




MEMORANDUM

TO: Central Florida Expressway Authority CLIENT-MATTER NO.: 19125.0164
Board Members

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

DATE: June 26, 2017

RE: State Road 429 Wekiva Parkway, Project 429-204; Parcel 259
Proposed Settlement Agreement

Shutts & Bowen LLP, Right of Way Counsel, seeks the approval by the CFX Board of a negotiated settlement between Bank of America, N.A. (the "Owner") and the Central Florida Expressway Authority (the "CFX") for the acquisition of Parcel 259 (the "Taking" or "Property") for the construction of State Road 429 Wekiva Parkway, Project 429-204.

DESCRIPTION AND BACKGROUND

Parcel 259 is a fee simple whole acquisition of 2.443 acres for use as limited access right-of-way. The property is located on the west side of Plymouth Sorrento Road in Orange County, Florida. The property is zoned A-1, Citrus Rural District by Orange County. The future land use designates the property as Rural/Agricultural, with a maximum one dwelling unit per 10 acres. The subject is a legal, conforming lot and the zoning and land use are not inconsistent. David K. Hall of Bullard, Hall & Adams, appraiser for the CFX, opined the highest and best use as vacant would be for rural residential development. As improved, the highest and best use would be continued use as a single-family residence. On November 5, 2014, the first written offer of \$260,000 was made to the owner, Jane L. Dishman, through her counsel, Thomas P. Callan. Prior to the Order of Taking on June 22, 2015, Bank of America, the mortgage-holder, foreclosed on the property.

During the initial inspection on July 21, 2014, David Hall indicated the property was improved with a 2,276 square foot, 3 bedroom, 2 bath, single family residence which included the 480 square foot enclosed garage, appeared owner-occupied and in average condition. Additional site improvements included metal field wire fencing, a shell/dirt driveway with a 3-space concrete parking slab adjacent to the garage, an in-ground concrete swimming pool, a 160 square foot patio/porch and a 300 square foot screened porch on the rear of the house. The property also had a barn/apartment with metal roofing. It was upon this condition which Mr. Hall appraised the property at \$260,000, consisting of \$73,300 for land and \$186,700 for

improvements.

During a subsequent inspection on March 3, 2015, Mr. Hall noted the condition of the residence had drastically changed. The front and side doors appeared to have been kicked in and the house was unsecured. The house appeared to have been ransacked with the electrical wiring removed, numerous holes in the ceiling and walls, kitchen and bathroom cabinets had been damaged, interior doors were removed, the flooring damaged, the plumbing fixtures damaged, the air conditioner compressor and air handler were removed, and the pool pump was removed. Based upon these substantial changes, Mr. Hall prepared an updated appraisal report valuing the property at \$96,300, consisting of the land value remaining at \$73,300, but reducing the value of the improvements to \$23,000 due to extensive damage to the residence and barn/apartment.

Mr. Hall used six (6) land comparables ranging in adjusted price from \$22,874 to \$30,021 per acre to arrive at a valuation of \$30,000 per acre for the subject, or \$73,300. Mr. Hall also used four (4) residential sales comparables ranging from \$84.09 to \$96.02 per square foot to arrive at a valuation of \$95.00 per square foot, or a total of \$170,700 for the subject. The cost to rehabilitate the residence and demolish the garage due to the extensive damage was estimated at \$123,034 by John Speer of Speer Construction LLC. To that amount, Mr. Hall added a 20% entrepreneurial profit to arrive at an overall rehabilitation cost of \$147,700. To indicate the current market value of the improvements "as is," Mr. Hall deducted the \$147,700 rehabilitation cost from the comparable sales value of \$170,700, valuing the improvements "as is" at \$23,000. To this value, Mr. Hall added the land value of \$73,300 to arrive at a total value by the Sales Comparison Approach of \$96,300.

Settlement discussions were instituted with outside counsel representing Bank of America, first Alexander Briggs of Morris Laing Evans Brock & Kennedy in West Palm Beach, and later Charlotte Murrell with Quarles & Brady in Tampa. Ms. Murrell provided a copy of a Uniform Residential Appraisal Report by Charles Sean Grau of Timely Appraisal Service which valued the property at \$195,000 as of April 13, 2015.

After significant negotiations with counsel for Bank of America, we reached a settlement in the amount of \$146,254.18, plus Bank of America agreed to waive any and all attorneys' fees and costs and experts' fees and costs.

