgcorp.com)
Subject: CFX/AAF proposed acquisition from Mattamy Homes/ Randal Park residential development property - Communication in aid of Settlement

Linda,

As a follow up to our meetings with you and the CFX/AAF team and consultants, I want to express Mattamy's gratitude for CFX's efforts to expedite this matter.

I also want to confirm to you that Mattamy has now been advised by its title insurer that the property in the attached 1966 deed does belong to CFX and not Mattamy.

Finally, and perhaps most importantly, as we discussed, in order to have a chance at making our schedule we will need to receive the Authority's written Offer and appraisal early this week – please confirm that will happen. Again, Mattamy commits to providing you with its response within 24 hours of receipt of the offer from CFX.

We look forward to hearing from you and continuing our efforts towards an amicable and mutually beneficial resolution to this matter.

Thanks and
Best regards,
Kent

From: Keeter, Deborah D [<mailto:Deborah.Keeter@atkinsglobal.com>]
Sent: Tuesday, May 12, 2015 7:35 AM
To: Kent L. Hipp
Cc: Linda Brehmer- Lanosa
Subject: CFX - Mattamy

Kent

Please confirm that Mattamy agrees that the property in the attached Deed is owned by CFX, and that Mattamy has no claim to the property.

Thanks

Deb

Deborah Keeter
Project Manager
Direct: 407-806-4183

Atkins

482 S. Keller Rd., Orlando, FL 32810 | Cell: +1 (407) 461-7116 | Fax: +1 (407) 806-4500

Kent L. Hipp | Shareholder
GRAY | ROBINSON

301 East Pine Street, Suite 1400 | Orlando, Florida 32801
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From: Kent L. Hipp
Sent: Thursday, May 14, 2015 12:27 PM
To: HREA
Cc: Jim Leiferman (Jim.Leiferman@mattamyhomes.com); Tom McCarthy (Tom.McCarthy@mattamyhomes.com); Linda Lanosa (Linda.Lanosa@CFXWay.com); Linda Brehmer-Lanosa; Keeter, Deborah D; Laura Kelley; Hal Collins
Subject: Mattamy Homes - Answers to Questions/Information regarding Randal Park requested by CFX Appraiser Woody Hanson

Woody,

As a follow up to our meeting of this past Tuesday afternoon and so that CFX can provide us with your appraisal and an offer in this matter asap please see Mattamy's answers to the questions that you stated below. Please note that some of this information (e.g. the answer to question 6) will change as the Mattamy construction and development is progressing daily.

Thanks and
Best regards,
Kent

1. What are the 12 lots on the taking pond worth
\$2,200 a Front Foot \$132,000

2. What are the 17 lots on the pond next to the ROW worth
\$2,200 a Front Foot \$132,000
3. For the "60" footers what is a base price of a home worth
Ranges from \$321,990 to \$371,990
4. For the "60" footers, What are the lot premiums.
Would range from \$5,000 to \$30,000 depending on location
From superior location to oversize 60 foot lot
5. For the "60" footers, What are the pond premiums
Pond Premiums for the "12" Lots is \$20,000
and "17" lot locations is \$25,000
6. Total capital required to finish the entire project, land development and home construction. .
The unconstructed portion of the project will require \$86,000,000 to complete the improvements and home construction.
7. Rate of sales, particularly the 60 footers.
Starting with Phase 2 sales in November 2014 pace is 17.8 per month

DRAFT

HREA ASSIGNMENT NO. 15001002.C

Appraisal Services Contract No. 001092
CFX Project: SR 528 Multimodal Corridor in Orange County
Parcel No.: 104 (Mattamy Homes)
City/State: Orlando, Florida

THE CLIENT

Central Florida Expressway Authority
4974 Orl Tower Road
Orlando, Florida 32807

EFFECTIVE DATE OF THE APPRAISAL

May 18, 2015

PREPARED BY

Hanson Real Estate Advisors, Inc.
2233 Second Street
Fort Myers, FL 33901-3051

HANSON REAL ESTATE ADVISORS, INC.

Real Estate Consulting • Appraisal • Brokerage

May 21, 2015

Joseph L. Passiatore
General Counsel
Central Florida Expressway Authority
4974 Orl Tower Road
Orlando, Florida 32807

Re: HREA Assignment No. 15001002.C
Appraisal Services Contract No. 001092
CFX Project: SR 528 Multimodal Corridor in Orange County
Parcel No. 104 (Mattamy Homes)
City/State: Orlando, Florida

Dear Mr. Passiatore:

Hanson Real Estate Advisors, Inc. (the Appraiser) has completed the real property appraisal assignment referenced above (the Appraisal). The Appraiser's opinions and conclusions are set forth in the Restricted Appraisal Report (the Appraisal Report) attached to this letter of transmittal.

The purpose of the Appraisal is to estimate the monetary amount due the property owner as a result of the acquisition of Parcel 104 of the Multimodal Corridor in Orange County Project.

Central Florida Expressway Authority is the client and the intended user of the Appraisal Report. It is the Appraiser's intent that the appraisal report only be used for purposes related to the voluntary acquisition or condemnation of Parcel 104.

As a result of my investigation and analysis, it is my opinion that the amount due the owner, as of May 18, 2015, was:

THREE MILLION-ONE HUNDRED TWENTY THOUSAND-THREE HUNDRED-FIFTY DOLLARS
(\$3,120,350)

If you have any questions regarding the appraisal or related matters, please contact me at your earliest convenience.

Respectfully submitted,

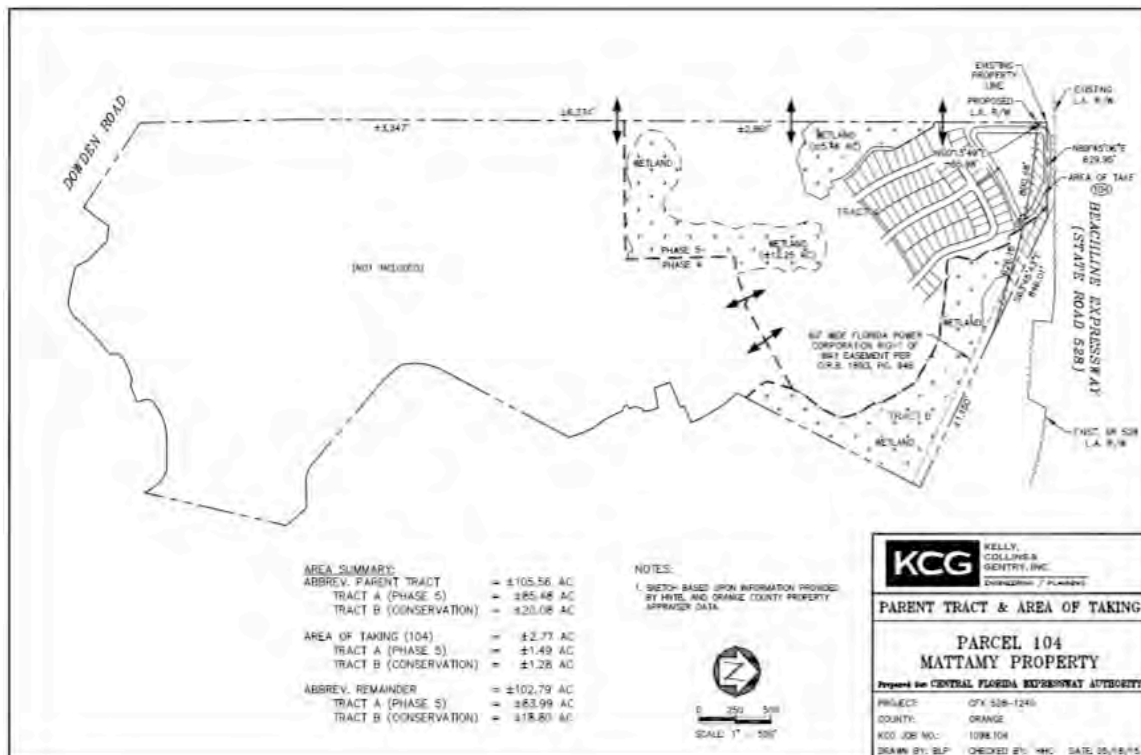
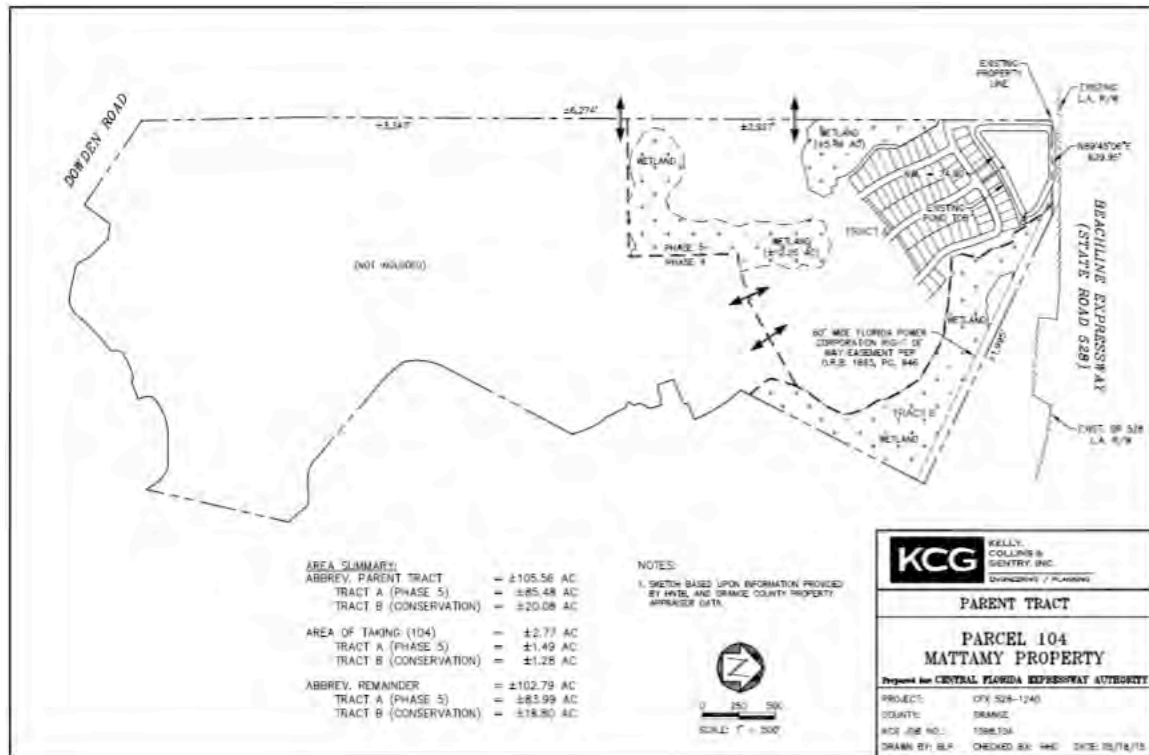
Woodward S. Hanson, MAI, CRE, CCIM, FRICS
Cert Gen RZ1003

