

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Resolution - Airspace Agreement between the State of Florida Department of Transportation and Seminole County for the construction of a new pedestrian facility over Interstate 4.

**DEPARTMENT:** PUBLIC WORKS **DIVISION:** ENGINEERING

**AUTHORIZED BY:** W. Gary Johnson **CONTACT:** Jerry McCollum, P.E. EXT. 5651  
W. Gary Johnson, P.E., Director Jerry McCollum, P.E., County Engineer

Agenda Date	<u>06-08-04</u>	Regular	<input type="checkbox"/>	Consent	<input checked="" type="checkbox"/>	Work Session	<input type="checkbox"/>	Briefing	<input type="checkbox"/>
		Public Hearing – 1:30	<input type="checkbox"/>	Public Hearing – 7:00	<input type="checkbox"/>				

**MOTION / RECOMMENDATION:**

Adopt Resolution and authorize the Chairman to execute the Airspace Agreement with the Florida Department of Transportation for the construction of a new pedestrian facility over Interstate 4 adjacent to the current E. E. Williamson Road overpass.

Districts 3, 4 & 5 – Commissioners Van Der Weide, Henley & McLain  
(Jerry McCollum, P.E.)

**BACKGROUND:**

The Florida Department of Transportation requires a Resolution adopted by the Board of County Commissioners along with an executed Airspace Agreement for the construction of the pedestrian overpass adjacent to E. E. Williamson Road at its intersection with Interstate 4. This overpass is part of the overall County Sidewalk Program and is part of the existing budget and funded from the 2<sup>nd</sup> Generation Sales Tax Sidewalk funds.

Attachment: Resolution  
FDOT Airspace Agreement

Reviewed by:	<u>SA</u>
Co Atty:	<u>SA</u>
DFS:	_____
Other:	_____
DCM:	<u>SA</u>
CM:	<u>SA</u>
File No.	<u>CPWE03</u>

RESOLUTION

**THE FOLLOWING RESOLUTION WAS ADOPTED AT THE REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, ON THE 8th DAY OF JUNE, A.D., 2004.**

**WHEREAS**, the Board of County Commissioners of Seminole County recognizes the importance of safe travel throughout the County especially in the area of travel ways for pedestrians, trail users and cyclist; and

**WHEREAS**, E. E. Williamson Road is a vital segment of the County's current and future pedestrian and railway master plans; and

**WHEREAS**, the construction of a new pedestrian facility over Interstate 4 adjacent to the current E.E. Williamson Road overpass will provide a safe and effective travel way for pedestrians, trail users and cyclists; and

**WHEREAS**, this project is funded for implementation by Seminole County; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Seminole County, Florida, that this project is supported by this Board and should be implemented as soon as possible to serve the citizens of Seminole County.

**ADOPTED THIS 8<sup>TH</sup> day of JUNE, A.D., 2004.**

**BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY**

**ATTEST:**

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**Daryl G. McLain, Chairman**

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**MARYANNE MORSE, Clerk to the  
Board of County Commissioners in  
and for Seminole County, Florida.**

## AIRSPACE AGREEMENT

ITEM/SEGMENT NO.: 77160  
 MANAGING DISTRICT: 5  
 F.A.P. NO.: \_\_\_\_\_  
 STATE ROAD NO.: 400 (I-4)  
 COUNTY.: Seminole  
 PARCEL NO.: \_\_\_\_\_

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_ at \_\_\_\_\_ (Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency of the State of Florida (State).

## WITNESSETH:

WHEREAS, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

WHEREAS, the Department has acquired sufficient legal right, title, and interest in the right of way of SR 400-  
I-4 which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease to Lessee the airspace above or below gradeline of the property described Exhibit "A", attached and made a part hereof for the following purpose: Build and maintain a  
pedestrian bridge adjacent to the existing E.E. Williamson Overpass.

WHEREAS, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

NOW, THEREFORE, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of fifty (50) years beginning with the date of this Agreement. One renewal of this Agreement may be made for fifty (50) years. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3. Rent

a. Lessee shall pay to the Department as rent each  month  quarter  year on or before the first day of each rent payment period, N/A plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

b. The Department reserves the right to review and adjust the rental fee biennially and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: N/A

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: Construction and maintenance of a pedestrian bridge adjacent to the existing E.F. Williamson Overpass

c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.



## 7. Termination

a. This Agreement may be terminated by either party without cause upon \_\_\_\_\_ ( \_\_\_\_ ) days prior written notice to the other party.

b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.

c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.

d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.

e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.

f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

## 8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

## 9. Miscellaneous

a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:

1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. This Agreement shall not be recorded in the public records of any state, city, county, or other governmental entity.

g. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

h. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

i. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

j. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

\_\_\_\_\_  
LESSEE (Company Name, if applicable)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

District Secretary

Name: \_\_\_\_\_

Attest: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Legal Review:

\_\_\_\_\_  
District Counsel

Name: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, as of the day and year first above written.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY**

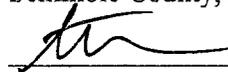
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**MARYANNE MORSE, Clerk to the  
Board of County Commissioners in  
and for Seminole County, Florida.**

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**DARYL G. McLAIN, Chairman**

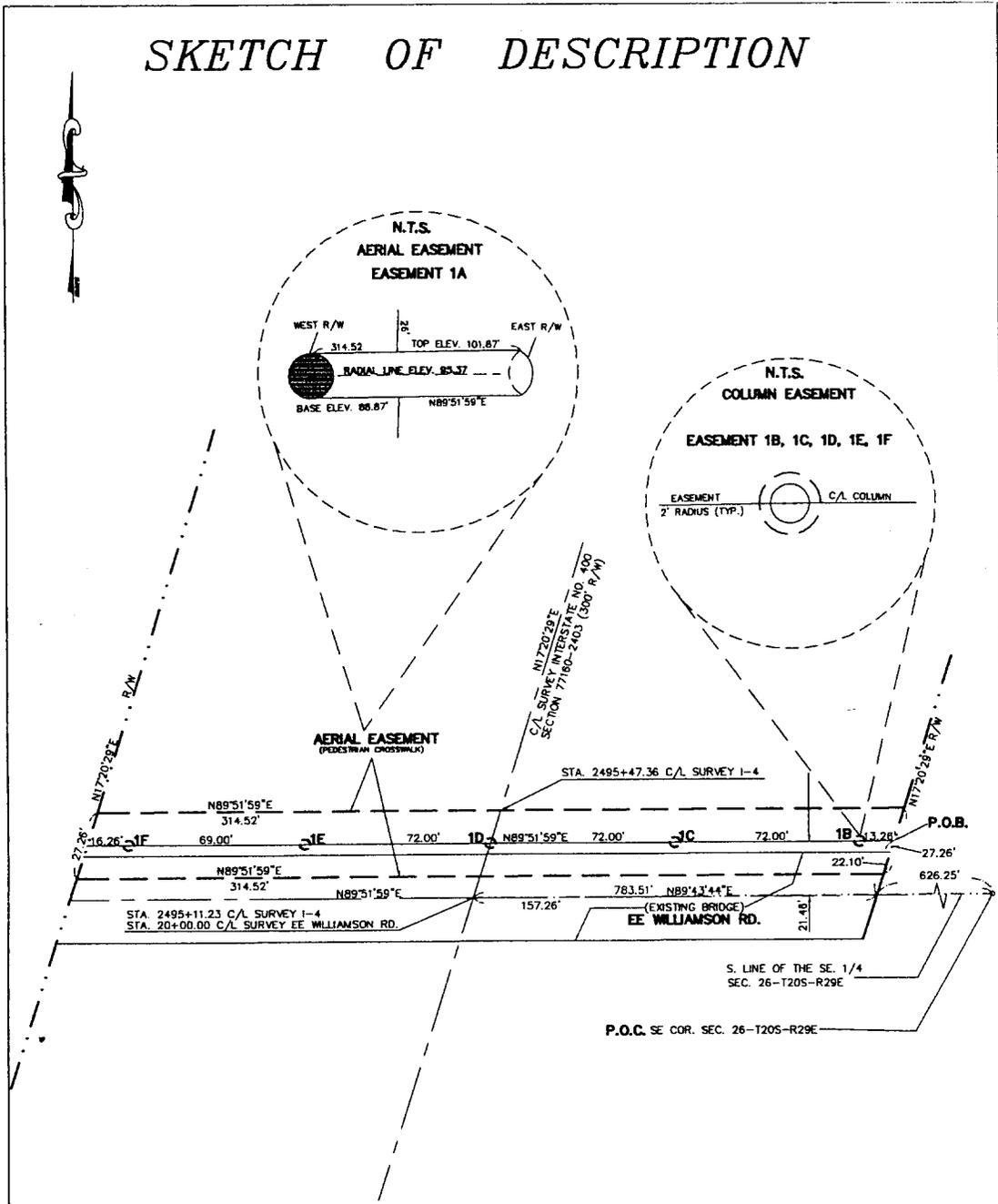
For the use and reliance of Seminole County  
only. Approved as to legal sufficiency for  
Seminole County, Florida



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County Attorney

# SKETCH OF DESCRIPTION



## EXHIBIT A & B

SHEET 1 OF 2

### SEMINOLE COUNTY

ENGINEERING DEPARTMENT  
 SURVEY SECTION  
 520 W. LAKE MARY BLVD.  
 SANFORD, FLORIDA 32773  
 (407)323-2500 EXT.5647

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

BY: *Gary A. Leise*  
 GARY A. LEISE P.L.S. FLA. CERT.# 4723

### LEGEND

- |                                |                                  |
|--------------------------------|----------------------------------|
| △ CENTRAL ANGLE (DELTA)        | PB - PLAT BOOK                   |
| R - RADIUS                     | PG - PAGE (S)                    |
| CB - CHORD BEARING             | ORB - OFFICIAL RECORDS BOOK      |
| L - ARC LENGTH                 | SEC - SECTION - TOWNSHIP - RANGE |
| C - CHORD                      | PCL - PARCEL                     |
| ○ SET IRON PIN OR PIPE         | PC - POINT OF CURVATURE          |
| ◻ FOUND IRON PIN OR PIPE       | PT - POINT OF TANGENCY           |
| □ SET CONCRETE MONUMENT        | PI - POINT OF INTERSECTION       |
| ■ FOUND CONCRETE MONUMENT      | PCC - POINT OF COMPOUND CURVE    |
| P.O.B. - POINT OF BEGINNING    | PRC - POINT OF REVERSE CURVE     |
| P.O.C. - POINT OF COMMENCEMENT | M - MEASURED                     |
| P.O.T. - POINT OF TERMINATION  | P - PLAT                         |
| R/W - RIGHT OF WAY             | F - FIELD                        |
| D - DEED                       | C - CALCULATED                   |
| C/L - CENTERLINE               | P/L - PROPERTY LINE              |
| UTIL - UTILITY                 | ESMT - EASEMENT                  |

FIELD DATE: N/A  
 DATE: 05/03/04  
 JOB NAME: 04-020

SCALE: 1"=50'  
 DRAWN BY: L.W.  
 CHECKED BY:

# LEGAL DESCRIPTION

## AERIAL EASEMENT 1A

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 20 SOUTH, RANGE 30 EAST, SEMINOLE COUNTY, FLORIDA; THENCE RUN S89°43'44"W ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 26 A DISTANCE OF 626.25 FEET TO THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD NO. 400; THENCE RUN N17°20'29"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 22.10 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE EAST END OF A RADIAL LINE OF A CYLINDER 26 FEET IN DIAMETER, SAID EAST RADIUS POINT LYING 21.46 FEET NORTH OF AND PERPENDICULARLY TO THE CENTERLINE OF E.E. WILLIAMSON ROAD (A.K.A. MARKHAM ROAD) AS SHOWN ON THE D.O.T. RIGHT-OF-WAY MAP OF SAID STATE ROAD NO. 400 (SECTION 77160-2403) SAID POINT OF BEGINNING BEING AT AN ELEVATION OF 95.37 FEET ABOVE MEAN SEA LEVEL (1929 DATUM); THENCE FROM SAID POINT AND THE BEGINNING OF A CYLINDER SHAPED AERIAL EASEMENT LYING RADIALLY FROM THE FOLLOWING DESCRIBED LINE; RUN S89°51'59"W ALONG SAID RADIAL LINE A DISTANCE OF 314.52 FEET TO A POINT TERMINUS AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY- LINE OF SAID STATE ROAD NO. 400 AT AN ELEVATION OF 95.37 FEET ABOVE MEAN SEA LEVEL (1929 DATUM).

## COLUMN EASEMENT

### EASEMENT 1B

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 20 SOUTH, RANGE 30 EAST, SEMINOLE COUNTY, FLORIDA; THENCE RUN S89°43'44"W ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 26 A DISTANCE OF 626.25 FEET TO THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE STATE ROAD 400; THENCE RUN N17°20'29"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 22.10 FEET; THENCE RUN S89°51'59"W A DISTANCE OF 13.26 FEET TO THE RADIUS POINT OF AN EASEMENT 4.0 FEET IN DIAMETER AND DESIGNATED AS POINT 1B.

### EASEMENT 1C

COMMENCE AT SAID POINT 1B; THENCE RUN S89°51'59"W A DISTANCE OF 72.00 FEET TO THE RADIUS POINT OF AN EASEMENT 4.0 FEET IN DIAMETER AND DESIGNATED AS POINT 1C.

### EASEMENT 1D

COMMENCE AT SAID POINT 1C; THENCE RUN S89°51'59"W A DISTANCE OF 72.00 FEET TO THE RADIUS POINT OF AN EASEMENT 4.0 FEET IN DIAMETER AND DESIGNATED AS POINT 1D.

### EASEMENT 1E

COMMENCE AT SAID POINT 1D; THENCE RUN S89°51'59"W A DISTANCE OF 72.00 FEET TO THE RADIUS POINT OF AN EASEMENT 4.0 FEET IN DIAMETER AND DESIGNATED AS POINT 1E.

### EASEMENT 1F

COMMENCE AT SAID POINT 1E; THENCE RUN S89°51'59"W A DISTANCE OF 69.00 FEET TO THE RADIUS POINT OF AN EASEMENT 4.0 FEET IN DIAMETER.

SHEET 2 OF 2

## SURVEYOR'S NOTES

1. THIS IS NOT A SURVEY.
2. UNDERGROUND UTILITIES AND/OR IMPROVEMENTS NOT LOCATED.
3. SURVEYOR HAS NOT ABSTRACTED THE LAND SHOWN HEREON, THE ABOVE REFERENCED PROPERTY MAY BE SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

## LEGEND

BEARINGS BASED ON :

THE S. LINE OF THE SE 1/4 OF SEC. 26-T20S-R30E AS

BEING N89°43'44"E

## REVISIONS

DATE	BY	REVISIONS	REQUESTED BY:
1			
2			
3			
4			

JOB NAME: 04-020	FIELD DATE: N/A	DATE: 05/03/04	SCALE: 1"=50'	DRAWN BY: L.W.	CHECKED BY:
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