

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: APPROVAL OF SETTLEMENT AGREEMENT (AGREED ORDER OF TAKING AND STIPULATED FINAL JUDGMENT) IN THE CASE OF: STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION v. THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, et al., Circuit Court Case No. 14-26240-CA 31 (EMINENT DOMAIN ACTION AT SWEETWATER ELEMENTARY SCHOOL)

On October 13, 2014, the Florida Department of Transportation ("FDOT") filed an eminent domain action to acquire a portion of the campus at Sweetwater Elementary School, identified as "Parcel 118." FDOT asserted that it needs the subject property for the purpose of widening 107th Avenue in order to accommodate an increase in the number of existing lanes.

The parties have now reached a tentative agreement on the matter, which is expected to result in an "Agreed Order of Taking and Stipulated Final Judgment" (attached hereto). The Court has provided the parties thirty (30) in which to finalize said settlement of the matter or to file proposed Orders of taking in the case. Accordingly, this item is being presented for the Board's consideration and seeks authorization for the Board Attorney to seek court approval of the Agreed Order of Taking and Stipulated Final Judgment. The Order of Taking will vest fee simple title to Parcel 118 ("Subject Parcel") in the Department and awarding full compensation to the School Board for the Department's acquisition of the Subject Parcel.

REVISED

The essential terms of the proposed settlement are as follows:

- "Parcel 118," the property which is the subject of the taking is described as:

SECTION N/A (ITEM SEGMENT:
412479-3)
STATE ROAD: 985 (SW 107TH AVENUE) MIAMI-DADE
COUNTY DESCRIPTION: FEE SIMPLE

Parcel 118

FIN No. 412479-3

A portion of Tract 7, Block 3, RICHARDSON-KELLETT COMPANY, as recorded in Plat Book 1, at Page 19, of the Public Records of Miami-Dade County, Florida, said land lying and being in the Southwest ¼ (SW ¼) of Section 5, Township 54 South, Range 40 East, being more particularly described as follows:

Commence at the Northeast corner of the Southwest ¼ of said Section 5, said point being a 60D spike nail thence S 87°49'18" W, along the North line of the Southwest ¼ of said Section 5, for a distance of 2,634.81 feet to the Northwest corner of the Southwest ¼ of said Section 5; thence S 04°36'01" E, along the West line of the Southwest ¼ of said Section 5, for a distance of 674.87 feet; thence N 85°23'59" E at right angles to the last described course for a distance of 40.00 feet to a point on the Easterly existing Right-of-Way line of State Road No.

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985 (S.W. 107th Avenue) as show on Florida Department of Transportation Right-of-Way Map for State Road No. 985 (S.W. 107th Avenue), Section 87519-2603 (87072), recorded in road Plat Book 112, at Page 69, of the Public Records of Miami-Dade County, Florida; said point being the POINT OF BEGINNING of the following described parcel of land:

thence N 85°23'59" E for a distance of 13.22 feet; thence S 05°25'55" E for a distance of 305.34 feet; thence S 04°36'13" E for a distance of 167.44 feet; thence S 87°47'53" W for 17.67 feet to a point on the aforesaid Easterly existing Right-of-Way line of State Road No. 985 (SW 107th Avenue); thence N 04°36'01" W, along said Easterly Right-of-Way line of State Road No. 985 (S.W. 107th Avenue) for a distance of 472.01 feet to the POINT OF BEGINNING.

- In full and complete settlement of the School Board's claims for compensation, the FDOT shall pay the sum of one million, two hundred eight thousand, six hundred and eighty-two dollars and no cents (\$1,208,682.00) by depositing the specified amount into the Registry of the Clerk of the Circuit Court. Said deposit shall be made within twenty (20) days from the date that the Agreed Order of Taking and Stipulated Final Judgment is entered.
- In recognition that the Subject Parcel is a portion of a fully functional and operating elementary school (Sweetwater Elementary), FDOT and the School Board shall cooperate to enable FDOT to timely construct Project No. 412479-3 ("Project") and to enable the School Board to timely reconfigure bus and vehicular access, parking, drainage, lighting, landscaping, and related design elements along 107th Avenue upon the remainder School Board property adjacent to the subject Parcel.
- The School Board shall have rent-free and extended possession of the subject Parcel through June 10, 2016 and shall have until August 15, 2016, to reconfigure or "cure" the remainder School Board property adjacent to the subject Parcel. The School Board, subject to the limitations of § 768.28, Florida Statutes, shall indemnify and hold FDOT harmless for any claims, suits, or demands that may arise during, or as a result of the School Board's extended possession of the subject Parcel.
- The School Board agrees, subject to the limitations set forth in § 768.28, Florida Statutes, to indemnify and hold harmless FDOT from and against any and all claims, suits, damages, or causes of action arising out of the negligent acts of the School Board in connection with the provisions of the Agreed Order.
- The court will retain jurisdiction to award attorneys' fees, experts' fees, and litigation costs, taxable against FDOT, and in favor of the School Board, pursuant to applicable state law.

