

SEMINOLE COUNTY ATTORNEY'S OFFICE
Regular Agenda
August 26, 2003

Action Requested:

Authorization to proceed as indicated.

Authorization:

 County Attorney RCAO@I

RECOMMENDATION: Adopt the attached resolution authorizing an exchange of property with BDC Markham, Ltd., and authorize the Chairman to execute the attached Disclaimer and Relinquishment of Interest in Real Property.

BACKGROUND: In February, 2000, BDC Markham, Ltd., after processing through the County's development review process and approval by the Board of County Commissioners, recorded the plat for Lake Markham Preserve (the "Preserve"). The legal description of the property covered by that plat assumes that the abandoned railroad right-of-way (now jointly owned by the State of Florida and the County to be used for trail purposes) on the southern boundary of the Preserve is eighty (80) feet wide. The developer then built a wall along that boundary. Thereafter, County staff concluded that the railroad right-of-way is one hundred (100) rather than eighty (80) feet wide in that area. BDC disputes that claim.

Rather than litigate, the parties reached a compromise: BDC would convey to the County (or dedicate on the plat of Phase Two) a triangular piece on the southern boundary of the second phase of the development in exchange for a disclaimer from the State and the County as to the disputed twenty (20) feet. This solution avoids the risk to the developer of being required to tear down the existing wall and replatting the Preserve. The County avoids the expense and risk of loss associated with protracted litigation and gains clear title to a comparable amount of property just to the east of the property in dispute. The trail in this area has now been built and the utility of the trail is not impacted by the proposed exchange.

Because of market conditions the platting of Phase Two has been delayed and is only now being finalized. However, the developer wants to proceed with the exchange in order to conclude the dispute as part of a property transaction.

The State of Florida has already approved and signed the Disclaimer and Relinquishment of Interest in Real Property. The applicable statutes dealing with disposal of County property require adoption of the attached resolution in order to conclude the transaction.

The deed from BDC to the County requires preparation of a metes and bounds legal description of the area shown as Tract B on the proposed plat of Phase Two. The resolution is contingent upon receipt of a fully executed recordable deed containing such a description. This will allow the exchange to be concluded before conclusion of the plat review and approval process. Staff has reviewed the proposal and recommends approval of the exchange and adoption of the attached resolution.

THE FOLLOWING RESOLUTION WAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, AT ITS REGULARLY SCHEDULED MEETING OF AUGUST 26, 2003.

WHEREAS, BDC Markham, Ltd. (BDC), is developing certain property adjacent to Longwood Markham Road in Seminole County; and

WHEREAS, there is a dispute between BDC and the County regarding the location and width of an abandoned railroad right-of-way being developed by the County for trail purposes and which is adjacent to BDC's property; and

WHEREAS, in order to resolve the dispute the parties have agreed to an exchange of properties, one piece being owned by the County and the State of Florida and the other being owned by BDC; and

WHEREAS, *Section 125.37, Florida Statutes*, authorizes such an exchange of real property; and

WHEREAS, the Florida Department of Transportation has, on behalf of the State of Florida, agreed to such an exchange and has executed a Disclaimer and Relinquishment of Interest in Real Property, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, BDC has tendered a deed for the property the County is to receive, a copy of which is attached as Exhibit "B"; and

WHEREAS, the County has complied with the statutory notice requirements in order to authorize an exchange of the properties.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA THAT:

1. The Board of County Commissioners of Seminole County, Florida, (the Board) hereby authorizes and approves the exchange of real property with BDC Markham, Ltd.

2. The Board also authorizes the Chairman of the Board to execute the Disclaimer and Relinquishment of Interest in Real Property, a copy of which is attached hereto as Exhibit "A".

3. County staff is authorized to accept and record the deed, a copy of which is attached as Exhibit "B".

4. The effectiveness of this resolution is contingent upon the County's receipt of a properly executed and recordable deed containing a metes and bounds legal description of the property shown as Tract B on the Plat of LAKE MARKHAM PRESERVE PHASE TWO which is currently subject to the County's review process. The recording of the Disclaimer and Relinquishment of Interest in Real Property shall be conclusive evidence that the foregoing condition has been met and of the effectiveness of this resolution.

