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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

FROM: Lynn Vous, Assistant County Attorney *[Signature]*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*
 David V. Nichols, P.E., Principal Engineer/Engineering *[Signature]*

DATE: May 16, 2005

SUBJECT: Purchase Agreement Authorization
 Owner: The Pantry, Inc, a Delaware entity f/k/a Lil Champ
 Food Stores Inc., a Florida Corporation.
 Parcel Nos. 145/745
 Bunnell Road improvement project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel Nos. 145/745. The parcels are required for the Bunnell Road improvement project. The purchase price is \$78,000.00, included in this total amount is (\$3,000.00) to the owners for expert costs and attorney fees incurred.

I THE PROPERTY

A. Location Data

The property is located at 495 Pearl Lake Causeway, Altamonte Springs, Seminole County, Florida.

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

B. Address

495 Pearl Lake Causeway
 Altamonte Springs, Florida

C. Description

The property is a triangular parcel of land encompassing 38,958 ± s.f. with 275 ± feet of frontage on the east side of Pearl Lake Causeway. The subject property is improved with a 3,596 s.f. concrete block convenience store (circa 1987) with a canopy covered gas pump island.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution Nos. 2004-R-72 on April 13, 2004 and 2005-R-5 on January 11, 2005, authorizing the acquisition of the referenced property, and finding that the construction of the Bunnell Road improvement 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 taking is a triangular-shaped parcel of land extending along the south 132.9 ± feet of the subject property's frontage on Pearl Lake Causeway. The acquisition is 47± feet wide on the south side and encompasses a total area of 2,001 square feet. The area of the remainder is 36,957 s.f. The area of the temporary construction easement is 652 s.f.

IV APPRAISED VALUE

The County's appraised value amount is \$56,400.00. The County's appraisal was prepared by Clayton, Roper & Marshall, P.A., and was approved by the County's MAI designated staff appraiser.

A.	Parcel No. 145	Land and Improvements	\$36,100.00
		Cost to Cure	\$16,800.00
	Parcel No. 745	Land and Improvements	\$ 3,500.00
	TOTAL		\$56,400.00

V BINDING OFFER/NEGOTIATIONS

On February 22, 2005, the BCC authorized a binding written offer in the amount of \$75,000.00. The property owner countered with an offer of \$78,000.00 which included \$3,000.00 for the owner's expert costs and attorney fees incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

Settlement at \$3,000.00 above the County's binding written offer amount is an outstanding result for the acquisition of this parcel. The binding written offer was made above the appraised value amount to account for contingencies inherent when acquiring commercial property, in this case a convenience store. The property owners believed the County's offer to be a fair one, and since they had retained control over the negotiations, they were able to retain the entire binding written offer amount with their attorney receiving a very reasonable fee of \$3,000.00. Since the owners are in charge of store operations, they have agreed that business damages shall also be included in the \$78,000.00 total settlement.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$78,000.00.