REVISED

RECOMMENDED: That the School Board of Miami-Dade County, Florida, authorize the School Board Attorney to seek court approval of the "Agreed Order of Taking and Stipulated Final Judgment" in the matter of State of Florida Department of Transportation v. The School Board of Miami-Dade County, Florida, et al., Circuit Court Case No. 14-26240-CA 31, approving the settlement of the eminent domain action at Sweetwater Elementary School, vesting fee simple title to "Parcel 118" as described herein, and in the attached proposed Agreed Order, in the Florida Department of Transportation and awarding full compensation to the School Board for the Department's acquisition of the Subject Parcel.

REVISED

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-26240 CA 31

PARCEL NO.: 118

STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION,

Petitioner,

v.

THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA, et al.,

Respondents.

AGREED ORDER OF TAKING AND STIPULATED FINAL JUDGMENT

This matter came before the Court upon agreement and stipulation of Petitioner, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ("Department"), and Defendant, SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA ("School Board"), for entry of an order of taking vesting fee simple title to Parcel 118 ("Subject Parcel") in the Department and awarding full compensation to the School Board for the Department's acquisition of the Subject Parcel. Based upon the agreement and stipulation of the Department and the School Board, and their joint motion for entry of this Agreed Order of Taking and Stipulated Final Judgment, it is ORDERED AND ADJUDGED that:

JURISDICTION AND COMPLIANCE
WITH STATUTORY CONDITIONS PRECEDENT

1. The Court has jurisdiction over the subject matter and the parties to this cause, including all persons and entities claiming any equity, lien, title, or other interest in or to the Subject Parcel, which is described as:¹

SECTION N/A (ITEM SEGMENT: 412479-3)
STATE ROAD: 985 (SW 107TH AVENUE) MIAMI-DADE COUNTY
DESCRIPTION: FEE SIMPLE

Parcel 118

FIN No. 412479-3

A portion of Tract 7, Block 3, RICHARDSON-KELLETT COMPANY, as recorded in Plat Book 1, at Page 19, of the Public Records of Miami-Dade County, Florida, said land lying and being in the Southwest $\frac{1}{4}$ (SW $\frac{1}{4}$) of Section 5, Township 54 South, Range 40 East, being more particularly described as follows:

Commence at the Northeast corner of the Southwest $\frac{1}{4}$ of said Section 5, said point being a 60D spike nail thence S 87°49'18" W, along the North line of the Southwest $\frac{1}{4}$ of said Section 5, for a distance of 2,634.81 feet to the Northwest corner of the Southwest $\frac{1}{4}$ of said Section 5; thence S 04°36'01" E, along the West line of the Southwest $\frac{1}{4}$ of said Section 5, for a distance of 674.87 feet; thence N 85°23'59" E at right angles to the last described course for a distance of 40.00 feet to a point on the Easterly existing Right-of-Way line of State Road No. 985 (S.W. 107th Avenue) as show on Florida Department of Transportation Right-of-Way Map for State Road No. 985 (S.W. 107th Avenue), Section 87519-2603 (87072), recorded in road Plat Book 112, at Page 69, of the Public Records of Miami-Dade County, Florida; said point being the POINT OF BEGINNING of the following described parcel of land:

thence N 85°23'59" E for a distance of 13.22 feet; thence S 05°25'55" E for a distance of 305.34 feet; thence S 04°36'13" E for a distance of 167.44 feet; thence S 87°47'53" W for 17.67 feet to a point on the aforesaid Easterly existing Right-of-Way line of State Road No. 985 (SW 107th Avenue); thence N 04°36'01" W, along said Easterly Right-of-Way line of State Road No. 985 (S.W. 107th Avenue) for a distance of 472.01 feet to the POINT OF BEGINNING.

