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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

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

DATE: February 23, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-204: Parcel 279
Approval for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement regarding Parcel 279 on the Wekiva Parkway Project 429-204. A Petition in Eminent Domain was filed on October 14, 2014, and the Court entered an Order of Taking on January 13, 2015.

DESCRIPTION and BACKGROUND:

This case involves the partial taking of property owned by Adelpha Howell, which is located on the south side of Boch Road, approximately 1,550 feet east of Plymouth-Sorrento Road in unincorporated Orange County. CFX is acquiring 10.311 acres from a 14.14 acre parent tract, leaving a 3.829 acre remainder with frontage along Boch Road. The property is improved with two single-family residences and other minor residential and agricultural improvements. The residential improvements will not be directly affected by the taking, but will be located in close proximity to the Parkway. The land is zoned Farmland Rural District (A-2) by Orange County, with a future land use of rural/agricultural, which allows a maximum density of one dwelling unit per 10 acres.

CFX retained the services of appraiser Walter Carpenter, who estimated the value of the parent tract to be \$542,900 and the value of the taking to be **\$382,000**. Mr. Carpenter determined that the highest and best use of the property in the "before" condition was for rural residential use, with up to two units per acre. After considering comparable sales that ranged from \$23,000 to \$45,000 per acre, Mr. Carpenter concluded that the property was worth **\$30,000 per acre** before the taking.

CFX is acquiring about 10 acres, or approximately 73% of the land area, leaving a remainder that is just less than four acres. The expressway height ranges from about 28 feet above grade on the west, gradually decreasing to about 5.5 feet towards the east of the remainder property. Mr. Carpenter considered an Impact Adjacency Study of large low density residential

sites located adjacent to limited access highways to assist in determining severance damages to the remainder. This study indicated that proximity to limited access highways can have an impact on value ranging from 0% to -43%. Considering the elevation of the expressway along the subject property, Mr. Carpenter concludes that the remainder improvements and land will be damaged by **25%** (and will be worth **\$22,500 per acre**), resulting in damages of **\$54,300**. Mr. Carpenter also considered a \$2,100 cost to cure. His valuation estimates are summarized as follows:

Value of the Part Taken (10.311 acres x \$30,000/ac)	\$325,600
Severance damages (25%)	54,300
<u>Cost to Cure</u>	<u>2,100</u>
CFX's Total Compensation Estimate	\$382,000

The landowner retained the appraisal services of Gary Pendergast, who determined that the highest and best use of the property was for a residential subdivision. The landowners' position is that, absent the Wekiva Parkway influence, the same densities and intensities proposed in the Wekiva Parkway Interchange Vision Plan would have been developed surrounding the Plymouth-Sorrento Road / Kelly Park Road intersection. Mr. Pendergast finds it highly likely that the subject would be annexed into the City of Apopka and obtain a Neighborhood District future land use and the necessary zoning change and approvals to be developed with low density residential uses at a density between 1-5 units per acre. The landowner's appraiser concludes that a density near three units per acre is most likely, in the absence of project influence.

Mr. Pendergast considered 6 comparable sales that ranged in value from \$76,000-\$149,000 per acre. All but one sale already had approval for low density residential subdivisions between 2.2-3.2 units per acre. All of the comparables had sewer and water service available. Mr. Pendergast concludes that if the subject had the necessary zoning, land use, and utilities in place, it would have a value of \$80,000 per acre before the taking. MEI determined that extraordinary development costs would be \$55,400 (\$3,900) per acre. Mr. Pendergast deducts another 10% to account for time, risk and effort to obtain necessary approvals and utilities (another \$8,000 per acre) to conclude on a value of **\$68,100 per acre**, which equates to \$962,900 for the parent tract, and **\$702,200** for the land taken.

One of the biggest issues in this case is the location of the comparables used by both appraisers. CFX's appraiser located sales close to the subject property, which the landowner claims are subject to "condemnation blight." The landowner's sales are located quite far from the subject, in superior locations and with superior zoning designations and approvals in place. The landowner claims that the comparable sales locations and development entitlements are similar to what the subject neighborhood and property would have enjoyed in the absence of the Parkway.