LV/sb

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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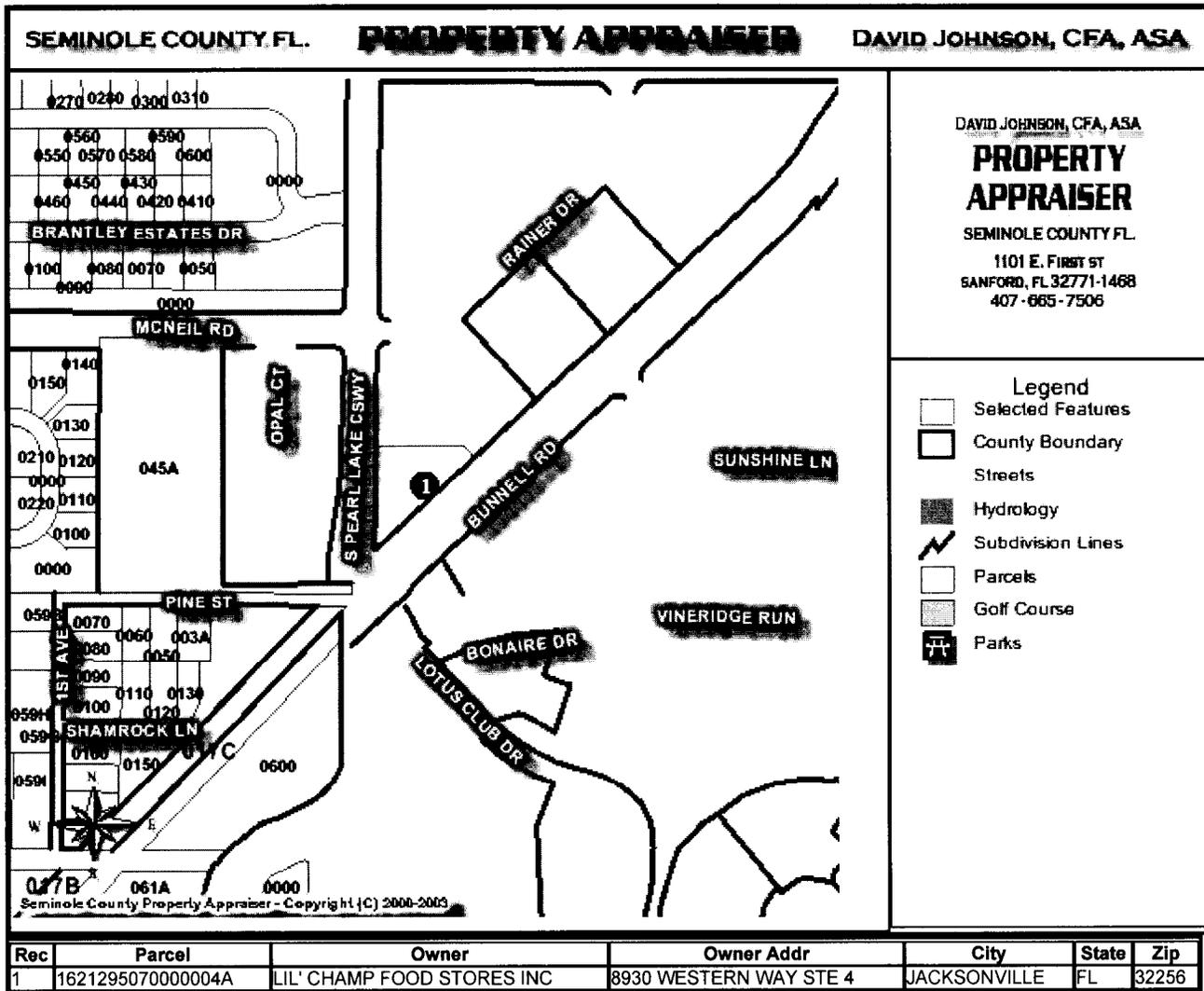


