State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 16, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF WATER AND WASTEWATER (BRADY)
DIVISION OF AUDITING & FINANCIAL ANALYSIS (VANDIVER)
DIVISION OF LEGAL SERVICES (FUDGE)

RE: DOCKET NO. 991056-SU - APPLICATION FOR TRANSFER OF CERTIFICATE NO. 456-S FROM DEL VERA LIMITED PARTNERSHIP TO COOLIDGE-FT. MYERS REALTY LIMITED PARTNERSHIP d/b/a HERON'S GLEN UTILITIES
COUNTY: LEE

AGENDA: 03/28/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES NOS. 4 AND 5 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\WAW\WP\991056.RCM

CASE BACKGROUND

Del Vera Limited Partnership (Del Vera, utility, or seller) is a Class C utility providing wastewater service to the Del Vera Golf & Country Club subdivision in Lee County. (Water service is provided by Lee County.) According to the utility's 1998 Annual Report, it serves approximately 390 residential customers and one general service customer with total gross revenues of $101,785 and a net operating loss of $23,726.

Del Vera was originally known as Del Tura North Limited Partnership (Del Tura) when first certificated. The development was intended to serve 2,000 equivalent residential connections (ERCs) at buildout. The Commission granted the utility Certificate No. 456-S, by Order No. 22157, issued November 6, 1989, in Docket No. 890975-SU.

The utility's name was changed from Del Tura to Del Vera by Order No. 24805, issued July 11, 1991, in Docket No. 910448-SU. On August 5, 1999, an application was filed on behalf of the utility to transfer Certificate No. 456-S from Del Vera to Coolidge-Ft. Myers Realty Limited Partnership d/b/a Heron's Glen Utilities (Coolidge-Ft. Myers), opening this docket.

Staff first became aware of the transfer in mid-1998 when the utility's 1997 Annual Report and regulatory assessment fees (RAFs) were paid by Coolidge-Ft. Myers. According to the application, the development rights to the Del Vera Golf & Country Club subdivision, along with the utility facilities, were auctioned on January 31, 1997, pursuant to the terms of Del Vera's Debtors' Consolidated Plan of Reorganization dated October 10, 1996. The United States Bankruptcy Court of the Southern District of Florida issued an Order Confirming Auction Sale (Court Order) on February 6, 1997, which is the date staff is using as the effective date of the transfer.

DISCUSSION OF ISSUES

ISSUE 1: Should Del Vera Limited Partnership be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Sections 367.071(1), Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated. (FUDGE)

STAFF ANALYSIS: As indicated in the Case Background, pursuant to a court sanctioned action, Del Vera transferred its facilities to Coolidge-Ft. Myers on February 6, 1997, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states that:

> No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes. By transferring its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

In this case, Del Vera failed to obtain Commission approval prior to transferring its facilities to Coolidge-Ft. Myers, because of a court sanctioned auction of its facilities. Accordingly, staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Del Vera to show cause for failing to obtain Commission approval prior to transferring its facilities to Coolidge-Ft. Myers.

ISSUE 2: Should Coolidge-Ft. Myers Realty Limited Partnership be ordered to show cause, in writing, within 21 days, why it should not be fined for its apparent violation of Sections 367.121(2) and 367.156(1), Florida Statutes?

RECOMMENDATION: No. A show cause proceeding should not be initiated. However, Coolidge-Ft. Myers Realty Limited Partnership should be put on notice that any further violations of Sections 367.121(2) or 367.156(1), Florida Statutes, may result in a show cause proceeding being initiated. (FUDGE, BRADY, VANDIVER)

STAFF ANALYSIS: While performing an audit to establish the net book value of the utility at the time of transfer, staff's auditor was denied access to an area of the buyer's premises containing utility records.

Section 367.121(2), Florida Statutes, provides that:

> The commission or its duly authorized representatives may, during all reasonable hours, enter upon any premises occupied by any utility and set up and use thereon any necessary apparatus and appliance for the purpose of making investigations, inspections, examinations, and tests and exercising any power conferred by this chapter. Such utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations, and tests.

Section 367.156(1), Florida Statutes, provides that:

> The commission shall continue to have reasonable access to all utility records and records of affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities.

