



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Robert A. McMillan, County Attorney

FROM: Al Schwarz, Assistant County Attorney *AHS*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
 Lenor M. Bromberg, Principal Engineer/Special Projects/Engineering *UMB*

DATE: March 7, 2006

SUBJECT: Purchase Agreement Authorization
 Owner: Seminole Restaurants of Florida, Inc., d/b/a The Melting pot
 Seminole Wekiva Trail
 State Road 434 Pedestrian Underpass

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for the Seminole Wekiva Trail project, State Road 434 Pedestrian Underpass parcel. The parcel is required for the Seminole Wekiva Trail project. The purchase price is \$52,000.00, inclusive of all attorney's fees and expert costs incurred by the property owner.

I THE PROPERTY

A. Location Data

The property is located at northeast corner of Markham Woods Road and State Road 434 in Seminole County, Florida.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

B. Address

1200 Douglas Avenue
 Longwood, Florida 32779

C. Description

The parent tract consists of 42,656 square feet. The property has been improved with a 3,954 square foot table service restaurant constructed in 1987.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2005-R-237 on December 20, 2005, authorizing the acquisition of the referenced property, and finding that construction of the Seminole Wekiva Trail project is necessary and serves a county and public purpose and is in the best interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The proposed acquisition is an irregular shaped easement necessary to construct and maintain a pedestrian underpass. The easement area contains 3,069.18 square feet. There is no fee taking of the property, therefore the remaining fee ownership still remains 42,656 square feet.

IV APPRAISED VALUE

The County's appraised value amount is \$47,000.00. The County's appraisal was prepared by Cuddeback & Associates, Appraisal Services, P.A., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On December 20, 2005, the BCC authorized a binding written offer in the amount of \$47,000.00. Thereafter, County staff negotiated this proposed settlement agreement with the property owner and its attorney in the amount of \$52,000.00.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

This proposed settlement amount, although \$5,000.00 more than the County's binding written offer amount, is reasonable under the circumstances inherent in the condemnation process. If this property proceeds to condemnation, litigation costs and costs to update the appraisals on both sides will have to be paid by the County. These costs would likely exceed the \$5,000.00 in additional settlement funds proposed to be paid.

The cooperative purchase of the property through this proposed settlement is in the best interests of the citizens of Seminole County.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$52,000.00, inclusive of all attorney's fees and expert costs incurred by the property owner.

