

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Daniel Colabella, Utilities Director, 954-433-4000

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A BULK WATER AND SEWAGE USER AGREEMENT BETWEEN THE TOWN OF DAVIE AND SEMINOLE TRIBE OF FLORIDA TO PROVIDE BULK WATER AND SEWAGE SERVICE.

**REPORT IN BRIEF:**

The Seminole Tribe of Florida, in order to better service its customers, has requested that the Town of Davie provide water and sewage service pursuant to a Bulk Water and Sewage Agreement to its "Hotel/Entertainment Complex Service Area." The area to be serviced is located contiguous to the corporate limits of the Town and all costs for the extension of water and sewer mains will be borne by the Seminole Tribe of Florida, according to the Agreement. It is believed to be in the best interest of both the Town of Davie as well as the Seminole Tribe of Florida for the Town to enter into said Agreement.

**PREVIOUS ACTIONS:** Not applicable

**CONCURRENCES:** Not applicable

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Motion to approve the resolution

**Attachment(s):** Resolution, Bulk Water and Sewage User Agreement and Exhibits

RESOLUTION NO.

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A BULK WATER AND SEWAGE USER AGREEMENT BETWEEN THE TOWN OF DAVIE AND SEMINOLE TRIBE OF FLORIDA TO PROVIDE BULK WATER AND SEWAGE SERVICE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie owns and operates a water producing and distribution facility and a sewage collection and treatment facility located within the Town; and

WHEREAS, Seminole Tribe of Florida is located adjacent to the corporate limits of the Town; and

WHEREAS, to better service the customers of Seminole Tribe of Florida, Seminole Tribe of Florida has requested that the Town provide water and sewage service pursuant to a Bulk Water and Sewage User Agreement a copy of which is attached hereto; and

WHEREAS, it is in the best interest of the Town of Davie and the Seminole Tribe of Florida to enter into said agreement; and

WHEREAS, the Town is agreeable to providing said service and wishes to authorize the Mayor to enter into an agreement providing for same.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the above recitations are true and correct.

SECTION 2. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the Bulk Water and Sewage User Agreement between the Town of Davie and Seminole Tribe of Florida, a copy of which is attached hereto.

SECTION 3. The appropriate Town officials are authorized to take all necessary actions to implement the Agreement.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2001.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2001.

BULK WATER AND SEWAGE  
USER AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between:

Town of Davie, a municipal corporation of the State of Florida,  
hereinafter called the "Seller",

and

the Seminole Tribe of Florida, hereinafter called the  
"Consumer",

WITNESSETH

WHEREAS, the Seller in its proprietary capacity, owns and operates a water producing and distribution facility and a sewage collection and treatment facility, collectively referred to as "Utility", and is in a position to service the Consumer; and

WHEREAS, the Consumer in its proprietary capacity, desires to purchase from Seller water to be used in Consumer's distribution system and to return sewage to Seller to be treated for servicing Consumer's customers, upon terms mutually agreeable;

WHEREAS, the Consumer is an organized tribe as defined in Section 16 of the Act of June 18, 1934, as amended, and the property to be serviced is located on Consumer's sovereign lands;

NOW THEREFORE, for and in consideration of the premises and the sum of One Dollar (\$1.00) cash in hand paid by the Consumer to the Seller, receipt whereof is hereby acknowledged, and other good and valuable consideration, IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

(1) The Seller agrees to sell to the Consumer and the Consumer agrees to buy from the Seller water for Consumer, and the Seller agrees to accept untreated sewage and the Consumer agrees to pay for the treatment of the sewage from the Consumer, under the terms and conditions set forth herein.

(2) All water delivered by the Seller shall be clean, potable water, meeting all current Federal, State and Local regulations in effect for the Utility at the time of transmission, relating to the quality of water as such Regulations may apply during the life of this Agreement. Failure of the Seller to provide water of the quality required by this paragraph shall be deemed a breach of this agreement, however, an allegation of failure to meet any such Regulations which is challenged by the Seller, shall not be deemed a breach of the Agreement unless there is a final finding after exhaustion of any appeals that there has, in fact, been non-compliance with said Regulations.

(3) During the term of this Agreement, the Seller will undertake to deliver water to the Consumer in such quantities as are required by the Consumer in the areas hereinafter described, and subject to the conditions herein contained, but only after proper water meter or master water meters are installed by Consumer. The maximum average flow shall be 300,000 gallons per day, per month. However the Seller does not bind itself during periods of water shortage resulting from an emergency condition to do more than deliver water to said metering station in such quantities and pressure as are available throughout the Town. In the event it should become necessary for the Seller to adopt regulations for conservation of water during such time of emergency, the Consumer agrees that it will adopt and use reasonable efforts to enforce in the areas covered by this Agreement the same regulations for conservation of water mandated by either the South Florida Water Management District or, in the case of a facilities emergency, the Town of Davie during such time of emergency. Under all circumstances Consumer will be treated similarly with regard to water conservation measures as other like users of Seller's system.

