

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Vihlen Road Joint Facilitation of Public Infrastructure Agreement

DEPARTMENT: Public Works **DIVISION:** Road Operations and Stormwater

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Mark E. Flomerfelt **EXT.** 5709
W. Gary Johnson, P.E., Dir. Mark E. Flomerfelt, P.E., Manager
Public Works Department Road Operations & Stormwater Div

Agenda Date 3/23/04 **Regular** **Consent** **Work Session** **Briefing**
Public Hearing – 1:30 **Public Hearing – 7:00**

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute the Vihlen Road Joint Facilitation of Public Infrastructure Agreement between Keewin Real Property Company and Seminole County.

BACKGROUND:

Vihlen Road is a local collector road used by a variety of traffic, including school buses, which connects various residential neighborhoods between CR 46A, a County arterial, and Upsala Road, a collector, in north central Seminole County. A two thousand seven hundred twenty foot (2,720') segment of Vihlen Road is currently unpaved, of which the western one thousand fifty feet (1,050') will be paved as an urban cross-section by a proposed development inside the City of Sanford. Design for this segment has been completed by the developer. Because of drainage and right-of-way issues, the remaining one thousand six hundred seventy foot (1,670') portion is not a good candidate for alternative surface treatment.

An opportunity to cooperatively complete paving and associated drainage improvements to Vihlen Road has been identified by representatives of the developer, Keewin Real Property Company, and County staff. Key points to this partnership include:

- County to be responsible for design of improvements for the one thousand six hundred seventy foot (1,670') section of Vihlen Road, which is not required to be paved by the developer. The County's cost is estimated at approximately seventy five thousand dollars (\$75,000).

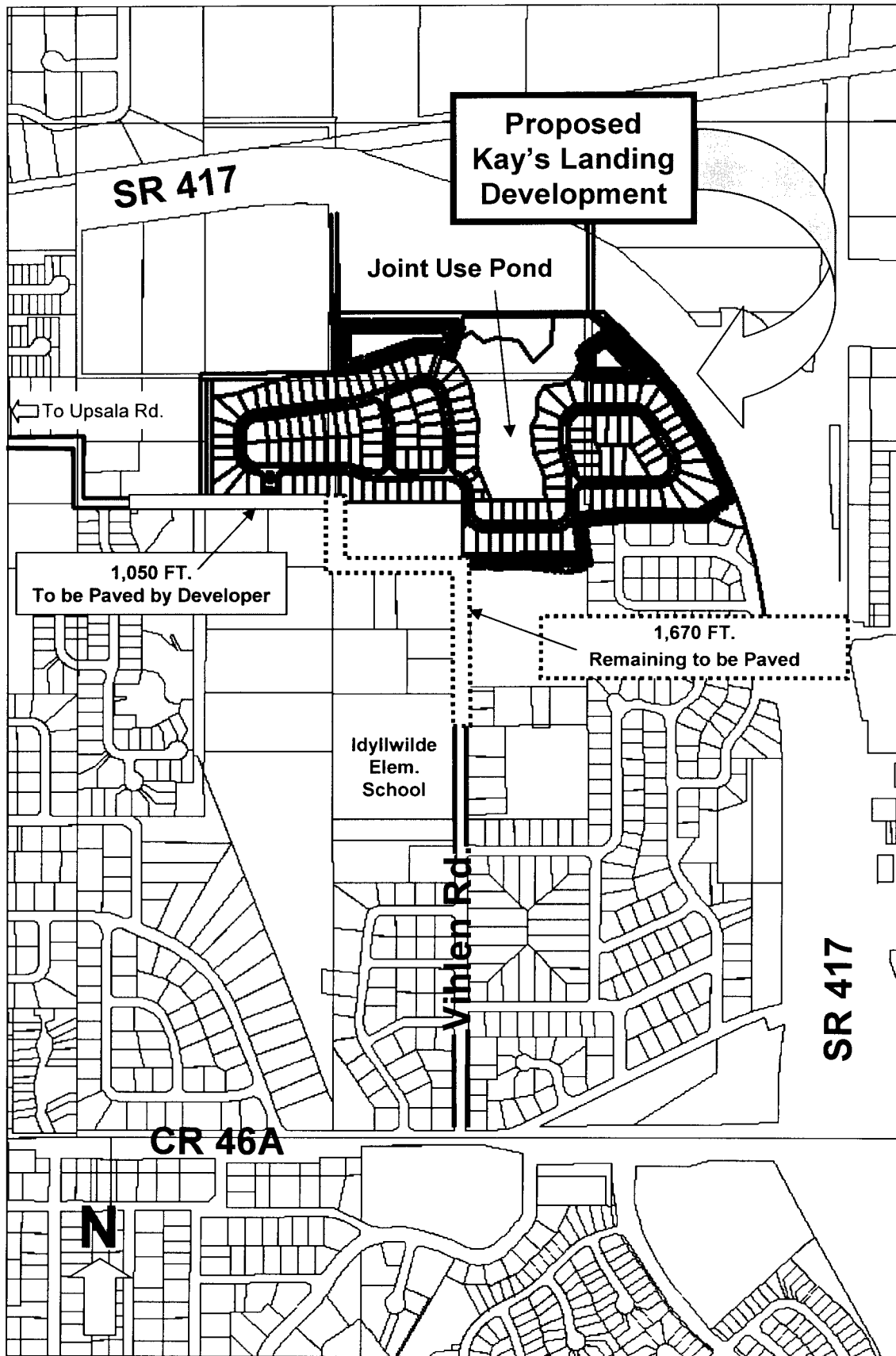
Reviewed by:
Co Atty: <u>[Signature]</u>
DFS: _____
Other: _____
DCM: <u>[Signature]</u>
CM: <u>[Signature]</u>
File No. <u>RPWS01</u>