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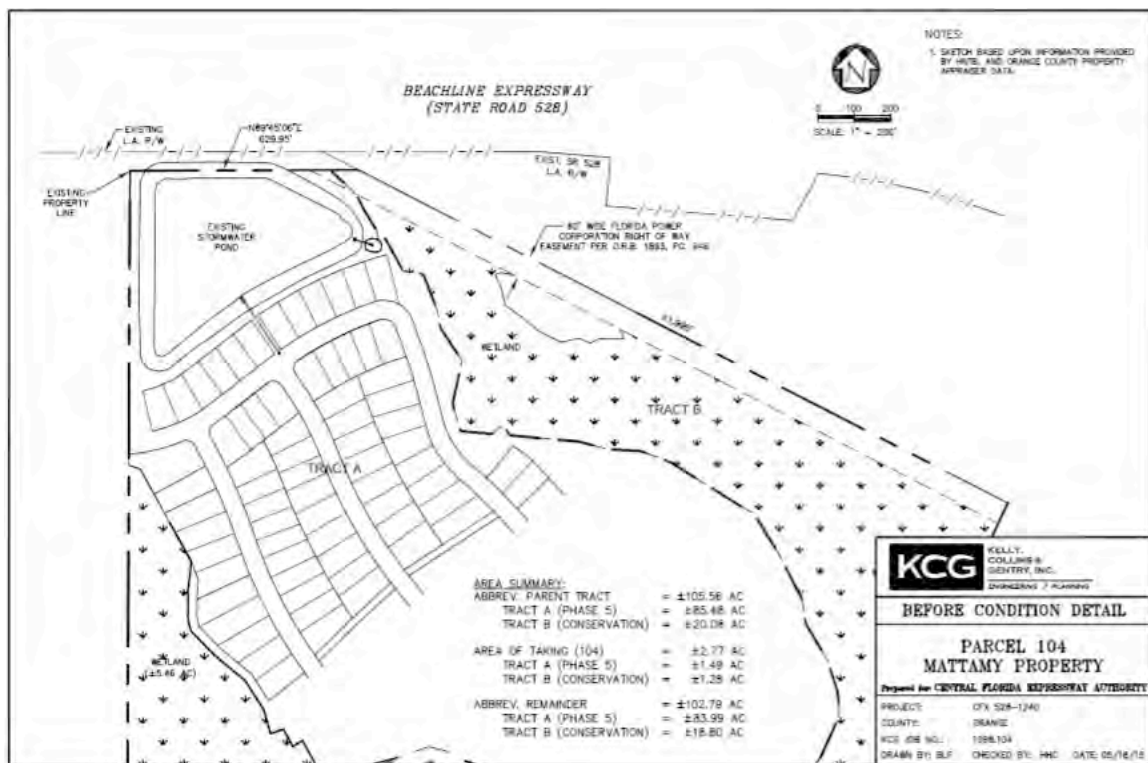
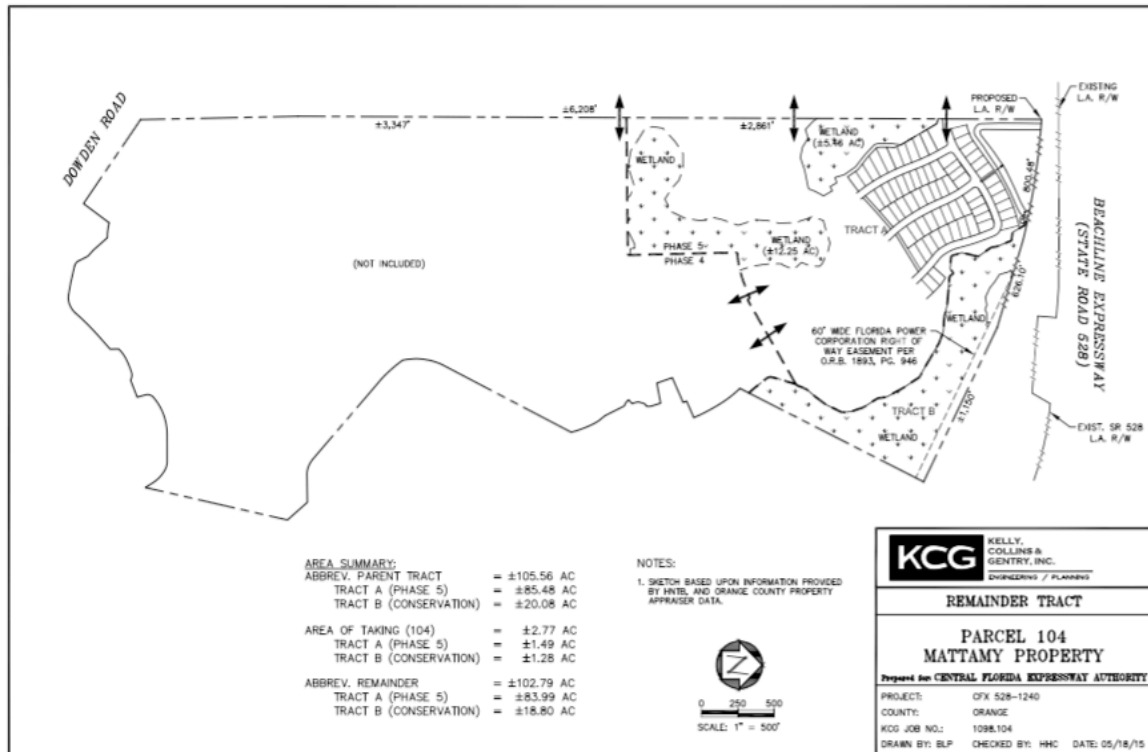
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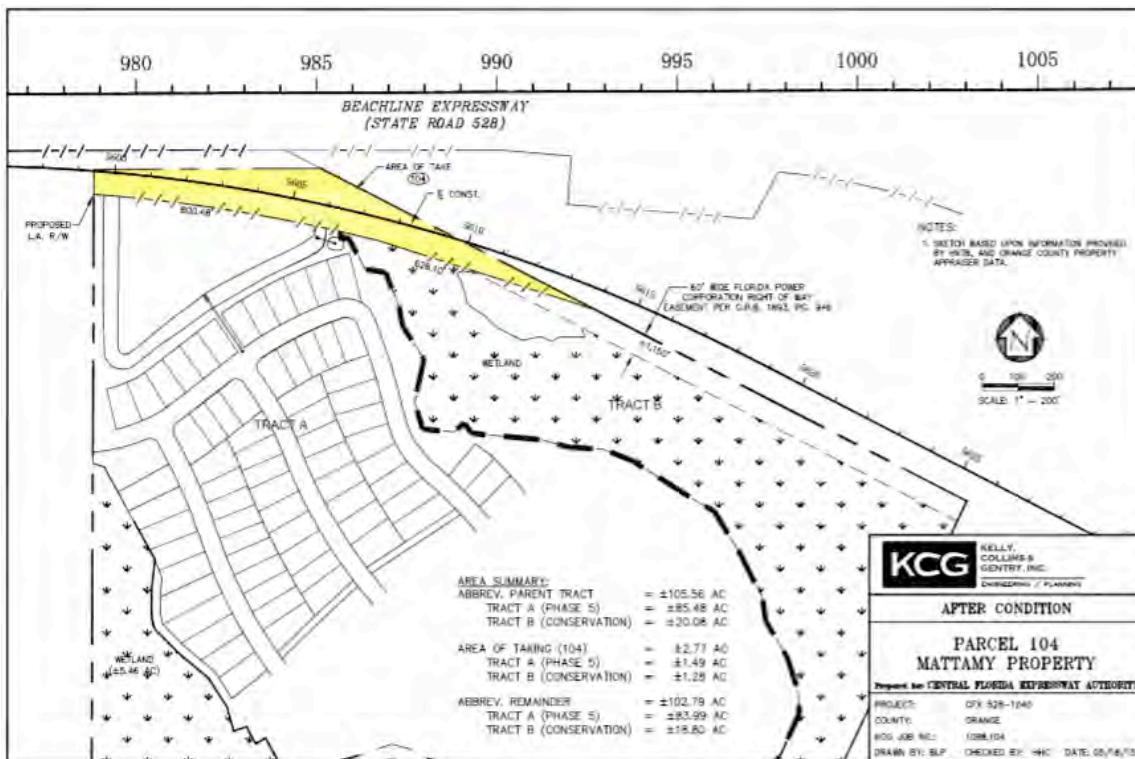
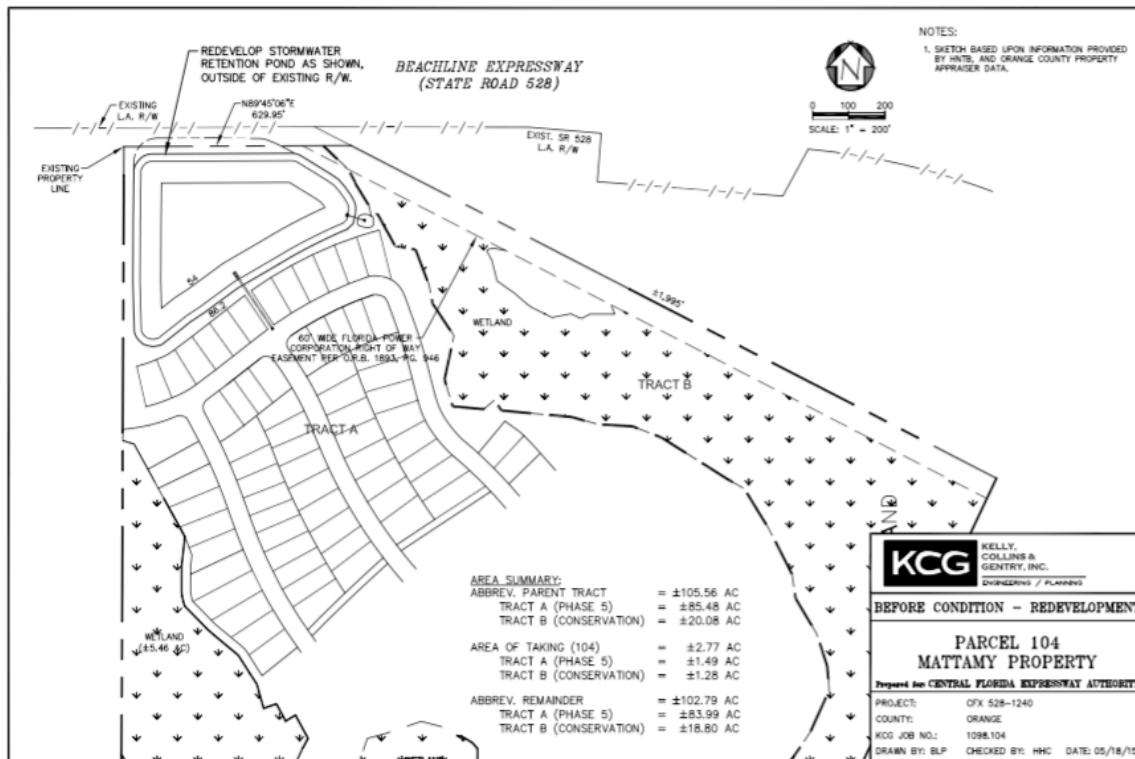
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HREA ASSIGNMENT No. 15001002.C (PARCEL 104: MATTAMY HOMES)



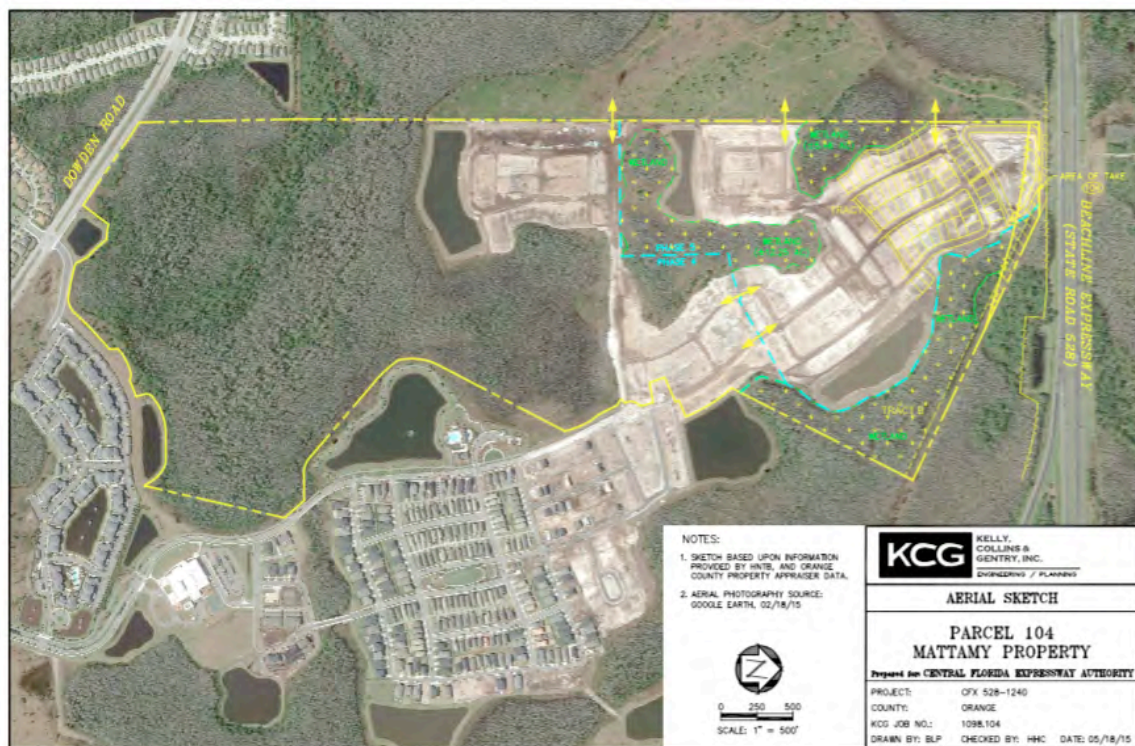
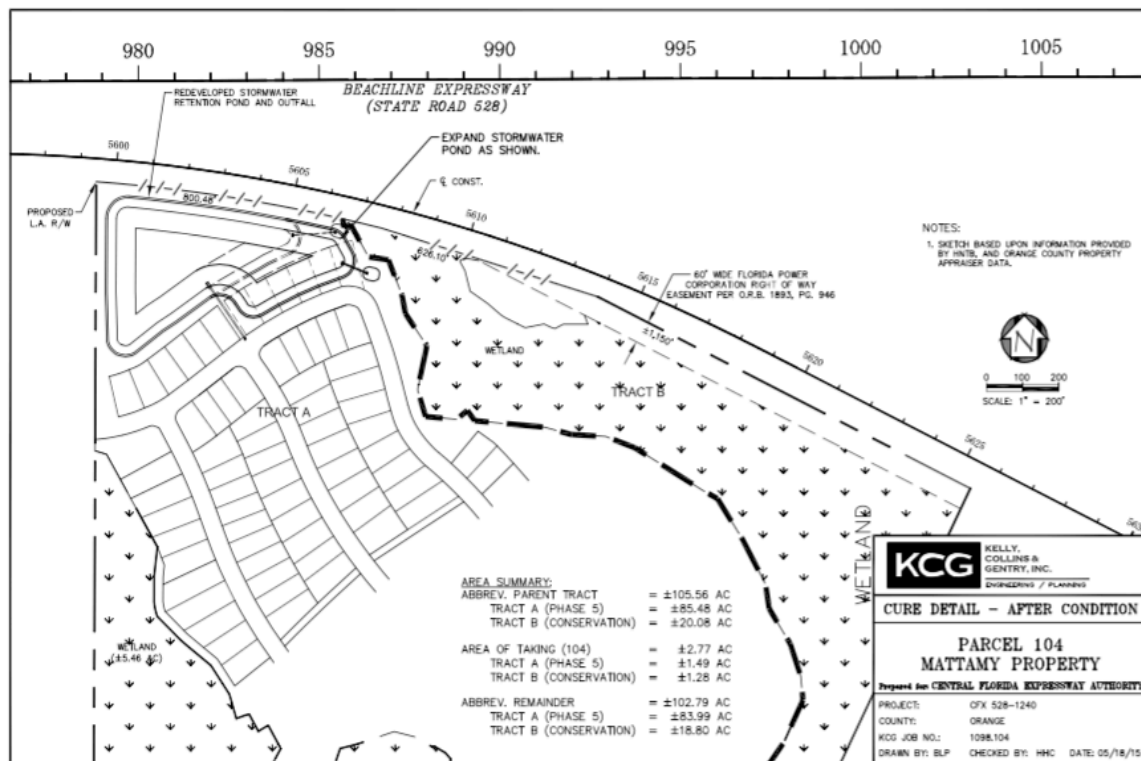
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CFX PROJECT No. 528-124 (MULTIMODAL CORRIDOR IN ORANGE COUNTY)
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CFX PROJECT No. 528-124 (MULTIMODAL CORRIDOR IN ORANGE COUNTY)
HREA ASSIGNMENT No. 15001002.C (PARCEL 104: MATTAMY HOMES)



PHOTOGRAPHS

Taken on January 16, 2015

Taken by Woodward S. Hanson, MAI, CRE, CCIM, FRICS



Interior View of the Mattamy Property



Interior View of the Mattamy Property



View of the Mattamy Property from SR 528 (Beachline Expressway)



East View along SR 528 (Beachline Expressway) along north side of the Mattamy Property

1.0 ELEMENTS OF THE ASSIGNMENT

1.0 ELEMENTS OF THE ASSIGNMENT

1.1 THE CLIENT

The client is the party or parties who engage, by employment or contract, an appraiser in a specific assignment.¹ The client is the Central Florida Expressway Authority (Client), 4974 ORL Tower Road, Orlando, FL 32807.

1.2 THE INTENDED USERS OF THE APPRAISAL REPORT

The intended user of the appraisal report is the client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser on the basis of communication with the client at the time of the assignment.² It is the appraisers intent that the appraisal report be used, solely by the Client (Intended User).