(4) The areas to be serviced by Consumer are situated in Broward County, Florida, and shall be referred to as the "Hotel/Entertainment Complex Service Area (hereafter "Service Area") for the purpose of this Agreement. The Service Area is described as follows: See attached Exhibit A-1 and A-2.

(5) There shall be a master water meter installed at a point mutually agreeable, through which all water provided to Consumer shall be supplied, and all water furnished by Seller shall be metered through such meters. The Consumer shall, at its own expense, procure and install a water meter or water meters, the type of such meters to be approved by, and the installation thereof to be approved by the Seller or its authorized agents. The sewage connection point shall be at a mutually agreeable location and its installation shall be at the sole expense of the Consumer and approved by the Seller or its authorized agents. It is the intention of the parties that both the water meter(s) and sewer connection points shall be located on the northwestern boundary of the Hollywood Reservation in the eastern right-of-way of the Florida Turnpike. After installation the Seller will, at its own expense, operate and maintain the master water meter.

(6) It shall be the obligation of the Consumer, at its expense, to design, construct and install water service, force main and wastewater collection lines, and all necessary appurtenances thereto to connect to Seller's existing municipal lines. All improvements constructed on the Reservation shall remain the property of, and be maintained by, the Consumer. All improvements off the Reservation shall be dedicated to the Seller, which then will, at its own expense, operate and maintain same.

(7) The Seller shall own the water meter as evidenced by a Bill of Sale from Consumer once construction of off Reservation improvements have been completed. The meter shall be of standard make and type, pursuant to AWWA standards, installed in a readily accessible location with checking or calibration devices, and the installation shall indicate flow with an error not to exceed plus or minus three percent of full scale reading. If found to be in error exceeding three percent of true accuracy, the meter shall be recalibrated to the satisfaction of the parties hereto. If such error of more than three percent is discovered, bills for the next period following the prior meter accuracy check shall be adjusted to reflect the quantity of over-read or under-read exceeding three percent. In calculating such billing adjustment it will be assumed that the meter inaccuracy existed for one-half of the entire time interval between meter accuracy checks, not to exceed twelve (12) months. The billing adjustment shall be made at the same rate established in accordance with Section (9) hereinafter, but the volume used in the billing calculations shall be adjusted as described above.

The Seller may request and the Consumer agrees to pay to perform a meter accuracy check at any reasonable time acceptable to both parties. The meter accuracy test will be required at least once every two years. If the meter is found to be in error exceeding three percent true accuracy, it shall be recalibrated as described above and the entire cost for such checking and recalibration shall be paid for by the Consumer.

(8) The water furnished by the Seller hereunder shall be delivered to the Consumer at the point of delivery (master meter location) at a minimum head of one hundred (100) feet (+44PSI) except during fire demand. The Seller shall not be responsible for water hammer in any of the pipe lines of the Consumer nor shall the Seller be responsible for meeting any demands for water other than that required by the terms of this Agreement. It shall be the obligation and duty of the Consumer to carry the water at its own expense from each point of delivery to the place or places of ultimate use and, in so doing, to supply and impart to the water adequate pressure as may be necessary to provide adequate pressure at all points beyond such point of delivery, in consequence whereof the Seller shall not be responsible for insufficient pressure, nor be required to correct any fluctuation in pressure, occurring beyond any such point of delivery.

(9) The sewage to be delivered by the Consumer to the Seller shall be untreated wastes only from the Consumer. It shall be the Consumer's responsibility to collect and transmit the sewage to the agreed point of sewage connection.

(10) The water rates to be charged by the Seller to the Consumer herein shall be a user rate of \$1.37 per 1,000 gallons. The rates may be adjusted to the Consumer as Seller adjusts its rate structure for all customers of Sellers service. It is the intention of the parties that any future rate adjustments will result in the same rate to retail customers. The sewage rates to be charged by the Seller to the Consumer herein shall be a user rate of 100% of the water usage @ \$1.71 per 1,000 gallons. The rates may be adjusted to the Consumer as Seller adjusts its rate structure for all customers of Sellers service. It is the intention of the parties that any future rate adjustments will result in the same rate to retail customers.

(11) Readings of the master water meter at point of delivery shall be taken by the Seller on or about the fifteenth day of each month and shall be used for monthly billing purposes under the provision of this section. The Seller shall render monthly statements for water furnished to the master meter and the Consumer shall pay promptly all statements furnished by Seller.