- Developer to acquire and dedicate all necessary right-of-way for the entirety of the Vihlen Road improvements. Additionally, the developer has designed and will construct a joint-use retention pond on the developer's property, at the developer's cost. In consideration for services leading up to right-of-way acquisition, such as title searches and legal descriptions, the County will pay twenty five thousand dollars (\$25,000) upon receipt of all recorded rights-of-way and easements.
- Developer may construct the paving improvements as a single project, subject to a not-to-exceed limit of four hundred twenty-five thousand dollars (\$425,000) for the one thousand six hundred seventy foot (1,670') County segment. Alternatively, the County may independently construct that segment.

Funds for the County's costs are available from the 2001 Renewed Sales Tax, and the proposed improvements constitute an eligible type of project under both the "Various Retrofits" and "Various Paving" categories. Pending County Commission approval of the recommended agreement, appropriate project accounts can be established in the FY '04 Mid-Year Budget Amendment. The Mid-Year Amendment is anticipated to be presented for Board action on April 27, 2004.

District 5 – Commissioner McLain

Attachments: Location Map
Proposed Agreement
(Developer's Execution to be received prior to 3/23/04)



**Proposed
Kay's Landing
Development**

SR 417

Joint Use Pond

← To Upsala Rd.

1,050 FT.
To be Paved by Developer

1,670 FT.
Remaining to be Paved

Idyllwilde
Elem.
School

Vihlen Rd.

SR 417

CR 46A

N

**THE KEEWIN REAL PROPERTY COMPANY/SEMINOLE COUNTY
JOINT FACILITATION OF PUBLIC INFRASTRUCTURE
VIHLEN ROAD AGREEMENT**

THIS JOINT FACILITATION OF PUBLIC INFRASTRUCTURE AGREEMENT, hereinafter referred to as the "Agreement", is made and entered into this ___ day of _____, 2004, by and between **KEEWIN REAL PROPERTY COMPANY**, a Florida corporation, whose address is 1031 West Morse Boulevard, Suite 325, Winter Park, Florida 32799, hereinafter referred to as the "Developer", and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "County".

