



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

FROM: A. Herbert Schwarz, Assistant County Attorney *AHS*

THROUGH: Robert A. McMillan, County Attorney *RA*

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David V. Nichols, P.E., Principal Engineer/Major Projects *DVN* 9-19-06

DATE: September 18, 2006

RE: Purchase Agreement Authorization
Lake Emma Road
Parcel Nos. 134/834; Moreno Valley Investors Four, LLC

This Memorandum requests authorization by the Seminole County Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for the Lake Emma road improvement project, Parcel Nos. 134/834. The purchase price is \$475,000.00 inclusive of interest, fees, and costs.

I THE PROPERTY

A. Location Data

The subject parcels are located at the northwest corner of Lake Emma Road and Sand Pond Road in Seminole County, Florida.

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

B. Address

3200 Lake Emma Road
Lake Mary, Florida 43746

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2006-R-52 on March 14, 2006, authorizing the acquisition of the above-referenced properties, and finding that the improvements are

necessary and serves a County and public purpose and are in the best interests of the citizens of Seminole County.

III ACQUISITIONS AND REMAINDERS

The fee simple acquisition, Parcel No. 134 consists of .163 acres (7,117 square feet) and is strip and corner clip taking extending along the subject's east property line and the corner of Sand Pond Road and Lake Emma Road. The remainder will nominally change as a result of the taking a reduction from 39.931 acres to 39.768 acres. The permanent easement acquisition, Parcel No. 834, is within an existing pond (Pond 2) and will be used to direct stormwater within Lake Emma Road to Pond 2.

IV APPRAISED VALUES

The Spivey Group, Inc. completed the appraisal for the referenced parcels and opined the value to be \$37,133.00 for Parcel No. 134 and \$407,867.00 for Parcel No. 834.

V BINDING OFFER/NEGOTIATIONS

On March 14, 2006, the BCC authorized a binding written offer in the amount of \$445,000.00. The owner secured an attorney to evaluate the County's binding written offer. Thereafter, County staff negotiated this proposed settlement agreement with the property owner's attorney at \$475,000.00.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The proposed settlement amount is reasonable under the circumstances inherent in the condemnation process. The main rationale for approval of this settlement is cost avoidance. If the acquisition must proceed to condemnation, litigation costs and costs to update the County's appraisal and pay for the owner's appraisal and other experts' fees on both sides would likely exceed the additional settlement funds proposed to be paid.

VII RECOMMENDATION

County staff recommends that the BCC settlement at \$475,000.00, inclusive of interest, fees and costs.

AHS/dre

Attachment:

Location Map – Exhibit A

Sketch – Exhibit B

Purchase Agreement – Exhibit C

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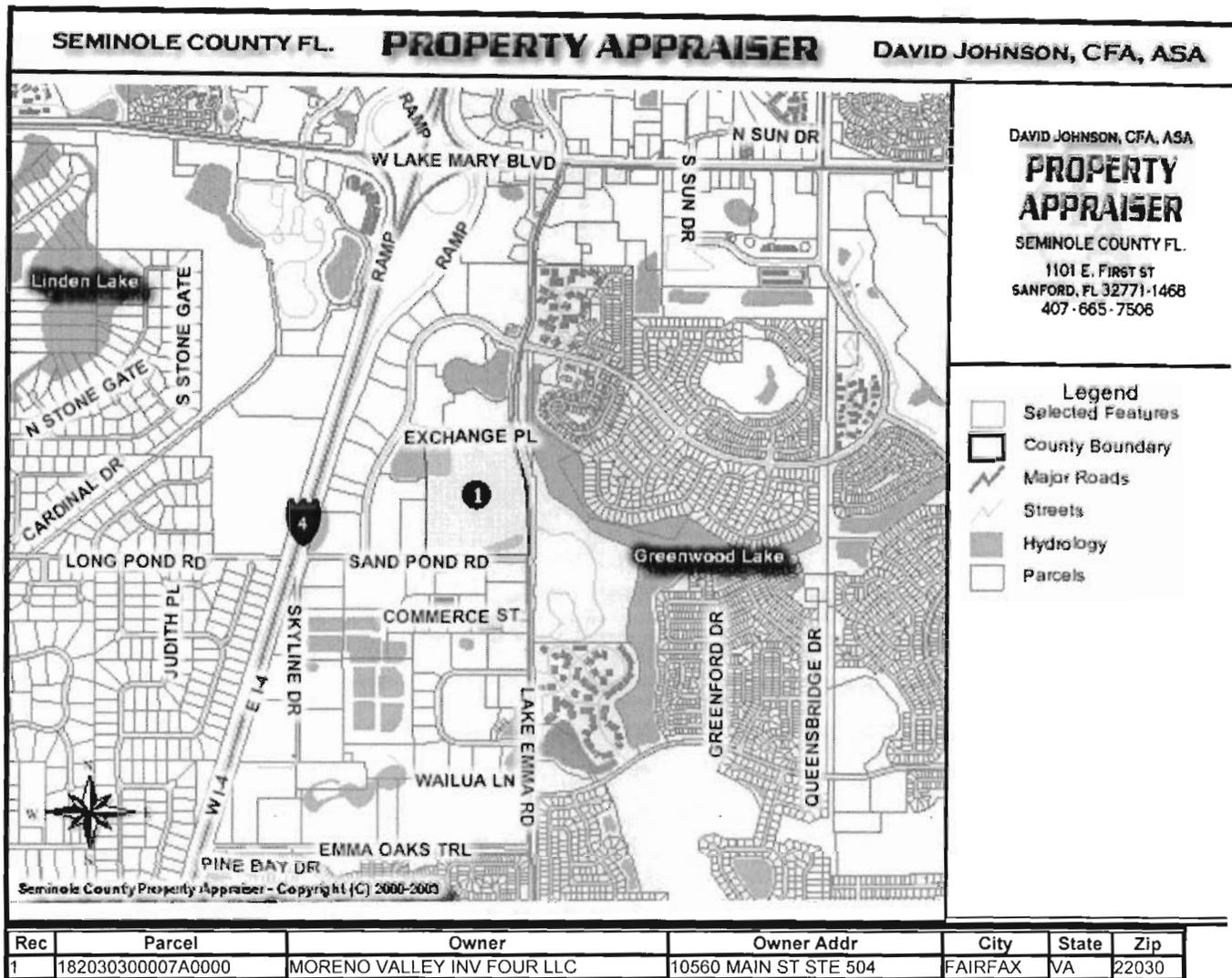


EXHIBIT A

NOTES:

1. THIS DRAWING IS BASED UPON SITE SKETCH INFORMATION PREPARED BY AMERICAN SURVEYING AND RECORD DRAWINGS FROM THE CITY OF LAKE MARY PUBLIC FILES.
2. DEVELOPMENT PLAN PROVIDED BY URS SOUTHERN.



SCALE: 1"=200'

AREA SUMMARY

PARENT TRACT	TRACT A	TRACT B	TOTAL
TAKING (134 A)	39.931 AC	5.1 AC	45.031 AC
TAKING (834)	0.163 AC	-	0.163 AC
REMAINDER	3.658 AC	-	3.658 AC
	39.768 AC	5.1 AC	44.868 AC