Finally, Rule 25-30.145, Florida Administrative Code, which implements Sections 367.121 and 367.156(1), Florida Statutes, addresses the reasonable access to utility and affiliate records for the purposes of management and financial audits. Specifically, Rule 25-30.145(1)(b), Florida Administrative Code, provides that:

> Reasonable access means that company responses to audit requests for access to records shall be fully

provided within the time frame established by the auditor. [Emphasis added.]

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than $5,000 for each offense if a utility is found to have knowingly refused to comply with, or to have willfully violated, any provision of Chapter 367, Florida Statutes. By not allowing staff's auditor reasonable access to an area of the buyer's premises containing utility records, the buyer's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Coolidge-Ft. Myers stated in its application that because the utility system assets were acquired in a foreclosure it did not have readily available information concerning original source documents for the purposes of establishing the net book value of the system. The application described in some detail the unsuccessful efforts of the buyer to locate the accountant and other representatives of the former, now bankrupt, owner. Because the wastewater system was relatively new, with major plant additions occurring primarily in 1991 and 1993, Coolidge-Ft. Myers believed it should be able to prepare an original cost study, if necessary, to establish net book value.

In the abundance of caution, staff decided to request an audit to determine, at a minimum, the condition of the utility's books and records. Shortly after initiating the audit, the auditor located the former accountant for the prior owner who believed the books and records had been provided to the former Chief Financial Officer (CFO) of Coolidge-Ft. Myers. During a visit to the buyer's offices, the auditor mentioned a specific contract to a company representative who was able to immediately produce an empty file. The file came from one of several file cabinets in the buyer's conference room of which at least one cabinet contained old Del Vera contracts. Within a few minutes, the auditor was able to locate six contracts for original plant. However, before the examination of the files could be completed, the auditor was asked to leave by the buyer's Chief Executive Officer (CEO).

Upon informing Tallahassee auditing and technical staff of the incident, it was suggested the auditor contact legal counsel for the buyer and let him handle the apparent violation of statutes. The next day, the CFO called the auditor to apologize. The reason given for the CEO's actions the previous day was that the room contained other sensitive company records. Also, although at least one representative for the company obviously knew the location of the records, the auditor was told that neither the current CFO nor CEO knew these were the records the auditor was looking for because they weren't in the form of "books and ledgers."

Apparently, after the auditor had left the premises the previous day, the CEO had ordered all managers to go through their files to proactively look for Del Vera records. The auditor was asked to give the buyer a week to gather up everything and an appointment was made for review. The auditor requested to still be allowed to go through the files to make sure all related documents were located. In addition the auditor indicated that screening the records prior to audit review would need to be disclosed in the audit report. The incident was mentioned in the audit report under "Scope Limitations."

As to the buyer's original assertions that no records existed, it could be argued that the records were withheld to prevent the discussion of an acquisition adjustment issue in the transfer docket. However, the acquisition adjustment issue would eventually be discussed in the utility's first rate proceeding. And, in the case of the plant records the auditor was attempting to locate, the utility benefits from full disclosure of such records, not from their suppression. Finally, since having such records might prevent the buyer from eventually having to do a complete original cost study, there is no logical reason to deny their existence, if truly known.

As to the denial of access once the records were located because of concern the records were intermingled with non-utility records, staff is not persuaded. Section 367.156(1), cited above, specifically allows audit access to affiliated and parent records. Also, the CEO did not allow the CFO access to the room, either, to review the records for the auditor. Instead, staff is persuaded by the actions of the individuals who intervened on behalf of the audit effort. In other words, the violation does not appear to have been "across the board" but limited to one misguided individual who fairly quickly apologized and made provisions for ultimate access.

For the reasons described above, staff recommends that the Commission not order Coolidge-Ft. Myers Realty Limited Partnership to show cause why it should not be fined for failure to allow the Commission reasonable access to an area of the buyer's premises containing utility records. However, Coolidge-Ft. Myers should be put on notice that, any further violations of Sections 367.121(2) or 267.156(1), Florida Statutes, may result in a show cause proceeding being initiated.