W I T N E S S E T H:

WHEREAS, the Developer has a pending contract to purchase certain real property located in the City of Sanford, Seminole County, Florida, which is described in Exhibit "A" attached hereto, hereinafter referred to as "the Property"; and

WHEREAS, the Property is contiguous along its southern boundary to Vihlen Road, which is part of the County's road system, hereinafter referred to as "Vihlen Road"; and

WHEREAS, Vihlen Road is currently operated and maintained by the County as a two (2) lane rural facility containing an unpaved segment; and

WHEREAS, Developer, as part of its development approval from the City of Sanford, is required to design and construct improvements to a portion of Vihlen Road immediately adjacent to the Property (the "Developer Segment"); and

WHEREAS, the balance of Vihlen Road lying between the Developer's Segment and CR 46A (the "County Segment") would, in the absence of this Agreement, remain an unimproved rural facility; and

WHEREAS, improvement of the County Segment to County standards requires the acquisition of additional rights-of-way and drainage easements; and

WHEREAS, the County has determined that the improvement of the County Segment is in the public interest; and

NOW, THEREFORE, the parties, in consideration of the premises and the benefits to them respectively, the rights and obligations of the parties as set forth in the commitments, covenants, promises, agreements and conditions of this Agreement and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference and form a material part of this Agreement upon which the parties have relied.

Section 2. Improvements to the County Segment. The County agrees to undertake, in accordance with County procedures, the selection and hiring of a design consultant to prepare plans and specifications for the construction of the County Segment of Vihlen Road. The County will use its best efforts to complete the design of the County Segment before Developer is ready to commence construction of the Developer Segment.

Section 3. Rights-of-Way and Drainage Easements. Developer agrees to provide and convey or cause to be conveyed to the County all rights-of-way and drainage easements necessary for the design, construction and future maintenance of the County Segment. If any of the rights-of-way or drainage easements are not part of the Property then Developer shall secure the necessary property interests by appropriate instrument, reasonably acceptable to the County Attorney and suitable for recording in the public records. The County agrees that the stormwater management facilities for the County Segment which are to be located on the Property shall be designed so as to minimize, consistent with sound and generally accepted engineering and safety standards as set forth in the Seminole County Land Development Code, the amount of the Property required for same and so as not to unreasonably interfere with the contemplated development of the Property.

Section 4. Payment for Rights-of-Way and Drainage Easements. The County agrees to pay Developer a total of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) for all rights-of-way and drainage easements, payment to be made upon acceptance of all the recordable instruments conveying the property interests to the County, free and clear of all encumbrances. Developer shall be responsible for all costs of acquiring and recording the transfer of all property interests covered by this Agreement. Developer shall provide either an opinion of counsel directed to the County or a title insurance policy in favor of the County, showing title to the rights-of-way and drainage easements is or, upon recording of the instruments, will be properly vested in the County.

Section 5. Construction of Road Improvements. The Developer agrees to provide the County with a fixed bid for the construction of the County Segment in accordance with the County's plans and specifications. If the bid is equal to or less than FOUR HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$425,000.00) then the County Manager shall, by written notification, authorize the Developer to perform or cause to be performed the construction of the County Segment. All work shall be done in accordance with standard County terms and conditions regarding such construction, including bonding and insurance requirements, inspections and warranties, quality of materials and workmanship, maintenance of traffic requirements, indemnity provisions, equal opportunity requirements and all other standard terms and conditions of County construction contracts. Developer acknowledges receipt of a copy of the County's standard terms and conditions and agrees to be bound by same should the County award Developer the work.

Payment to the Developer shall be in two installments, one at fifty percent (50%) completion, as certified by the County Engineer or his designee, and the balance upon substantial completion of the work. The County may retain ten per cent (10%) of each payment as retainage. Such retainage, less final adjustments, if any, shall be paid upon final completion and acceptance of the work by the County Engineer or his designee.

If the Developer's bid is in excess of the amount specified above then the County has no duty or obligation to accept same and may choose to perform the work through another contractor or not perform the work at all, all in the absolute discretion of the County.

Section 6. Developer's Consultant/Permit Modification. Developer agrees to cause the design consultant for the Developer Segment to provide all pertinent data that may be reasonably required to the County's design consultant, all at no charge to the County. Developer also agrees to allow the County to modify the permit(s) issued by the water management district and/or the Corps of Engineers in order to accommodate the County's requirements for the County Segment.

Section 7. Developer's failure to obtain rights-of-way. The parties acknowledge and agree that the County Segment of Vihlen Road cannot be built without the additional rights-of-way. Should the Developer be unable to obtain all required rights-of-way then the County shall have no obligation to pay Developer as provided in Section 4 above. The County may, but is not obligated to, elect to acquire the necessary rights-of-way and proceed with the construction of the County Segment and, if so, then Developer shall convey the drainage easement and rights-of-way located upon the Property to the County.