For the above-cited reasons, Right of Way counsel requests the CFX Board approve the settlement of the underlying property owners' compensation in the amount of \$146,254.18, plus the waiver of any and all attorneys' fees and costs and experts' fees and costs. The CFX would receive credit for the good faith deposit previously made of \$96,300, for a net resolution amount of an additional \$49,954.18, which is in the CFX's best interest. Settlement of any and all claims for Parcel 259 will eliminate further risk and unnecessary expenses that the CFX will ultimately incur with further litigation of the condemnation action to acquire the parcel. The proposed settlement was recommended by the Right of Way Committee at its June 28, 2017 meeting.

RECOMMENDATION

We respectfully request that the CFX Board approve the proposed settlement of \$146,254.18 in settlement of all claims for compensation in the acquisition of Parcel 259, plus the waiver of any and all attorneys' fees and any costs and experts' fees and costs.

ATTACHMENTS

Exhibit "A" – Sketch of the Subject Property

Exhibit "B" – Photographs of the Subject Property and Area

Exhibit "C" – Settlement Agreement

Reviewed by: 

ORLDOCS 15487807 1

LEGAL DESCRIPTION

PARCEL 259

PURPOSE: LIMITED ACCESS RIGHT OF WAY

ESTATE: FEE SIMPLE

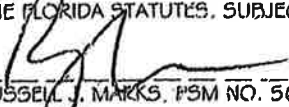
THAT PART OF THE S 1/2 OF THE SE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8458, PAGE 4756, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

"THE N 1/2 OF S 1/2 OF SE 1/4 OF SE 1/4 OF SE 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA. (LESS RIGHT OF WAY ON EAST)"