¹ The following potential defendants / claimants identified in the Petition in Eminent Domain ("Petition") have failed to respond to it: all known and unknown owners, lessees, executors, administrators, trustees, mortgagees, creditors, lien holders, persons in possession, and all persons, estates, heirs, successors or assigns having or claiming any right, title or interest in the subject parcel. Therefore, their interests, if any, shall be deemed extinguished, and none shall take anything from this matter.

Containing 7,661 square feet, more or less.

John Liptak, PSM
Triangle Surveying & Mapping, Inc.
Date: 07/12/13

2. The Department has complied with Sections 73.031 and 74.041, Florida Statutes, and has properly served the School Board and all other persons and entities claiming any equity, lien, title, or other interest in or to the Subject Parcel with a Summons, a Petition, a Notice of Lis Pendens, and an Amended Declaration of Taking and Estimate of Value, the originals of which have been filed by the Department with the Clerk of Court. The pleadings in this cause are sufficient and the Department has properly exercised its delegated authority for a proper purpose.

3. The Amended Declaration of Taking and Estimate of Value filed in this cause was made in good faith and based upon a valid appraisal, and this Agreed Order of Taking and Stipulated Final Judgment is being entered after delivery of proper notice to all persons and entities claiming any equity, lien, title, or other interest in or to the Subject Parcel, and subsequent to a hearing held on January 21, 2015 that provided all persons and entities claiming any equity, lien, title, or other interest in or to the Subject Parcel with a sufficient opportunity to be heard.

VESTING OF TITLE IN THE DEPARTMENT
AND SETTLEMENT OF COMPENSATION PAYABLE FOR THE ACQUISITION

4. Upon deposit as set forth in Paragraph 5 below, all right, title, and interest in the Subject Parcel as specified in the Petition, save and except for an easement of the Miami-Dade County Water and Sewer Department recorded in Official Records Book 13243 at Page 2336 of

Agreed Order of Taking and Stipulated Final Judgment
Case No.: 14-26240 CA 31
Parcel No. 118

the Public Records of Miami-Dade County, shall vest in the Department free and clear of outstanding real property taxes or other liens, recorded or unrecorded, due and owing to Miami-Dade County or any other governmental jurisdictional authority named as a party. The Department's acquisition herein is subject to the Miami-Dade County Water and Sewer Department easement identified above, which is not being acquired, and shall remain in full force and effect.

5. In full and complete settlement of the School Board's claims for compensation, the Department shall pay the sum of ONE MILLION TWO HUNDRED EIGHT THOUSAND SIX HUNDRED EIGHTY-TWO DOLLARS AND NO CENTS (\$1,208,682.00) by depositing the specified amount into the Registry of the Clerk of the Circuit Court. Deposit shall be made within twenty (20) days from the date that this Agreed Order of Taking and Stipulated Final Judgment is entered, and shall be evidenced by the Department timely filing notice with the Clerk of the Circuit Court that the deposit has been made.

6. The Department's deposit of the amount specified in Paragraph 5 above shall be subject to apportionment, if any, among defendants who have responded to the Petition, and shall constitute full payment of any and all claims by the School Board arising from the taking of the Subject Parcel.

7. Upon entry of this Agreed Order of Taking and Stipulated Final Judgment, claims by the School Board for full compensation for property taken, severance damages, cost to cure expenses, statutory interest, and any and all other claims for compensation or damages of any

nature whatsoever, shall be adjudicated. The amount specified in Paragraph 5 above, however, does not include payment of attorney's fees, experts' fees, and litigation costs taxable against the Department under Sections 73.091 and 73.092, Florida Statutes. The School Board's claims for attorney's fees, experts' fees, and litigation costs shall be subject to subsequent adjudication by this Court.