Section 8. Compliance with Laws and Regulations. In performing pursuant to this Agreement, each party hereto shall abide by the respective statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such party, including, but not limited to, those now in effect and hereafter adopted.

Section 9. Notice.

(a) Except as otherwise provided in this Agreement, whenever either party desires to give notice to the other, notice shall be sent to:

For the County: Kevin Grace, County Manager
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

With copies to: Jerry McCollum, County Engineer
Public Works Department
Engineering Division
520 West Lake Mary Boulevard
Suite 200
Sanford, Florida 32773

For the Developer: Keewin Real Property Company
Attn: Mr. Allan E. Keen
1031 West Morse Boulevard
Suite 325
Winter Park, Florida 32789

with a copy to: Kenneth W. Wright, Esq.
Shutts & Bowen LLP
300 South Orange Avenue
Suite 1000
Orlando, Florida 32801

(b) Either of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices. Each such notice shall be deemed delivered on the date delivered if by personal delivery or on the date of transmission with confirmed answer back if by telex, or on the date upon which the return receipt is signed or delivery is refused or notice is designated by the postal authorities as not deliverable, as the case may be, if mailed or date of delivery by overnight delivery services as evidenced by a service receipt.

Section 10. Counterparts. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

Section 11. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the parties to be bound thereby.

Section 12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors in interest, transferees and assigns of the parties.

Section 13. County's Obligation. This Agreement shall not be deemed to pledge the credit of the County nor to make the County a co-venturer or partner of the Developer.

Section 14. Applicable Law/Venue/Remedies.

(a) This Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida.

(b) Venue for any proceeding arising under this Agreement shall be in the Eighteenth Judicial Circuit in and for Seminole County, Florida as to State actions and the United States District Court for the Middle District of Florida as to Federal actions.

(c) In the event of a dispute between Developer and County regarding the subject matter of this Agreement, Developer and County agree to submit same to non-binding mediation and shall cooperate in good faith in appointing a qualified mediator and in attending and participating in mediation of such dispute. Each party shall pay their own attorney's and

consultant fees and costs incurred in connection with any such mediation and shall split equally all fees and costs of the mediator. In the event that such dispute cannot be resolved by mediation, then the parties hereto shall have all rights and remedies available under Florida law in connection with the enforcement of the terms and conditions of this Agreement. The prevailing party in any action, litigation, suit, action or proceeding to enforce the terms and conditions of this Agreement shall be entitled to recover all reasonable attorneys and paralegal fees and costs incurred prior to, in preparation for and in connection with all trial or appellate proceedings.

Section 15. Time is of the Essence. Time is hereby declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

Section 16. Non-Waiver. No consent or waiver, expressed or implied, by either party, to or of any breach or default of the other party, with regard to the performance by said other party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver, to or of, any other breach or default in the performance of that party, of the same or of any other objection of performance incumbent upon that party. Failure on the part of either party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this Agreement, at law, or in equity.

Section 17. Construction.

(a) This Agreement shall not be construed against either party on the basis of it being the drafter of the Agreement. The parties agree that both herein played an equal part in reciprocity in drafting this Agreement.

(b) Capitalized terms contained herein shall have no more force nor effect than uncapitalized terms.

(c) Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

Section 19. Severability. If any provision of this Agreement, or its application to any person, entity or circumstances is specifically held to be invalid or unenforceable by a Court of competent jurisdiction, the remainder of this Agreement and the application of the provisions hereof to other persons, entities or circumstances shall not be affected thereby and, to that end, this Agreement shall continue to be enforced to the greatest extent possible consistent with law and the public interest including, but not limited to, the expenditure of public funds for lawful purposes.

Section 20. Further Assurances. The Developer agrees to sign any other and further instruments and documents, consistent herewith, as may be necessary and proper in order to give complete effect to the benefits deriving from the terms and conditions of this Agreement.

Section 21. Curative Periods. No default as to any provision of this Agreement on the part of either the County or the Developer shall be claimed or charged by either party against the other until notice thereof has been given to the defaulting party in writing, and such default remains uncured for a period of ten (10) days after such notice.