(12) Water sold to Consumer hereunder will be supplied from Seller's water producing facilities and will be of substantially the same quality and at the same pressure at the point of connection as the water furnished by Seller to its consumer within the Town limits of Seller, and said pressure shall not be below the minimum provided in Section (8).

(13) Sewage treatment service purchased by Consumer shall include full responsibility of Seller for compliance with all applicable Federal, State, Town of Davie and County regulations regarding treatment criteria and operation.

(14) (A) Any temporary or continuing cessation of the service by the Seller caused by an Act of God, fire, strike, casualty, necessary maintenance work, breakdown of or injuries to machinery, pumps or pipelines, civil or military authority, insurrection, riot, or any other causes, whether or not of the same kind as enumerated herein, shall not constitute a breach of the Agreement on the part of the Seller, and the Seller shall not be liable to the Consumer for any damage resulting from such cessation of service. The Seller shall use due diligence in the operation and maintenance of its water supply and transmission facilities; however, the Seller shall not be responsible to the Consumer for any interruption of service due to causes beyond the Seller's control not due to the negligence of the Seller. All of the provisions of this Section shall apply equally to obligations of the Seller and the Consumer under this Agreement.

(B) During such temporary or continuing cessation or interruption of services, including a declared water shortage as described in paragraph (3), Consumer may seek alternative means to replace the lost or diminished water and sewer services until such time services are fully restored to the levels required under this Agreement.

(15) Any controversy or claim arising out of this Agreement which cannot be amicably resolved by the parties shall be voluntarily submitted to non-binding mediation by agreement of both parties. If both parties do not agree to mediate, then either party can proceed with litigation.

(16) The purchase and sale of water and sewer treatment services pursuant to this Agreement shall commence thirty (30) days after the Consumer notifies the Seller in writing that it is able to accept water at the point of connection, and shall continue until terminated in the following manner. The terminating party, either the Seller or the Consumer, shall give the other party hereto twelve (12) months notice of its intention to terminate this Agreement. At the expiration of the 12 month notice period the agreement

shall be deemed terminated. Such notices shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the party entitled to such notice at the address specified in paragraph numbered (18) of this Agreement.

(17) This Agreement shall inure to and be binding upon the successors of each of the parties hereto.

(18) All notices required pursuant to this Agreement shall be properly given if mailed by United States registered or certified mail addressed to the party to which notice is to be given at the following respective addresses:

Town of Davie  
Attention: Town Administrator  
6591 Orange Drive  
Davie, Florida 33314

with a copy to:

Monroe Kiar (Town Attorney)  
6191 SW 45 Street  
Davie, Florida 33314

Seminole Tribe of Florida  
Utilities Department  
Attention: Director  
6300 Stirling Road  
Hollywood, Florida 33024

with a copy to:

Jim Shore  
General Counsel  
6300 Stirling Road  
Hollywood, Florida 33024

(19) This Agreement may be amended, changed, voided or annulled any time by joint consent of the parties in writing.

(20) This Agreement shall not become effective until a resolution has been adopted by the governing bodies of each of the parties hereto approving this Agreement and authorizing its execution.

IN WITNESS WHEREOF, Seller has caused this Agreement to be signed by its Mayor and attested by its Town Clerk and its Corporate Seal to be affixed, and approved by the Town Attorney, and Consumer has caused this Agreement to be signed by its acting Chairman and attested by the Secretary/Treasurer, and its Tribal Seal to be affixed, and approved by its Tribal Council, in duplicate, the day and year above written.

TOWN OF DAVIE

By \_\_\_\_\_  
Mayor

(Corporate Seal)

Attest:

\_\_\_\_\_  
Town Clerk  
SEMINOLE TRIBE OF FLORIDA

By \_\_\_\_\_  
Mitchell Cypress, as acting Chairman of the  
Tribal Council

(Tribal Seal)