After the taking, Mr. Pendergast contends that the expressway will negatively impact the development potential of the property, which will now be limited to the County's Rural/Agricultural standard of one unit per 10 acres. Thus, the remainder's highest and best use is for development of a rural residential homesite. After considering four comparable sales located adjacent to elevated limited access roadways, Mr. Pendergast concludes that the remainder property would be worth **\$25,000 per acre** (about the same after-value conclusion as Mr. Carpenter). This amounts to severance damages of **\$165,000**, or approximately **65%**. Mr. Pendergast's valuation

conclusions are summarized as follows:

Land Taken (10.311 acres x \$68,100/ac)	\$702,200
Severance Damages (65%)	\$165,000
Landowner's Compensation Estimate	\$867,200

PROPOSAL FOR SETTLEMENT:

At a Mediation Conference held on January 26, 2016, the parties reached a settlement in the amount of **\$570,000**, plus attorneys fees and costs, subject to CFX Right of Way and Board approval. The undersigned counsel believes that \$570,000 represents a reasonable resolution of this case, limits CFX's exposure at trial, reduces expert and attorney fees and costs, and is below the midpoint of \$624,600. The landowner submitted expert fee invoices in the amount of \$60,138.20. As part of the mediated settlement agreement, the landowner agreed to accept a reduction of approximately 15% of their expert fees. The number of experts retained in this case are numerous, and their fees are summarized as follows:

EXPERT	INVOICE AMOUNT
Morris MEI (engineer)	\$23,247.00
Pendergast (appraiser)	\$15,714.00
Williams (land planner)	\$8,050.00
Hall (land planner)	\$3,442.20
Buchheit (survey)	\$9,685.00
TOTAL	\$60,138.20

The undersigned counsel has reviewed the invoices submitted by the above experts and believes that a 15% reduction, or **\$50,320.00** is an appropriate resolution of these fees. CFX's fees are \$58,498 (including appraisals, improvement cost estimates, and engineering). However, these fees do not include initial survey and engineer work that was performed by CFX in conjunction with other parcels on this project. Considering the amount at issue in the instant litigation (\$867,200), and the similarity in fees between the landowner and CFX, the undersigned counsel believes that the fee resolution is reasonable.

The landowners retained the services of Raymer Maguire from Maguire and Lassman, P.A. Mr. Maguire has agreed to accept statutory betterment fees in the amount of \$76,560 (based on a betterment of \$232,000).

The total settlement proposal, inclusive of fees and costs, is summarized as follows:

Compensation to the Owner	\$570,000
Expert Fees and Costs	\$ 50,320
<u>Attorneys fees (based on betterment)</u>	<u>\$ 76,560</u>
Total	\$696,880

RECOMMENDATION:

The proposed settlement was recommended for Board approval by the Right of Way Committee at the February 24, 2016 meeting. We respectfully request the Board's approval of the proposed settlement in the amount of **\$696,880** to resolve Adelpha Howell's compensation claims and expert and attorneys fees on Parcel 279.

ATTACHMENT:

Parcel Sketch

Mediated Settlement Agreement

LEGAL DESCRIPTION

PARCEL 279

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

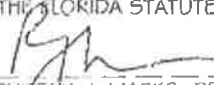
THAT PART OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4732, PAGE 3670 AND OFFICIAL RECORDS BOOK 10434, PAGE 985, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 28 EAST; THENCE, SOUTH 03°43'34" EAST ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, A DISTANCE OF 719.76 FEET TO A POINT ON THE EXISTING SOUTH RIGHT OF WAY OF BOCH ROAD AS DESCRIBED IN OFFICIAL RECORDS BOOK 893, PAGE 25, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE, DEPARTING SAID EAST LINE, SOUTH 89°59'44" WEST ALONG SAID EXISTING SOUTH LINE, A DISTANCE OF 671.76 FEET; THENCE DEPARTING SAID EXISTING SOUTH RIGHT OF WAY LINE, SOUTH 03°39'34" EAST, A DISTANCE OF 269.62 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 03°39'34" EAST, A DISTANCE OF 718.92 FEET; THENCE SOUTH 87°57'23" WEST, A DISTANCE OF 669.37 FEET; THENCE NORTH 03°20'08" EAST, A DISTANCE OF 711.11 FEET; THENCE NORTH 88°17'46" WEST, A DISTANCE OF 24.95 FEET; THENCE NORTH 86°27'30" EAST, A DISTANCE OF 115.98 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 4650.00 FEET; THENCE, FROM A TANGENT BEARING OF NORTH 84°22'57" EAST, NORTHEASTERLY ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 380.97 FEET, THROUGH A CENTRAL ANGLE OF 04°41'39" AND A CHORD BEARING OF NORTH 86°43'47" EAST TO A POINT OF TANGENCY; THENCE, NORTH 89°04'36" EAST A DISTANCE OF 110.64 FEET TO THE POINT OF BEGINNING.

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

CONTAINING 10.312 ACRES, MORE OR LESS.