ISSUE 3: Should the transfer of Certificate No. 456-S from Del Vera Limited Partnership to Coolidge-Ft. Myers Realty Limited Partnership d/b/a Heron's Glen Utilities be approved?

RECOMMENDATION: Yes, the transfer should be approved. A description of the territory being transferred is appended to this memorandum as Attachment A. (BRADY, FUDGE)

STAFF ANALYSIS: As noted in the Case Background, the effective date of the transfer was February 6, 1997, pursuant to the Court Order issued by the United States Bankruptcy Court of the Southern District of Florida which confirmed the January 31, 1997, auction sale of the utility. Staff became aware of the transfer in mid-1998 when the utility's 1997 annual report and RAFs were paid by Coolidge-Ft. Myers. After numerous attempts by staff to distinguish the Commission from other regulatory bodies and utility responsibilities in an attempt to obtain an application for transfer, the buyer finally retained legal counsel. The application for transfer was filed fairly quickly thereafter on August 5, 1999, and contained no deficiencies.

The application is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. According to the application, the utility's current certificate was not available. Instead, in accordance with Rule 25-30.037(2)(t), Florida Administrative Code, an explanation was provided of the steps taken to locate the certificate. As for the other requirements for authority to transfer facilities, the application contains the following information.

Noticing. The application contains proof of noticing as required by Rule 25-30.030, Florida Administrative Code. The notices were appropriately given. No response to any of the notices were received and the time for filing such has expired.

Sales Contract, Financing, and Land Ownership. Allowing for the unusual circumstances of the transfer, the application contained sufficient documentation to respond to Rules 25-30.037(2)(g), (h), (i), (k) and (q), Florida Administrative Code, regarding terms of the sale, financing and ownership of the land under the utility facilities. Instead of a sales contract, the application contained a copy of the Court Order which indicates that Coolidge-Valencia Equities, L.P., was the sole and successful

bidder at a bankruptcy auction of the utility. At the time of the execution of the bankruptcy documents, Coolidge-Ft. Myers was substituted for Coolidge-Valencia Equities, L.P. as the transferee. The acquired property, including the utility, was then transferred by Quit Claim Deed from Del Vera to Coolidge-Ft. Myers and a note payable set up between Coolidge-Valencia Equities, L.P. and Coolidge-Ft. Myers for the purchase price of the assets.

According to the Court Order, Coolidge-Valencia Equities, L.P. paid $11,200,000 for the total acquisition including the utility facilities. According to information provided subsequent to the application, the value placed on the utility facilities was the book value of the utility as of December 31, 1996, as reported in the utility's 1996 Annual Report, or $753,907. The application indicates the purchase was financed through the assumption of the outstanding debt between First Union Bank and Del Vera and that the debt instrument was assumed at a discount.

According to Del Vera's existing tariff and the transfer application, customer deposits, guaranteed revenue contracts, developer agreements, customer advances and leases did not exist under the prior owner. Therefore, the disposition of such is not an issue for this transfer.

Annual Reports and RAFs. Staff has confirmed that Del Vera filed annual reports and remitted RAFs through the end of 1996. From 1997 forward, Coolidge-Ft. Myers has timely filed the utility's annual reports and remitted the resulting RAFs. Staff has also confirmed there are no penalties, interest or refunds due.

Environmental Compliance. Pursuant to Rule 25-30.037(2)(p), Florida Administrative Code, the application contains a statement from the buyer that the utility systems are in good working condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). Staff has confirmed the statements with the FDEP.

Financial and Technical Ability. Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application provides statements of Coolidge-Ft. Myers financial and technical ability. In terms of technical ability, the application indicates that Coolidge-Ft. Myers does not have any previous experience in the ownership or operation of a water or wastewater utility system. However, the current owner continues to employ the same personnel as previously employed by Del Vera in the day to day operation of the utility system as well as in the administrative duties related to billing, collection and record keeping. In addition, Coolidge-

Ft. Myers retained the expertise of a former financial officer of a regulated utility dissolved in an unrelated acquisition.

In terms of financial ability, the application contained the current financial statement for Coolidge-Ft. Myers. Such statements appear to indicate adequate assets for both the development of the acquired properties and the maintenance of utility facilities. In addition, the application contained a statement pledging funding and financial reliance for the utility from Coolidge-Ft. Myers.