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

CONTAINING 2.443 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

12/18/13

DATE

NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY

STATE ROAD 429

DESIGNED BY: RJM

DATE: 12/18/13

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

EXHIBIT A

SKETCH OF DESCRIPTION

PARCEL 259

PURPOSE: LIMITED ACCESS RIGHT OF WAY

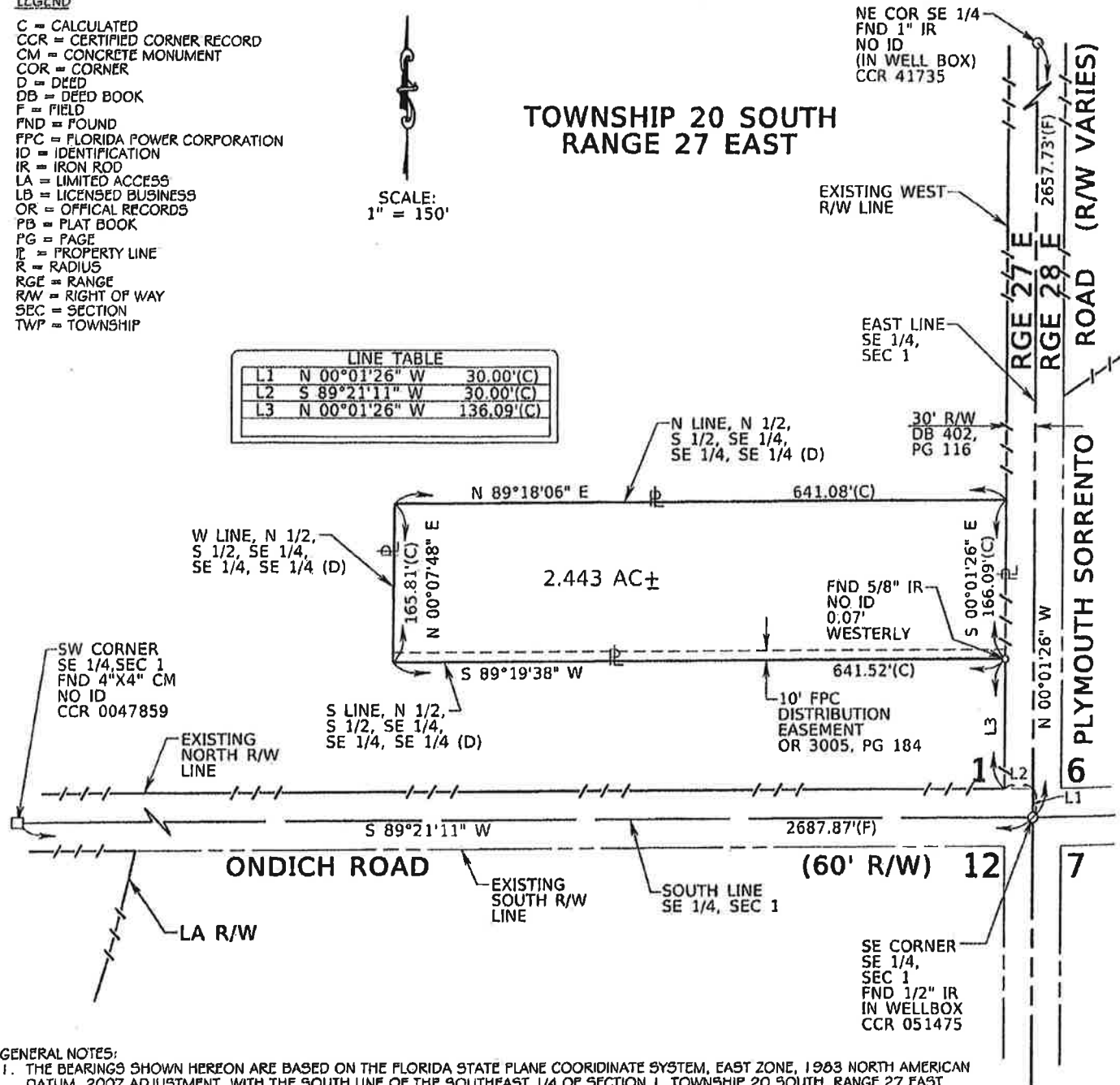
ESTATE: FEE SIMPLE

LEGEND

C = CALCULATED
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SCALE:
1" = 150'

LINE TABLE		
L1	N 00°01'26" W	30.00'(C)
L2	S 89°21'11" W	30.00'(C)
L3	N 00°01'26" W	136.09'(C)



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 NOVEMBER 27, 2012, FILE NO. 2037-2857106 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. 6639	REVISIONS:
DRAWN BY: DJK	JOB NO:			
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204			SHEET: 2 OF 2

**PHOTOGRAPHS OF SUBJECT
PARCEL 259**



1. LOOKING NORTH AT THE FRONTAGE ALONG PLYMOUTH SORRENTO ROAD



2. LOOKING WEST AT THE DRIVE FROM PLYMOUTH SORRENTO ROAD

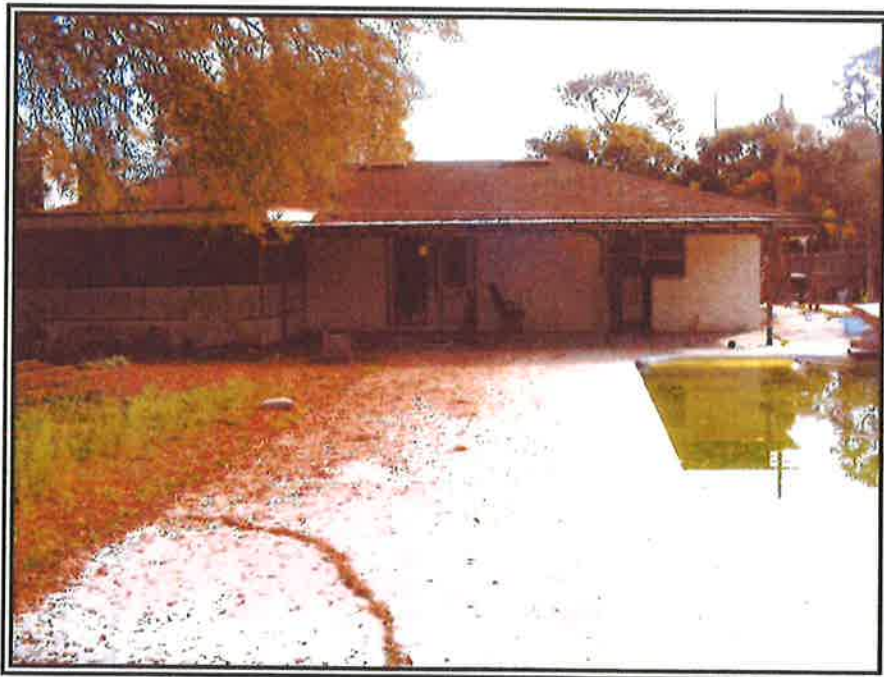
Photographs Taken By:
David K. Hall
July 1, 2015

EXHIBIT "B"