1.3 THE INTENDED USE OF THE APPRAISAL REPORT

The use or uses of an appraiser's reported appraisal or appraisal review assignment opinions and conclusions, as identified by the appraiser based on communication with the client at the time of the assignment.³ It is the appraisers intent that the appraisal report be used, solely for the voluntary acquisition or condemnation of that certain property identified herein as the Parcel 104, the Part Taken, or proposed acquisition area (Intended Use).

1.4 REAL PROPERTY INTEREST TO BE APPRAISED

Real property is the interests, benefits, and rights inherent in the ownership of real estate.⁴ The fee simple estate is the property interest that is the subject of this appraisal.

1.5 TYPE OF VALUE TO BE ESTIMATED

Market value is the type of value that will be estimated in this appraisal. Although there are many definitions for market value, generally, they are similar in many, if not all respects. The definition, below, is used in this assignment.

“The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeable and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;
3. a reasonable time is allowed for exposure in the open market;

¹ Appraisal Standards Board. *Uniform Standards of Professional Practice*. (Washington, D.C.: The Appraisal Foundation, 2014), U-2.

² Ibid., U-3.

³ Ibid.

⁴ Ibid.,U-4.

4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”⁵

1.6 DATE OF THE VALUE OPINION

The effective date of the assignment results, also known as the date of the value, is May 18, 2015 (the Date of Value) and the date of the report is May 20, 2015 (the Date of the Report).

1.7 SCOPE OF WORK

The type and extent of research and analyses in performed by the Appraiser in the preparation and development of the appraisal include (without limitation):

1. Extent of the Property Identification: Several methods have been used by the Appraiser to identify the Parent Tract, the Part to be Acquired (Parcel 104), and the Remainder Property. These include: a) a metes and bounds legal description, prepared by AMEC Environmental and Infrastructure, Inc., b) a narrative description, and c) visual aids and illustrations.
2. Extent of the Property Inspection: The Parent Tract, containing 105.56 acres, is located in the Randal Park PD multiple phase plan development. The Parent Tract and the area proposed to be acquired (Parcel 104) were inspected by Woodward S. Hanson, MAI, CRE, CCIM, FRICS and Nelson P. Taylor, Cert Gen RZ3732. Each appraiser made an on-site inspection of the property.
3. Type and Extent of Data Researched: The type of data researched included macro-economic data pertaining to the U.S. economy, the Orange County Metro area, and nearby submarkets; micro-economic data pertaining to recent transactions and listings of similar properties; and data pertaining to the property contiguous to the Mattamy Parcel and owned by Mattamy Homes, a Florida general partnership.
4. Type and Extent of Analysis Applied: The sales comparison approach is the appraisal method or analysis that was used by the Appraiser in developing a market value estimate for the Parent Tract and the Remainder Properties. In the course of this analysis, the Appraiser identified submarkets from which data pertaining to recent transactions or listings of similar properties was collected. This information was used in a comparative analysis, in which qualitative techniques were applied to derive a value indication.

1.8 ASSIGNMENT CONDITIONS

The nature of the appraisal problem determines whether or not any extraordinary assumptions, hypothetical conditions, or jurisdictional exception apply to a specific assignment. Given the purpose of the appraisal and the intended use of the appraiser’s opinions and conclusions, the assignment conditions are defined as:

⁵ The Appraisal Institute. *The Appraisal of Real Estate – 14th Edition*. (Chicago, IL.: The Institute, 2013), 59.

A. Extraordinary Assumptions: An extraordinary assumption, is directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.⁶

The appraiser's opinions or conclusion are based on the extraordinary assumptions identified below:

1. The transactional information contained in the appraisal report and used by the Appraiser in application of the sales comparison approach, is correct and accurate.
2. The Property information and the market data contained in the Appraisal Report are complete and accurate.

B. Hypothetical Conditions: A hypothetical condition is a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for purpose of analysis.⁷

Neither the analyses nor opinions expressed herein are not based upon a hypothetical condition.

1.9 APPRAISAL ASSISTANCE

The opinions contained in the Appraisal Report are solely those of Woodward S. Hanson, MAI, CRE, CCIM, FRICS. Mr. Hanson was assisted by Nelson P. Taylor, a member of his staff, and Kelly, Collins & Gentry, Inc., who provided land planning and engineering services; and W.D. Richardi, Inc., who provided cost estimates for the various project elements.

⁶ USPAP, U-3.

⁷ Ibid.

2.0 ECONOMIC CONDITIONS AND TRENDS

2.0 ECONOMIC CONDITIONS AND TRENDS

2.1 THE U.S. ECONOMY

2.1.1 Economic Momentum Slowed in First Quarter

- Recent economic data demonstrate that the economy softened in first quarter 2015. GDP growth fell to 0.2 percent, according to the BEA, and the majority of state unemployment rates increased in March.
- Interest rates could begin to increase this year, although most investors expect them to remain low on a relative basis for the near term as the Federal Reserve continues to monitor inflation and employment before they raise the target range for short term rates.
- The 10-year U.S. Treasury yield rate ended first quarter at 1.94 percent, but has since increased to 2.24 percent. This is very close to the average that Situs RERC's institutional investment survey respondents predicted over the next 6 months. Respondents expected the 10-year U.S. Treasury yield rates will increase further over the next 12 months to an average of 2.52 percent.⁸

2.1.2 Underwriting standards are loosening. Are we at a tipping point?

- Investors are worried about weak underwriting standards for commercial real estate. Situs RERC's institutional investment survey respondents, rated the overall discipline of capital at 6.0 on a scale of 1 to 10, with 10 representing very tight underwriting standards, in first quarter 2015. This is down from a rating of 6.2 in fourth quarter 2014.
- Are we entering dangerous territory? Not yet, because the availability of capital remains fairly stable, even declining slightly to a rating of 8.2 in first quarter 2015 from a rating of 8.3 in fourth quarter 2014 and a rating of 8.5 in third quarter. However, we may be at a tipping point, as the spread between the availability and discipline of capital has been increasing and is comparable to that point in 2003 where the availability and discipline began to diverge very broadly, leading to the biggest credit crisis in recent history.⁹

2.1.3 Strong Demand Pushes Aggressive Pricing.

- We continue to see exceptional demand for commercial real estate. Recent reports about the sale of GE Capital's real estate assets for \$26.5 billion (the largest deal since Blackstone's acquisition of Equity Office Properties Trust in 2007) and the sale of Willis tower for \$1.3 billion (the highest price paid for a U.S. office tower outside of New York City, according to *MarketWatch*), are whetting the appetites of investors. As long as interest rates and cap rates remain at near record lows, the rally continues. This is the most important inflection period in this cycle as prices begin to peak. The size of deals is larger and prices are higher than even before the credit crisis.
- Willing buyers are finding the capital they need (plus more) to pay top prices. From a performance perspective, values are holding their own and then some, despite the pressure from prices. Solid risk-adjusted returns continue to place commercial real estate among the most attractive investment alternatives at the present. However, there is increasing concern that

⁸ "Executive Summary: First Quarter 2015," *Situs RERC Real Estate Report: Dynamic Equilibrium* 44, no. 1 (Spring 2015).

⁹ Ibid.

once interest rates increase, values could quickly decrease and investors will be left holding the keys.¹⁰

2.1.4 WHAT DOES THIS MEAN FOR COMMERCIAL REAL ESTATE VALUES?

- There are huge amounts of capital still pressuring commercial real estate investment. This, along with low interest rates, which are expected to remain quite low on a relative basis, indicate that this cycle should continue in the current direction for another 12 months or so.
- Property fundamentals have been improving, and expectations are that they will continue to do so for the rest of the year. In addition, with the exception of the apartment sector in some markets, new construction has not gotten too far ahead of fundamentals.
- Situs RERC remains quite bullish on commercial real estate for the near term. We have already seen some of the highest prices ever paid for commercial real estate and it is likely that we will see more of these in 2015. We also expect both debt and equity volume to increase in 2015 over 2014 volume. However, at some point, cap rates will start to increase.
- Investors should not become complacent. Eventually this commercial real estate cycle – like all cycles – will correct. “In general, the longer the run, the more severe the correction. Far better for commercial real estate as a whole, if prices didn’t get so high and didn’t have such a sharp correction,” stated Situs RERC President Ken Riggs.¹¹

2.2 OUTLOOK FOR THE U.S. AND CENTRAL FLORIDA 2015-2018

2.2.1 Orlando – Kissimmee Profile

The Orlando–Kissimmee MSA is comprised of Lake, Orange, Osceola and Seminole Counties. Located in the southern center of the state, this area is home to numerous tourist attractions such as Walt Disney World, Universal Studios and Sea World. It is also home to the Orlando Magic and the Orlando City Soccer Club. Orlando hosts many conventions utilizing some of the biggest hotels in the country and America’s second largest convention center. The University of Central Florida, the nation’s second largest university, and many other places of higher education also reside in the MSA.¹²

2.2.2 Orlando – Kissimmee Quick Facts

- MSA population estimate of 2,267,846 as of July 1, 2013 (U.S. Census Bureau).
- Lake County population estimate of 308,034 as of July 1, 2013 (Metro Orlando Economic Development Commission).
- Orange County population estimate of 1,224,267 as of July 1, 2013 (Metro Orlando Economic Development Commission).
- Osceola County population estimate of 298,504 as of July 1, 2013 (Metro Orlando Economic Development Commission).
- Seminole County population estimate of 436,041 as of July 1, 2013 (Metro Orlando Economic Development Commission).
- Civilian labor force of 1,204,111 in January 2015 (Florida Research and Economic Database).

¹⁰ Ibid.

¹¹ Ibid.

¹² ¹² “Florida Metro Forecast 2015-2018: March 2015 Report, “*University of Central Florida, Institute for Economic Competitiveness: Florida Forecast* (March 2015).

- An unemployment rate of 5.6% as of January 2015, not seasonally adjusted. This amounts to 67,270 unemployed people (Florida Research and Economic Database).¹³

2.2.3 Orlando – Kissimmee Outlook Summaries

The Orlando–Kissimmee area is expected to show varying strengths and weaknesses in the economic indicators. Personal income growth is expected to average 6.2 percent annually, the second highest of the twelve Metropolitan Statistical Areas (MSAs). The real per capita income level is expected to average \$36,800. Average annual wage growth will be 3.2 percent. The average annual wage will be at a level of \$49,300. The Orlando MSA will see an average population growth of 2.3 percent, the second highest of the studied MSAs. Gross Metro Product is expected to average at 122,645.35 million dollars, the third highest of the MSAs. Employment growth is forecasted to average 3.0 percent annually, the second highest of the MSAs. The metro will see an average unemployment rate of 5.0 percent. In the Orlando area, the fastest growing sector is expected to be the Construction and Mining sector with an average annual growth rate of 9.3 percent. This will be followed by the Professional and Business Services sector, with an average annual growth rate of 4.4 percent, and the Educational and Health Services sector at 2.9 percent. None of the sectors are expected to decline.¹⁴

2.2.4 Orlando – Kissimmee Metro News Summaries

Orlando ranks No. 11 in U.S. for economic performance

- Orlando ranked 11th highest in the nation and 73rd highest in the world in the Brookings Institution Economic Performance measurement released in January.
- Over 2013-2014, Orlando increased employment by 3.5 percent while the national average was only 1.2 percent. Orlando's Gross Domestic Product also showed an increase of 0.1 percent over the 2013- 2014 period. Overall, Orlando is still listed as having only "partially recovered" from the recession.
- Austin and Houston ranked highest among U.S. metros in the international rankings at numbers 38 and 39, respectively. China performed extremely well having 26 of the top 45 metros.

UCF gets OK on \$5.8M to start plans for downtown Orlando campus

- On February 19th, the Florida Board of Governors unanimously approved a \$5.8 million funding request to begin the first building in UCF's planned downtown Orlando campus.
- A portion of the funding will go towards planning "Building A," a proposed \$57.8 million joint Valencia/UCF student support and services building. This would be the first of two buildings planned by UCF to be built in downtown's Creative Village development.
- Thus far, the project has not received any capital appropriations. UCF received \$2 million in operating appropriations from the 2014 Legislature for a feasibility study of the downtown campus.
- The downtown campus is slated to have 13,000 students. Decisions regarding which academic programs will be moved to the new campus are expected in late spring 2015.

¹³ Ibid.

¹⁴ Ibid.

Orlando City Soccer sells out Citrus Bowl for MLS debut

- The Orlando City Soccer Club Lions sold out the 60,000-plus Orlando Citrus Bowl for the March 8th opener, the team's first Major League Soccer game.
- At the start of March, the team had already passed 13,000 season ticket sales, with a goal of 14,000 season ticket holders by opening day.
- Phil Rawlins, founder and president of Orlando City Soccer, hopes to have all 14,000 season ticket holders at each game plus an additional 6,000 attendees for an average of 20,000 in attendance. He believes this is on par for what the team will be dealing with for its new \$110 million stadium slated to open next season.

Developer Plans new 1,100-home I-Drive neighborhood near SeaWorld

- Ridgewood Real Estate Partners, based in Florham, New Jersey, and Angel Gordon & Co. LP, based in New York, are seeking approval from Orange County for a 1,136 home neighborhood that will include single-family lots, townhome lots, and rental apartment parcels.
- The development is planned atop the Marriott Grande Pines golf course on International Drive and Westwood Boulevard. Construction could begin by the 4th quarter of this year.
- Jonathan Grebow, president of Ridgewood Real Estate Partners, expects the homes to sell to end users as opposed to vacation homes. New apartment development in the nearby area includes the \$40 million Integra Cove complex and the \$43 million Sea Isle Apartments.

Marglev hires train car designer for Orlando airport- to-I-Drive rail

- American Marglev Technology Inc. selected Van Buren Township, Michigan-based engineering consultant Richardo Plc to handle the design, engineering, and integration of their planned magnetic-levitation passenger trains.
- The trains are to be part of the \$400 million passenger rail line connecting Orlando International Airport with the Orange County Convention Center, which is planned to begin operating in 2017.
- Once complete, Marglev will include six or seven stations, including stops at the airport's new Intermodal Transportation Facility, the Florida Mall, and several on Orlando's I-Drive tourist corridor. Additionally, the project is expected to generate 85 local, high-tech jobs with potential for 100-plus permanent jobs.¹⁵

2.3 SUMMARY AND CONCLUSION OF ECONOMIC CONDITIONS AND TRENDS

In summary, the U.S., Florida, and Orlando-Kissimmee MSA have fully recovered from the recessionary cycle of 2010. Each of these markets appear to be experiencing economic growth and expectations for the future remain optimistic. The U.S. economy has enjoyed the economic growth attributable to low interest rates and the DJIA recently closed at a record high.. The Orlando-Kissimmee MSA is experiencing increases in construction of new residential dwelling units and will likely be one of Florida's strongest MSAs going forward. Each of these markets and the economic expectations associated with them suggest continued economic growth into the reasonably foreseeable future. Furthermore, most of these considerations will likely have favorable effects on the real estate market, particularly in Florida and the Orlando-Kissimmee MSA.