EXHIBIT A

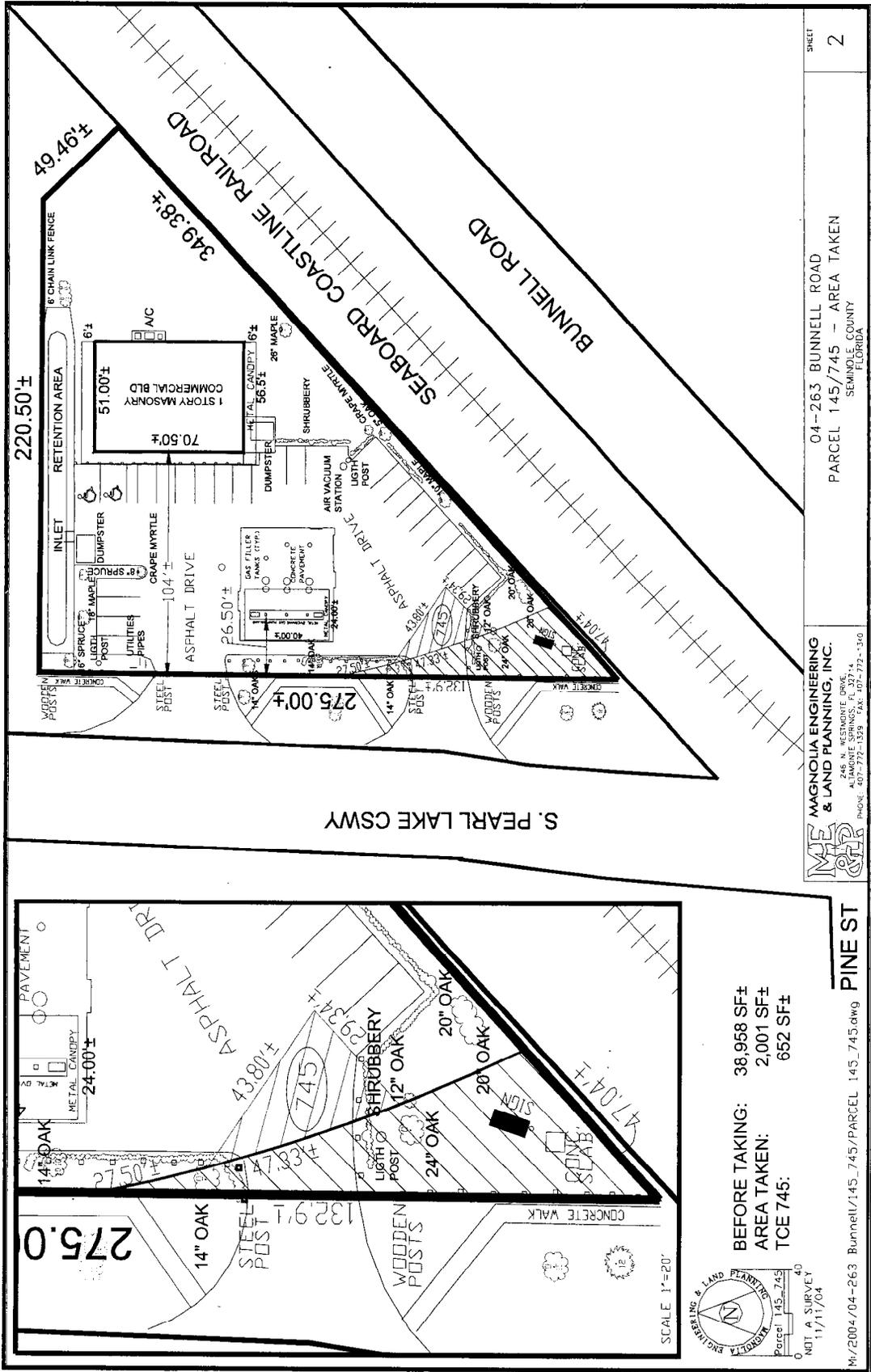


EXHIBIT B

ENCLOSURE 2:

**PURCHASE AGREEMENT
FEE SIMPLE/TEMPORARY CONSTRUCTION EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this 27th day of April, 2005, by and between THE PANTRY, INC., a Delaware entity f/k/a LIL CHAMP FOOD STORES, INC., a Florida Corporation, whose address is ~~1801 Douglas Drive (mailing address Post Box 1410), Sanford, North Carolina 27330~~, 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."

8930
Western
Way, Ste 4
Jacksonville FL
32254

WITNESSETH:

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

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained OWNER hereby agrees to sell and convey, and COUNTY hereby agrees to purchase the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION -

**Parcel No(s): 145/745
Bunnell Road Project
Fee Simple and Temporary Construction Easement**

See attached Exhibit "A"

Parcel I.D. Number: 16-21-29-507-0000-004A

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above-described property of the above referenced project by Warranty Deed on Parcel No. 145, free of liens and encumbrances, and by Temporary Construction Easement on Parcel No. 745 unto COUNTY for the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever. OWNER agrees to execute a Temporary Construction Easement for a period of five (5) years from date of commencement of construction on Parcel No. 745. *County shall pay Three Thousand Dollars (\$3,000) for owners Expert costs incurred in reviewing the County's purchase documents, diagrams and appraisal as well as Attorneys fees incurred. Total Compensation shall be Twenty Eight Thousand (\$28,000).*

(b) COUNTY shall only be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

(c) OWNER shall be responsible for OWNER's own attorney's fees, ~~all costs~~ to prepare and all expenses to record instruments ~~necessary~~ to provide title unto COUNTY, free and clear of all liens and encumbrances, and the OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

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 COUNTY's designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY's closing agent that a closing is ready to occur.

(b) ~~OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing on this purchase.~~ COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in the normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(c) Any and all encroachments existing upon the property other than those improvements included in the purchase price are to be removed at the expense of the OWNER prior to closing.

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

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

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

except that expert costs and Attorney fees in the amount of Three Thousand dollars (\$3,000) shall be paid by county.

(h) 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.