**PHOTOGRAPHS OF SUBJECT
PARCEL 259**



3. LOOKING WEST AT THE SINGLE FAMILY RESIDENCE



4. LOOKING EAST AT THE REAR OF THE RESIDENCE

Photograph 3 Taken By:
David K. Hall
July 1, 2015

Photograph 4 Taken By:
David K. Hall
March 3, 2015

**PHOTOGRAPHS OF SUBJECT
PARCEL 259**



5. LOOKING NORTHWEST AT THE APARTMENT/BARN



6. INTERIOR VIEW OF THE HOUSE

Photograph 3 Taken By:
David K. Hall
July 1, 2015

Photograph 4 Taken By:
David K. Hall
March 3, 2015

**PHOTOGRAPHS OF SUBJECT
PARCEL 259**



7. INTERIOR VIEW OF THE HOUSE



8. INTERIOR VIEW OF THE APARTMENT/BARN

Photograph 3 Taken By:
David K. Hall
July 1, 2015

Photograph 4 Taken By:
David K. Hall
March 3, 2015

**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,

Petitioner,

v.

CASE NO.: 2015-CA-004105-O

DARYL A. ALDERMAN, et al.,

Parcel 259

Respondents.

Subdivision 39

SETTLEMENT AGREEMENT

During settlement negotiations, Petitioner, CENTRAL FLORIDA EXPRESSWAY AUTHORITY (referred to as "Petitioner" or "CFX"), and Respondent, NEW PENN FINANCIAL, LLC d/b/a Shellpoint Mortgage Servicing acting on behalf of Bank of America, N.A. per the Limited Power of Attorney dated February 19, 2016, and recorded February 23, 2016 at Book DE 2482, Page 3637-3640, Official Records of Greenville County, South Carolina (attached hereto and made part of this Agreement by reference) (referred to as "Respondent"), reached the following Settlement Agreement:

1. Petitioner will pay to Respondent the sum of ONE HUNDRED FORTY-SIX THOUSAND, TWO HUNDRED FIFTY-FOUR AND 18/100 DOLLARS exactly (\$146,254.18) in full settlement of all claims for compensation from Petitioner whatsoever for the taking of Parcel 259, including statutory interest and all claims related to real estate and business damages, if any, including attorney's fees and expert witness costs. The settlement sum may be subject to claims of apportionment by any party in this case having a property interest in or a lien on the subject property.

2. Petitioner previously deposited in the Registry of the Court Petitioner's good faith estimate in the amount of NINETY-SIX THOUSAND, THREE HUNDRED AND NO/100 DOLLARS (\$96,300.00). Within thirty (30) days from the date of receipt by Petitioner's counsel of a conformed copy of the Stipulated Final Judgment, Petitioner will pay to Respondent, by deposit in the Registry of the Court the sum of FORTY-NINE THOUSAND, NINE HUNDRED FIFTY-FOUR AND 18/100 DOLLARS EXACTLY (\$49,954.18), representing the difference between the total settlement sum referenced above and the Petitioner's previous deposit in this case.

3. In addition to the settlement amount referenced in Paragraph 1 of this Settlement Agreement, Respondent agrees to waive all attorney's fees, expert's fees, and litigation costs in this matter.

EXHIBIT "C"

4. This Settlement Agreement will be placed on the agenda for the Right of Way ("ROW") Committee and Central Florida Expressway Authority ("CFX") Board and is conditioned upon final approval by the ROW Committee and then the CFX Board.


5. Counsel for Petitioner and Respondent will jointly submit to the Court a mutually approved Stipulated Final Judgment containing the terms and conditions of this Settlement Agreement within fifteen (15) days from the date of approval of this Settlement Agreement by the CFX Board.

6. 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.


7. This Agreement resolves all claims whatsoever, including claims of compensation arising from the taking of Parcel 259, severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim.

8. Respondent shall execute and deliver to the undersigned counsel for the Central Florida Expressway Authority the Public Disclosure Affidavit of Interests in Real Property as required by Section 286.23, *Florida Statutes* (2016).

9. This Settlement Agreement, executed by the counsel for the parties listed below on this 15th day of June, 2017, contains all the agreements of the parties.