Public Interest. Also, pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application provides a statement of public interest. Since Coolidge-Ft. Myers acquired the utility at the same time its owners became the developer of the property served by the utility, the application states that the buyer has an inherent interest in ensuring the appropriate operation and continued viability of the utility system. In addition, the application contained a statement that Coolidge-Ft. Myer's intends to fulfill the commitments, obligations and representations of the prior utility owner as they relate to utility matters.

Based on all the above, staff recommends that the transfer of Certificate No. 456-S from Del Vera Limited Partnership to Coolidge-Ft. Myers Realty Limited Partnership d/b/a Heron's Glen Utilities is in the public interest and should be approved. A description of the territory being transferred is appended hereto as Attachment A.

ISSUE 4: What is the rate base of Del Vera Limited Partnership at the time of transfer?

RECOMMENDATION: The rate base is $640,512 as of December 31, 1996. (BRADY)

STAFF ANALYSIS: Rate base for the utility was established by Order No. 22682, issued March 13, 1990, in Docket No. 890975-SU, at $735,577. This represented 80% design capacity. Since the utility was a true original for which no plant had yet been constructed, the rate base established was based on the projected costs of constructing a 250,000 gallons per day (GPD) plant sized to serve approximately 1,230 ERCs, or the first two phases of the total development. As of year-end 1996, the utility reported only 334 residential connections and 1 general service connection and a net book value of $753,907.

As mentioned earlier, an audit of the utility's books was requested by staff. The resulting report was filed on January 5, 2000, and contained the following exception and disclosure impacting rate base.

Audit Exception No. 1. Land

The utility's 1996 annual report recorded $120,893 for land and $20,238 for land improvements. The auditor could verify the value of the land improvements in an external engineering report prepared for the mortgage company. The original value of the land was derived from the documentary stamps on the 1989 warranty deed and a measurement by staff of the total acreage in the legal description attached to that deed. This provided a value of $9,491 per acre. The auditor then determined that the land occupied by the wastewater treatment plant was 72% of an acre and the land under a trailer occupied by plant operations staff was an additional 7% of an acre. The auditor's opinion was that total utility land, exclusive of improvements, should be $7,498 for a recommended adjustment of ($113,395).

Audit Disclosure No. 1. Plant Additions

This disclosure indicates that all original records of the utility could not be found. However, the invoices that could not be found (lift stations, the collection lines and services, and the force main), were contributed property and any adjustments thereto would not affect rate base. Also, since the records found for the utility were prepared by an external engineering source and costs were reviewed yearly by an external consultant, the auditor's

opinion was that the numbers found in the utility's annual report would probably result in an accurate rate base. Therefore the auditor has included plant in rate base for which no actual invoices could be found.

On January 11, 2000, the utility filed the following generic response to the audit report:

> We have reviewed the audit and while we may not agree with all aspects of it, we are willing to accept the conclusions reached by the audit staff to the extent this forms the basis for the final Commission action in this case. Based upon that acceptance, we will offer no further comment to the conclusions of the Audit Report.

Staff concurs with the auditor's opinions and the resulting adjustments for purposes of this issue in this docket. Nothing in this issue should preclude the buyer from providing actual survey measurements of the land attached to the original warranty deed for consideration in a future rate case proceeding. On the other hand, nothing in this issue should preclude staff from recommending the exclusion of undocumented plant in a future rate case proceeding.

The calculation of wastewater rate base is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2. Based on these schedules, as of December 31, 1996, staff recommends that rate base for Del Vera, for purposes of the transfer, is $640,512. Rate base calculations in a transfer of certificate are used solely to establish the net book value of the property being transferred. As such, the calculations do not include the normal ratemaking adjustments of working capital and used and useful calculations.