KELLY
COLLINS &
GENTRY, INC.
ENGINEERING / PLANNING

PARENT TRACT & AREA OF TAKING

PARCEL 134

Prepared for: THE SPIVERY GROUP

PROJECT: LAKE EMMA ROAD
COUNTY: SEMINOLE COUNTY
WIP NO.: PS-332

DRAWN BY: MAY CHECKED BY: HHC DATE: 11/3/05

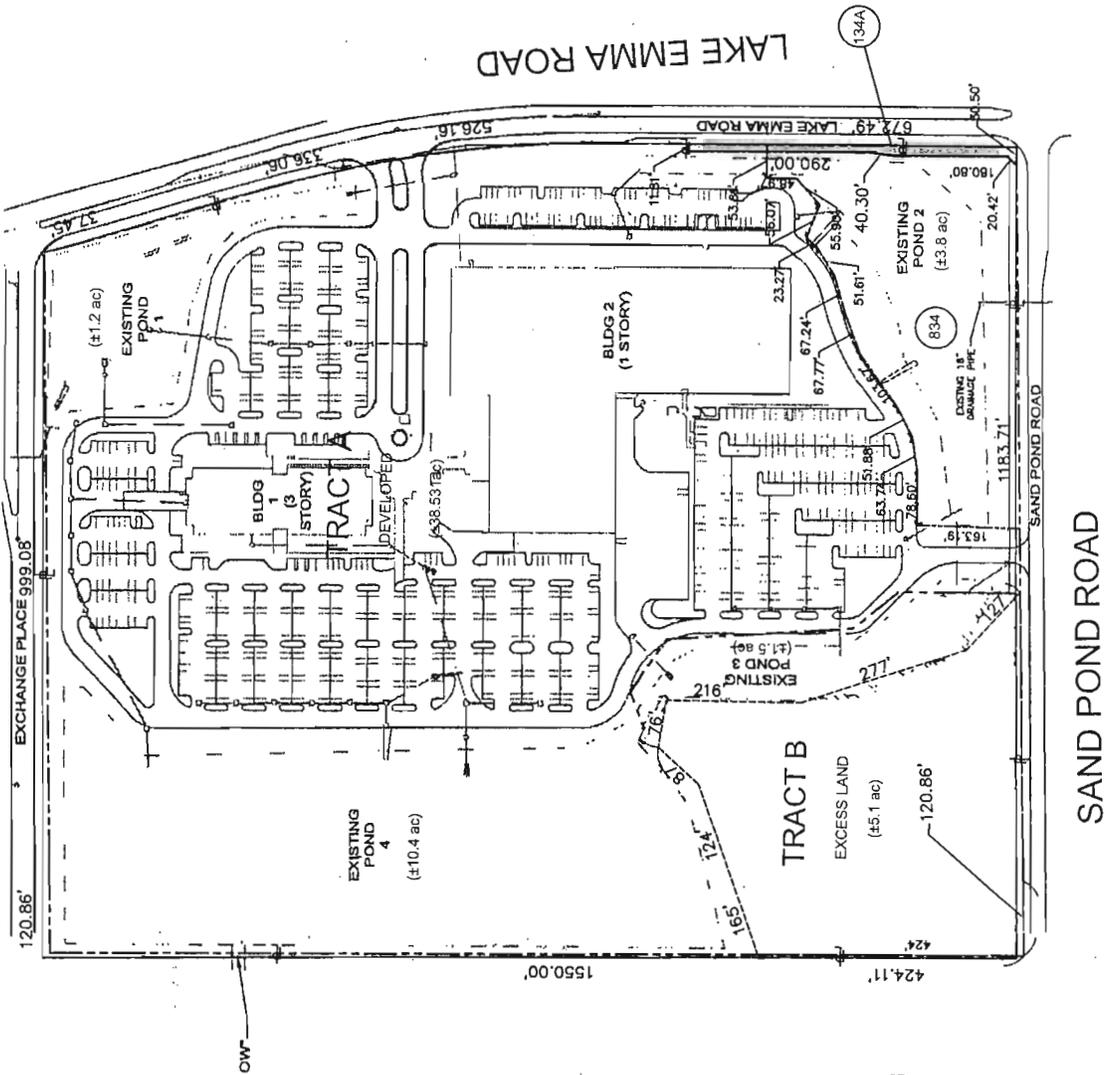


EXHIBIT B

**PURCHASE AGREEMENT
FEE SIMPLE / PERMANENT DRAINAGE EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this _____ day of _____, 2006, by and between MORENO VALLEY INVESTORS FOUR, LLC, whose address is c/o Professors Capital, Inc., 10560 Main Street, Suite 504, Fairfax, Virginia 22030, 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 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

Lake Emma Road
Fee Simple / Permanent Drainage Easement
Parcel Numbers: 134 / 834

See attached Exhibit "A"

Parcel Property I.D. Numbers: 18-20-30-300-007A-0000

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. 134, free of liens and encumbrances, and by Permanent Drainage Easement on Parcel No. 834 unto COUNTY for the sum of FOUR HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$475,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

(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, other than the Warranty Deed, 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 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.

(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 Lake Emma 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 OWNER's execution of this Agreement or in any act or omission in any manner related to OWNER's execution of this 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.

(m) OWNER shall indemnify, reimburse, defend and hold harmless the COUNTY from and against all demands, claims, liabilities, fines, fees, losses or expenses (including attorney fees and costs, cleanup costs and fines) by reason of liability, including any strict or statutory liability, imposed upon COUNTY, arising out of or as a consequence of the use of the properties by OWNER (or any prior owner or operator) as a hazardous waste or toxic chemical storage facility or dumpsite, or the use of the properties by OWNER or any prior owner or operator as a business operation which may have utilized hazardous materials.

(n) PERMANENT DRAINAGE EASEMENT in the form and content to be used by the parties at closing on this purchase is attached to this agreement as Exhibit "B".

(o) Prior to commencement of construction of any improvements, the COUNTY shall provide a photo-copy of the approved modified permit, (issued to the COUNTY from the St. Johns River Water Management District), to OWNER and/or OWNER's attorney, which said permit incorporates the stormwater Pond 7 improvements, Parcel Number 834.