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


RUSSELL J. MARKS, PSM NO. 5623

3/25/14
DATE

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: DJK

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

URS

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

REVISIONS:

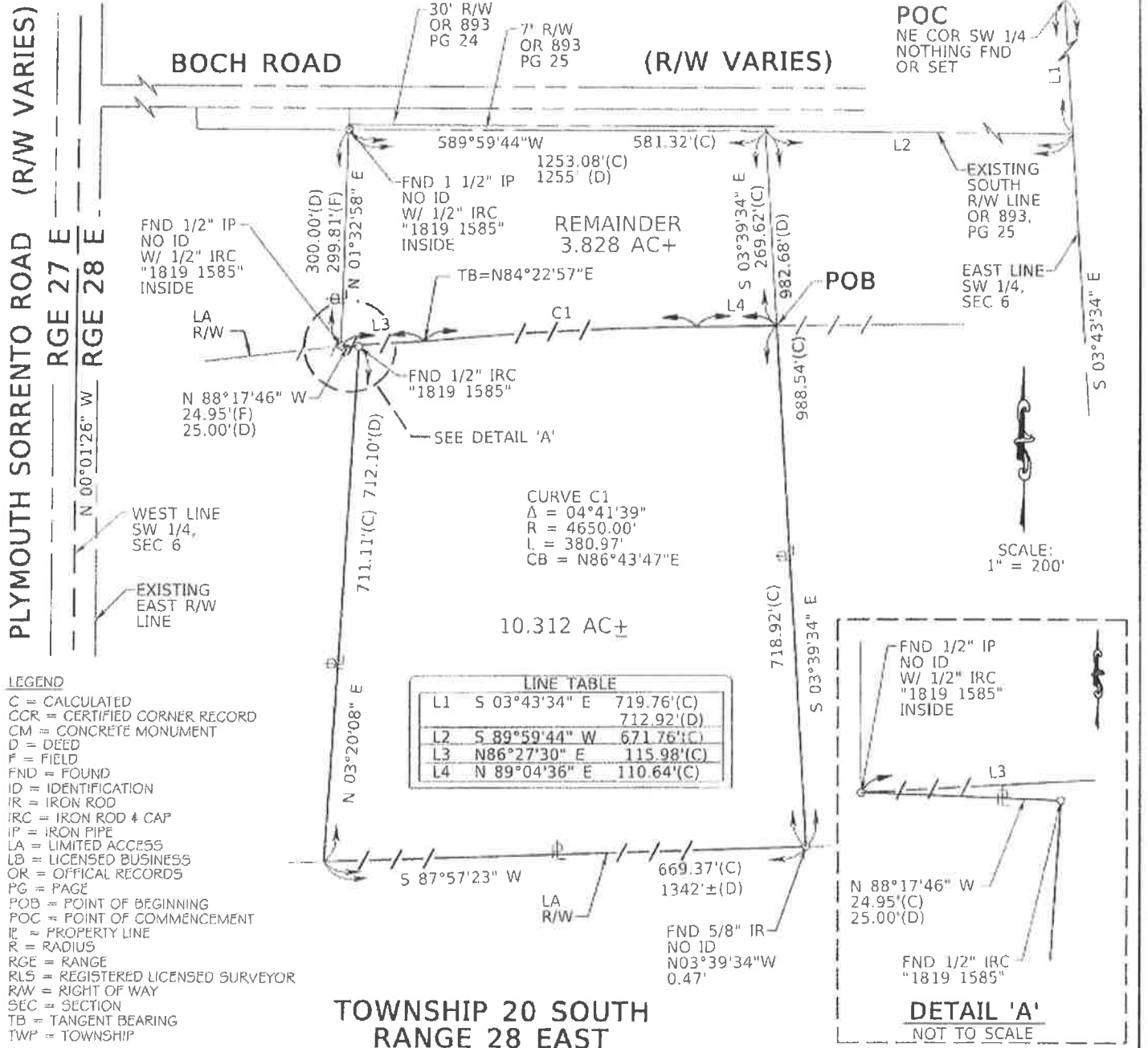
SHEET: 1 OF 2

SKETCH OF DESCRIPTION

PARCEL 279

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE



GENERAL NOTES:

- THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF NORTH 00°01'26" 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 18, 2012, FILE NO. 2037-2840301 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 3/18/14

DRAWN BY: DJK

JOB NO:

APPROVED BY: RJM

OOCEA PROJECT NO: 429-204

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315 E. ROBINSON STREET
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PH (407) 422-0353
LICENSED BUSINESS NO. 6839

REVISIONS:

SHEET: 2 OF 2

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

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

10718
CASE NO: 2014-CA-003636-O

Subdivision 39

Petitioner,

Parcel 279

vs.

THOMAS J. HOLDER, SR., individually and as Trustee
of the Sally R. Holder Credit Shelter Trust created
under agreement dated November 11, 2004;
THOMAS J. HOLDER, SR., as Trustee of the Thomas
J. Holder, Sr., Family Trust dated November 11, 2004;
BETH ANN HOLDER; ADELPHA HOWELL;
HOLDER & STRITE CORPORATION;
FLORIDA POWER CORPORATION n/k/a DUKE ENERGY
FLORIDA, INC.; ORANGE COUNTY, FLORIDA, and
SCOTT RANDOLPH, Orange County Tax Collector,

Respondents.

MEDIATED SETTLEMENT AGREEMENT

At the Mediation Conference held on January 26, 2016, the parties reached the following Settlement Agreement:

1. Petitioner will pay to Respondent, **ADELPHA HOWELL** ("Respondent") the sum of **Five Hundred Seventy Thousand Dollars (\$570,000)**, in full settlement of all claims for compensation from Petitioner resulting from the taking of Parcel 279, including severance damages, business damages, tort damages, interest, and any other claim, subject to apportionment, if any, but excluding attorney's fees, expert fees, and costs,

2. Petitioner is entitled to a credit in the amount of **Three Hundred Thirty-Eight Thousand Dollars (\$338,000)**, which sum was previously deposited in the Registry of the Court in this case by Petitioner.

3. Petitioner will pay Respondent the balance due of **Two Hundred Thirty-Two Thousand Dollars (\$232,000)**, within twenty (20) days of the actual date of receipt by Petitioner's counsel of a conformed copy of the ~~aforesaid~~ Stipulated Final Judgment from the Court.

4. In addition to the settlement amount referenced in Paragraph 1 of this Settlement

Agreement, Petitioner will pay to the trust account of Respondents' attorney the sum of **Seventy-Six Thousand Five Hundred Sixty Dollars (\$76,560)** in full settlement and satisfaction of all attorney's fees, including all fees related to monetary benefits, non-monetary benefits, and all law firm litigation costs in this case, but excluding supplemental proceedings related to apportionment, if any.

5. In addition to the above-referenced settlement sum and the above-referenced attorney's fees and law firm litigation costs, Petitioner will pay to the trust account of Respondent's attorney not more than 85% of the verified and confirmed invoiced amount, but no more than the sum of **Fifty Thousand Three Hundred Twenty Dollars (\$50,320)**, in full settlement and satisfaction of all expert witness fees and expert witness costs incurred by Respondent in this case, subject to review and confirmation that each invoice submitted by Respondent's experts was necessary and reasonable. Counsel for Respondent shall provide the experts' invoices and any additional backup within five (5) days.

6. This Agreement is contingent upon the approval of the Central Florida Expressway Authority ("CFX") Right of Way ("ROW") Committee and the CFX Board of Directors.

7. The parties agree to continue the trial of this matter pending review by the CFX ROW Committee and CFX Board.

8. Counsel for Petitioner and Respondent will jointly submit to the Court for signature a mutually approved Stipulated Final Judgment in this matter as soon as practice able after the approval of this mediated settlement agreement by the CFX Board. The Stipulated Final Judgment will include a sentence that states that the portion of the Wekiva Parkway as to Parcel 279 will be built in substantial conformance with the construction plans filed in this case. Respondent will have the same rights set forth in the *Wye River* case

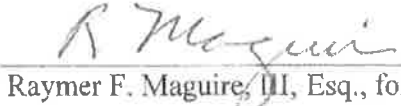
9. This Agreement resolves all claims whatsoever, including claims of compensation arising from the taking of Parcel 279, such as severance damages, business damages, tort damages, interest, attorney's fees, expert fees, costs, and any other claim.

10. The parties agree to waive any confidentiality provisions set forth in Chapter 44 of Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules of Evidence, if applicable, for the limited purpose of consideration of this proposed Settlement Agreement by the ROW Committee and the CFX Board. This Settlement Agreement, executed by the parties and their counsel on January 26, 2016, contains all of the agreements of the parties.


Linda Brehmer Lanosa, Esq.
Central Florida Expressway Authority


Thomas J. Holder, Jr., Power of Attorney,
for Owner


James Edward Cheek, III, Esq. for CFX


Raymer F. Maguire, III, Esq., for Owner


Richard Lord, Mediator