ADOPTED this 26th day of August, 2003.

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: _____

SPL 08/06/03
Attachments
Disclaimer and Relinquishment of Interest in Real Property Deed
Quit Claim Deed
F:\Ca\Users\Cas101\Agenda\BDC Property Exchange Reso.doc

THIS INSTRUMENT PREPARED BY AND RETURN TO:
DONALD J. CUROTTO, ESQUIRE
Allen, Lang, Curotto & Peed, P.A.
Post Office Box 3628
Orlando, Florida 32802

----ABOVE SPACE FOR RECORDING INFORMATION ONLY ----

DISCLAIMER AND RELINQUISHMENT OF INTEREST IN REAL PROPERTY

THIS DISCLAIMER AND RELINQUISHMENT OF INTEREST IN REAL PROPERTY (the "Disclaimer") is made and entered into as of this 13TH day of September, 2000, by **FLORIDA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Florida ("FDOT"), whose mailing address is 719 S. Woodland Blvd., Deland, Florida 32720, and **SEMINOLE COUNTY**, a political subdivision of the State of Florida ("Seminole County"), whose mailing address is Seminole County Services Building, 101 E. First Street, Sanford, Florida 32771.

WITNESSETH:

THAT, FDOT and Seminole County, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash in hand paid, and other valuable consideration, the receipt of which is hereby acknowledged, does hereby release, remise, disclaim, and forever quitclaim, any and all right, title and interest in and to the lands legally described on Exhibit A attached hereto and incorporated herein by reference.

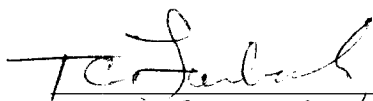
FDOT and Seminole County reconfirm and re-acknowledge that the southern boundary line of the lands described in Exhibit A is the same as the northern boundary line of the abandoned CSX railroad right-of-way (upon which Seminole County is designing and constructing the Seminole Trail project), said common boundary line being the quarter section line between the northeast ¼ and the southeast ¼ of Section 34, Township 19 South, Range 29 East, Seminole County, Florida.

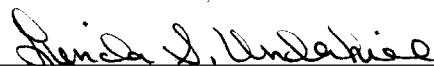
THIS Disclaimer is made for the benefit of the landowners referenced on Exhibit B attached hereto and incorporated herein by reference.

In the event of any conflict between the content and terms of this Disclaimer and the content and terms of any other instrument, the provisions of this Disclaimer shall control.

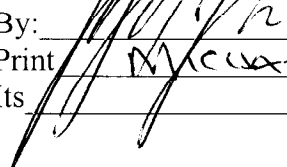
IN WITNESS WHEREOF, the parties hereto have executed this Disclaimer as of the date first above written.

Signed, sealed and delivered
in the presence of:


Print Timothy C. Laue


Print Linda S. Underhill

FLORIDA DEPARTMENT
OF TRANSPORTATION
An Agency of the State of Florida

By: 
Print Michael S. ...
Its _____

SEMINOLE COUNTY, FLORIDA,
A Political Subdivision of the
State of Florida

Print _____

Print _____

By: _____

Print _____

Its _____

STATE OF FLORIDA
COUNTY OF Volusia

The foregoing instrument was acknowledged before me this 30 day of March,
2000, by Michael Snyder, District
Secretary of the FLORIDA DEPARTMENT OF TRANSPORTATION,
an agency of the State of Florida, in his/her capacity as _____ of said
agency. He/She is personally known to me or has produced _____
_____ as identification.

My Commission Expires:

NOTARY PUBLIC - STATE OF FLORIDA
LINDA S. UNDERHILL
COMMISSION # CC846990
EXPIRES 9/30/2003
BONDED THRU ASA 1-888-NOTARY

Linda S. Underhill
Print Linda S. Underhill
Notary Public

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this _____ day of _____,
2000, by _____,
of SEMINOLE COUNTY, a political subdivision of the State of Florida, in his/her capacity as
_____ of said County. He/She is personally known to me or has
produced _____ as identification.