David A. Shontz, Esq.
SHUTTS & BOWEN LLP
Counsel for Petitioner, Central Florida
Expressway Authority



Charlotte Murrell, Esq.
QUARLES & BRADY LLP
Counsel for Respondent, New Penn Financial,
LLC d/b/a Shellpoint Mortgage Servicing
acting on behalf of Bank of America, N.A. per
the Limited Power of Attorney dated February
19, 2016, and recorded February 23, 2016 at
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REVISIONS:

SHEET: 1 OF 2

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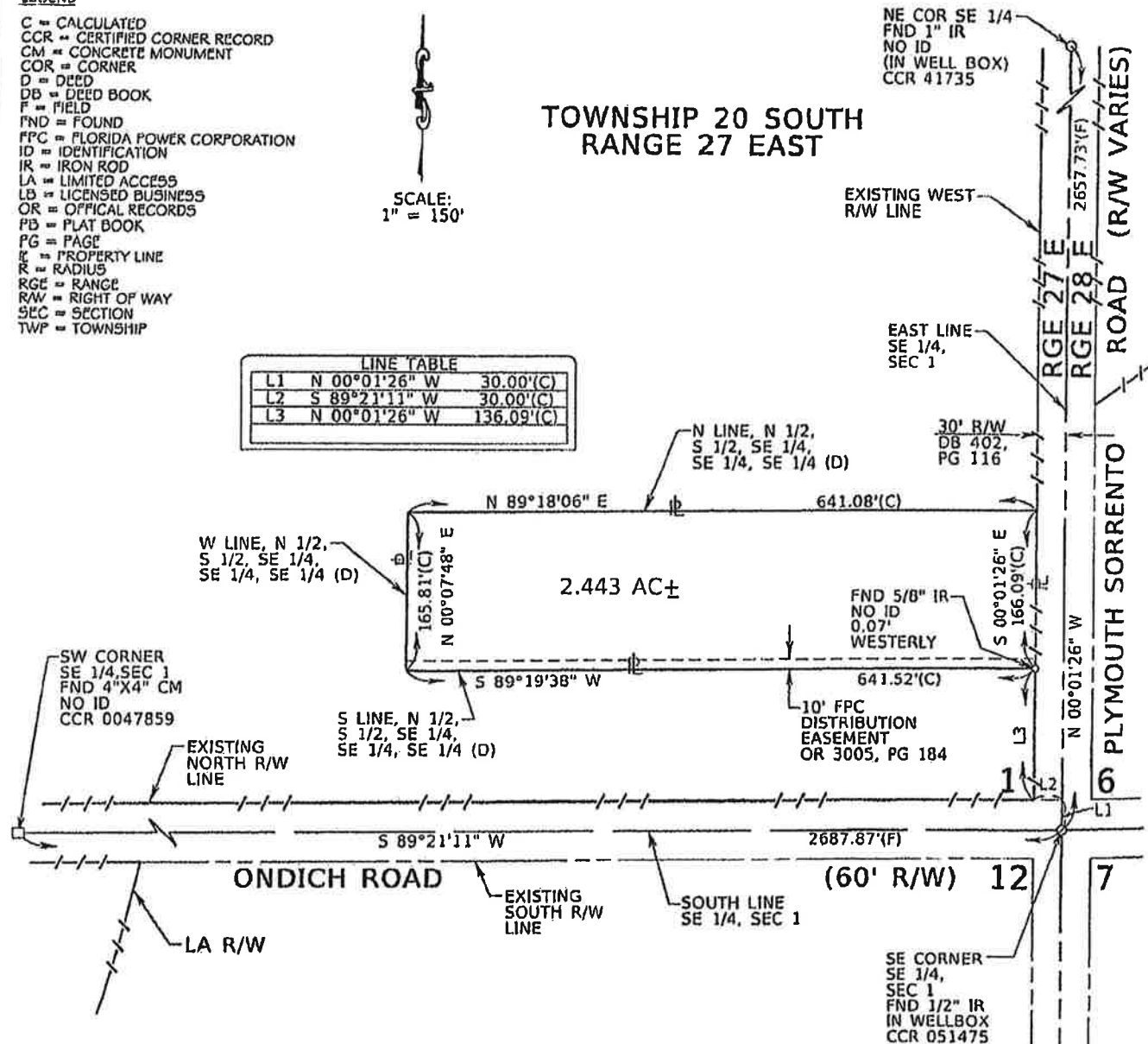
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LICENSED BUSINESS NO. 6839

REVISIONS:

SHEET: 2 OF 2

After Recorded Return To:

New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing

75 Beattie Place

Greenville, SC 29601

Attention: Cynthia Brock, Doc Curative Manager

LIMITED POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, BANK OF AMERICA, N.A. ("Owner"),¹ a national banking association located at 1800 Tapo Canyon Rd., Simi Valley, CA, 93063, by these presents does hereby make, constitute and appoint New Penn Financial LLC dba Shellpoint Mortgage Servicing ("Subservicer"), a Delaware limited liability company located at 75 Beattie Place, Greenville, SC 29601, to be Owner's true and lawful attorney-in-fact, and hereby grants Subservicer authority and power to take, through its duly authorized officers, such Actions (as defined below) as may be appropriate, in Owner's name, place and stead. This limited power of attorney ("Limited Power of Attorney") is given in connection with and relates solely to that certain Flow Subservicing Agreement dated September 10, 2010 (the "Agreement"), between Owner and Resurgent Capital Services, LP dba Resurgent Mortgage Servicing, pursuant to which Subservicer has the duty to provide servicing, administration, and management and disposition services with respect to certain mortgage loans ("Mortgage Loans") owned by Owner (the "Servicing Arrangement").² Each of the Mortgage Loans comprises a promissory note evidencing a right to payment and performance secured by a security interest or other lien on real property ("Property") evidenced by one or more mortgages, deeds of trust, deeds to secure debt, or other forms of security instruments (each, a "Security Instrument"). The assignment of a Security Instrument, as used herein, shall also include the assignment of the beneficial interest under a deed of trust.

As used above, the term "Actions" shall mean and be limited to the following acts, in each case with respect to one or another of the Mortgage Loans or the Property and as mandated or permitted by federal, state or local laws or other legal requirements or restrictions—including without limitation federal, and state debt collection laws—applicable to Owner or Subservicer in connection with mortgage loans serviced by Subservicer or on behalf of Owner as owner:

1. Demand, sue for, recover, collect and receive each and every sum of money, debt, account and interest (which now is or hereafter shall become due and payable) belonging to or claimed by Owner in respect of the Mortgage Loans and Property, and to use or take any lawful means for recovery by legal process or otherwise, including but not limited to the substitution of trustee under a deed of trust, the preparation and issuance of statements of

¹ This Limited Power of Attorney is intended to cover Actions, as such term is defined herein, taken in the name of: Bank of America, N.A. is the successor by merger to BAC Home Loans Servicing, LP, formerly known as Countrywide Home Loans Servicing LP.

² Effective February 1, 2014, Resurgent Capital Services, LP assigned all of its rights and delegated all of its performance under the Agreement to Subservicer.

LIMITED POWER OF ATTORNEY TO NEW PENN FINANCIAL LLC DBA SHELLPOINT MORTGAGE SERVICING

THIS INSTRUMENT PREPARED BY AMIE ELDRED 7315 S DURANGO DRIVE, LAS VEGAS, NV 89113

breach, notices of default, and/or notices of sale (or any other statement or notice that is now or hereafter becomes necessary or appropriate to protect or enforce Owner's interest in the Mortgage Loans and Property), filing proofs of claim, motions for relief from the automatic stay or other writings in a bankruptcy proceeding, taking deeds in lieu of foreclosure, negotiating and entering into "cash for keys" agreements, evicting and foreclosing on the Properties.

2. Subordinate the lien of a mortgage or deed of trust (i) for the purpose of refinancing Mortgage Loans, where applicable, or (ii) to an easement in favor of a public utility company or a government agency or unit with powers of eminent domain, including but not limited to the execution of partial satisfactions and releases and partial reconveyances reasonably required for such purpose, and the execution or requests to the trustees to accomplish the same.
3. Execute and/or file such documents and take such action as is proper and necessary to defend Owner in litigation and to resolve any litigation where Subservicer has an obligation to defend Owner.
4. Transact business of any kind regarding the Mortgage Loans, as Owner's act and deed, to contract for, purchase, receive and take possession and evidence of title in and to the Property and/or to secure payment of a promissory note or performance of any obligation or agreement relating thereto.
5. Execute, complete or file bonds, Security Instruments and other contracts, agreements and instruments regarding the borrowers and/or the Property, including but not limited to the execution of releases, satisfactions, reconveyances, assignments, loan modification agreements, loan assumption agreements, subordination agreements, property adjustment agreements, and other instruments pertaining to Security Instruments, bills of sale and execution of deeds and associated instruments, if any, conveying or encumbering the Property, in the interest of Owner.
6. Correct or otherwise remedy any errors or deficiencies contained in any transfer or reconveyance documents provided or prepared by Owner or a prior transferor, including but not limited to note indorsements.
7. Convey the Property to the mortgage insurer, or close the title to the Property to be acquired as real estate owned, or convey title to real estate owned property ("REO Property").
8. Execute and deliver the following documentation with respect to the sale of REO Property acquired through a foreclosure or deed-in lieu of foreclosure, including, without limitation: listing agreements; purchase and sale agreements; grant/warranty/quit claim deeds or other deeds causing the transfer of title of the property to a party contracted to purchase same; escrow instructions; and any and all documents necessary to effect the transfer of REO Property.
9. Perform all steps necessary to realize on insurance proceeds, including but not limited to insurance proceeds relating to foreclosures, short sales, deeds in lieu of foreclosure, sale of REO Property, and the exercise of any rights of Owner under any insurance agreement.
10. Indorse all checks, drafts and/or other negotiable instruments made payable to Owner as payments by borrowers in connection with the Mortgage Loans.