¹⁵ Ibid.

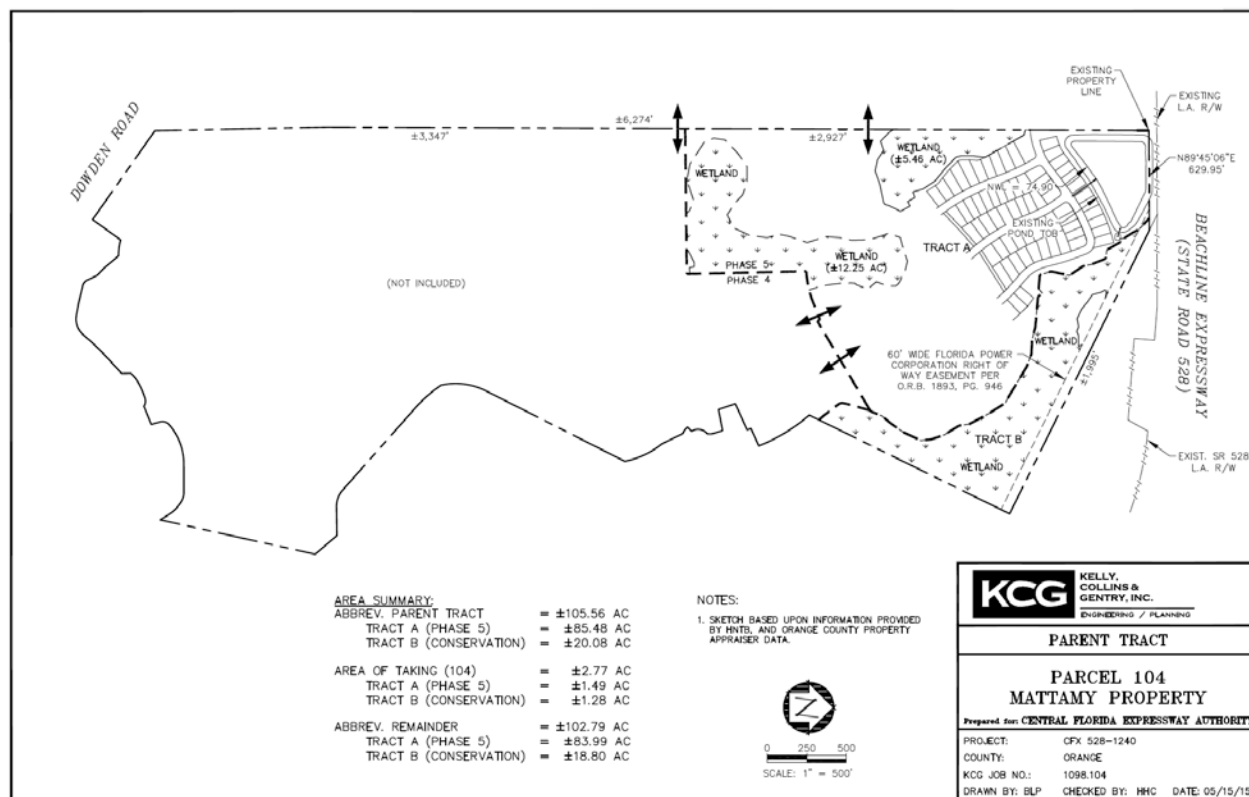
3.0 IDENTIFICATION OF THE PARENT TRACT

3.0 IDENTIFICATION OF THE PARENT TRACT

3.1 PHYSICAL CONDITIONS

3.1.1 Parent Tract

Containing approximately 105.6 acres of gross land area, the Parent Tract is part of a 461.5 acre multiple phase planned development known as Randal Park PD. The Parent Tract is identified as: (1) Tract A (Phase 5 of Randal Park PD) = ± 85.48 acres, and (2) Tract B (Undeveloped/Wetlands) = ± 20.08 acres.



3.1.2 Location

The property is located in east Orange County, within the City of Orlando, and south of State Road 528 (SR-528), west of State Road 417 (SR-417), and north of Dowden Road. Access to the property is from SR-417 or Narcoossee Road via Dowden Road. Randal Park Boulevard extends north from Dowden Road providing access to the parent tract.

3.1.3 Size and Shape

The property, containing approximately 105.6 acres, is of irregular shape and has a west boundary that measures $\pm 2,927$ feet, a north boundary along the south limited-access right-of-way of SR-528 Beachline Expressway that measures ± 629.95 feet, and a northeast boundary that measures $\pm 1,995$ feet.

3.1.4 Access

Two roads, internal to the Randal Park PD subdivision, provide access to the property. The internal road network includes a spine road known as Randal Park Boulevard, which provides access to Dowden Road to the south.

3.1.5 Utilities

The property is serviced by the City of Orlando for sewer and the Orlando Utilities Commission (OUC) for water and electricity.

3.1.6 Easement/Encumbrances

The north/northeast property line is encumbered by an existing 60 ft wide Florida Power Corporation right-of-way easement per an instrument recorded at O.R. Book 1893, Page 946, Public Records of Orange County, Florida.

3.1.7 Topography

Elevations at the property range from EL±85 NGVD at the northwest portion of the site to EL±82 at the low/wetland portions generally out falling to the southeast. Portions of the parent tract are currently under construction with mass grading and utility/site infrastructure.

Portions of Tract A have recently been cleared, mass graded, and a stormwater pond facility constructed in the northwest corner of the parent tract. A portion of the pond encroaches upon the SR-528 Beachline Expressway right-of-way.

3.1.8 Existing Use and Adjoining Uses

The property is Phase 5 of a single-family (detached and townhomes) residential community that is currently being developed by Mattamy Homes. Land uses adjacent to the property are:

North – SR-528 & Vacant/Undeveloped

East – SR-417 & Vacant/Undeveloped

South – Single Family Residential (Phase 4 of Randal Park)

West – Vacant/Undeveloped

3.1.9 Stormwater/Drainage

The northwest portion of the parent tract is improved with a wet detention pond. According to engineering plans and drainage calculations for SFWMD Environmental Resource Permit #48-01727-P-02 (Issued May 23, 2014), stormwater management sub-basin B-NV3 is approximately 15.4 acres in size with the pond comprising approximately 33% of the basin. This percentage typically suggests that the SWM pond is over designed; and this is essentially confirmed based upon the comparison of required vs. provided water quality treatment volume within the pond.

3.1.10 Environmental

Site plans filed with the City of Orlando indicate that the Randal Park PD contains 461.5 acres, of which 285.9 acres are preserved wetland conservation area and 175.6 acres of developable upland area. The parent tract contains 105.56 acres of which 20.08 acres are preserved wetland conservation area and 85.48 acres of developable upland area.

3.1.11 Flood Zone

The parent tract is identified on the FEMA Flood Insurance Map 12095C0455F, Panel 455 of 750, with upland portions located within Zone X outside the limits of the 100 year floodplain (EL 82) with select wetland areas located with Zone A, subject to the floodplain.

3.1.12 Soils

According to the U.S. Department of Agriculture, Natural Resources Soil Conservation Service (NRCS), the upland portions of the parent tract are comprised primarily of Smyrna-Smyrna wet, fine sand, characterized as poor drainage and 0.2% slope.

3.2 FUTURE LAND USE ANALYSIS

3.2.1 Future Land Use

The property is designated *Office Low Intensity & Conservation* on the Future Land Use Map of the City of Orlando's Comprehensive Plan. Office Low Intensity Land Use allows for a maximum density of 21 dwelling units per acre (du/ac) and a maximum intensity of 0.4 floor area ratio (FAR). Conservation Land Use (Wetlands) allows for a maximum density of 1 du/5 ac, and a maximum intensity of 0.05 FAR.

3.2.2 Future Land Use Policies

Policy S.35.2 of the City's comprehensive plan states that the property is well situated for appropriately timed urbanization. Policy S.35.6 identifies maximum development capacity with respect to the overall Randal Park planned development to include a maximum of: 2,200 residential units, 400,000 sf office, 750,000 sf retail, and a maximum of 600 hotel rooms.

Any increase beyond that allowed by the subarea policy shall require a comprehensive plan amendment. The overall master land use plan is required to comply with preservation of natural features, provide public park facilities (min 12 acres), coordinate with Orange County Public Schools regarding a future school site and provide transportation improvements in compliance with development approvals.

3.2.3 Southeast Sector Plan

Approved in 1996, the original Southeast Sector Plan included over 19,300 acres in southeast Orlando and portions of Unincorporated Orange County including the subject property. In 2012, the plan was revised to approximately 10,000 acres with Randal Park, Bal Bay, and LaVina opting out of the plan area.

However, development patterns within the Southeast Sector Plan are noteworthy including the $\pm 7,000$ acre Lake Nona DRI/PD and recently annexed $\pm 1,266$ acre property directly east of the subject property originally known as the Wewahootee PD renamed Storey Park. Storey Park was recently approved for 2,752 residential units, 627,000 sf of office, and 713,845 sf of retail uses.

According to the City's Growth Management Plan – Growth Projections Report for 2013-2040, the southeast sector of Orlando is projected to experience the most growth in the City over the 27-year period. Also, the projection suggests that $\pm 90\%$ of all the single family residential properties, that will be built during this period, will be built in the southeast sector.

3.3 ZONING ANALYSIS

3.3.1 Zoning

The subject property is part of a large mixed-use planned development that received development approval in 2006 and was rezoned Planned Development (PD)-Randal Park in 2010. The Randal Park PD was approved for a maximum of 2,200 residential units, 400,000 sf office, 750,000 sf retail, and 600 hotel rooms. However, the Master Concept Plan for Randal Park PD indicates that the project is approved for 797 residential units, consisting of 574 single family units and 223 townhome units, and an elementary school.

The parent tract, Phase 5 – Randal Park, is approved for 206 residential units, including 40 townhomes and 166 single family residential homes. Office and retail may be accessory uses only.

3.3.2 Eminent Domain and Concurrency

Section 7G of the City of Orlando's Code of Ordinance gives staff the authority to grant waivers and exceptions to City land development regulations, as well as engineering codes, and regulations, or to seek waivers or variances before the appropriate boards, in order to ensure that legally affected property owners have a viable and fair means of preventing or reducing any adverse impact upon their property as a result of the condemnation process, and to allow the continued use of said property in a manner as similar to its pre-condemnation condition as practicable.

The subject property meets or exceeds the minimum requirements of the State of Florida's concurrency management policies.

4.0 HIGHEST & BEST USE OF THE PARENT TRACT

The site utilization study suggests that the Parent Tract has the physical capacity to accommodate the development of 206 residential units, internal roadways, stormwater facilities, and other improvements. Based upon the visual interpolation of the site utilization study and consideration of information obtained from secondary sources, it appears as though the 166 residential units will range in width from 40-ft to 60-ft.

Based upon the information provided by the property owner's representative and other information obtained from primary and secondary sources, it is the appraiser's opinion that the Parent Tract is physically capable of accommodating the development of 206 residential units, consisting of 166 single family residential units and 40 townhomes.

4.3 FINANCIALLY FEASIBLE USES

Financial feasibility pertains to the capability of a physically possible and legal use of property to produce a positive return to the land after considering risk and all costs to create and maintain the use.¹⁶ The appraiser has prepared a financial analysis of the proposed uses of the Parent Tract for the purpose of evaluating the potential feasibility of those uses (see below).

<i>End of Period</i>	Quarter 1 <i>(Aug. 31, 2015)</i>	Quarter 2 <i>(Nov. 30, 2015)</i>	Quarter 3 <i>(Feb. 29, 2016)</i>	Quarter 4 <i>(May 31, 2016)</i>	Quarter 5 <i>(Aug. 31, 2016)</i>
Number of Lots					
- Beginning of Period	206	206	116	71	26
- End of Period	206	116	71	26	0
- Lot Sales	0	90	45	45	26
Average Lot Price	\$91,269	\$91,269	\$91,269	\$91,269	\$91,269
Gross Sales Revenue		\$8,214,210	\$4,107,105	\$4,107,105	\$2,372,994
Expenses and Deductions					
- Real Estate Taxes	-51,500	-51,500	-29,000	-17,750	-6,500
- HOA Fees	0	-61,800	-34,800	-21,300	-7,800
- Commissions (1.0%)	0	-82,142	-41,071	-41,071	-23,730
- Marketing (1.0%)	-82,142	-82,142	-41,071	-41,071	-23,730
- Administrative (1.0%)	<u>-41,071</u>	<u>-82,142</u>	<u>-41,071</u>	<u>-41,071</u>	<u>-23,730</u>
Sub-Total	-174,713	-359,726	-187,013	-162,263	-85,490
Cash Flow Before Profit	-\$174,713	\$7,854,484	\$3,920,092	\$3,944,842	\$2,287,504
Entrepreneurial Profit (15%)	0	-1,178,173	-588,014	-591,726	-343,126
Capital Expenditures	<u>-5,000,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Sub-Total	-5,000,000	-1,178,173	-588,014	-591,726	-343,126
Cash Flows FV	-\$5,174,713	\$6,676,311	\$3,332,078	\$3,353,116	\$1,944,379
Present Value Factor (8.0%)	1.0000	0.9612	0.9423	0.9238	0.9057
Cash Flows PV	-\$5,174,713	\$6,417,062	\$3,139,892	\$3,097,760	\$1,761,084
Cash Flows PV Total	\$9,241,084				
Cash Flows PV Per Lot	\$44,860				

¹⁶ *The Appraisal of Real Estate – 14th Edition, 341.*

The financial analysis suggests that the Parent Tract has an economic value of approximately \$9.25 million. In this case, economic value is not intended to be the same as market value. The financial analysis consists of a number of input assumptions and variables, some of which were provided by the property owner's representative and others that were estimated by the appraiser. Information provided by the property owner's representative indicated that 29 single family lots, identified on the site utilization study, will be located along one of two ponds and that these lots are worth \$2,200 a Front Foot, thus, suggesting prices of approximately \$132,000 for these lots. The Intended User must realize that the term "worth" pertains to probable "market price," as opposed to "market value," and that the reported price is for a "pad-ready lot," as opposed to a proposed residential lot that is not ready for immediate development of a single family residence.