My Commission Expires:

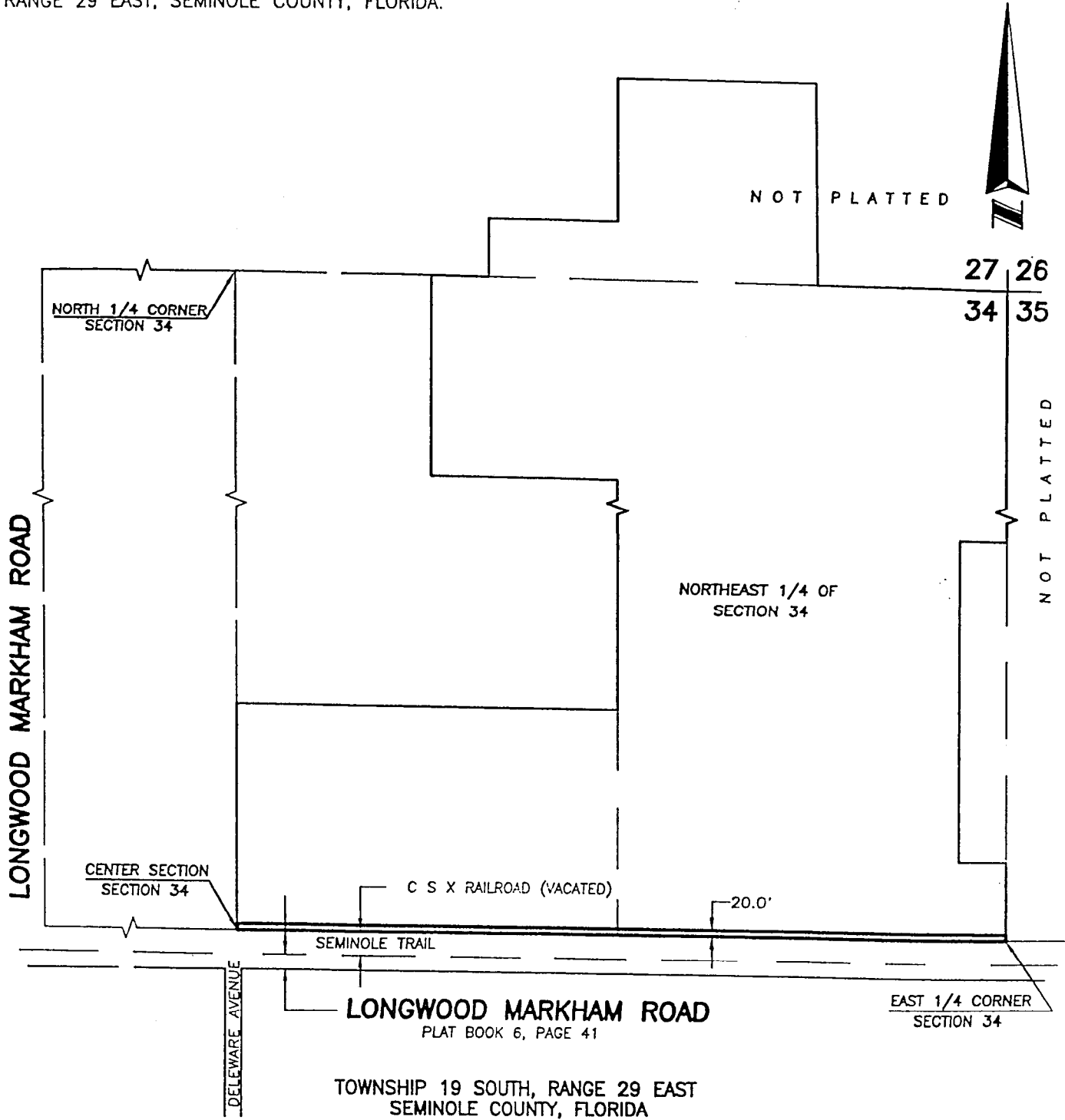
Print _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION:

LEGAL DESCRIPTION

THE SOUTH 20 FEET OF THE NORTHEAST ONE-QUARTER (1/4) OF SECTION 34, TOWNSHIP 19 SOUTH, RANGE 29 EAST, SEMINOLE COUNTY, FLORIDA.