AHS/krc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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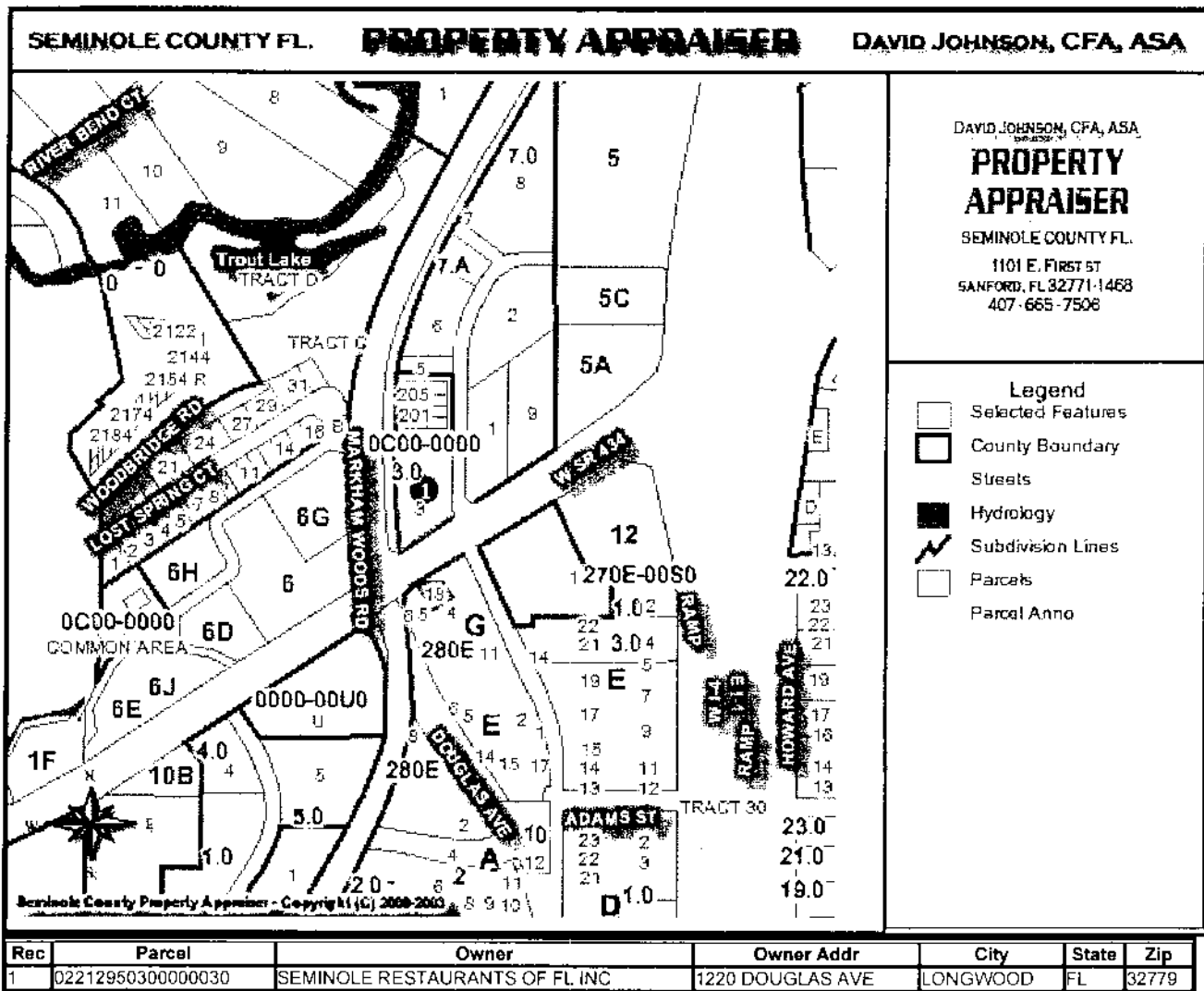


EXHIBIT A

SKETCH
THE MELTING POT RESTAURANT SITE

Site area 42,656 sq. ft.
 Building area 3,954 sq. ft.
 Easement area 3,069 sq. ft.
 (shown in red)

S 89° 59' 5" W 175.9'