SCHEDULE 1

DEL VERA LIMITED PARTNERSHIP
SCHEDULE OF WASTEWATER RATE BASE
AS OF DECEMBER 31, 1996

DESCRIPTION	BALANCE PER UTILITY	AUDIT ADJUSTMENTS	BALANCE PER STAFF
Land	$ 120,893	$(113,395)	$ 7,498
Land Improvements	20,238		20,238
Plant in Service	1,491,090		1,491,090
Contributions in Aid of Construction (CIAC)	(699,786)		(699,786)
Amortization of CIAC	90,285		90,285
Accumulated Depreciation	(268,813)		(268,813)
WASTEWATER RATE BASE	$ 753,907	$(113,395)	$ 640,512

SCHEDULE 2

DEL VERA LIMITED PARTNERSHIP
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS

	EXPLANATION	ADJUSTMENT
Land		
	Limit land to that used by utility plant and trailer	$(113,395)
	TOTAL ADJUSTMENT	$(113,395)

ISSUE 5: Should a positive acquisition adjustment be approved?

RECOMMENDATION: No. (BRADY)

STAFF ANALYSIS: An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. In this instance, there was no contract for the purchase of the utility systems. Instead, systems were acquired by Court Order in a bankruptcy foreclosure proceeding in which the seller's existing debt instruments for the development of a subdivision project was assumed by the buyer at a discount.

The utility facilities were a relatively small part of the overall total acquisition of $11,200,000. According to the application, the value placed on the utility facilities by the buyer was the book value of the utility as of December 31, 1996, as reported in the utility's 1996 annual report. That amount would be $753,907. Based on this evaluation, the acquisition adjustment resulting from the transfer of Del Vera to Coolidge-Ft. Myers is calculated as follows:

Evaluation of utility systems by the buyer	$ 753,907
Rate Base Adjusted to December 31, 1996	$ 640,512
Positive Acquisition Adjustment	$ 113,395

In the absence of extraordinary circumstances, it is the practice of this Commission that the purchase of a utility at a premium or discount shall not affect the rate base calculation. While complicated, the circumstances in this case do not appear to be extraordinary. Further the utility has not requested an acquisition adjustment. Staff therefore recommends that a $113,395 positive acquisition adjustment not be included in the calculation of rate base.

ISSUE 6: Should the rates and charges approved for Del Vera Limited Partnership be continued?

RECOMMENDATION: Yes, the rates and charges approved for the utility should be continued except that a previously approved treated effluent rate of $.05 per 1,000 gallons should be made effective. The tariff reflecting the transfer should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. (BRADY)

STAFF ANALYSIS: The utility's current rates and charges for general and residential service were administratively placed into effect on March 31, 1999, pursuant to a tariff correction of a 1998 price index. The utility's service availability charges were placed into effect July 26, 1991, pursuant to a name change. The utility bills quarterly; does not require customer deposits; and charges the standard wastewater miscellaneous fees.

By Order No. 22157, issued November 6, 1989, in Docket No. 890975-SU, the Commission granted the utility an original wastewater certificate and set initial rates. That order was protested by the utility because of the rate for treated effluent service. By Order No. 23437, issued March 13, 1990, in the same docket, a stipulated settlement rate for treated effluent of $.05 per 1,000 gallons was approved. However, a treated effluent schedule was never included in the utility's tariff and should be established.

WASTEWATER
GENERAL SERVICE

Quarterly Base Facility Charges

Meter Size	Charge
5/8" x 3/4"	$ 14.30
1"	35.75
1-1/2"	71.49
2"	114.38
3"	228.78
4"	357.47
6"	714.94
8"	1,143.91

Gallonage Charge $ 2.29
(Per 1,000 gallons)

WASTEWATER
RESIDENTIAL SERVICE

Quarterly Base Facility Charge	$	14.30
Gallonage Charge (Per 1,000 gallons--10,000 gallon monthly maximum)	$	2.29

WASTEWATER SERVICE
SERVICE AVAILABILITY FEES AND CHARGES

Plant Capacity Charge		
Residential-per ERC (200 GPD)	$	200.00
All other - per gallon	$	1.00

WASTEWATER SERVICE
TREATED EFFLUENT SERVICE

Quarterly Base Facility Charge	$	N/A
Gallonage Charge Per 1,000 Gallons	$	.05

Staff recommends that Coolidge-Ft. Myers Limited Partnership d/b/a Heron's Glen Utilities continue to charge the utility's existing rates and charges until authorized to change by the Commission with the addition of a previously approved treated effluent rate of $.05 per 1,000 gallons. Coolidge-Ft. Myers has filed a wastewater tariff reflecting the transfer including a schedule for treated effluent service. The tariff should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

ISSUE 7: Should this docket be closed?