TOWNSHIP 19 SOUTH, RANGE 29 EAST
SEMINOLE COUNTY, FLORIDA


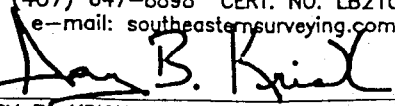
<p>Legal Description</p>	<p>Date: 09/22/2000 S.S.</p>		<p align="right">45441033</p>
<p align="center">FOR</p> <p align="center">BDC Markham, Ltd.</p>	<p>Job No.: 45441033</p>	<p>Scale: 1" = 500'</p>	<p align="center">  SOUTHEASTERN SURVEYING & MAPPING CORP. 324 North Orlando Avenue Maitland, Florida 32751-4702 (407) 647-8898 CERT. NO. LB2108 e-mail: southeasternsurveying.com  GARY B. KRICK REGISTERED LAND SURVEYOR NO. 4245 </p>
	<p>CH. 61G17-6, Florida Administrative Code requires that a legal description drawing bear the notation that THIS IS NOT A SURVEY.</p>		

EXHIBIT B

BENEFITED LANDOWNERS

1. General Warranty Deed by Overstreet Investment Company to BDC Markham, Ltd., recorded August 28, 1998, in Official Records Book 3488, Page 1840, Public Records of Seminole County, Florida.
2. General Warranty Deed by BDC Markham, Ltd., to L.P. Hagan, Jr., Family Limited Partnership recorded August 28, 1998, in Official Records Book 3488, Page 1844, Public Records of Seminole County, Florida.

Exhibit "B"

This Document Prepared by and Return to:
Donald J. Curotto, Esquire
Shuts & Bowen, LLP
Post Office Box 4956
Orlando, Florida 32802-4956

— THE SPACE ABOVE THIS LINE IS FOR RECORDING INFORMATION —

Property Appraiser's Parcel Identification No.: 35-19-29-300-0270-0000

QUITCLAIM DEED

THIS QUITCLAIM DEED executed this 10th day of July, 2003, by **BDC MARKHAM, LTD.**, a Florida limited partnership, existing under the laws of the State of Florida, having its principal place of business at 401 W. Colonial Drive, Suite 7, Orlando, Florida 32804, hereinafter referred to as "Grantor," to **SEMINOLE COUNTY, FLORIDA**, a political subdivision chartered under the laws of the State of Florida, hereinafter referred to as "Grantee," with an address of 1101 East First Street, Sanford, Florida 32771.

WITNESSETH:

That the said Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable considerations to it in hand paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the said Grantee, all that certain piece, parcel or tract of land lying and being in the County of Seminole, State of Florida, more particularly described on the attached Exhibit A.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said Grantor, either in law or in equity, to the only proper use, benefit and behoof of the said Grantee forever.

The real property conveyed herein shall be used by the Grantee, its successors and/or assigns, solely for passive recreational use purposes associated with the Grantee's "Rails to Trails" project.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed in its name by its undersigned president, and the corporate seal of its corporation to be affixed, all in pursuance of due and lawful corporate authority, as of the day and year first written.

Signed, Sealed and Delivered
in the Presence of:

BDC MARKHAM, LTD.,
A Florida Limited Partnership

By: BDC MARKHAM, INC.,
A Florida Corporation
General Partner

Kathy Morehead
Print Kathy Morehead
Deborah A. Lamothe
Print DEBORAH A. LAMOTHE

By: [Signature]
James H. Fant
Senior Vice President

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10th day of July, 2003, by JAMES H. FANT, Senior Vice President of BDC MARKHAM, INC., a Florida corporation, as general partner of BDC MARKHAM, LTD., a Florida limited partnership, on behalf of the corporation as general partner of the partnership. He is personally known to me or produced as identification.

My Commission Expires:

[Signature]
Print DEBORAH A. LAMOTHE
Notary Public



EXHIBIT "A"

LEGAL DESCRIPTION

Tract B according to the Plat of LAKE MARKHAM PRESERVE PHASE TWO, recorded in Plat Book _____, Page _____, Public Records of Seminole County, Florida.