



**COUNTY ATTORNEY'S OFFICE  
MEMORANDUM**

TO: Board of County Commissioners

FROM: Stephen P. Lee, Deputy County Attorney  
Herbert S. Zischkau III, Assistant County Attorney *[Signature]*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*  
Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: May 13, 2003

RE: Settlement Authorization  
Airport Boulevard, Phase III road improvement project  
Parcel Nos. 147 and 223  
*Seminole County v. Cubberly, et al.*  
Case No.: 2003-CA-158-13-W  
Owner: Barry Nash

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This memorandum requests approval of a settlement and authority to execute a settlement agreement, a copy of which is attached as Exhibit B, for Parcel Nos. 147 and 223 on the Airport Boulevard, Phase III road improvement project in the amount of \$675,000.00, inclusive of all fees, costs and expenses.

**I THE PROPERTY**

**A. Location Data**

These two parcels are in the vicinity of Albright Road and the new alignment of Airport Boulevard. Parcel No. 147 fronts on the new Airport Boulevard while Parcel No. 223 is on the west side of the existing Airport Boulevard approximately 75 feet north of and on the opposite side of the street from Commerce Way.

Location Maps (Composite Exhibit A)  
Settlement agreement (Exhibit B).

**B. Address**

Both parcels are unimproved.

**II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution of Necessity 2001-R-108 on June 26, 2001, relating to the Airport Boulevard, Phase III project authorizing the acquisition of the above referenced property, and finding that the construction of this project is necessary

and serves a county and public purpose and is in the best interest of the citizens of Seminole County.

### **III ACQUISITION/REMAINDER**

Both parcels are partial takings in fee simple; the property to be used for a drainage retention area. The area taken in Parcel No. 147 is approximately 1.14 acres, leaving a remainder of approximately 1.71 acres. The area taken in Parcel No. 223 is approximately 1.64 acres, leaving a remainder of approximately 6.048 acres.

### **IV APPRAISED VALUES**

The latest appraisals place a value on Parcel No. 147 of \$118,900.00 and on Parcel No. 223 of \$379,700.00, for a total of \$498,600.00 for both parcels. Parcel No. 147 is valued at \$2.40 per square foot with no improvements or other elements of damage. Parcel No. 223 is valued at \$242,600.00 for the land taken and \$137,100.00 in damages to the remainder. There have been several appraisals (see Section VI below for a discussion of the problems created by these parcels).

### **V BINDING OFFERS/NEGOTIATIONS**

The Board of County Commissioners (BCC) has authorized two different binding written offers. The first was made on March 28, 2002 in the total amount of \$182,000.00 for both parcels. On September 9, 2002, a second binding written offer was made in the amount of \$230,000.00 for both parcels.

### **VI SETTLEMENT ANALYSIS/COST AVOIDANCE**

Both parcels have presented unique and unprecedented problems. The initial appraisals were based upon an assumption that substantial areas of each parcel and adjoining Parcel Nos. 146 and 222 were wetlands. The original appraised values for the taking were \$35,600.00 for Parcel No. 147 and \$129,700.00 for Parcel No. 223. Because the owner of neighboring Parcel Nos. 146 and 222 questioned the wetlands delineation on his parcel, staff investigated the situation. It was determined that the County's permit application to the St. Johns River Water Management District (SJRWMD) showed no wetlands in the taking areas. Accordingly, the appraiser was instructed to provide a new appraisal based upon the SJRWMD permit information. The new appraisal increased the value of Parcel No. 147 to \$79,300.00. Parcel No. 223 remained the same (\$129,700.00). The appraisals were recently updated for the order of taking hearing. Because of recent comparable sales data, the values went up significantly, as detailed in Section IV above.

To further complicate this acquisition, the first updated appraisal of Parcel No. 223 contained a mathematical error and showed a value in excess of \$600,000.00 for this parcel by itself. The error was discovered the day of the hearing on the order of taking, requiring a continuance of the hearing in order to cure the error in the appraisal.

The owner's attorney then made a settlement demand of \$150,000.00 for Parcel No. 147 and \$600,000.00 for Parcel No. 223, exclusive of fees and costs. Staff

evaluated the situation and concluded that the problems detailed above made it virtually impossible to proceed to trial based upon these appraisals. It was decided that unless the parcels could be settled the pending case would be dismissed, a new appraiser hired and a new case filed in several months. After negotiation, the parties agreed on a total of \$675,000.00, including all attorneys fees and costs. Staff calculated this amount by increasing the current corrected appraised values by a factor of approximately twenty per cent (20%) to \$600,000.00 and adding an attorney's fee of \$75,000.00. Upon receiving the signed original copy of the proposed settlement agreement staff learned that the owner and his attorney had agreed upon a different division of the settlement amount (\$555,250.00 to the owner and \$119,750.00 in fees and costs). This division did not change the amount of the total settlement.