RECOMMENDATION: Yes, if no timely protest is received to the proposed agency action issues, the order should become final and effective upon the issuance of a Consummating Order and the docket should be closed. (FUDGE)

STAFF ANALYSIS: If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the order should become final and effective upon the issuance of a Consummating Order and the docket should be closed.

ATTACHMENT A

TERRITORY DESCRIPTION
DEL VERA LIMITED PARTNERSHIP
LEE COUNTY

WASTEWATER SERVICE, ONLY

Township 43 South, Range 24 East
Sections 2, 3, 4, 5, & 10

A parcel of land in Sections 2, 3, 4, 5, & 10, Township 43 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the NE corner of Section 3, Township 43 South, Range 24 East; thence N.89°57'30"W., along the north line of the NE 1/4 of said Section 3 for a distance of 355.01 feet to an intersection with the westerly right of way line of the former S.A.L. Railroad and the Point of Beginning of the herein described parcel of land; thence continue N.89°57'30"W., along said north line for a distance of 2,313.55 feet to the NE corner of the NW 1/4 of said Section 3; thence S.89°48'38"W., along the north line of said NW 1/4 for a distance of 2,667.53 feet to the NW corner of said Section 3; thence N.89°42'40"W., along the north line of Section 4, Township 43 South, Range 24 East, for a distance of 5,335.96 feet to the NW corner of said Section 4; thence S.89°33'20"W., along the north line of the NE 1/4 of Section 5, Township 43 South, Range 24 East, for a distance of 1,871.76 feet to an intersection with the northeasterly line of North Fort Myers Park according to the plat thereof as recorded in Plat Book 9, Page 113 of the public records of Lee County, Florida; thence S.26°03'40"E., along said northeasterly line for a distance of 318.66 feet to an intersection with the southeasterly line of Lot 3 of said plat of North Fort Myers Park; thence S.63°56'20"W., along said southeasterly line for a distance of 300.77 feet to an intersection with the northeasterly right of way line of Tamiami Trail (State Road 45, U.S. 41) being a point on the arc of a circular curve concave to the southwest, said point bearing N.63°13'24"E., from the radius point of said curve; thence southeasterly along the arc of said curve having for its elements a radius of 7,739.44 feet and a central angle of 0°42'56" for a distance of 96.66 feet to the point of tangency; thence S.26°03'40"E., along said northeasterly right of way line for a distance of 1,943.40 feet to an intersection with the southeasterly line of the northwesterly one half of lot 24 of the aforementioned plat of North Fort Myers Park; thence N.63°56'20"E., along said southeasterly line for a distance of 300.17 feet to an intersection with the aforementioned northeasterly line of North Fort Myers Park; thence N.26°03'40"W., along said northeasterly line for a distance of 4.46 feet to an intersection with the southerly line of that certain parcel of land described in Official Record Book 1032 at Page 707 of the aforementioned public records; thence N.89°48'47"E., along said southerly line for a distance of 3,357.09 feet to an