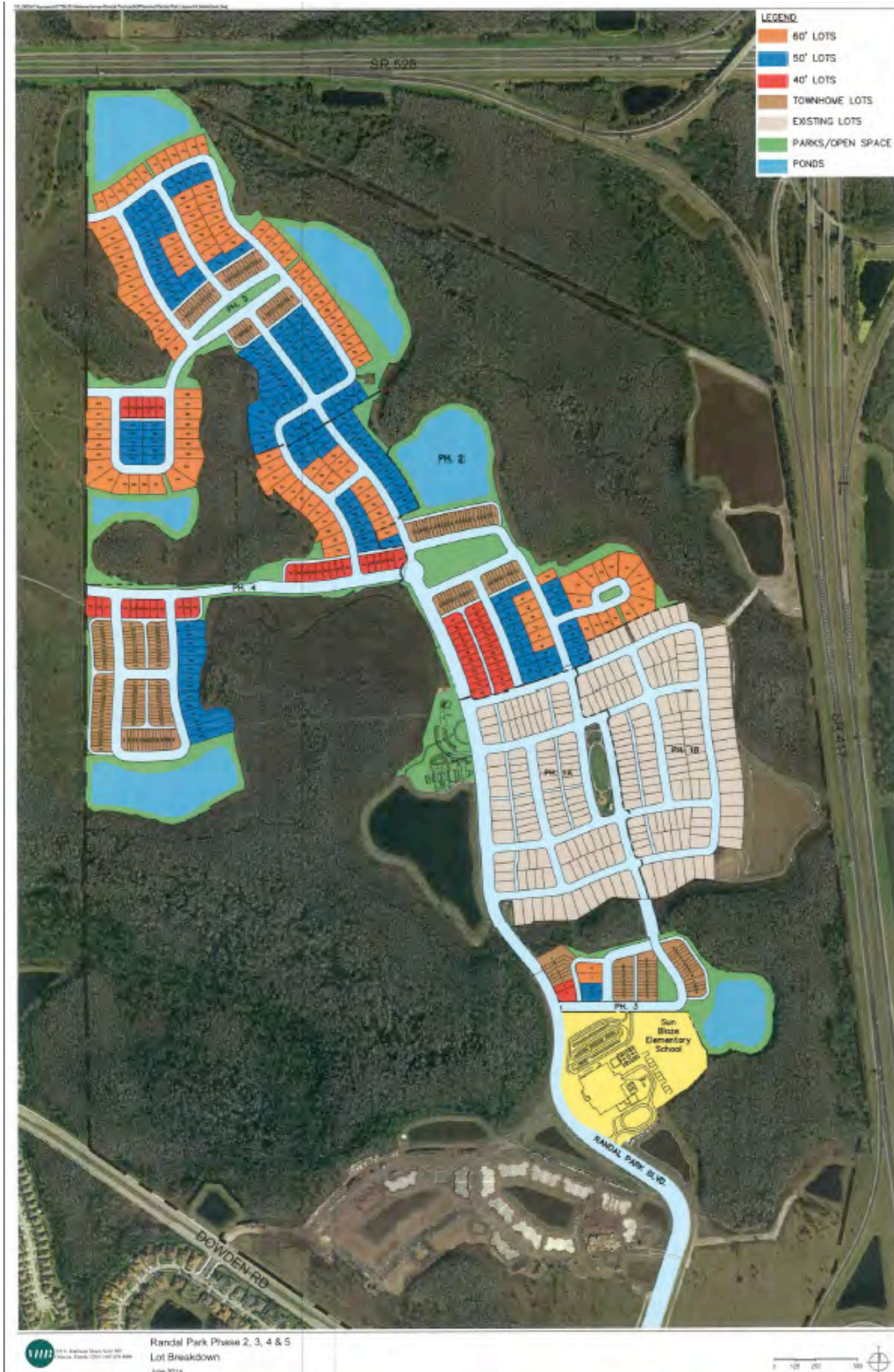
Other information provided by the property owner's representative to the appraiser indicates that the base price of the single family homes that will be built on those lots that are 60-ft wide will range from \$321,990 to \$371,990; that lot premiums ranging from \$5,000 to \$30,000 are applied to the "base price" of the 60-ft wide lots, depending on location and lot size; lot premiums ranging from \$20,000 to \$25,000 are applied to the "base price" of the 60-ft wide lots located along either of the two ponds; the unconstructed portion of the project will require \$86.0 million to complete the improvements and home construction; starting with Phase 2 sales in November 2014, the pace of sale has been 17.8 residential units per month; and \$5.0 million in capital expenditures will be required to complete the land development phase of the Parent Tract before residential units may be constructed.

In conclusion, the financial analysis suggests that the development of 206 residential units at the Parent Tract is financially feasible, given certain input assumptions. Furthermore, the analysis suggests that the economic value of the Parent Tract is approximately \$9.25 million, or approximately \$45,000 per allowable residential unit. Neither of these numbers should be interpreted as the market value of the Parent Tract. However, these numbers are intended to suggest that price that may be paid for the Parent Tract, given the legal and physical uses, and produce a positive return to the land, after considering risks and all costs to create and maintain their use.

4.4 MAXIMALLY PRODUCTIVE

In conclusion, it is the appraiser's opinion that the highest and best use of the Parent Tract is for development of 206 residential units, consisting of 166 single family residential units and 40 townhomes.

5.0 MARKET VALUE OF PARENT TRACT



Randal Park Phases 2, 3, 4 & 5

5.0 MARKET VALUE OF THE PARENT TRACT

5.1 INTRODUCTION

In valuing the Parent Tract, the sales comparison approach is the only method considered applicable. Because there have been several recent transactions of similar properties, the appraiser is able to use this information and reasonably predict the behavior of buyers and sellers. Neither the cost approach nor the income capitalization approach is considered applicable in this assignment because the Parent Tract is unimproved land.

5.1 SALES COMPARISON APPROACH

Three recent transactions of properties that are proposed for residential development have been identified and are used as primary source data in the application of the sales comparison approach. The table, below, provides a summary of information pertaining to these properties.

	<u>Parent Tract</u>	<u>Sale 1</u>	<u>Sale 2</u>	<u>Sale 3</u>
A. Transaction Data				
- Sale Date	N/A	3/19/2014	5/30/2014	9/12/2014
- Seller	N/A	JEN Fla V, LLC	Seidel, LLC	SLF IV/Boyd Horizon West
- Buyer	N/A	KB Home Orlando, LLC	Toll FL XII, LP	Saguaro Fla. I, LLC
- Public Record	N/A	10722-8520	10751-4803	10804-9211
- County	Orange Co	Orange Co	Orange Co	Orange Co
- Sale Price	N/A	\$10,000,000	\$16,000,000	\$13,700,000
B. Property Data				
- Project	Randal Park PD	Orchard Park	Lakeshore	Hamlin Reserve
- Location	East Orange Co	Horizon West	Horizon West	Horizon West
- Access	Dowden Road	Tiny Road	Seidel Road	Porter Road
- Utilities Available	Yes	Yes	Yes	Yes
- Topography	Level	Level	Level	Level
- Size (Acres)				
- Upland	85.5	64.0	152.8	71.0
- Wetland	<u>20.1</u>	<u>2.3</u>	<u>36.5</u>	<u>11.0</u>
- Total	105.6	66.3	189.3	82.0
C. Highest & Best Use				
- Use on Sale Date	Unimproved	Unimproved	Unimproved	Unimproved
- Comp Plan - FLU	Office Low/Cons	Village	Village	Village
- Zoning	Planned Dev	Planned Dev	Planned Dev	Planned Dev
- Proposed Use	Residential	Residential	Residential	Residential
- No. of Units	206	200	365	349
- Single Family	166	200	281	349
- Townhomes	40	0	84	0
- Density	2.4	3.1	2.4	4.9
- Highest & Best Use	Residential	Residential	Residential	Residential
D. Price Metrics				
- Dollars/Unit	N/A	\$50,000	\$43,836	\$39,255
- Dollars/Net Ac.	N/A	\$156,250	\$104,712	\$192,958

Purchased between March 2014 and September 2014, the three sale properties ranged in price from \$10.0 million to \$16.0 million. The buyers purchased the properties with the intent of developing a residential community; the smallest, proposed for 200 dwelling units, and the largest, proposed for 365 dwelling units. The highest and best use of the Parent Tract is estimated to be for 206 dwelling units. The residential developments proposed for the three properties suggest net project densities (i.e., residential units per net developable acre) ranging from 2.4 to 4.9, whereas the density at the Parent Tract is 2.4. Each of the three properties are located in the Horizon West submarket, an area located along the Western Beltway. Similar to the submarket where the Parent Tract is located, the Horizon West submarket is in the growth stage of its life cycle and the construction of new residential properties is occurring at a brisk pace.

The transactions indicated prices that range from \$39,255 Per Dwelling Unit to \$50,000 Per Dwelling Unit. Sale No. 1 and 2 cluster towards the higher end of the range. Most similar to the Parent Tract in regards to density, Sale No. 2 indicates a market price of \$43,836 Per Dwelling Unit. Sale No. 2, similar to the Parent Tract, includes townhomes, whereas Sale No. 1 and Sale No. 3 do not. Consideration has been given to the prices paid for each of the three properties, however, greatest weight is given to Sale No. 1, because it is most similar to the Parent Tract in regards to the total number of units.

It is the appraiser's opinion that the market value of the specified interest in the Parent Tract, as of the Date of Value is \$50,000 Per Dwelling Unit. Therefore, the market value of the Parent Tract, exclusive of the contributory value of the stormwater pond, is:

$$\text{Market Value of Parent Tract: } (206 \text{ DU}) \times (\$50,000 \text{ Per DU}) = \$10,300,000$$

The Parent Tract is improved with a 4.8 acre wet detention pond that is part of a stormwater management system that has been constructed on the Parent Tract. The replacement cost new of the pond is \$551,889, or approximately \$550,000. Adding the cost estimate for the pond to the estimate of the market value for the land indicates a market value for the Parent Tract of \$10,850,000.

6.0 THE PROJECT AND THE PROPOSED ACQUISITION

6.0 THE PROJECT AND THE PROPOSED ACQUISITION

6.1 THE PROJECT

The KCG Report indicates that the preliminary plans for the proposed project include a “conceptual study for the 8 laning of SR 528 dated September 13, 2013. The Federal Railroad Administration has prepared a Draft Environmental Impact Statement (DEIS) and Section 4(f) Evaluation with Appendices dated September 2014 providing an in depth overview of the proposed Orlando to Miami Intercity Passenger Rail project.”¹⁷

The proposed project is described in the KCG Report as the “Reconstruction of SR 528 into a multimodal corridor includes widening sections of SR 528 to 8 lanes, new interchange/overpasses and stormwater facilities. In addition to the roadway improvements, the project proposes multiple rail systems south of SR 528, including an intercity passenger rail service that will ultimately connect Orlando and Miami.”¹⁸

All Aboard Florida (AAF) is proposing to construct and operate a privately owned and operated intercity passenger railroad system that will connect Orlando and Miami, with intermediate stops in Fort Lauderdale and West Palm Beach, Florida (Project). AAF proposes to implement the Project through a phased approach. Phase I would provide rail service on the West Palm Beach to Miami section while Phase II would extend service to Orlando. Phase I would provide passenger rail service along the 66.5 miles of the Florida East Coast Railroad (FECR) Corridor connecting West Palm Beach, Fort Lauderdale, and Miami.¹⁹

Phase II of the Project includes constructing a new railroad line parallel to State Road (SR) 528 between the Orlando International Airport (MCO) and Cocoa, constructing a new Vehicle Maintenance Facility (VMF) on property owned by the Greater Orlando Airport Authority (GOAAA), adding a second tract within 128.5 miles of the FECR Corridor between West Palm Beach and Cocoa, and additional bridge work between Miami and West Palm Beach. The proposed service would use a new intermodal facility at MCO that is being constructed by GOAA as an independent action. The Project includes purchasing five additional passenger train sets, and would add 16 new round-trip intercity passenger train trips (32 one-way trips) on the new railroad segment and on the FECR Corridor between Cocoa and West Palm Beach. No additional trips beyond those considered in the 2012 (16 round-trip intercity passenger train trips [32 one-way trips]) would be added on the West Palm Beach to Miami section.²⁰

The purpose of the Project is to provide reliable and convenient intercity passenger rail transportation between Orlando and Miami, Florida, by extending (in Phase II) the previously reviewed Phase I AAF passenger rail service between West Palm Beach and Miami and by maximizing the use of existing transportation corridors. This transportation service would offer a safe and efficient alternative to automobile travel on congested highway corridors, add transportation capacity within those corridors (particularly Interstate 95 [I-95]) and encourage

¹⁷ Kelly, Collins & Gentry, Inc. *Land Planning/Engineering Report: Multimodal Corridor in Orange County*. March 18, 2015. 2.

¹⁸ Ibid.

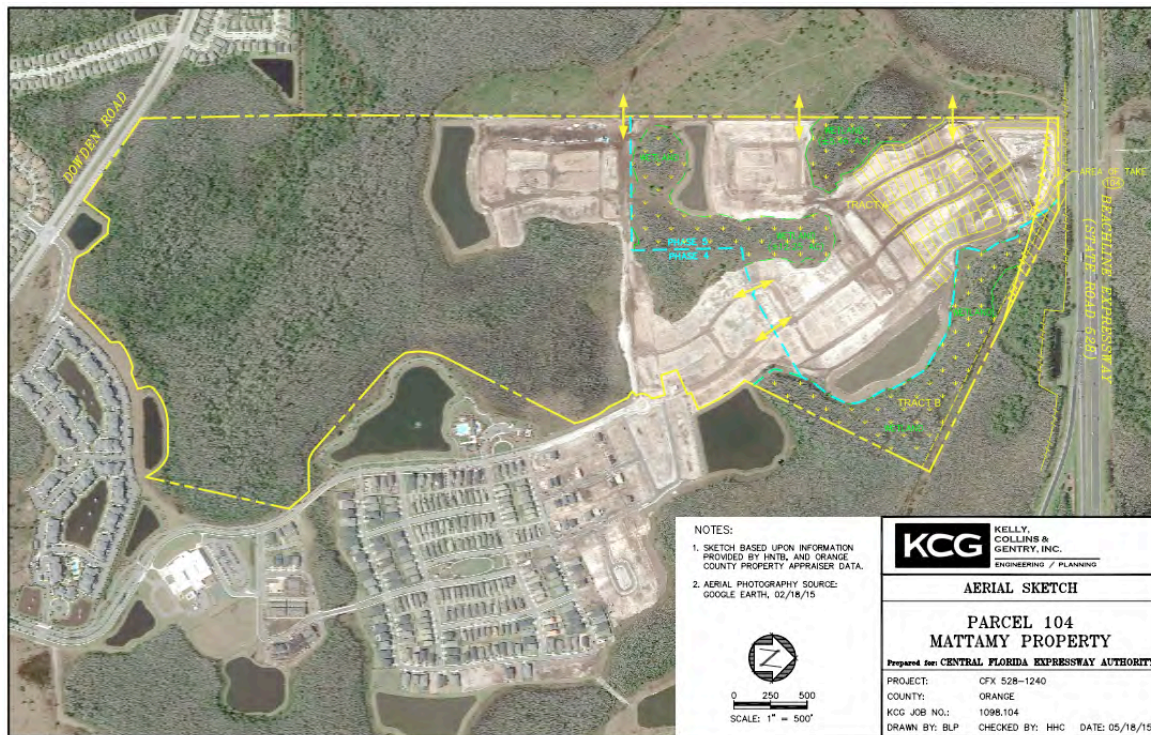
¹⁹ USDOT Federal Railroad Administration. *All Aboard Florida – Intercity Passenger Rail Project: Orlando to Miami, Florida/Draft Environmental Impact Statement and Section 4(f) Evaluation*. Volume I: Text. September 2014, S-1.