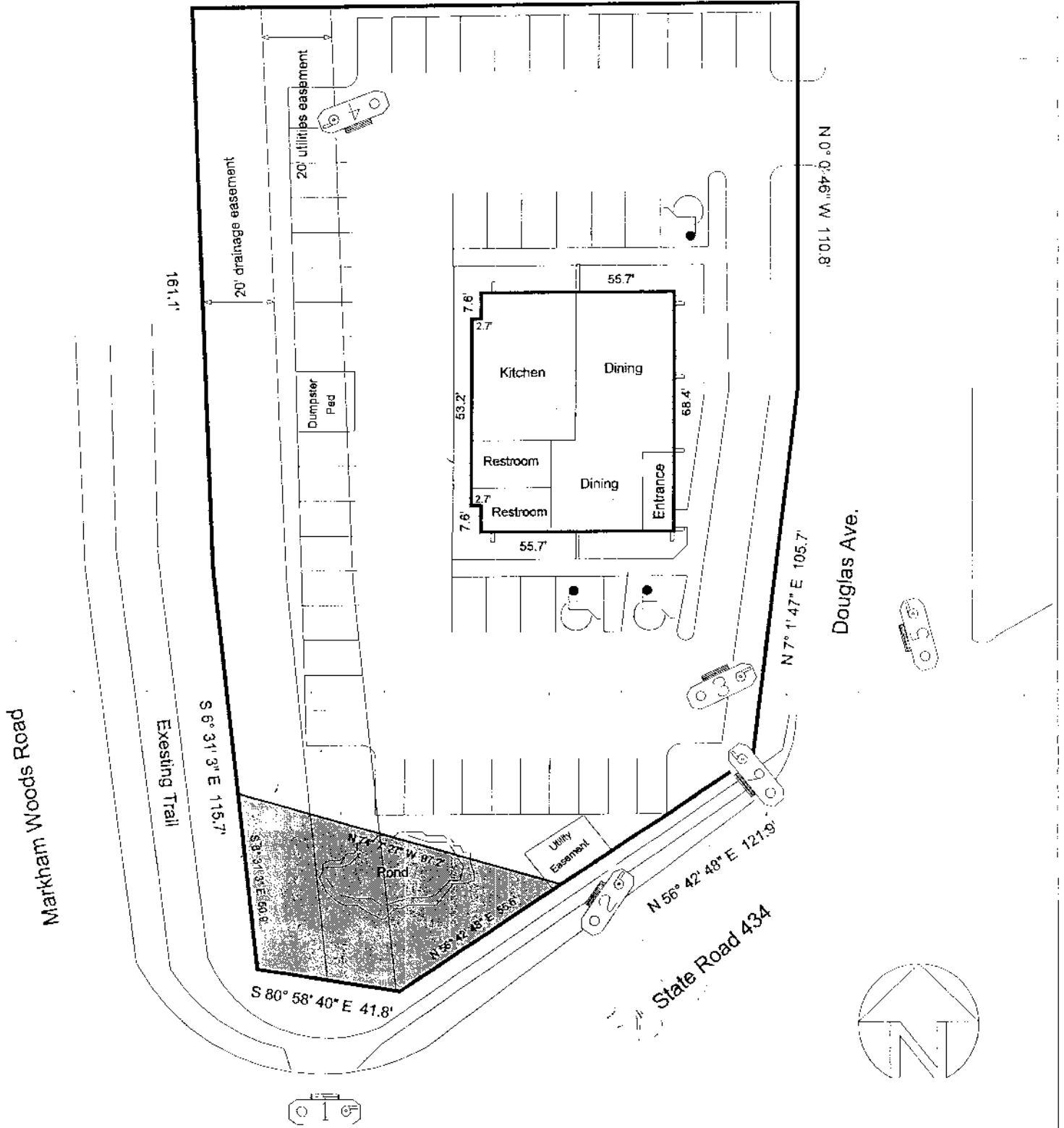


EXHIBIT B

ENCLOSURE 1:

**PURCHASE AGREEMENT
RECREATIONAL TRAIL EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this 23rd day of February, 2006 by and between SEMINOLE RESTAURANTS of FLORIDA, INC., a Florida Corporation, d/b/a "The Melting Pot - A Fondue Restaurant", whose address is 1200 Douglas Avenue, Longwood, Florida 32779, hereinafter referred to as "OWNER," 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 "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY requires the hereinafter described property for construction and maintenance of an authorized RECREATIONAL TRAIL project in Seminole County;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained OWNER hereby agrees to execute a Permanent Recreational Trail Easement and COUNTY hereby agrees to purchase the Permanent Recreational Trail Easement described below upon the following terms and conditions:

I. LEGAL DESCRIPTION

Seminole Wekiva Trail
SR 434 Pedestrian Underpass Project
Recreational Trail Easement

See attached "Exhibit A"

Parcel I. D. Number: 02-21-29-503-00000-0030

II. PURCHASE PRICE

(a) OWNER agrees to convey to the COUNTY a Recreational Trail Easement, referenced herein as Exhibit "B", upon and across the property described above for the sum of FIFTY TWO THOUSAND AND NO/100 DOLLARS (\$ 52,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

EXHIBIT C

III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II. above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur.

(b) The OWNER at the expense of the OWNER prior to closing shall remove any and all encroachments existing upon the required property other than those improvements included in the purchase price.

(c) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants, also include the covenant of further assurances.

(d) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(f) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(g) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(h) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon and to have exclusive possession of the property described in Exhibit A to this Agreement.