EXTENDED POSSESSION OF THE SUBJECT PARCEL,
CURE OF THE REMAINDER PROPERTY, AND HARMONIZATION

8. In recognition that the Subject Parcel is a portion of a fully functional and operating elementary school (Sweetwater Elementary; "School"), the Department and the School Board shall cooperate to enable the Department to timely construct Project No. 412479-3 ("Project") and to enable the School Board to timely reconfigure bus and vehicular access, parking, drainage, lighting, landscaping, and related design elements along 107th Avenue upon the remainder School Board property adjacent to the Subject Parcel ("Remainder"). Reconfiguration of the Remainder shall not interfere with the Project, and shall be done in a manner that ensures the continuous and safe movement of students, teachers, employees, parents and visitors to the School.

9. The School Board shall have rent-free possession of the Subject Parcel through June 10, 2016 ("Extended Possession"), subject to the following limitations. The School Board shall:

- (a) maintain the Subject Parcel and all improvements upon it;

(b) construct no improvements upon the Subject Parcel without written consent of the Department;

(c) agree, subject to the limitations set forth in Section 768.28, Florida Statutes, to indemnify and hold harmless the Department from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of the School Board in connection with the provisions of this Agreed Order of Taking and Stipulated Final Judgment. The School Board is a state agency or subdivision as defined in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the School Board's liability beyond that provided in Section 768.28, Florida Statutes.

(d) assume responsibility for repairs to the Subject Parcel and for payment of all maintenance expenses and costs arising from its possession of the Subject Parcel;

(e) provide the Department, upon reasonable notice and conditions, with access to the Subject Parcel for testing, surveying, or other field work that is reasonably necessary for the Project; and

(f) stipulate to the enforceability of the self-executing writ of possession attached as Exhibit "A".

10. The School Board shall have an opportunity to reconfigure or "cure" ("Cure") the Remainder upon its own initiative and at its own expense and risk, subject to the following conditions:

(a) The School Board shall be responsible for site planning, permitting, bidding, designing, constructing, funding, and all other aspects of implementing a Cure, if any; and

(b) The Department shall maintain throughout the Project full functionality of bus and vehicular driveways along 107th Avenue as continuous means of ingress and egress during all days that the School is in session, from a period beginning one hour before classes begin and ending one hour after classes end.

11. The School Board shall not interfere with construction of the Department's Project. In order to enable the Department to harmonize its construction of the Project with vehicular and pedestrian means of ingress and egress ("Driveways") upon the Remainder, the School Board shall as expeditiously as practical, provide the Department with sufficient design specifications of its Cure, if any, to enable the Department to harmonize construction of the Project with the Remainder. The Department agrees that there shall be no construction upon the Subject Parcel prior to August 15, 2016. The Driveways that exist upon the Remainder at the time of construction upon the Subject Parcel shall be harmonized with the Project. To the extent that it is reasonably necessary for the Department to operate upon or improve the Remainder for the purpose of harmonizing Driveways as they exist at the time of construction, the School Board shall issue a license to enable the Department to accomplish such harmonization.

RETENTION OF JURISDICTION

12. The Court retains jurisdiction of this case and the parties to this cause in order to:

- (1) permit withdrawal and apportionment, if any, of the amount specified in Paragraph 5 above;
- (2) award attorney's fees, experts' fees, and litigation costs taxable against the Department under Sections 73.091 and 73.092, Florida Statutes;
- (3) enforce the terms of extended possession of the Subject Parcel, Cure of the Remainder, and harmonization as specified in Paragraphs 8 through 11 above; and
- (4) enforce all other terms, conditions, or provisions of this Agreed Order of Taking and Stipulated Final Judgment.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida on

_____.

MIGNA SANCHEZ-LLORENS
CIRCUIT COURT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Conformed copies:
All counsel on attached Service List

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 14-26240 CA 31

PARCEL NO.: 118

STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION,

Petitioner,

v.

THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA, et al.,

Respondents.