²⁰ Ibid., S-2.

connectivity with other modes of transportation such as light rail, commuter rail and air transportation.²¹

6.2 THE PROPOSED ACQUISITION – PARCEL NO. 104

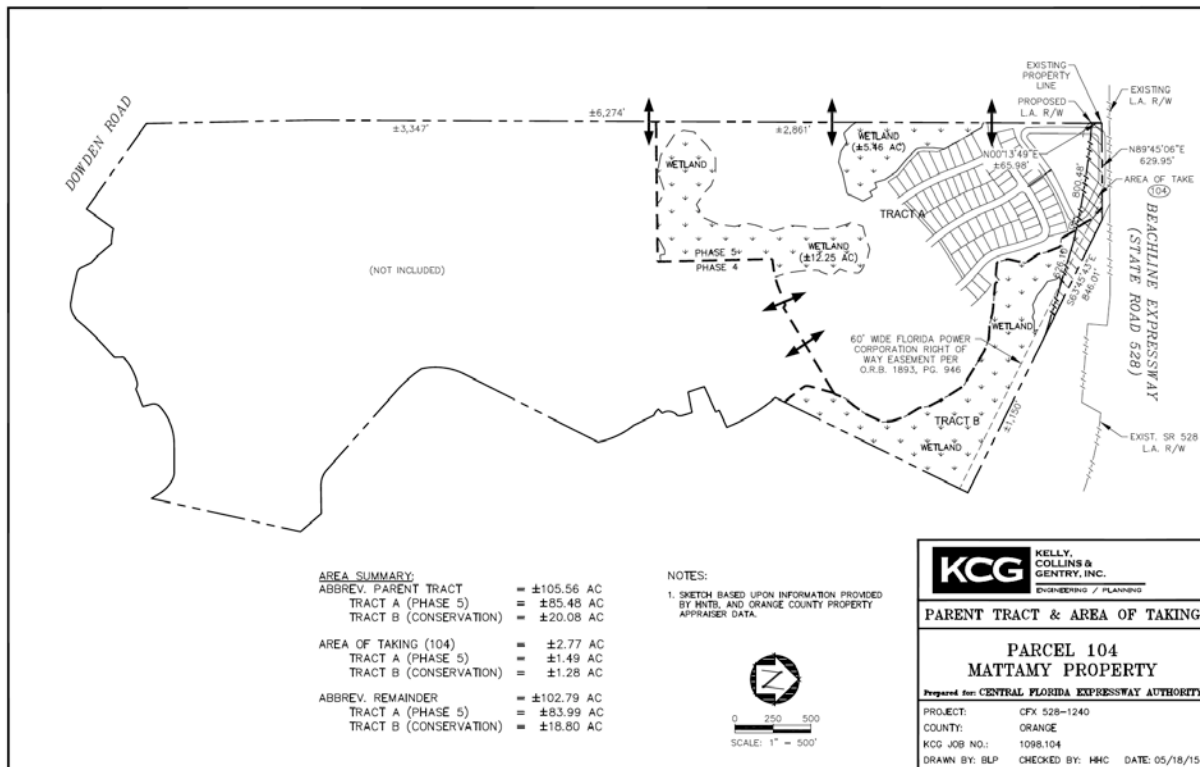
The proposed acquisition area is generally known as Parcel 104 of the “SR 528 – Multimodal Corridor in Orange County.” Parcel 104 is the fee simple acquisition of an irregular shaped strip impacting the northwest portion of the site (see illustration below).



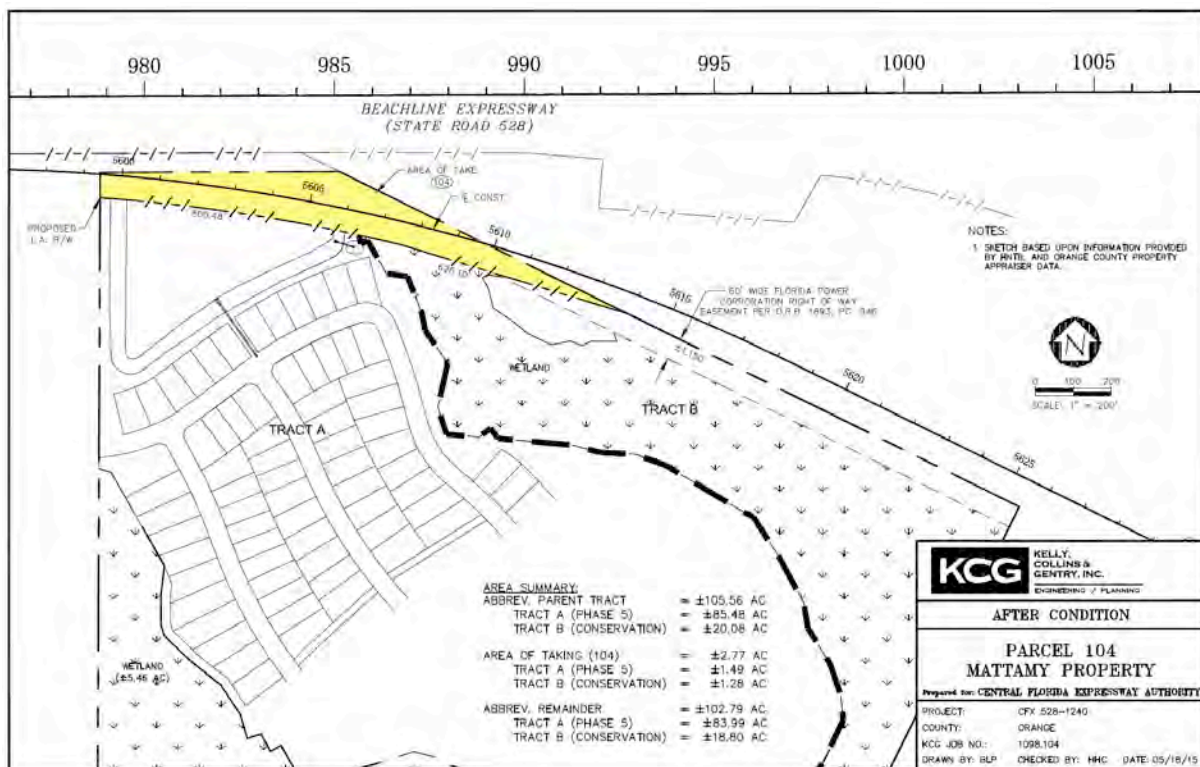
Parcel 104/Mattamy Property: Aerial Sketch

²¹ Ibid., S-5.

CFX PROJECT No. 528-124 (MULTIMODAL CORRIDOR IN ORANGE COUNTY)
HREA ASSIGNMENT No. 15001002.C (PARCEL 104: MATTAMY HOMES)

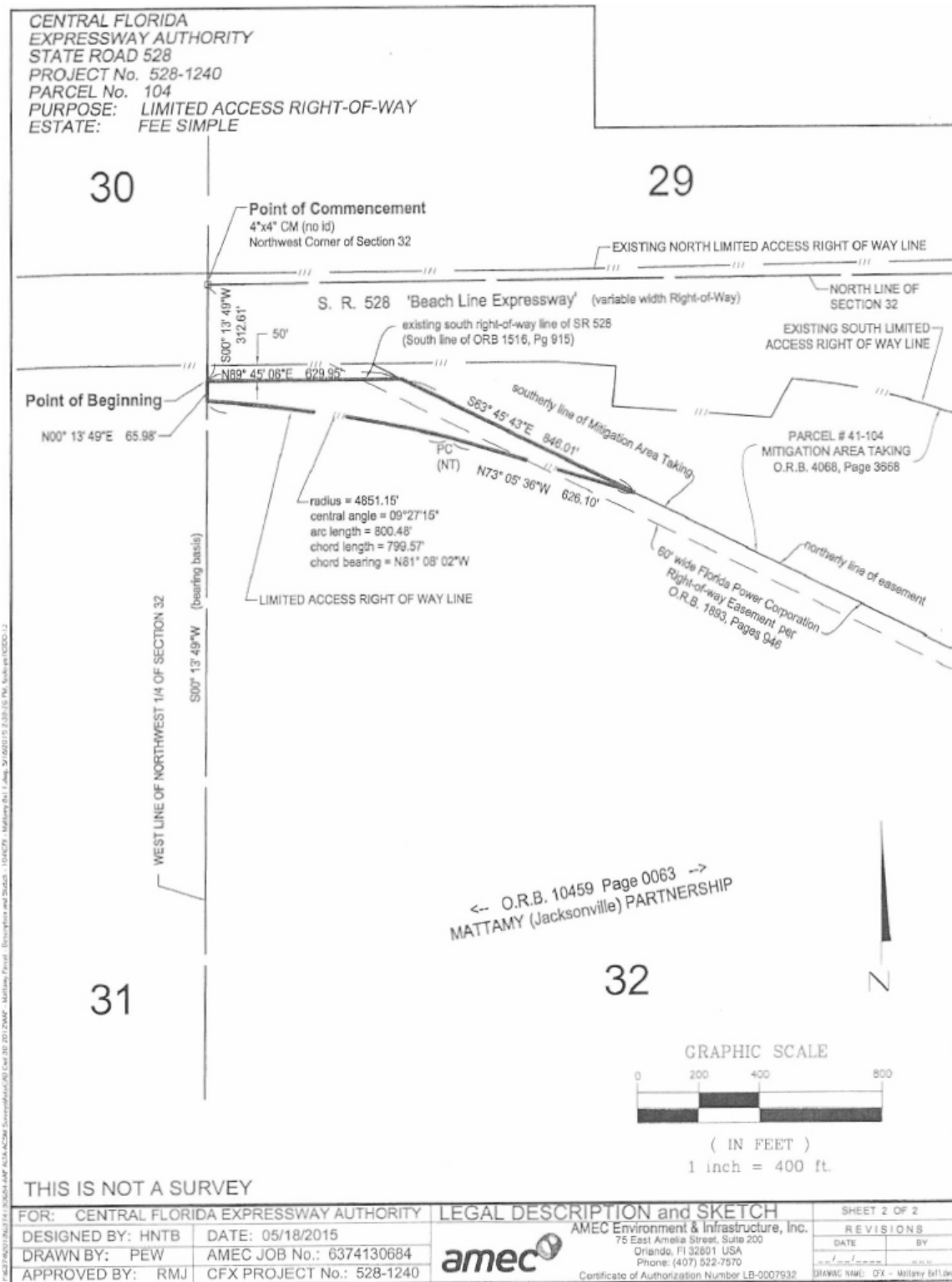


Parcel 104/Mattamy Property: Parent Tract & Area of Taking.



Parcel 104/Mattamy Property: Area of the Taking

CFX PROJECT No. 528-124 (MULTIMODAL CORRIDOR IN ORANGE COUNTY)
HREA ASSIGNMENT No. 15001002.C (PARCEL 104: MATTAMY HOMES)



Parcel 104/Mattamy Property: Sketch accompanying legal description of the Part Taken.

Parcel 104, containing 2.77 acres, consists of 1.49 acres of upland area and 1.28 acres of wetland/conservation area. Of irregular shape, Parcel 104 measures 629.95 ft along its northerly edge, 846.01 ft along its northeast edge, 65.98 ft along its west edge, and 1,426.58 ft along its southwest boundary. The north boundary of Parcel 104 is the south limited-access right-of-way of SR 528. A Florida Power Corporation powerline easement encumbers the northeast 60 ft of Parcel 104. The area of Parcel 104 has been recently improved with a wet detention stormwater management pond. Roadway, railway, and drainage improvements will be constructed in the area taken.

6.3 THE VALUE OF THE PART TAKEN

Previously, the appraiser estimated and reported the market value of the specified interest in the Parent Tract to be \$10,850,000, allocated \$10,300,000 to land value and \$550,000 to site improvement value. The land value estimate, \$10.3 million, indicates a value of \$120,496 Per Upland Acre.