SIGNATORY BLOCK ON FOLLOWING PAGE

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

ATTEST:

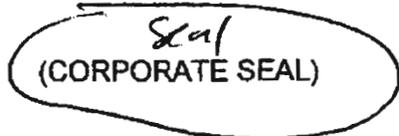


JOHN GARDNER
Secretary

MORENO VALLEY INVESTORS FOUR, LLC

By: 

PROFESSORS CAPITAL INC.
Manager/Member - RODERICK MARI BOJOC, V.P.


(CORPORATE SEAL)

Date: Sept. 18, 2006

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.
Approved as to form and legal
sufficiency.

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

County Attorney

Sheet 1 of 2

R/W Project: Lake Emma Road
R/W Parcel: 134
Title Search #: 135
Tax I.D. #: 18-20-30-300-007A-0000
Owners Name: Moreno Valley Inv Four LLC
Fee Simple

That portion of the Southwest 1/4 of Section 18, Township 20 South, Range 30 East, as recorded in Official Records Book 2496, Page 790, Seminole County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the Southwest 1/4 of said Section 18; thence N89°44'43"E, along the South line of said Southwest 1/4 of Section 18, a distance of 1184.04 feet to the Westerly right-of-way line of Lake Emma Road; thence N00°07'22"W, along said Westerly right-of-way line, 221.70 feet to the Northerly right-of-way line of Sand Pond Road and for a POINT OF BEGINNING; thence S89°44'43"W, along said Northerly right-of-way line, 30.50 feet; thence departing said Northerly right-of-way line, N45°44'54"E, 20.42 feet; thence N00°13'51"W, 180.80 feet; thence N06°53'47"E, 40.30 feet; thence N00°13'51"W, 290.00 feet; thence N89°51'49"E, 11.81 feet to the aforementioned Westerly right-of-way line of Lake Emma Road; thence S00°07'22"E, along said Westerly right-of-way line, 524.95 feet to the POINT OF BEGINNING.

Containing 7,117 square feet more or less.

Subject to: Utility Easement as recorded in Official Records Book 3006, Page 1410.

For Sketch of Description see Sheets 24 and 32 of 35 of Right-of-Way map.

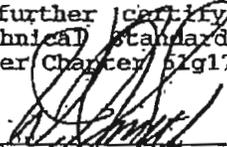
EXHIBIT A

Sheet 2 of 2

R/W Project: Lake Emma Road
R/W Parcel: 134
Title Search #: 135
Tax I.D. #: 18-20-30-300-007A-0000
Owners Name: Moreno Valley Inv Four LLC
Fee Simple

I hereby certify that, to the best of my knowledge and belief, the attached legal description of Parcel 134 as shown on the Right-of-Way Maps for Lake Emma Road are true, accurate, and were prepared under my direction.

I further certify that this legal description is in accordance with the Technical Standards adopted by the Florida Board of Surveyors and Mappers under Chapter 61G17-6, F.A.C.



Walter J. Smith
Florida Professional Land Surveyor No. 4807
520 South Magnolia Avenue, Orlando, Florida 32801

Date: 2/7/06

Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

LEGAL DESCRIPTION IS NOT A SURVEY

EXHIBIT A

Sheet 1 of 2

R/W Project: Lake Emma Road
R/W Parcel: 834
Title Search #: 135
Tax I.D. #: 18-20-30-300-007A-0000
Owners Name: Moreno Valley Inv Four LLC
Drainage Easement

That portion of the Southeast 1/4 of Section 18, Township 20 South, Range 30 East, as recorded in Official Records Book 2496, Page 790, Seminole County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the Southwest 1/4 of said Section 18; thence N89°44'43"E, along the South line of said Southwest 1/4 of Section 18, a distance of 1184.04 feet to the Westerly right-of-way line of Lake Emma Road; thence N00°07'22"W, along said Westerly right-of-way line, 221.70 feet to the Northerly right-of-way line of Sand Pond Road; thence S89°44'43"W, along said Northerly right-of-way line 30.50 feet for a POINT OF BEGINNING; thence continue S89°44'43"W, along said Northerly right-of-way line, 584.92 feet; thence departing said Northerly right-of-way line, N00°13'51"W, 163.19 feet; thence N89°43'32"E, 78.60 feet; thence N80°09'01"E, 63.74 feet; thence N62°19'30"E, 51.88 feet; thence N53°26'19"E, 103.67 feet; thence N67°56'22"E, 67.77 feet; thence N73°29'16"E, 67.24 feet; thence N56°34'52"E, 51.61 feet; thence N40°01'43"E, 23.27 feet; thence S69°32'09"E, 58.06 feet; thence N48°16'46"E, 55.90 feet; thence N00°13'51"W, 48.97 feet; thence N89°46'09"E, 53.61 feet; thence S00°13'51"E, 180.25 feet; thence S06°53'47"W, 40.30 feet; thence S00°13'51"E, 180.80 feet; thence S45°44'54"W, 20.42 feet to the POINT OF BEGINNING.