The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Seminole Wekiva Trail Underpass Project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter and possess the property before conveyance of title.

(i) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(j) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.


(k) All landscaping and irrigation conduit and components situate upon the OWNER's property which may be damaged during the course of construction of the Project shall be repaired or replaced at the expense of the COUNTY. Public Access to the OWNER'S place of business shall not be obstructed by the COUNTY or its contractors and subcontractors during normal business hours, nor shall the OWNER's parking lots be used as either a staging area for construction activities, the storage of construction materials, or for the parking of construction equipment, trucks, or other motor vehicles of like kind.

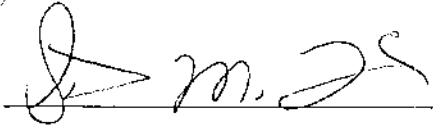
(l) The County shall pay for owner's title commitment, title insurance policy (if elected by County), cost to record the easement instrument, and closing fees charged by County's designated title insurance and closing agent. Place of closing shall be determined by the County.

(m) The Owner shall pay for any charges by owner's lender for partial releases and/or subordination of mortgages, costs to provide marketable/insurable title to the easement and state documentary stamp taxes required by the State of Florida (if any) for the easement to be recorded in the public records of Seminole County, Florida. The Owner shall pay its' own attorney fees/costs. **IN WITNESS WHEREOF**, the parties hereto have caused


these presents to be executed in their respective names on the date first above written.

Signed, Sealed and Delivered
In the Presence of:





**SEMINOLE RESTAURANTS of
FLORIDA, INC., a Florida Corporation**

By: 

Dale R. Wallace
President
Date: 2/23/06

ATTEST:

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

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

By: _____
CARLTON D. HENLEY, Chairman

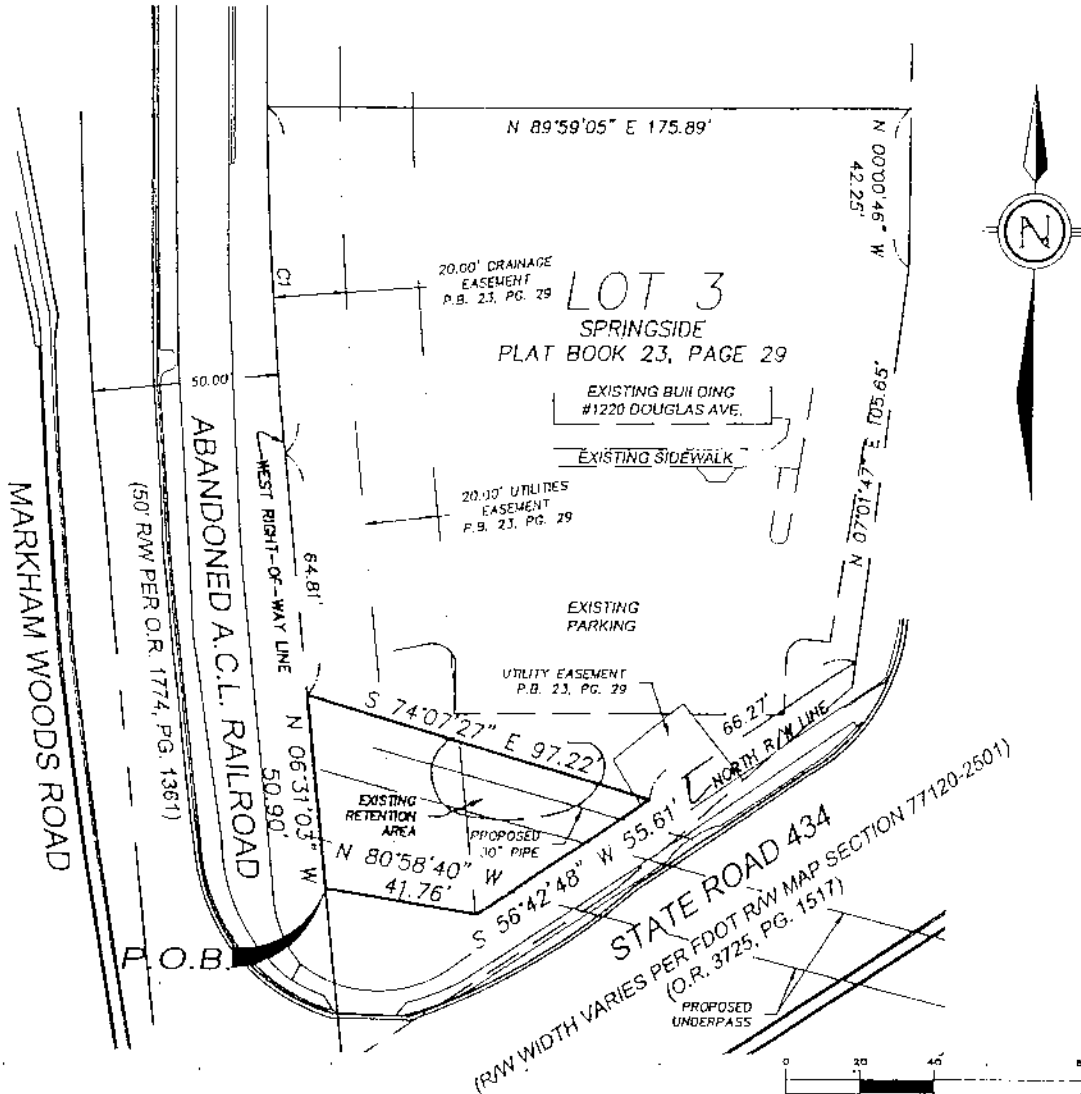
Date: _____

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

As authorized for execution by the
County Commissioners at its
_____, 2006,
meeting.

County Attorney

EXHIBIT A



CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	DISTANCE
C1	1120.01	4°44'34"	92.71	S04°08'45"E	92.68

LEGEND:

- P.O.B. POINT OF BEGINNING
- R/W RIGHT-OF-WAY
- P.B. PLAT BOOK
- PG. PAGE
- FDOT FLORIDA DEPARTMENT OF TRANSPORTATION
- PLS/PSM PROFESSIONAL SURVEYOR AND MAPPER
- LB CERTIFICATE OF AUTHORIZATION NUMBER
- O.R. OFFICIAL RECORDS BOOK

MAP OF DESCRIPTION

THIS IS NOT A SURVEY

SHEET 1 OF 2

DESCRIPTION ON SHEET 2 OF 2

PREPARED FOR:
SEMINOLE COUNTY

DATE: MARCH 24, 2005 SCALE: 1"=40'

PROJECT #: 03-0108.000

DESIGN: ALQ CHECKED: JRL

THIS MAP OF DESCRIPTION IS NOT VALID WITHOUT THE SURVEYOR'S SIGNATURE & ORIGINAL RAISED SEAL.

Allen L. Quickel
ALLEN L. QUICKEL 09/14/05
PROFESSIONAL SURVEYOR AND MAPPER #6481
STATE OF FLORIDA



Phone: (407) 896-0594
L.B. #2648

1505 East Colonial Drive - Orlando, Florida 32803

EXHIBIT A

LEGAL DESCRIPTION:

A portion of Lot 3, Springside, as recorded in the plat thereof recorded in Plat Book 23, Page 29 of the public records of Seminole County, Florida, lying in Section 2, Township 21 South, Range 29 East and being more particularly described as follows:

Begin at the intersection of the east right-of-way line of the abandoned A.C.L. Railroad as recorded in Official Records Book 1774, Page 1361 of the public records of Seminole County, Florida, and the north right-of-way line of State Road 434 as shown on Florida Department of Transportation right-of-way map, Section 77120-2501 and recorded in Official Records Book 3725, Page 1517 of the public records of Seminole County, Florida; thence run North 6°31'03" West, along said east right-of-way line, a distance of 50.90 feet; thence departing said east right-of-way line run South 74°07'27" East, a distance of 97.22 feet to a point on said north right-of-way line of State Road 434; thence run South 56°42'48" West, along said north right-of-way line, a distance of 55.61 feet; thence run North 80°58'40" West, along said north right-of-way line, a distance of 41.76 feet to the Point of Beginning.