(i) 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 Bunnell Road Improvement 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.

(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.

(k) 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.

(l) 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.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective name on the date first above written.

ATTEST:

THE PANTRY, INC.

Brian W. Schenk
Witness, Secretary

By: Joseph Krol
PETER J. SODINI, President Vice Pres.
Joseph Krol

Elaine Williamson-Watson
Witness (CORPORATE SEAL)

Date: 1/27/05

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
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
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board of
County Commissioners at its _____,
2005, regular meeting.

[Signature]
County Attorney

TTC/03/02/2005

RIGHT-OF-WAY FEE
PROJECT: Bunnell Road
R/W PARCEL NO.: 145

ID# 16-21-29-507-0000-004A

A part of the property described in Official Records Book 2205, Page 370 as recorded in Public Records of Seminole County, Florida, being that portion of Section 16, Township 21 South, Range 29 East.

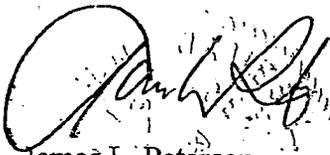
described as follows:

BEGINNING at the Southernmost corner of Lot 9, Lorraine Commerce Park according to the plat thereof as recorded in Plat Book 26, Page 79 Public Records of Seminole County, Florida; thence North $00^{\circ}26'42''$ East, a distance of 132.90 feet along the West line of said Lot 9 to the point on the arc of a non-tangent curve concave to the East having a radius of 364.00 feet, a central angle of $16^{\circ}48'11''$ and a chord of 106.37 feet that bears South $18^{\circ}21'23''$ East; thence Southerly along the arc of said curve, a distance of 106.75 feet to the Southeasterly line of said Lot 9; thence South $47^{\circ}14'01''$ West, a distance of 47.04 feet to the POINT OF BEGINNING.

Containing 2,001 square feet, more or less.

The sketch for this description is shown on sheets 10 of 17 on the right-of-way maps for Bunnell Road.

I hereby certify that this description is true, accurate and complete to the best of my knowledge and is in compliance with the Minimum Technical Standards as set forth in Chapter 61G17-6 Florida Administrative Code.



James L. Petersen
Florida Registered Land Surveyor #4791
NOT VALID WITHOUT SURVEYOR'S EMBOSSED SEAL

Date 9/18/2003

Southeastern Surveying & Mapping Corp.
6500 All American Boulevard
Orlando, Florida 32810
407-292-8580

EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT

PROJECT: Bunnell Road

R/W PARCEL NO.: 745

ID# 16-21-29-507-0000-004A

A part of the property described in Official Records Book 2205, Page 370 as recorded in Public Records of Seminole County, Florida, being that portion of Section 16, Township 21 South, Range 29 East.

described as follows:

COMMENCE at the Southernmost corner of Lot 9, Lorraine Commerce Park according to the plat thereof as recorded in Plat Book 26, Page 79 Public Records of Seminole County, Florida; thence North $00^{\circ}26'42''$ East, a distance of 132.90 feet along the West line of said Lot 9 to the point on the arc of a non-tangent curve concave to the East having a radius of 364.00 feet, a central angle of $04^{\circ}19'45''$ and a chord of 27.50 feet that bears South $12^{\circ}07'09''$ East; thence Southerly along the arc of said curve, a distance of 27.50 feet to the POINT OF BEGINNING; thence South $55^{\circ}20'06''$ East, a distance of 43.80 feet; thence South $46^{\circ}51'12''$ West, a distance of 29.34 feet to the point on the arc of a non-tangent curve concave to the East having a radius of 364.00 feet, a central angle of $07^{\circ}26'57''$ and a chord of 47.29 feet that bears North $18^{\circ}00'30''$ West; thence Northerly along the arc of said curve, a distance of 47.33 feet to the POINT OF BEGINNING.

Containing 652 square feet, more or less.

The sketch for this description is shown on sheets 10 of 17 on the right-of-way maps for Bunnell Road.

I hereby certify that this description is true, accurate and complete to the best of my knowledge and is in compliance with the Minimum Technical Standards as set forth in Chapter 61G17-6 Florida Administrative Code.



James L. Petersen

Date 9/18/2003

Florida Registered Land Surveyor #4791

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Southeastern Surveying & Mapping Corp.

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Orlando, Florida 32810

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EXHIBIT A