Parcel 104 contains 1.49 acres of upland area and the replacement cost new of the site improvements located in the area of the acquisition is \$121,397. The value of the Part Taken (Parcel 104) is:

<u>Item</u>	<u>Net Acres</u>		<u>Value/Ac</u>		<u>Total</u>
Land	1.49	x	\$120,496	=	\$179,539
Site Improvements					<u>121,397</u>
Value of Part Taken					\$300,936

7.0 THE REMAINDER PROPERTY

7.0 THE REMAINDER PROPERTY

7.1 VALUATION OF THE REMAINDER AS PART OF THE WHOLE

The difference between the value of the whole property and the value of the part acquired equals the value of the remainder as part of the whole. Therefore:

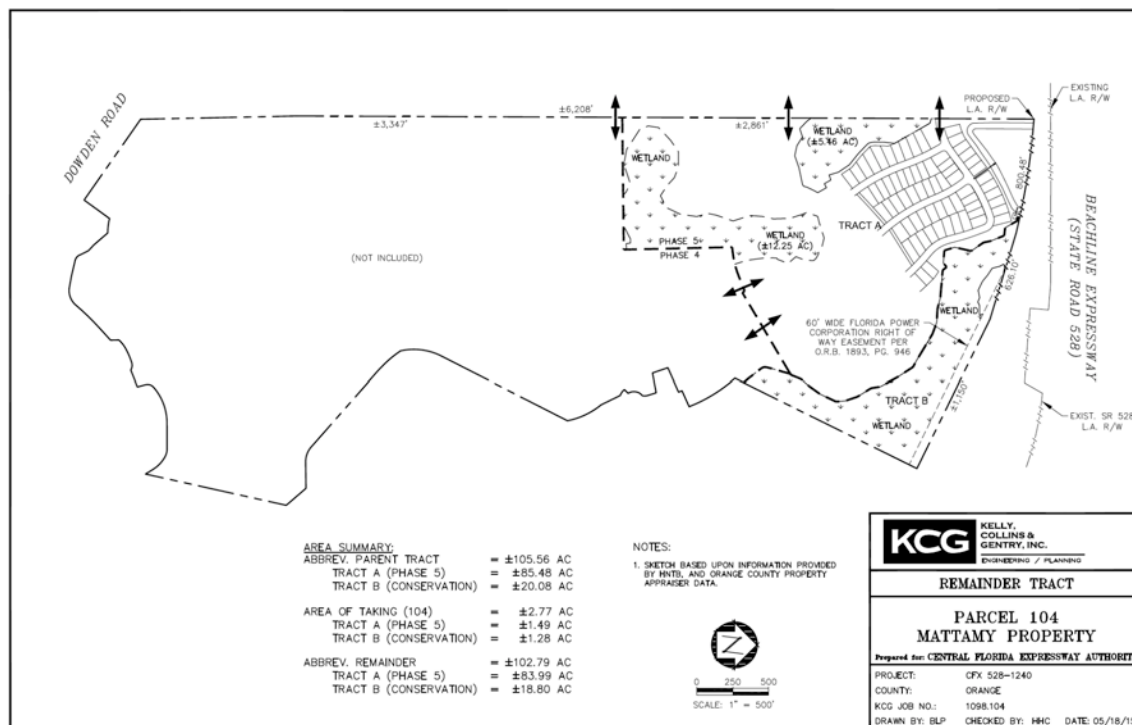
	Land Value	Site Imp.	Total
Value of Whole (Before Acquisition).	\$10,300,000	\$550,000	\$10,850,000
(Less) Value of Part Acquired (Fee Simple - Parcel 104)	<u>-\$179,500</u>	<u>-\$121,400</u>	<u>-\$300,900</u>
Value of the Remainder as a Part of the Whole	\$10,120,500	\$428,600	\$10,549,100

7.2 VALUATION OF THE REMAINDER AFTER THE ACQUISITION

In Section 7.1 (Value of the Remainder as Part of the Whole) of the appraisal report, the market value of the Parent Tract before the taking is shown with the value of the part acquired subtracted. This results in the estimated value of the remainder as part of the whole. This value is then compared to the estimated value of the remainder (Uncured) to determine if there are any damages or special benefits caused by the acquisition. Note that the appraisal is performed under the assumption that the multimodal corridor has been completed according to the constructions plans and that the facility is open for public use.

7.3 DESCRIPTION OF REMAINDER UNCURED

The property sketch, below, is an illustration of the Remainder Uncured.



Parcel 104/Mattamy Property: Remainder Tract

The Remainder, containing ± 102.79 acres, consists of ± 83.99 acres of uplands and ± 18.80 acres of conservation/wetlands area, and retains the same general shape as the before condition. A portion of the on-site stormwater treatment pond located on the Parent Tract was impacted by the taking and will require redevelopment as a cost to cure to restore stormwater management commensurate with the before condition. Access from Randall Park Boulevard is unaffected. The topography, generally, is unaffected; however, a cost to cure will be necessary to redevelop the stormwater on the remainder property. Drainage is affected, as the taking impacts the wet detention pond in the northwest portion of the site.²²

The overall abbreviated parent tract is reduced by $\pm 3\%$ to 102.79 acres in size. Tract A (Phase 5) is reduced ± 1.49 acres from ± 85.49 acres, a reduction of approximately 2%. As in the before condition, the site as if vacant remains physically adequate in size and shape to support a variety of development scenarios. Consistent with the Office-Low future land use designation, reasonable use of the property would include residential home sites consistent with those approved within Randal Park PD.²³

The cure restores the Remainder back in a similar condition with respect to onsite stormwater management in support of future development. As cured, the Remainder suffers a permanent loss of six residential home sites, a reduction of $\pm 3\%$ as compared to the total home sites (206) permitted in Phase 5 of the development program.²⁴

Damages due to railway proximity and noise may be considered by the appraiser. Residential lots most proximate to the proposed right-of-way are located 200 ft to 500 ft away. Noise impacts are generally based upon the decibel increases above existing ambient sound levels. Given the proximity to an existing high speed limited access expressway and interchange, and to the Orlando International Airport (OIA), baseline noise levels may vary considerably and a study by qualified noise consultant would be required to fully understand sound impacts subject to the taking.²⁵

The market value of the Remainder Uncured is affected by the taking in two ways: (1) cost to cure damages caused by the taking of a portion of the existing wet detention pond located in the north portion of the Remainder, and (2) detrimental conditions associated with the proposed use of the part taken for multimodal purposes. These factors are further described:

1. Cost to Cure Damages: On May 18, 2015, an estimate of the cost to cure the detrimental impacts to the stormwater detention pond was prepared by a general contractor. The cost-to-cure amount is \$441,750.40 and includes construction of 3.3 ac of stormwater storage, a control structure, 100 LF of 24" reinforced concrete pipe, 2 mitered earth stabilization culverts, a spreader swale. The proposed cure will be discussed in a subsequent section of the appraisal report.
2. Detrimental Conditions: In addition to the cost-to-cure damages, the Remainder Uncured will be adversely affected by: (1) a loss of six potential homesites caused by the reconstruction of the wet detention pond, and (2) the detrimental conditions associated with the use of the Part Taken for construction, maintenance, and operations of a multimodal transportation corridor, particularly the intercity passenger train component.

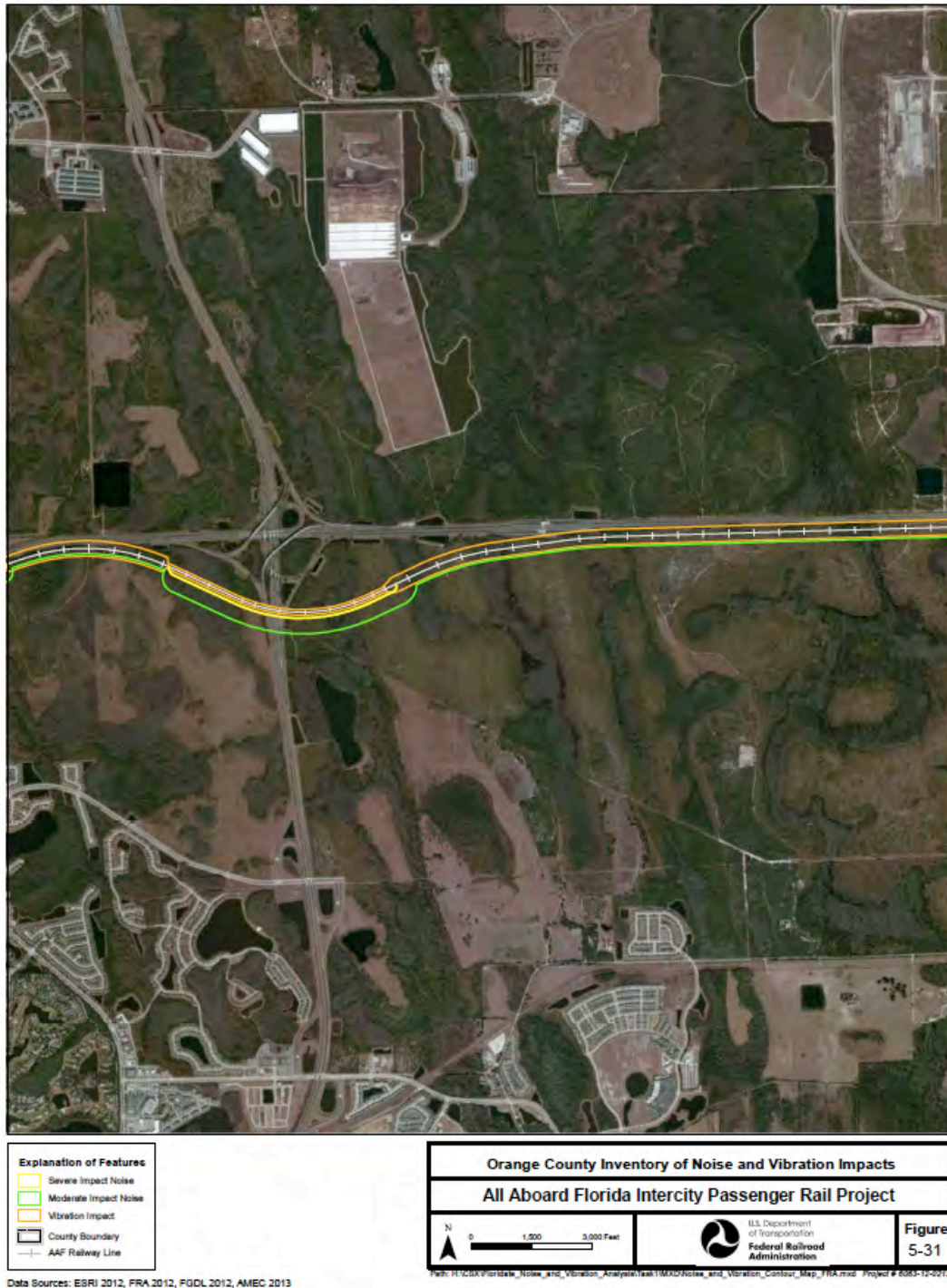
²² Kelly, Collins & Gentry, Inc. *Land Planning/Engineering Report*. Parcel 104, 7-8.

²³ Ibid., 8.

²⁴ Ibid., 9.

²⁵ Ibid.

Noise and vibrations will be generated by the passenger train. Noise is defined as unwanted sound. The visual aid, below, illustrates the approximate locations of noise and vibration contours at the Remainder:



Parcel 104/Mattamy Property: Noise and Vibration Impacts

The appraiser has identified recent transactions of properties located along or in close proximity to that portion of the OUC railway corridor, generally located between Lake Nona Boulevard and SR-528 (Beachline Expressway). The visual aid, below, illustrates the

approximate location of the OUC railway (yellow line) and three properties, purchased by national homebuilders for residential development, that abut the OUC railway.



Regarding the OUC railway use and operation, the average OUC train is about one mile long and travels no faster than 25 mph. The trains carry coal to the Stanton Energy Center located north of SR-528 at its intersection with ICP Boulevard. Typically, the rail is ± 2 -3 ft above existing grade, except for those points of intersection with an existing roadway, whereupon the rail elevation is at or approximate to the crown of the road. Although OUC does not have a set schedule, the trains run several times a week and at all hours.²⁶



OUC railway crossing at Moss Park Road (Date of Photo: October 2014).

²⁶ Email: Tim Trudell to Deborah D Keeter. May 13, 2015.

The line with the blue color illustrates the approximate perimeter of a property that was purchased by Pulte Home Corporation in December 2013. Pulte, a national home builder, paid $\pm\$14.0$ million for the property, containing ± 70.0 acres and proposed for the development of 140 single family residential units, or \$100,000 per unit. Currently, Pulte is developing the property with a single family residential community known as The Enclave at Village Walk, pictured below:



Lake Nona Boulevard is located between the OUC railway right-of-way and the southeast boundary of the residential development. Pulte constructed a privacy wall along the southeast boundary of the property. Pulte is constructing single family residences at the property that are located approximately 300 ft from the train tracks. Base price for the residences, excluding lot premiums, range from \$579,990 for a 3,188 sf single-story residence to \$719,990 for a 5,118 sf two-story residence. Lots facing the preserve area to the west, command lot price premiums that range from \$100k to \$145k. Lots facing the privacy wall command lot price premiums of \$15k to \$20k. Phase I, including 36 homesites, of which 19 homesites are located along the privacy wall, is nearing sell-out. Generally, this information suggests that an active at-grade railway, used for the transportation of freight, has an adverse effect on the nearby residential property. Even so, the developer, a national home builder with knowledge of the presence and effects of the nearby OUC railway chose to purchase the property, regardless of the railway, and appears to have been successful in the sales of residences located along the property line located along Lake Nona Boulevard.

The line with the red color illustrates the approximate perimeter of a property that was purchased by Lennar Homes LLC in March 2013. Lennar, a national home builder, paid $\pm\$9.0$ million for the property, containing ± 292.8 net acres and entitled for development of 1,194

residential units. This transaction consists of five non-contiguous tracts of land, of which three are located along the OUC railway corridor. One of the three tracts has been developed with a residential community known as The Enclave at Moss Park. This residential community consists of 45 single family homesites, of which 13 are located along a powerline transmission corridor which is contiguous to the OUC railway corridor, picture below:



Residences located ± 400 ft from the railway track have been sold for prices ranging from \$257k to \$330k. This information suggests that the OUC railway, in and of itself, did not cause the property to remain vacant and idle. Lennar, a national homebuilder, aware of the presence and locations of the powerline and railway corridors, developed the property regardless of these externalities. Although the OUC railway is different than the proposed All Aboard Florida passenger railway, the property was purchased and developed by a national homebuilder who has had success with the sales of new single family residences that are located near to an active, at-grade, freight train corridor.

The line with the orange color illustrates the approximate perimeter of a property that was purchased by Lennar Homes LLC in March 2013. Lennar, a national home builder, paid $\pm \$15.0$ million for the property, containing ± 169.9 net acres and entitled for development of 1,112 residential units and known as Storey Park. The number of units that are proposed for development is less than the number of residential units that were entitled at the time of purchase. The master concept plan illustrates a development with single family, duplex, and multiple family residences proposed to be constructed at locations within the development that are within a distance of ± 400 ft to ± 450 ft from the rail of the OUC railway corridor. Until such time that the residential products are brought to market, the effects of the proximity to the OUC railway are not known. However, Lennar's purchase of the property and the

development, as proposed at this time, suggests that the OUC railway corridor, in and of itself, did not have such an adverse effect as to prevent the purchase of the property nor alter the uses proposed at the property.