Containing 3.658 acres more or less.

Subject to: N/A

For Sketch of Description see Sheets 24 and 32 of 35 of Right-of-Way map.

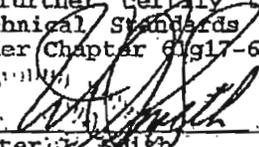
EXHIBIT A

Sheet 2 of 2

R/W Project: Lake Emma Road
R/W Parcel: 834
Title Search #: 135
Tax I.D. #: 18-20-30-300-007A-0000
Owners Name: Moreno Valley Inv Four LLC
Drainage Easement

I hereby certify that, to the best of my knowledge and belief, the attached legal description of Parcel 834 shown on the Right-of-Way Maps for Lake Emma Road are true, accurate, and were prepared under my direction.

I further certify that this legal description is in accordance with the Technical Standards adopted by the Florida Board of Surveyors and Mappers under Chapter 61G17-6, F.A.C.



Walter G. Smith
Florida Professional Land Surveyor No. 4807
520 South Magnolia Avenue, Orlando, Florida 32801

Date: 2/7/06

Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper.

LEGAL DESCRIPTION IS NOT A SURVEY

EXHIBIT A

This instrument prepared by:
A. Herbert Schwarz, Esq.
County Attorney's Office
1101 East First Street
Sanford, Florida 32771

PERMANENT DRAINAGE EASEMENT

THIS PERMANENT DRAINAGE EASEMENT is made and entered into this _____ day of _____, 2006, by and between MORENO VALLEY INVESTORS FOUR, LLC., whose address is 10560 Main Street, Suite 504, Fairfax, Virginia 22030, 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 East First Street, Sanford, Florida 32771, hereinafter referred to as the GRANTEE.

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of ONE AND NO/100 DOLLAR (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, GRANTOR does hereby grant and convey to the GRANTEE and its assigns, a perpetual Permanent Drainage Easement, with full authority to enter upon, excavate, construct and maintain, as the GRANTEE and its assigns may deem necessary, a drainage system consisting of pipes, ditches, detention, percolation or disposal areas or any combination thereof, together with appurtenant drainage structures over, under, upon and through the following-described lands situate in the County of Seminole, State of Florida, to-wit:

See Exhibit "A", Parcel Number 834 Legal Description

Property Appraiser's Parcel Identification No.: 18-20-30-300-007A-0000

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

THE GRANTEE herein and its assigns shall have the right to clear and keep clear all trees, undergrowth, and other obstructions that may interfere with the location, excavation, operation or maintenance of the drainage and any other facilities placed thereon by the GRANTEE and its assigns, from the herein granted right-of-way, and GRANTOR, his/her successors and assigns, agree not to build, construct or create, or permit others to build, construct or create any buildings or other structures on the herein granted right-of-way that may interfere with the location, excavation, operation or maintenance of the drainage or any facilities placed thereon.

EXHIBIT B

GRANTOR does hereby covenant with the GRANTEE, that he/she is lawfully seized and possessed of the real estate above described, that he/she has a good and lawful right to convey the said easement and that it is free from all encumbrances.

IN WITNESS WHEREOF, GRANTOR has hereunto set his/her hand and seal, the day and year first above written.

WITNESSES:

MORENO VALLEY INVESTORS FOUR, LLC

Clarissa Dacanay
(Signature)

By: Roderick Maribojoc
PROFESSORS CAPITAL, INC.
Manager/Member - RODERICK MARIBOJOC,
V.P.

CLARISSA DACANAY
(Printed Name)

John Gardner
(Signature)

John Gardner
(Printed Name)

STATE OF ~~FLORIDA~~ VIRGINIA

COUNTY OF ~~SEMINOLE~~ FAIRFAX

The foregoing instrument was acknowledged before me this 18th day of September, 2006, by Roderick Maribojoc who is personally known to me or who produced VA License # A66-09-9691 as identification and who did (~~did not~~) take an oath.

WITNESS my hand and official seal in the County and State aforesaid this 18th day of September, 2006.

Legibly print or stamp Notary's name

Robert S. Faulkner
Notary Public, in and for the
County and State Aforementioned

My Commission Expires: April 30, 2009