WRIT OF POSSESSION

THE STATE OF FLORIDA: To the Sheriff of MIAMI-DADE County, Florida:

YOU ARE COMMANDED to remove all persons from a linear portion of real property that runs along SW 107th Avenue adjacent to Sweetwater Elementary School in Sweetwater, Miami-Dade County, Florida, described as:

SECTION N/A (ITEM SEGMENT: 412479-3)
STATE ROAD: 985 (SW 107TH AVENUE) MIAMI-DADE COUNTY
DESCRIPTION: FEE SIMPLE

Parcel 118

FIN No. 412479-3

A portion of Tract 7, Block 3, RICHARDSON-KELLETT COMPANY, as recorded in Plat Book 1, at Page 19, of the Public Records of Miami-Dade County, Florida, said land lying and being in the Southwest ¼ (SW ¼) of Section 5, Township 54 South, Range 40 East, being more particularly described as follows:

Commence at the Northeast corner of the Southwest ¼ of said Section 5, said point being a 60D spike nail thence S 87°49'18" W, along the North line of the Southwest ¼ of said Section 5, for a distance of 2,634.81 feet to the Northwest corner of the Southwest ¼ of said Section 5; thence S 04°36'01" E, along the West line of the Southwest ¼ of said Section 5, for a distance of 674.87 feet; thence N 85°23'59" E at right angles to the last described course for a distance of 40.00 feet to a point on the Easterly existing Right-of-Way line of State Road No. 985 (S.W. 107th Avenue) as show on Florida Department of Transportation Right-of-Way Map for State Road No. 985 (S.W. 107th Avenue), Section 87519-2603 (87072), recorded in road Plat Book 112, at Page 69, of

Exhibit "A"

the Public Records of Miami-Dade County, Florida; said point being the POINT OF BEGINNING of the following described parcel of land:

thence N 85°23'59" E for a distance of 13.22 feet; thence S 05°25'55" E for a distance of 305.34 feet; thence S 04°36'13" E for a distance of 167.44 feet; thence S 87°47'53" W for 17.67 feet to a point on the aforesaid Easterly existing Right-of-Way line of State Road No. 985 (SW 107th Avenue); thence N 04°36'01" W, along said Easterly Right-of-Way line of State Road No. 985 (S.W. 107th Avenue) for a distance of 472.01 feet to the POINT OF BEGINNING.

Containing 7,661 square feet, more or less.

John Liptak, PSM
Triangle Surveying & Mapping, Inc.
Date: 07/12/13

and to put the Florida Department of Transportation, and its agents, employees and/or contractors, in possession of it.

This Writ shall not be executed prior to June 10, 2016.

Dated on _____
Harvey Ruvin, as Clerk of the Court

As Deputy Clerk

Agreed Order of Taking and Stipulated Final Judgment
Case No.: 14-26240 CA 31
Parcel No. 118

**JOINT MOTION FOR ENTRY OF THE ABOVE
AGREED ORDER OF TAKING AND STIPULATED FINAL JUDGMENT**

Petitioner, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
("Department"), and Defendant, SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA
("School Board"), jointly move for entry of the above Agreed Order of Taking and Stipulated
Final Judgment.

STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION

SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____ Date: _____

By: _____ Date: _____

Name: _____
Position: _____

Name: _____
Position: _____

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Counsel for Petitioner
State of Florida Department
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Facsimile: 954-764-7770

By: _____ Date: _____
Lillian Valdespino
Florida Bar No. 608327

By: _____ Date: _____
Mitchell Burnstein
Florida Bar No. 813249

Agreed Order of Taking and Stipulated Final Judgment
Case No.: 14-26240 CA 31
Parcel No. 118

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel and parties on the attached Service List (in the manner indicated) this _____ day of _____, 2015.

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SERVICE LIST

*State of Florida Department of Transportation
v. The School Board of Miami-Dade County, et al.*

<p>Lillian Valdespino, Esq. State of Florida Department of Transportation 1000 N.W. 111 Avenue Room 6136 Miami, FL 33172 Telephone: 305-470-5435 Facsimile: 305-470-5104</p> <p>Email: Lillian.Valdespino@dot.state.fl.us Wilma.Morillo@dot.state.fl.us</p> <p><i>Counsel for Petitioner State of Florida Department of Transportation</i></p>	<p>Mitchell J. Burnstein Peter D. Waldman Joanna D. Thomson Weiss Serota Helfman Cole Bierman & Popok, P.L. 200 East Broward Boulevard, Suite 1900 Fort Lauderdale, FL 33301 Telephone: 954-763-4242 Facsimile: 954-627-3475</p> <p>Email: mburnstein@wsh-law.com lbrewley@wsh-law.com jthomson@wsh-law.com msarraff@wsh-law.com</p> <p><i>Counsel for Respondent The School Board of Miami-Dade County</i></p>
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