The table, below, provides information pertaining to the height of the proposed railroad track at various station points:

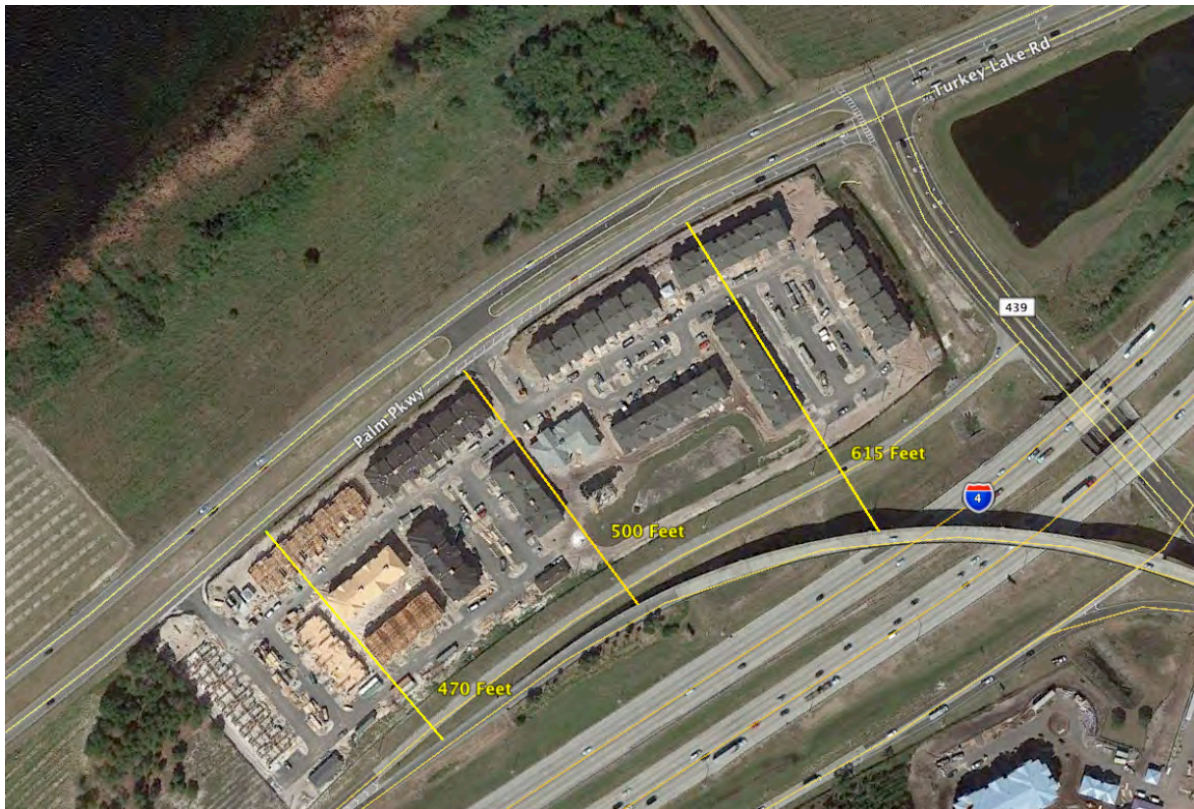
	Station	CL Elevation		Delta
		Ex. Gnd	Pr. Track 1	
Begin Parcel 104 Sta. 5599+41	5599 + 00	83.4	91.43	8.03
	5600 + 00	85.6	91.37	5.77
	5601 + 00	87.0	91.3	4.30
	5602 + 00	84.3	91.24	6.94
	5603 + 00	84.8	91.17	6.37
	5604 + 00	84.5	91.11	6.61
	5605 + 00	83.5	91.04	7.54
	5606 + 00	83.0	90.98	7.98
	5607 + 00	82.5	90.91	8.41
	5608 + 00	84.0	90.85	6.85
	5609 + 00	83.0	90.78	7.78
	5610 + 00	83.2	90.72	7.52
	5611 + 00	84.0	90.65	6.65
	5612 + 00	84.0	90.59	6.59
End Parcel 104 Sta. 5614+00	5613 + 00	84.1	90.52	6.42
	5614 + 00	83.8	90.46	6.66
	5615 + 00	83.6	90.39	6.79
	5620 + 00	82.6	90.07	7.47
	5625 + 00	82.3	93.12	10.82
	5630 + 00	82.4	104.33	21.93
	5635 + 00	82.5	116.53	34.03
Ex SR 417 intch Ex SR 417 intch	5640 + 00	84.1	128.05	43.95
	5645 + 00	104.3	131.72	27.42
	5650 + 00	84.4	125.63	41.23
	5655 + 00	82.4	113.51	31.11

Source: Kelly, Collins & Gentry, Inc.

The elevation of the railway track at its western end has an elevation of ± 5.8 ft and at its eastern end an elevation of ± 6.7 ft. Thus, the track slopes upward, slightly, as it moves from west to east. Thereafter, its height increases to a maximum of ± 44.0 feet as it crosses SR 417.

The appraiser has identified a recent transaction of a property located near the intersection of Interstate 4 (I-4) and the Central Florida Parkway that is adjacent to an elevated ramp that provides access for vehicles traveling westbound on the Central Florida Parkway to the southbound lanes of I-4. Purchased in March 26, 2014 for \$5,308,000, the property, containing ± 13.5 acres, has been developed with a luxury apartment project known as Altis Sand Lake. Approved for 334 residential rental units, the buyer paid approximately \$15,892 Per Unit for the site. The elevated ramp runs along the easterly side of the property and returns to grade at a point located near the southeast corner of the property. The aerial

photograph and street view, below, provides an illustration of the property and the elevated ramp:



Aerial view of property located adjacent to elevated ramp to I-4.



Street view of property located adjacent to elevated ramp to I-4 (March 2015).

The structures that have been built on the property are located a distance of ± 160 ft to ± 225 ft from the elevated ramp. The northwest boundary of the property is located a distance of ± 470 ft to ± 615 ft from the elevated ramp.

For use in a paired sales analysis, a recent transaction involving an apartment site that is not influenced by an elevated ramp, was identified. Purchased in December 18, 2013 for \$6,567,500, the property is located ± 2.25 miles northeast of the property located adjacent to the elevated ramp. Currently, 355 luxury apartment units are being constructed at the property and the project is generally known as The Courtney at Universal Boulevard. The buildings will range in floor height from three stories to four stories. The purchase price indicates a price of \$18,500 Per Unit.

Comparatively, the luxury apartment site located adjacent to the elevated ramp was purchased for \$15,892 Per Unit of \$9.01/SF of land area, whereas the luxury apartment site that is not located adjacent to an elevated ramp was purchased for \$18,500 Per Unit and \$12.06/SF of land area. Comparative analysis of these prices suggests that the luxury apartment site located adjacent to the elevated ramp sold at a price that was approximately 14.1% less than the luxury apartment site that is not located next to an elevated ramp, when compared on a Dollars Per Unit basis, and for approximately 25.4% less when viewed on a Dollars Per Square Foot of Land Area basis.

Having considered the information pertaining to the three properties located adjacent to the OUC railway corridor and having analyzed the variance in the lot premiums charged for properties near the OUC railway corridor, as opposed to those properties that are not located along the OUC railway corridor; the paired sales analysis of the luxury apartment sites, one located adjacent to an elevated ramp that provides vehicular access from Central Florida Parkway to I-4 southbound; and the information pertaining to the proposed intercity passenger rail, it is the appraiser's opinion that the Remainder Uncured has suffered a diminution in value of 25%.

7.4 VALUATION OF THE REMAINDER UNCURED

The Remainder Uncured contains ± 102.79 acres, of which ± 83.99 acres is uplands and ± 18.80 acres are conservation/wetland areas. The development capacity of the Remainder Uncured has been reduced by six units because the proposed cure to the wet detention pond will utilize land area that otherwise would have been available for residential development.

The contributory value of the wet detention pond as part of the Remainder as Part of the Whole is \$428,600. However, the cost to cure the stormwater pond is \$441,750. Therefore, the wet detention pond does not have contributory value to the Remainder Uncured.

Recognizing that the number of developable residential units has declined from 206 units to 200 units, the value of the property has declined from \$50,000/Unit to \$37,500/Unit, and that the wet detention pond has no contributory value, the market value of the Remainder Uncured is estimated as:

	<u>Units</u>		<u>Value/Un.</u>		<u>Total</u>
Land Value	200	x	\$37,500	=	\$7,500,000
Site Improvements					<u>0</u>
Remainder Uncured					\$7,500,000

7.5 SUPPORT FOR DAMAGES/NO DAMAGES TO THE REMAINDER

If the market value of the Remainder as Part of the Whole is greater than the Market Value of the Remainder Uncured, the remainder has suffered damages. Conversely, if the Market Value of the Remainder Uncured is greater than the Market Value of the Remainder as Part of the Whole, then the property has enjoyed a benefit. The difference in the market value estimates for these properties indicates the following:

MV - Remainder as Part of the Whole	\$10,549,100
MV - Remainder Uncured	<u>-7,500,000</u>
Damages (Benefits or No Damages)	\$3,049,100

The damages to the Remainder are caused by a reduction in the density or number of residential units that can be built at the site, a reduction in the value of the potential residential units caused by the detrimental conditions associated with the project improvements that are proposed for construction in the Part Taken, and the loss of the functional capacity of the wet detention pond.

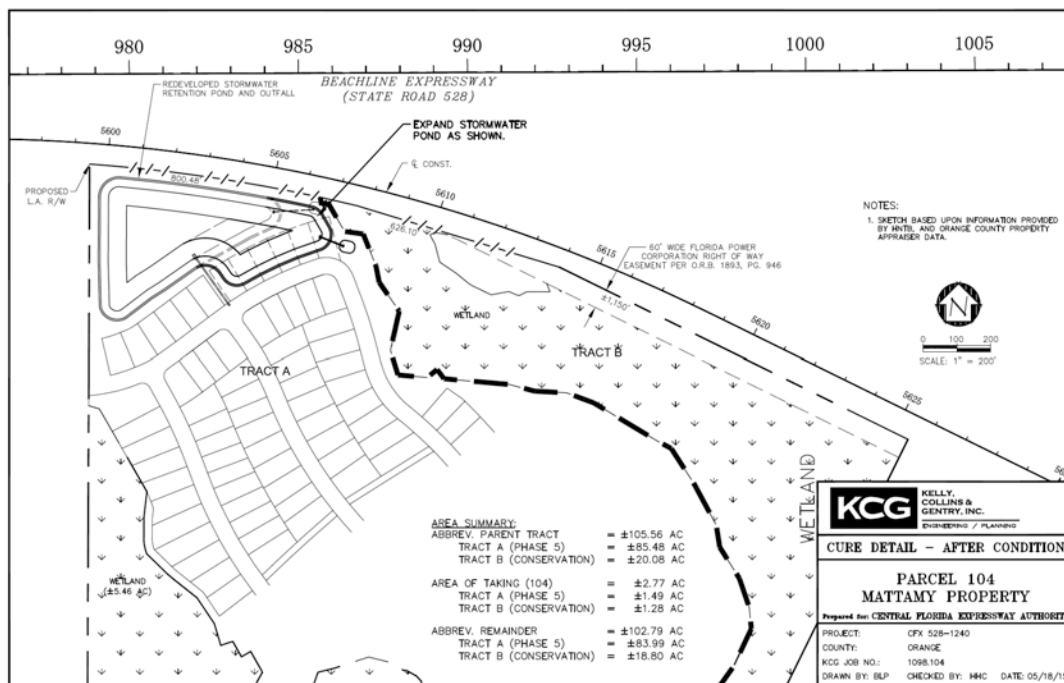
7.6 COST TO CURE DAMAGES

Another method applied to estimate a proper adjustment for damage is known as the *Cost to Cure*. This method can be used when the property being appraised has suffered damage that can be physically and economically corrected (e.g., through correction of drainage, replacement of fencing, reestablishment of physical access, or replacement of sewage or water systems). Under no circumstances can the cost to cure measure of damage be applied if the cost to cure exceeds the diminution in value that would result if such a cure were not undertaken. However, if the cost to cure is less than the diminution in the value of the remainder, the cost to cure measure of damage must be used.²⁷

A cured remainder plan has been prepared to address impacts to the subject property created by the acquisition. Proposed cure activities include the following: (1) Redevelop the stormwater management facility with sufficient capacity commensurate with the before condition. (2) Restore outfall discharge structures/spreader swale. (3) Restore disturbed areas in kind. (4) amend environmental permits as required. (5) Amend entitlement approvals as required.²⁸ The property sketch, below, illustrates the impacts of the proposed cure on the remainder property in the after condition.

²⁷ Real Estate Valuation in Litigation – 2nd edition. (Chicago, IL: The Appraisal Institute), 296.

²⁸ Kelly, Collins & gentry, Inc., 8.



The improvements or modifications to the wet detention pond that are necessary to restore its utility and functional capacity have a probable cost of \$441,750.

7.7 REMAINDER VALUE (AS CURED)

Although the improvements and modifications to the wet detention pond will restore its contributory value, the proposed cure will not affect the value of the site. Therefore, the Remainder Value (Cured) is estimated as follows:

	<u>Units</u>	<u>Value/Cured</u>	<u>Total</u>
Land Value	200	x \$37,500	= \$7,500,000
Site Improvements			<u>550,000</u>
Remainder Cured			\$8,050,000

7.8 SPECIAL BENEFITS

The acquisition does not result in any special benefits to the Remainder Property.

8.0 SUMMARIES AND CONCLUSION

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8.1 SUMMARY OF THE ESTIMATES

1) Before Property		\$10,850,000
2) Part Acquired		\$300,900
- Land Value:	\$179,500	
- Site Improvements:	\$121,400	
3) Remainder (Part of the Whole)		\$10,549,100
4) Remainder Appraised, Uncured		\$7,500,000
5) Damages	[3] - [4]	\$3,049,100
6) Special Benefits		-
7) Damages	[5] - [6]	\$3,049,100
8) Remainder (Cured) (or 3, whichever is less)		\$8,050,000
9) Remainder (appraised, uncured)	[4]	\$7,500,000
10) Damages, Curable	[8] - [9]	\$550,000
11) Damages, Uncurable	[7] - [10]	\$2,499,100
12) Cost to Cure (Re-establish)		\$441,750
13) Improvements Cured		\$121,400
14) Net Cost to Cure	[12] - [13]	\$320,350

8.2 AMOUNT DUE THE OWNER (ESTIMATED)

In conclusion, the amount due the owner, as a result of the acquisition of Parcel 104, is estimated to be:

Land	\$179,500	
Site Improvements	<u>121,400</u>	
Total Part Taken		\$300,900
Damages, Uncurable		\$2,499,100
Net Cost to Cure		<u>\$320,350</u>
Total Compensation (Parcel 104)		\$3,120,350