With respect to the Actions, Owner gives to said attorney-in-fact full power and authority to execute such instruments and to do and perform all and every act and thing requisite, necessary and proper to carry into effect the power or powers granted by or under this Limited Power of Attorney as fully, to all intents and purposes, as Owner itself might or could do, and hereby does ratify and confirm all that said attorney-in-fact shall lawfully do or cause to be done by authority hereof. Any Action taken pursuant to this Limited Power of Attorney shall be binding on Owner and Owner's successors and assigns.

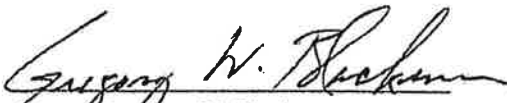
Owner represents to those dealing with such attorney-in-fact that they may rely upon this Limited Power of Attorney until they receive actual notice of termination or revocation thereof or unless an instrument of revocation has been made in writing. Any and all third parties dealing with Subservicer as Owner's attorney-in-fact may rely completely, unconditionally and conclusively on the authority of Subservicer, and need not make any inquiry about whether Subservicer is acting pursuant to the Servicing Arrangement. Any purchaser, title insurance company, public official or other third party may rely upon a written statement by Subservicer that any subject mortgage loan or real estate owned by Owner or by Subservicer for Owner as a result of the termination of the related Mortgage Loan, is subject to the authority and power conferred to the Subservicer pursuant to the Servicing Arrangement and this Limited Power of Attorney.

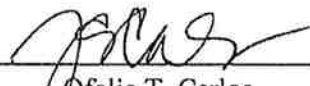
Nothing contained herein shall be construed to grant Subservicer the power to (i) initiate or defend any suit, litigation, or proceeding in the name of Owner, that is not expressly granted within this Limited Power of Attorney or be construed to create a duty of Owner to initiate or defend any suit, litigation, or proceeding in the name of Subservicer, (ii) incur or agree to any liability or obligation in the name or on behalf of Owner, or (iii) execute any document or take any action on behalf of, or in the name, place, or stead of, Owner, except, in each case, as provided herein.

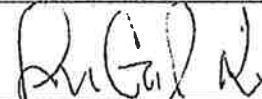
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IN WITNESS WHEREOF, Bank of America, N.A. has executed this Limited Power of Attorney this 19th day of February, 2016.

BANK OF AMERICA, N. A.

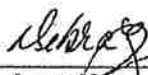
By: 
Name: Gregory W. Blackmer
Title: Vice President

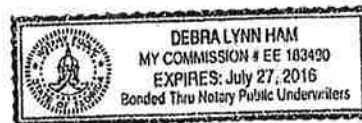
Witness: 
Name: Ofelia T. Carlos
Title: Officer

Witness: 
Name: Jon Giraldo
Title: Secondary Market Ops

STATE OF FLORIDA :
COUNTY OF DUVAL : ss.
:

This instrument was acknowledged before me on February 19, 2016 by Gregory W. Blackmer, personally known to me to be Vice President of Bank of America, N.A., a national banking association, on behalf of said national banking association.


Debra Lynn Ham
My commission expires: 7/27/16



LIMITED POWER OF ATTORNEY TO NEW PENN FINANCIAL LLC DBA SHELLPOINT MORTGAGE SERVICING

THIS INSTRUMENT PREPARED BY AMIE ELDRED 7315 S DURANGO DRIVE, LAS VEGAS, NV 89113