The above described parcel containing 3.069.18 square feet, more or less.

SURVEYOR'S NOTES:

- 1) Bearings shown hereon are based on the north right-of-way line of State Road 434 as being South 56°42'48" West, an assumed bearing.
- 2) This property is subject to encumbrances, easements, and restrictions, if any, of record.
- 3) No underground installations or improvements, including, but not limited to, buried cables, sub-surface utilities, foundations, footers, or burial sites were located except as shown.
- 4) No instruments of record reflecting ownership or encumbrances were provided, except as noted, nor did this surveyor abstract these lands.
- 5) This Map of Description does not constitute a boundary survey, as such.

SKETCH ON SHEET 1 OF 2

SHEET 2 OF 2

PREPARED FOR:
SEMINOLE COUNTY

DATE: MARCH 24, 2005

PROJECT #: 03-0108.000

DESIGN: ALQ CHECKED: JRL

DATE	REVISIONS
09/14/05	REVISED PER COUNTY COMMENTS
05/21/05	ADD TOP? & PROPOSED PIPES



DRMP
ENGINEERS • SURVEYORS • PLANNERS • SCIENTISTS

Phone: (407) 896-0594
L.B. #2643

1505 East Colonial Drive - Orlando, Florida 32803

Exhibit "B"

Document Prepared By:

Lynn M. Vous, Esq.
Assistant County Attorney
Seminole County
1101 E. First Street
Sanford, Florida 32771

SEMINOLE RESTAURANTS OF FLORIDA, INC. / SEMINOLE COUNTY PEDESTRIAN UNDERPASS - RECREATIONAL TRAIL EASEMENT

THIS RECREATIONAL TRAIL EASEMENT is made and entered this _____ day of _____, 2005, by and between SEMINOLE RESTAURANTS OF FLORIDA, INC., having its principal place of business at 1220 Douglas Avenue, Longwood, Florida, 32779, hereinafter referred to as the GRANTOR, and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 E. First Street, Sanford, Florida 32771, hereinafter referred to as the GRANTEE.

WITNESSETH:

FOR AND IN CONSIDERATION OF the sum of ONE AND NO/100 DOLLARS (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant, sell, and convey to the GRANTEE, its successors and assigns, a permanent perpetual easement and right-of-way for recreational trail facilities over, under, upon and through the following described lands situated in Seminole County, Florida as follows:

See the attached Exhibit "A", which is incorporated into and
Made part of this Agreement

TO HAVE AND TO HOLD said easement and right-of-way unto said GRANTEE and its assigns forever.

The easement is for the purpose of construction and maintenance of a pedestrian underpass as part of the Seminole-Wekiva Trail for the use of the general public. The GRANTEE, its successors, appointees and assigns, are granted the right, privilege, and authority to construct a public recreational trail and right-of-way for the purpose of facilitating pedestrian, bicycle, equestrian and all other modes of travel, of a non-motor vehicular type and nature, for the benefit of Seminole County and the public. In furtherance thereof the GRANTOR does grant and convey to the GRANTEE a continuous and perpetual right of way and easement through, over, upon, under, in and across and along Exhibit A for the construction, maintenance and usage of an underground pedestrian trail underpass. The easement includes all necessary surface and subsurface appurtenances within said land necessary to effectuate the GRANTEE'S purposes including all incidental rights to protect and preserve installed improvements, including but not limited to all rights of subjacent lateral support, the right to limit loads traversing or bearing upon the surface of the right of way to protect the installed improvements and appurtenances from stress or damage due to weight, shock, vibration or other similar phenomena, the right to construct and maintain requisite surface and subsurface appurtenances and to take any reasonable action that may be necessary to protect installed facilities, the perpetual right to use said land for the purposes aforesaid and remove all buildings, structures and obstructions of whatsoever kind or character now or hereafter found on or within the said

land except as limited herein and also the perpetual right of free and unobstructed access thereto, use and possession thereof with all manner of persons, machinery, supplies, materials and equipment for the accomplishment of any and all of the foregoing purposes and any other purposes required to accomplish the aforesaid purposes within said land. The GRANTEE may improve the easement with tunnels, impervious surfaces, bridges, walkways, structures, lighting, landscaping, drainage systems, signage, communication systems, utilities appurtenant to use, and all other facilities it deems necessary to accommodate public travel and use in the GRANTEE's recreational trail system.