Section 22. Reasonable Approval. In those instances in this Agreement in which a party's approval, consent or satisfaction is required, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

Section 23. Public Records. The Developer shall allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and which have been made or received by the Developer in conjunction with this Agreement

Section 24. Records and Audits. The Developer shall maintain in its place of business all books, documents, papers and other evidence pertaining in any way to payments made pursuant to this Agreement. Such records shall be available at the Developer's place of business at all reasonable times during the term of this Agreement and for five (5) years from the date of final payment under this Agreement for audit or inspection by the County upon five (5) days prior written notice.

Section 25. Equal Opportunity Employment. The Developer agrees that it will not discriminate against any employee or applicant for employment under this Agreement because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Section 26. Interpretation. This Agreement shall not operate as a development order or permit or a development approval of any type. No waiver or fulfillment of any condition of development arising from the Seminole County Comprehensive Plan or the Land Development Code of Seminole County is intended and none shall be implied from the terms of this Agreement.

Section 27. Effective Date. This Agreement shall take effect on the date that this Agreement is fully executed by the parties (the "Effective Date").

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

WITNESSES:

KEEWIN REAL PROPERTY COMPANY

SIGNATURE

By: _____
Allan E. Keen

PRINT NAME

Date: _____

SIGNATURE

PRINT NAME

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: DARYL G. MCLAIN, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency.

As authorized by the Board of County
Commissioners at their meeting of
_____, 2004.

County Attorney

SPL
03/11/04
Exhibit "A" Description of Developer's Property
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DESCRIPTION:

PARCEL #1

The South 1/2 of Blocks 24, 25, 40, and 41 (Less the East 625 feet thereof), M. M. SMITH'S SUBDIVISION, according to the plat thereof, as recorded in Plat Book 1, Page 55, of the Public Records of Seminole County, Florida.

AND:

PARCEL #2

Lot 37 (LESS the East 625 feet of the North 215 feet AND ALSO LESS the East 60 feet lying South of the North 215 feet), Lot 38 (LESS the East 60 feet), Lots 39, and 40 (LESS the East 60 feet AND ALSO LESS that part in 4TH RAVENNA PARK SECTION OF LOCH ARBOR, according to the plat thereof, as recorded in Plat Book 14, Page 66, of the Public Records of Seminole County, Florida), Lot 46 (LESS that part lying in said 4TH RAVENNA PARK SECTION OF LOCH ARBOR AND ALSO LESS that part lying in 3RD RAVENNA PARK SECTION OF LOCH ARBOR, according to the plat thereof, as recorded in Plat Book 14, Page 22, of the Public Records of Seminole County, Florida), all Lots 47, 48, 49 and 50, Lot 51 (LESS that part lying in said 3RD RAVENNA PARK SECTION OF LOCH ARBOR, AND ALSO LESS Right-of-Way for Vihlen Road), Lot 54 (LESS Right-of-Way for Vihlen Road), all of Lots 55 and 56, and Lot 57 (LESS Right-of-Way for Vihlen Road) all in Block B, M. M. SMITH'S SECOND SUBDIVISION, according to the plat thereof, as recorded in Plat Book 1, Page 101, of the Public Records of Seminole County, Florida.

AND

PARCEL #3

The North 1/2 of vacated West 20th Street adjacent to the South line of Lot 40, Block B, and the vacated un-named Right-of-Way lying adjacent to and in between the West Line of Lot 46 and the East line of Lot 51, Block B, M. M. SMITH'S SECOND SUBDIVISION, according to the plat thereof, as recorded in Plat Book 1, Page 101, of the Public Records of Seminole County, Florida. (LESS that part lying in 4TH RAVENNA PARK SECTION OF LOCH ARBOR, according to the plat thereof, as recorded in Plat Book 14, Page 66, of the Public Records of Seminole County, Florida.)

LESS

PARCEL #4

That portion as described in the Resolution of Taking No. 98-R-77, by The Board of County Commissioners of Seminole County, Florida, as recorded in Official Records Book 3413, Page 625, of the Public Records of Seminole County, Florida.

ALSO LESS

PARCEL #5

That portion as described in the "Order of Taking" recorded in Official Records Book 3667, Page(s) 1946 through 1963 and the related "Final Judgment" recorded in Official Records Book 4085, Page(s) 1950 through 1963, of the Public Records of Seminole County, Florida, in favor of the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION and SEMINOLE COUNTY.

Being subject to any rights-of-way, restrictions and easements of record.