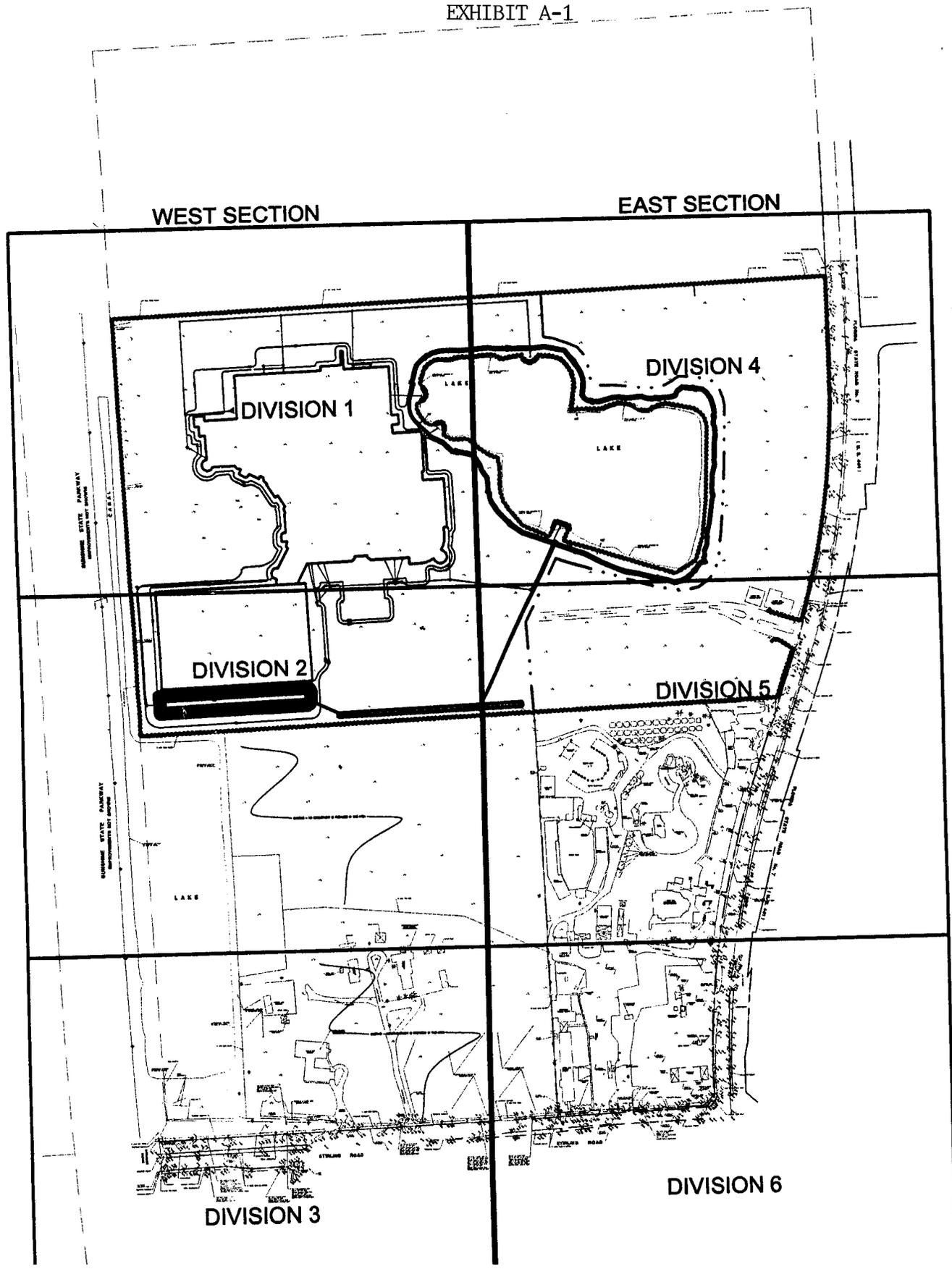
Attest:

\_\_\_\_\_  
Priscilla Sayen, Secretary/Treasurer

Approved as to form:

\_\_\_\_\_  
Monroe Kiar, Town Attorney

EXHIBIT A-1



N.T

# EXHIBIT A-2

## LEGAL DESCRIPTION

ALL THAT LOT, PIECE OR PARCEL OF LAND, CONSISTING OF A PORTION OF LOTS 11, 12, 13 AND 14 IN SECTION 36, TOWNSHIP 50 SOUTH, RANGE 41 EAST OF THE MARSH'S SUBDIVISION ONE (SHOWN IN RED) AND TWO (SHOWN IN BLACK) TR. 80 S., R. 41 E., DADE COUNTY, FLA., ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2 AT PAGE 26 OF THE PUBLIC RECORDS OF DADE COUNTY (NOW MIAMI-DADE COUNTY), FLORIDA, CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA, THE SAME BEING A PORTION OF THE LANDS COMMONLY KNOWN AS THE LANDS OCCUPIED BY THE SEMINOLE INDIAN TRIBE OF FLORIDA AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, VZ.:

COMMENCE AT THE SOUTHWEST CORNER OF SECTION 36, TOWNSHIP 50 SOUTH, RANGE 41 EAST IN THE CITY OF HOLLYWOOD, BROWARD COUNTY, FLORIDA THENCE N87°54'58"E ALONG THE SOUTHERLY LINE OF SAID SECTION 36 FOR 662.89 FEET TO A POINT OF INTERSECTION WITH THE SOUTHERLY EXTENSION OF THE EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY, AS SHOWN ON THE UNRECORDED MAP ENTITLED "FLORIDA STATE TURNPIKE AUTHORITY SUNSHINE STATE PARKWAY MIAMI TO FORT PIERCE SECTION" UNDER CONTRACT NO. 1-1, SHEET 4 OF 7, AND LAST REVISED OCTOBER 5, 1955; THENCE DEPARTING SAID SOUTHERLY LINE OF SECTION 36, N02°04'19"W ALONG SAID SOUTHERLY EXTENSION OF THE EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY FOR 98.30 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848), AS SHOWN ON THE UNRECORDED RIGHT OF WAY MAP ENTITLED "STATE ROAD NO. 7 (U.S. 441) SECTION 86100-2588," SHEET 36 OF 58, DATED OCTOBER 15, 1968 AS PUBLISHED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND, FROM SAID POINT OF BEGINNING; THENCE CONTINUE N02°04'19"W ALONG SAID EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY FOR 1250.80 FEET; THENCE S87°53'41"W ALONG SAID EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY FOR 282.58 FEET; THENCE N02°19'53"W ALONG SAID EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY FOR 1325.59 FEET TO THE SOUTHWEST CORNER OF PARCEL "A" OF "LAUDERDALE-MIAMI AUTO AUCTION," ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 143 AT PAGE 36 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE DEPARTING SAID EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY, N87°55'57"E ALONG THE SOUTHERLY LINE OF SAID PARCEL "A" FOR 223.23 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL "A" AND A POINT OF INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7, AS SHOWN ON THE UNRECORDED RIGHT OF WAY MAPS ENTITLED "STATE ROAD NO. 7 (U.S. 441) SECTION 86100-2588," SHEETS 35, 39 AND 40 OF 58, DATED OCTOBER 15, 1968 AS PUBLISHED BY THE FLORIDA DEPARTMENT OF TRANSPORTATION; THENCE DEPARTING SAID SOUTHERLY LINE OF PARCEL "A" OF "LAUDERDALE-MIAMI AUTO AUCTION," S01°52'11"E ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 FOR 218.71 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST; THENCE SOUTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 2914.93 FEET AND A CENTRAL ANGLE OF 21°02'53" FOR 1034.08 FEET TO THE POINT OF TANGENCY; THENCE S18°10'42"W ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 FOR 334.88 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST; THENCE SOUTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7, AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 2914.93 FEET AND A CENTRAL ANGLE OF 08°08'10" FOR 413.92 FEET TO A POINT OF NON-TANGENT INTERSECTION WITH A LINE BEARING N79°04'29"W, WITH SAID POINT OF NON-TANGENT INTERSECTION BEARING N78°57'27"W FROM THE CENTER OF SAID CURVE; THENCE N79°04'29"W ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 FOR 15.00 FEET; THENCE S10°56'38"W ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 FOR 10.00 FEET; THENCE S79°04'54"E ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 FOR 16.00 FEET TO A POINT OF NON-TANGENT INTERSECTION WITH THE ARC OF A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, WITH SAID POINT OF NON-TANGENT INTERSECTION BEARING N79°08'18"W FROM THE CENTER OF SAID CURVE; THENCE SOUTHWESTERLY ALONG SAID WESTERLY RIGHT OF WAY LINE OF FLORIDA STATE ROAD NO. 7 AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 2914.93 FEET AND A CENTRAL ANGLE OF 12°37'30" FOR 642.43 FEET TO A POINT OF NON-TANGENT INTERSECTION WITH SAID NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848), WITH SAID POINT OF NON-TANGENT INTERSECTION BEARING S88°13'06"W FROM THE CENTER OF SAID CURVE; THENCE S84°04'08"W ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848) FOR 49.37 FEET; THENCE S87°54'28"W ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848) FOR 282.26 FEET; THENCE N82°56'30"W ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848) FOR 8.00 FEET; THENCE S87°54'28"W ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848) FOR 717.18 FEET; THENCE N87°44'10"W ALONG SAID NORTHERLY RIGHT OF WAY LINE OF STIRLING ROAD (FLORIDA STATE ROAD NO. 848) FOR 451.55 FEET TO A POINT OF INTERSECTION WITH THE EASTERLY RIGHT OF WAY LINE OF THE SUNSHINE STATE PARKWAY, SAID POINT ALSO BEING THE POINT OF BEGINNING.