The GRANTEE shall have the right to construct, operate, maintain and improve the easement for the benefit of the public along with the right, privilege and authority to remove, replace, repair and enlarge said trail improvements, (provided any such enlarging may not encroach outside the described easement area), and to trim and remove roots, trees, shrubs, bushes, and plants, and remove fences or other improvement which may affect the use and/or operation of the trail improvements installed by the GRANTEE. Title to the improvements constructed hereunder shall be vested in and remain vested in the GRANTEE, its successors, appointees, and/or assigns. Houses, buildings, fences, and any other similar structures or improvements which would adversely impact the public use of a recreational trail shall not be constructed upon or placed in this easement by the GRANTOR, or its heirs, successors, or assigns. GRANTEE specifically retains the right to retain its present improvements on the site, including existing water retention and parking, and the re-establishment of all such existing improvements.

This grant of easement is subject to matters of record, including without implied limitation property taxes, and any existing easements for public highway or roads, railroads, laterals, ditches, canals, pipelines, water lines, sewer lines, electrical transmission or distribution lines and telephone and cable television lines encumbering the land herein described. The GRANTOR covenants that it is lawfully seized and possessed of the described real property (Exhibit "A"), has good and lawful right and power to sell and convey it, and that the property is free and clear of all liens and encumbrances, except as herein stated, and, accordingly, the GRANTOR will forever warrant and defend the title and terms to this permanent easement and the quiet possession thereof against all claims and demands of all other individuals and entities.

GRANTEE shall be solely responsible for all activities and use of the easement granted hereby and of any improvements placed thereon. Notice is hereby given that GRANTOR is protected by, and shall be entitled to all benefits and protections afforded by, Section 375.251, Florida Statutes. Accordingly, GRANTOR's obligations and liabilities arising from or with respect to the easement granted hereby and of any improvements placed thereon are limited by such statute.

GRANTEE covenants and agrees that after any construction work performed by or on behalf of GRANTEE has been completed, GRANTEE will, at GRANTEE's sole cost and expense, promptly remove GRANTEE's construction equipment and materials from the easement property and will repair, replace, and restore the area of that property, or improvements thereon, that are damaged or disturbed as a consequence of the work.

The easement granted hereby is exclusive. GRANTEE shall have the sole and exclusive right to use the easement area, except as to existing matters of record as provided for herein.

GRANTEE shall maintain the easement area and any improvements placed therein by or on behalf of GRANTEE in a safe and attractive condition.

GRANTEE shall not permit any claim, lien, or other encumbrance arising from construction work or GRANTEE's use of the easement property to accrue against or attach to the easement property or the interest of GRANTOR in adjacent lands.

GRANTEE shall secure all permits and approvals required for GRANTEE's improvement and use of the easement area. GRANTEE will not use, or allow to be used, the easement area or improvements thereon in any illegal manner.

IN WITNESS WHEREOF said GRANTOR has hereunto signed and sealed this easement on the day and year first written above.

WITNESSES

GRANTOR

(Signature)

SEMINOLE RESTAURANTS OF FLORIDA,
INC.

Printed Name

By: _____
Print Name:

(Signature)

As Its: _____

Printed Name

STATE OF _____)

COUNTY OF _____)

I HEREBY CERTIFY that, on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____, as _____, of SEMINOLE RESTAURANTS OF FLORIDA, INC., on behalf of the company, who are well known to me or who have produced _____ as identification. WITNESS my hand and official seal in the County and State aforesaid this ___ day of _____, 2005.

Notary Public, in and for the
County and State Aforementioned

My Commission Expires: