

LICENSE AGREEMENT FOR
SANDY LANE RIGHT-OF-WAY OCCUPATION, DRAINAGE PIPE
CONSTRUCTION AND MAINTENANCE

THIS License AGREEMENT is made this 20th day of November 2007 between SEMINOLE GULF RAILWAY, L.P., a Delaware Limited Partnership ("licensor") and LEE COUNTY, a political subdivision of the State of Florida ("licensee").

WHEREAS, Licensor owns the track and other Rail Facilities (the "Rail Facilities") comprising its main line of railroad; and

WHEREAS, the Rail Facilities occupy the right-of-way owned by CSX Transportation, Inc. ("CSXT") and leased to Licensor under a lease agreement dated as of November 13, 1987 (the "Lease Agreement"); and

WHEREAS, Licensor has agreed to grant Licensee a License to maintain and use, for the purpose of conducting stormwater, within the railroad right-of-way through pipes placed at approximately 90 degree angles as follows: (a) one 30" RCP outfall pipe that conducts water into a swale (located at approximately Railroad Milepost AX 981.28, of the Arcadia-Vanderbilt Beach Line at Estero, Florida); (b) two 24" concrete pipes encased in 42" steel casement pipes that cross the right of way and track (located at approximately Railroad Milepost AX 981.28; (c) one 18" RCP outfall pipe to conduct water into a swale (located at approximately Railroad Milepost AX 981.23); and (d) one 29 X 45" RCP outfall pipe (located at approximately Railroad Milepost AX 980.89) and;

WHEREAS, Licensor has agreed to grant Licensee a License to use and maintain, an equalizer swale and berm, 6442' long (linear) X 30" wide within the Railroad right-of-way, that runs parallel with Licensor's tracks between Railroad Milepost AX 981.38 (Williams Road) and the Railroad Milepost AX 980.41 (Estero River), the total right-of-way encumbered by the equalizer swale and berm is approximately 913,260 square feet and;

WHEREAS, the pipe installations, equalizer swale and berm, and appurtenances supporting the surface water management facility are hereinafter referred to as the "Utility"; and

WHEREAS, Licensor is willing to accord to Licensee a License to use and maintain the Utility, upon and subject to the terms, conditions and limitations set forth in this License Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

1. Licensor, insofar as it has the legal right to do so and in consideration of

the covenants and conditions hereinafter stated on the part of the Licensee to be kept and performed, hereby permits Licensee to improve, use, maintain, repair, renew, and ultimately remove the Utility across, under and parallel to said tracks, right-of-way and property of Licensor at the location shown on Exhibit A attached hereto and made a part hereof.

2. Licensee will pay Licensor within 30 days of receipt of billing for the installation and maintenance of signs, markings and other traffic control devices as may be required by Licensor, public authority or regulation not otherwise installed by Licensor directly at its own cost.

3. Affect of Exhibit A; Activity allowed in the License Area.

- (a) The Utility is public and will be located, constructed and maintained in exact accordance with Exhibit A. No departure may be made from Exhibit A without Licensor's prior written permission; provided, however, if any commission or other regulatory body having jurisdiction, has regulated the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then Licensee must comply with these regulations after providing prior notice to Licensor as to the required departure from Exhibit A.
- (b) This Agreement allows for stormwater drainage and structures as indicated in Exhibit "A". Drainage and structures are limited to those present as of the execution of this Agreement. No additional drainage, drainage pipes or structures, of any kind, from future construction, developments, or projects including future drainage added to the structures and ponds as shown in Exhibit "A", or from any property abutting or adjacent to the Railroad right-of-way, will be permitted under the terms of this License Agreement.
- (c) Supervision over the location of the construction work, inspection of the maintenance, repair, alteration, renewal, relocation and removal of the Utility is subject to the approval of Licensor, or its successors or assigns, whose approval or disapproval will not be unreasonably withheld or delayed.
- (d) The construction, maintenance, repair, alteration or removal of the Utility will be done under such general conditions, including access to the site, as will be satisfactory to the Licensor, and as will not interfere with the proper and safe use, operation and enjoyment of the property by Licensor, or its successors or assigns.
- (e) Licensor's right of supervision over the location of the construction or

maintenance work and inspection of the Utility from time to time thereafter extends for such distance on each side of the Utility, as may, in Licensor's judgment, be necessary to support and sustain the tracks and roadbed of Licensor.

4. Railroad Flagmen.

- (a) Licensee, at its own cost and expense, when performing any work in connection with the Utility must request Licensor to furnish any necessary inspectors, flagmen or watchmen for the protection of any person or property, including persons not parties hereto and their property. Licensor must be notified at least three weeks in advance of the performance of any work in connection with the Utility.
- (b) In addition to, but not in limitation of any of the foregoing provisions, if at any time Licensor deems it necessary to place inspectors, flagmen, or watchmen for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal of the Utility, Licensor has the right to place such inspectors, flagmen, or watchmen, or other persons at the sole cost and expense of the Licensee. Upon receipt of a bill from Licensor, Licensee will promptly pay the Licensor the full cost and expense of such inspectors, flagmen, or watchmen. The furnishing or failure to furnish inspectors, flagmen, or watchmen or other persons by Licensor under this paragraph, however, will not release Licensee from any and all other liabilities assumed by Licensee under the terms of this Agreement, including its obligations under Section 8 hereof.

5. If Licensee desires or is required by Licensor to revise, renew, add to, alter or relocate the Utility in any manner whatsoever, Licensee will submit plans to Licensor for review and approval before any work or alteration of the structure is performed. Licensee's plans will comply with Chapter 1, Part 5 *N* Pipelines of the American Railway Engineering Association Manual For Railway Engineering. Licensor reserves the right to make reasonable adjustments in its charges in connection with any such work, and those charges will be consistent with those customary in the industry for similar services.

6. Licensee is obligated to perform maintenance or renewal of the Utility as is required for the safe operation and maintenance of the properties of Licensor and its lessees. Upon written notice from Licensor, Licensee must promptly make reasonable repairs and renewals as required by Licensor. However, if necessary to protect the property, traffic, patrons or employees of Licensor, or any other person, from damage or injury, Licensor may with notice, or without notice in the event of an emergency or failure to contact Licensee, make repairs and renewals within the License Area that

Licensors deems adequate and necessary, all at the sole cost and expense of Licensee. The costs incurred by Licensor pursuant to this section will be promptly reimbursed to Licensor by Licensee upon written demand.

7. The burden of obtaining all permits and approvals that may be necessary or appropriate is upon Licensee and will be at the sole risk, cost and expense of Licensee whose responsibility it is to comply with all Federal, State, and Local laws and assume all cost, expense and responsibility in connection therewith, without any liability whatsoever on the part of the Licensor, and Licensee hereby agrees to indemnify, protect and save harmless Licensor therefrom, to the extent permitted by Florida law and in accord with paragraph 8.

8. Insurance.

- (a) The sole responsibility for protecting the Utility from the standpoint of safety and the duty to police the Utility rests exclusively on Licensee at all times and under all circumstances. Licensee will take or cause to be taken such precautionary measures as may be necessary to avoid injury to or death of persons or damage to or destruction of property at the Utility. In addition, Licensee must erect, maintain, and renew, at the sole cost and expense of Licensee, appropriate signs or notices, satisfactory to Licensor, and consistent with Federal and State standards to alert the public to the existence of the Utility.
- (b) If Licensor should at any time, and from time to time, request Licensee to take any other reasonable measures to protect the Utility (either new or additional), Licensee, at its sole cost and expense, will promptly cause the measures requested and directed by Licensor to be taken. In the event Licensee fails promptly to do so, Licensor may, at its option, take such measures, and Licensee hereby agrees to pay in the first instance or to reimburse Licensor for the cost and expense thereof.
- (c) Licensee's obligation to indemnify Licensor Entities may not be construed to protect Licensor Entities from their own negligence, and is subject to the limitation set forth in Section 768.28 Florida Statutes; provided, however, if Licensee, at its sole discretion purchases insurance covering the said liability with limits in excess of the statutory limits, Licensee's obligation will extend up to but may not exceed the limits of that insurance. Notwithstanding any provision contained herein, Licensee agrees to reimburse Licensor and CSXT for all cost and expenses for any damage, including settlement, to the land and/or facilities of Licensor and CSXT resulting from Licensee's use of the Utility.
- (d) In conformance with Section 725.06 Florida Statutes, to the extent it

applies to this indemnity, the specific consideration given for the promises of the Licensee set forth in this License Agreement is the right granted to Licensee to continue to use the Utility, together with One Dollar (\$1.00) in hand paid by Licensor to Licensee, receipt whereof is hereby acknowledged and the adequacy of which Licensee accepts as completely fulfilling the obligations of Licensor under the requirements of Section 725.06 Florida Statutes.

- (e) Any contractors employed by Lee County to perform any work on the land area relating to this License or any work relating to any other provisions of this License will be required by County to sign the indemnification agreement attached hereto as Exhibit "B", and to provide the following insurance:

(1) Any contractor employed by the County must agree to carry, with respect to the operations it or any of its subcontractors performs on or about the right-of-way of the Seminole Gulf Railway, the following insurance coverage: Railroad protective liability insurance with per occurrence limit of not less than Six Million Dollars (\$6,000,000) written on the ISO form. The policy must contain NO exclusions. The policy is to name Licensor, as the named insured, and CSX Transportation, Inc. as additional insured.

(2) Comprehensive liability including contractual liability with a combined single limit of Five Million Dollars (\$5,000,000) aggregate. Policy must delete exception for "WORK WITHIN FIFTY FEET OF A RAILROAD" and shall not exclude "UNDERGROUND WORK".

(3) Auto liability with a combined single limit of not less than One Million Dollars (\$1,000,000) with Licensor and CSX Transportation, Inc. as named additional insured.

(4) Workers compensation and employers liability with limits of liability of not less than One Hundred Thousand Dollars (\$100,000) per person and Five Hundred Thousand Dollars (\$500,000) per accident. The policy is to contain a waiver of subrogation against Licensor and CSX Transportation, Inc.

(5) Such policies of insurance must be endorsed to provide 30 days' notice to each name Insured by the insurance company before any reduction to or cancellation of the policies. Licensor must be furnished with a certificate of insurance for the coverage provided for herein indicating conformance to the foregoing.

PLEASE NOTE: Seminole Gulf Railway must have the actual Policy for "Railroad Protective Liability Insurance" in hand prior to the commencement of any work.

- (f) Licensee is currently self-insured. If at any time during the term of this License Agreement Licensee fails to maintain its formal self-insured status, it will obtain insurance coverage as outlined in paragraph 8 (e) above.

9. Licensee is responsible for any settlement caused to the roadbed, right-of-way/or tracks, facilities and appurtenances of Licensor, arising solely or as a result of the Utility, and Licensee agrees to pay to Licensor, on demand, the full cost and expense of repairing or restoring Licensor's facilities.

10. Upon termination of this License Agreement or upon the removal or abandonment of the Utility, all the rights of the Licensee hereunder will cease and terminate, and this instrument will terminate without any liability on the part of either party to the other party except as to any charges and liability accrued prior thereto; and, the obligation of Licensee, at Licensor's request, to remove its Utility from Licensor's property. All property of Licensor must be restored in good condition and to the satisfaction of the Licensor. If Licensee fails or refuses to remove its Utility and appurtenances under the foregoing conditions, Licensor will have the right to do so at the cost and expense of Licensee.

11. As part of the consideration of this License Agreement, Licensee covenants and agrees that no County assessments, taxes or property charges of any kind will be made against Licensor or its property by reason of this Agreement or the existence of the Utility. Licensee further covenants and agrees to pay Licensor, promptly upon receipt of itemized bills rendered therefore, the full amount of any assessments, taxes including if applicable, but not limited to, sales and use taxes or charges of any kind which may be levied, charged, assessed or imposed against Licensor or its respective property by reason of the construction and maintenance of the Utility or any fees or charges related thereto.

12. Assignment

- (a) The rights conferred under this Agreement are the privilege of Licensee only, and no assignment or transfer may be made without the prior consent and written agreement of Licensor.
- (b) In the event Licensee desires to transfer the Utility to any other person, firm or corporation or government entity, Licensee must provide 30 days' prior written notice of the intent to transfer to Licensor. Upon receipt of

such notice, Licensor may terminate this Agreement immediately upon notice delivered to Licensee unless such transfer provides that the receiving entity will assume without limitation all obligations of the Licensee under this License Agreement.

- (c) Despite any transfer of this License by Licensee in violation of this Agreement, Licensee will retain all liability including that which would otherwise be transferred to the Assignee of the License.