intersection with the east line of that certain parcel of land described in Official Record Book 410 at Page 690 of the aforementioned public records; thence S.00°06'41"E., along said east line for a distance of 2,040.37 feet to an intersection with the south line of that certain parcel of land described in Deed Book 224 at Page 437 of the aforementioned public records; thence S.89°48'47"W., along said south line for a distance of 2,698.40 feet to an intersection with the aforementioned northeasterly right of way line of Tamiami Trail; thence S.26°03'40"E., along said northeasterly right of way line for a distance of 370.00 feet; thence N.89°48'47"E., for a distance of 3,845.26 feet; thence N.00°11'13"W., for a distance of 332.91 feet to an intersection with the aforementioned south line of that certain parcel of land described in Deed Book 224 at Page 437 of the aforementioned public records; thence N.59°48'47"E., along said south line for a distance of 4,368.87 feet to an intersection with the northerly extension of the west line of that certain parcel of land described in Official Record Book 388 at Page 80 of the aforementioned public records; thence S.00°02'36"W., along said northerly extension and along the west line of said parcel for a distance of 2,553.91 feet; thence S.89°56'45"E., along the south line of said parcel for a distance of 1,711.91 feet; thence N.00°02'36"E., along the east line of said parcel for a distance of 16.72 feet to an intersection with the south line of that certain parcel of land described in Official Record Book 1516 at Page 1802 of the aforementioned public records; thence S.89°56'45"E., along said south line for a distance of 441.17 feet; thence N.00°02'36"E., along the east line of said parcel for a distance of 2,546.26 feet to an intersection with the aforementioned south line of that certain parcel of land described in Deed Book 224 at Page 437 of the aforementioned public records; thence N.89°48'47"E., along said south line for a distance of 775.85 feet to an intersection with the aforementioned westerly right of way line of the former S.A.L. Railroad; thence N.11°11'01"W., along said westerly right of way line for a distance of 4,190.51 feet to the Point of Beginning.

Township 43 South, Range 24 East

Section 4 A tract or parcel of land lying in Section 4, Township 43 South, Range 24 East, Lee County, Florida, which tract or parcel is described as follows:

From the SE corner of Lot 45 of Unit No. 1, North Fort Myers Park according to a plat thereof recorded in Plat Book 9 at Page 113 public records of Lee County, Florida, run S.89°59'E., along the south line of the lands conveyed by Deed recorded in Deed Book 224 at Page 437 of said public records and along the south line of Section No. 1, Unit No. 1, Lakeville, according to a plat thereof recorded in Plat Book 10, Page 48 of said public records and Section No. 1, Unit No. 2, Lakeville, according to a plat thereof recorded in Deed Book 298 at Pages 303 to 306, inclusive, of said public records for a distance of 1,940 feet to the SE corner of said Section No. 1, Unit No. 2 and the Point of Beginning of the lands herein described:

From said Point of Beginning continue S.89°59'E. along the south line of the lands conveyed by said Deed recorded in Deed Book 224 at Page 437, for a distance of 425 feet to a concrete monument at the SW corner of the lands described in and conveyed by Deed recorded in Deed Book 300, Page 633, of said public records; thence run N.00°01'E., along the west line of said lands for a distance of 2,040 feet to a point in the centerline of a roadway easement 80 feet wide which point is marked by a concrete monument; thence run N.89°59'W., along said centerline for a distance of 500 feet to a point on a prolongation of the east line of said Section No. 1, Unit No. 2, Lakeville, which point is 40 feet north of the NE corner of said Section No. 1, Unit No. 2; thence run south along said prolongation and along the easterly boundary of said Section No. 1, Unit No. 2, S.00°01'W., for a distance of 335 feet, thence run S.89°59'E., for a distance of 60 feet, thence run S.00°01'W., for a distance of 600 feet to a point of curvature; thence run southeasterly along the arc of a curve of radius 236.25 feet for a distance of 131.72 feet, thence run S.89°59'E., for a distance of 39.71 feet, thence run S.00°01'W., for a distance of 125 feet, thence run N.89°59'W., for a distance of 35.48 feet, thence run S.00°01'W., for a distance of 650 feet, thence run N.89°59'W., for a distance of 25 feet, and thence run S.00°01'W., for a distance of 205 feet to the SE corner of said Section No. 1, Unit No. 2, Lakeville, and the Point of Beginning.

Subject to roadway easements over and along the north 40 feet and over and along the north 80 feet of the south 855 feet being an extension of Lakeville Drive as shown on said plat of Section No. 1, Unit No. 2, Lakeville. Also granting an easement for roadway purposes over and along a strip of land 40 feet in width north of and adjacent to the northern boundary of the above described lands and an easement for roadway purposes 80 feet in width extending from the westerly boundary of the above described lands westerly along the northern boundaries of said Section No. 1, Unit No. 2, and Section No. 1, Unit No. 1 of Lakeville and through Lot 24 of said Unit No. 1, Fort Myers Park to the Tamiami Trail (State Road No. 45).