The proposed settlement is reasonable based upon the additional costs to the County which would result from a delay to the project if the pending case had to be dismissed, obtaining a new appraisal and paying an attorney's fee for the dismissed case (based upon the number of hours). The owner accepted this offer subject to the condition that the County stipulates to an order of taking based upon the current appraised value of \$498,600.00 and deposits that amount in the Court registry, subject to all apportionment claims. Staff agreed to this condition provided that the County received the signed settlement agreement before agreeing to the order of taking at the value stated.

Staff believes this settlement is fair and reasonable and recommends that the BCC approve it. The savings in additional fees and costs is substantial and the project will not be delayed.

## **VII RECOMMENDATION**

County staff recommends that the BCC approve to proposed settlement, in the amount of \$675,000.00, inclusive of all fees, costs and expenses, and authorize execution of the attached proposed settlement agreement.

Public Works advises that a budget transfer, to be presented to the Board on June 10, 2003, will place appropriate monies into the current fiscal year land account for this project to cover the recommended settlement and that adequate funds are available within the overall major roads program.

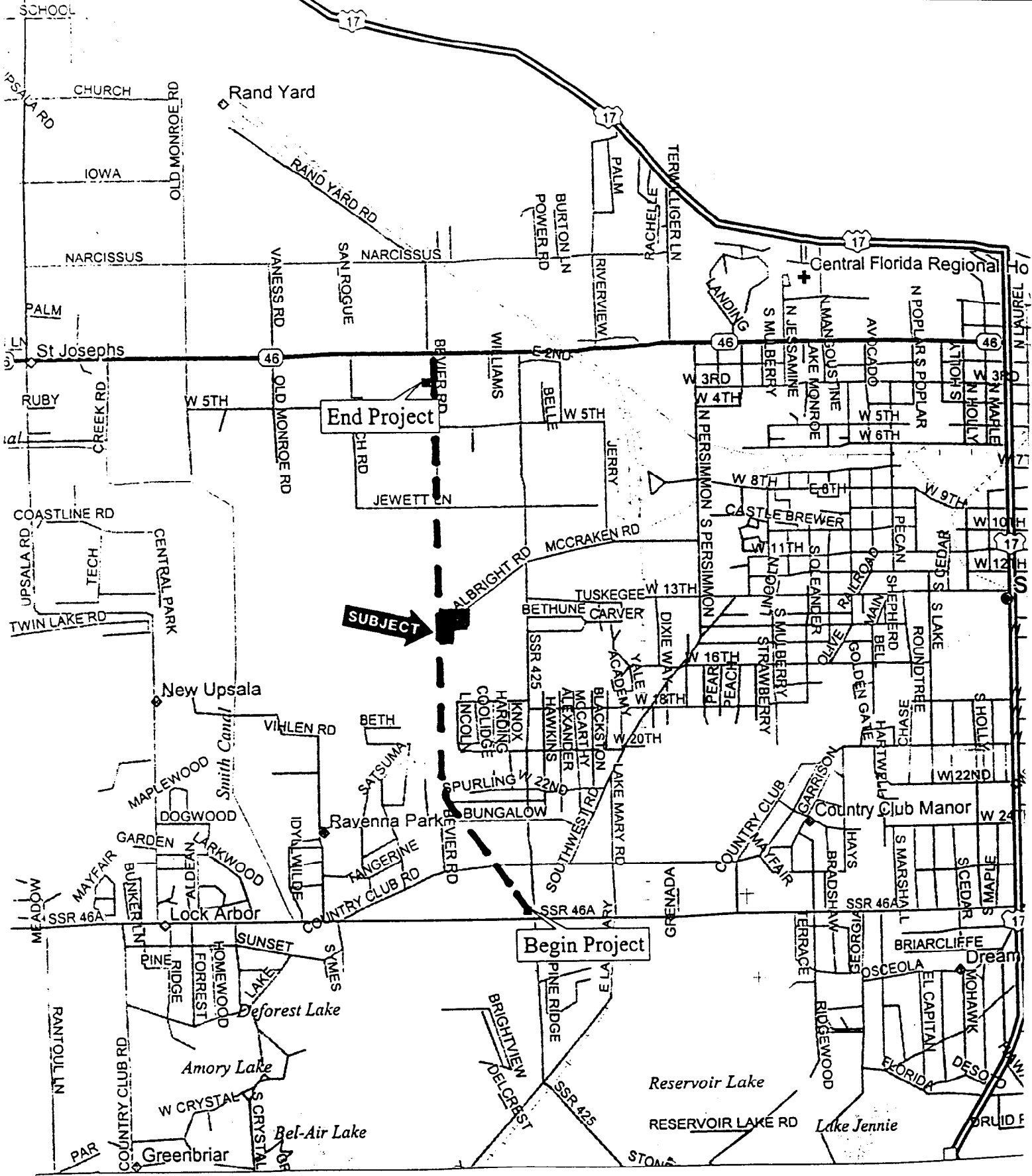
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Attachments:

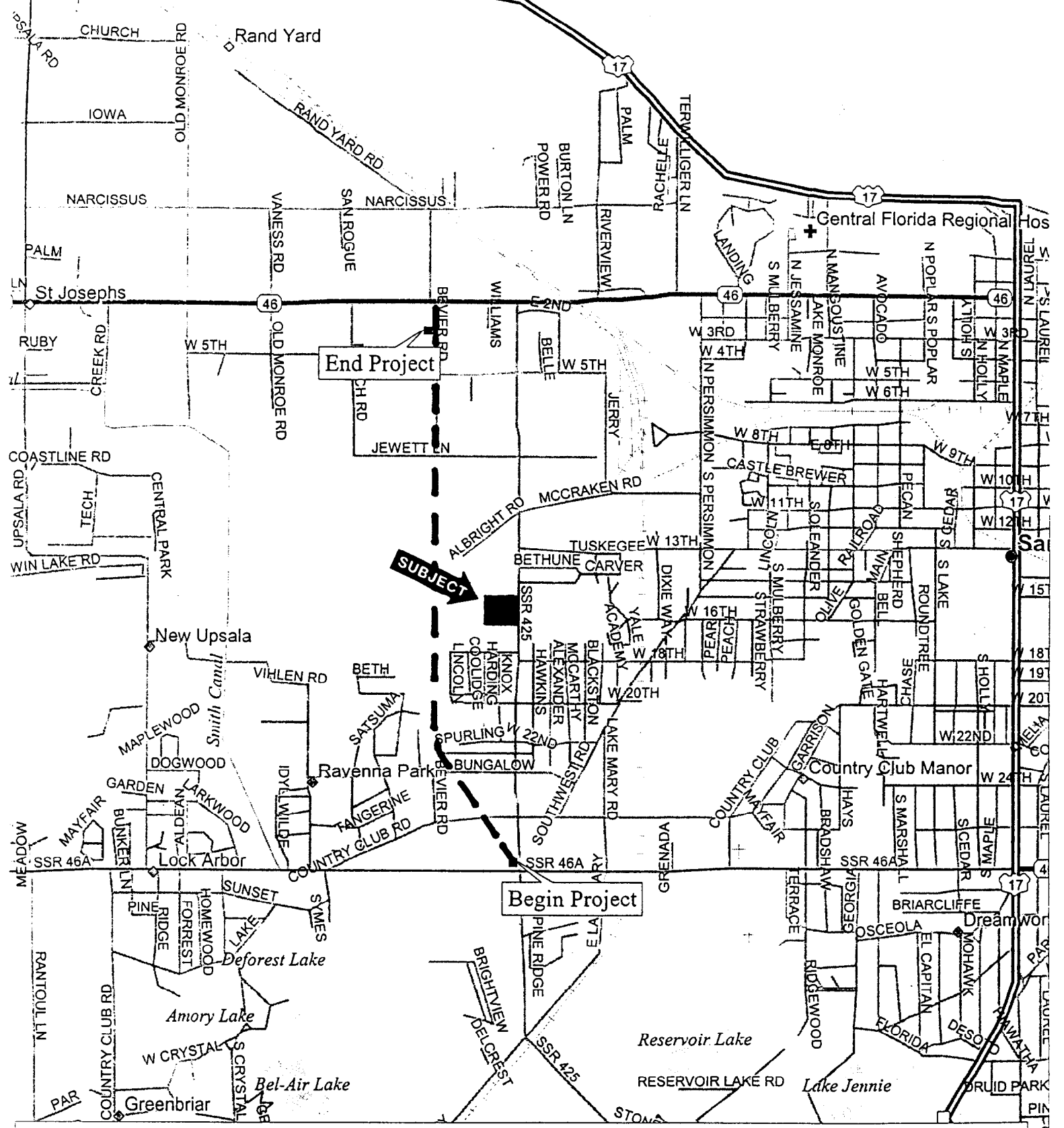
Location Maps (Composite Exhibit A)

Settlement agreement (Exhibit B)

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# LOCATION MAP



# LOCATION MAP

IN THE CIRCUIT COURT FOR THE  
EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR SEMINOLE COUNTY,  
FLORIDA

CASE NO.: 2003-CA-158-13-W

**SEMINOLE COUNTY, a political  
subdivision of the State of  
Florida,**

Petitioner,

v.

**PARCELS 147, 223**

**CHRISTOPHER J. CUBBERLY, et al.,**

Defendants.

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**SETTLEMENT AGREEMENT**

**SEMINOLE COUNTY, (hereinafter "Petitioner"), and BARRY P. NASH, (hereinafter "Defendant"), hereby stipulate and agree as follows:**

1. This agreement shall be incorporated into and made a part of a Stipulated Final Judgment for the lands described as parcels 147 and 223, more particularly described on the attached Exhibit A and B. Hereinafter these lands shall be referred to as the subject property.

2. Petitioner agrees to pay Defendant the sum of **FIVE HUNDRED FIFTY-FIVE THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$555,250.00)** for the taking of the property more particularly described on Exhibit A and B attached hereto and incorporated herein by reference. This amount includes compensation for the

party taken and all damages which might be claimed, exclusive of costs and attorneys' fees.

3. Petitioner shall also pay ONE HUNDRED NINETEEN THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$119,750.00) as Defendant's reasonable attorneys' fees and costs in this proceeding.

4. Petitioner shall receive a credit in the amount of FOUR HUNDRED NINETY-EIGHT THOUSAND SIX HUNDRED DOLLARS (\$498,600.00), which is the amount of the initial deposit to be made by Petitioner.

5. Petitioner shall within twenty (20) days of the date of the Final Judgment deposit the additional sum of ONE HUNDRED SEVENTY-SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$176,500.00), which includes the Clerk's fee to receive said deposit, which when deposited may be withdrawn by Defendant, less the Clerk's fee.

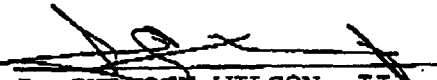
6. The Court will retain jurisdiction to enforce the terms of the final judgment and enter any other orders it deems just and appropriate.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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Assistant County Attorney  
Florida Bar No. 911178

BY:   
J. CHRISTY WILSON, III  
Florida Bar No. 326161

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SEMINOLE CO..FL

**R/W PARCEL NO.: 147**

A part of that property described in Official Records Book 1427, Page 161 as recorded in the Public Records of Seminole County, Florida, being that portion of Section 34, Township 19 South, Range 30 East

described as follows:

Commencing at the Northwest corner, Block A, A.F.G. Industrial Tract, as recorded in Plat Book 5, Page 22 of the Public Records of Seminole County, Florida, said point also being the intersection of the North line of the Northeast 1/4 of Section 34, Township 19 South, Range 30 East, Seminole County, Florida and the East Right-of-Way line of Bevier Road; thence South 00°14'11" East a distance of 479.43 feet along said East Right-of-Way line; thence South 89°50'45" East a distance of 322.55 feet along the North line of Block B, A.F.G. Vegetable Tract as recorded in Plat Book 7, Page 14 of the Public Records of Seminole County, Florida; thence South 00°12'33" East a distance of 227.46 feet to the POINT OF BEGINNING; thence continue South 00°12'33" East a distance of 80.00 feet to a point on the North line of the South 202.79 feet of Block B, as recorded in said A.F.G. Vegetable Tract; thence North 89°50'45" West along said North line, a distance of 212.40 feet to a point on the East line of the West 125.00 feet of Block 58, M.M. Smith's Subdivision as recorded in Plat Book 1, Page 101 of the Public Records of Seminole County, Florida; thence South 00°14'11" East a distance of 202.79 feet along said East line to a point on the South line of the North 328.60 feet of said Block 58; thence North 89°50'45" West a distance of 115.00 feet along said South line to the Southwest corner of Block B, A.F.G. Vegetable Tract as recorded in said plat; thence North 00°14'11" West a distance of 282.80 feet along the West line of said Block B also being the East Right-of-Way line of Bevier Road; thence South 89°50'45" East a distance of 327.44 feet to the POINT OF BEGINNING.  
Containing 1.137 acres, more or less.

BK 0273 PG 03

**EXHIBIT A**



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R/W PARCEL NO.: 223

A part of the property described in Official Records Book 3032, Page 1921 as recorded in the Public Records of Seminole County, Florida, being that portion of Section 34, Township 19 South, Range 30 East

described as follows:

Commencing at the Northeast corner of Block 59, 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; thence South 00° 07' 15" East a distance of 125.81 feet along the East line of said Block 59; thence North 89° 50' 45" West a distance of 456.11 feet along the North line of the South 202.79 feet of Block B, A.F.G. Vegetable Tract, according to the plat thereof as recorded in Plat Book 7, Page 14 of the Public Records of Seminole County, Florida, to the POINT OF BEGINNING; thence South 00° 09' 54" East a distance of 379.66 feet; thence North 89° 50' 46" West a distance of 187.84 feet thence North 00° 10' 43" West a distance of 379.66 feet along the West line of said Block 59; thence South 89° 50' 45" East a distance of 187.93 feet along said North line of the South 202.79 feet of Block B, A.F.G. Vegetable Tract to the POINT OF BEGINNING.

CONTAINING 1.638 acres, more or less.

BK 0 2 7 3 P 6 0 4

EXHIBIT B