13. All costs and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation or removal of the Utility will be borne by Licensee. In the event of any work being performed or materials furnished by Licensor pursuant to the Utility as provided for herein, Licensee agrees to pay to Licensor the cost of materials, plus the current overhead percentages as developed by Licensor for storage, handling, transportation, purchasing and other related material, management expenses, and labor including, but not limited to, fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers' liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses. It is to be understood that the aforementioned material and labor overhead charges will be applied at the rates of the Licensor in effect at the time the work is performed by employees or contractors of Licensor. Licensee agrees to pay such bills within 30 days of the presentation of such bills by Licensor.

Expansion of railroad tracks and relocation of Utility.

- (a) Licensee, is solely responsible for the cost and expense of relocating the Utility improvements within the Leased Parcel or Rail Facility in the event Licensor provides written notice of Licensor's intent to sell or dispose of the "Rail Facilities" or to relinquish its rights relative to the "Lease Agreement", make grade changes, realign, reconstruct or expand the railroad tracks or railroad facility upon the lands owned, now or in the future, by Licensor and subject to this Agreement. Licensee will have at least 30 days, or longer if, exercising due diligence and additional time is deemed necessary to procure all necessary governmental permits, and change the location of the Utility insofar as it is located over, upon or in the Leased Property or Rail Facilities. If the Utility is relocated within the railroad right-of-way, then the relocation must comply with the terms and conditions of this Agreement with respect to the original construction except as to location of the Utility. In the event of the lease, sale or disposal of the Leased Property or Rail Facilities or any part thereof affected by this License, then Licensee shall make such adjustments or relocations in the portion of the Utility over, upon, or in the Leased Property and Rail Facilities of the Licensor as may be required by Licensor or any of its grantees. If Licensee fails or refuses to comply with this

provision, then Licensor may make such repairs or adjustments or changes in location and provide necessary material therefore, at the sole cost and expense of Licensee.

- (b) Licensor reserves the right at any time, if it so desires, to construct an additional track or tracks across that portion of the Utility located on Licensor's property; in such event, Licensee, at its sole cost and expense, will relocate, extend, or encase the Utility as directed by Licensor to avoid interference with the new track alignment. Licensee also has the option to remove the Utility completely from the leased parcel and terminate this lease, provided Licensee restores the property.

15. The burden of obtaining all permits and approvals that may be necessary or appropriate is upon Licensee and will be at the sole risk, cost and expense of Licensee whose responsibility it is to comply with all Federal, State, and Local laws and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of the Licensor, and Licensee, and Licensee hereby agrees to indemnify, protect and save harmless Licensor therefrom, to the extent permitted by Florida law.

16. The terms of this License Agreement are binding and effective upon the parties hereto, and unless and until terminated, as hereinbefore provided, this License Agreement inure to the benefit of and is binding upon the parties hereto, their successors and assigns, subject however, to the provisions of Section 12. Notwithstanding the foregoing, the parties confirm that the Utility is a public utility.

17. All notices that are or may be required to be given, or served or sent by any party to the other parties pursuant to this License Agreement must be in writing and will be deemed properly given or sent, if hand delivered or mailed by registered or certified mail, return receipt requested, with postage prepaid. Each notice, if mailed as indicated, will be deemed sufficiently given, served or sent for all purposes at the time such notice is deposited in the mail properly addressed and, in any event, upon receipt by the addressee. Until any party notifies the others of any new address, notices must be addressed as follows:

If to Licensor:

Seminole Gulf Railway, L.P.
4110 Centerpointe Drive
Suite 207
Fort Myers, Florida 33916
Attn.: Manager, Engineering & Real Estate
Phone: (239) 275-6060

If to Licensee:

Lee County Government
Board of County Commissioners
PO Box 398
Fort Myers, FL 33902-0398
Attn: Public Works Director, and
Director, Department of Transportation

18. Licensee understands that this Agreement does not allow Licensee to install or permit installation of any other utility within the limits of the Utility.

19. This Agreement will continue for the term of the Licensor's Agreement with CSXT. However, Licensor may terminate this Agreement prior to the termination of its Lease with CSXT if Licensee is in default of any of the provisions of this Agreement. In the event Licensee is in default of any of the provisions herein and Licensor is aware of that default, or at such time as Licensor is made aware of that default, Licensor will give Licensee notice thereof and a reasonable opportunity to cure the default. If after a reasonable time Licensee fails to cure the default, or take reasonable steps to cure the default, Licensor will give Licensee written notice of its intent to terminate this Agreement 30 days following receipt of the written notice and this Agreement, and all rights and obligations herein, will terminate.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be duly executed and delivered as of the day and year first above written.

WITNESSES FOR LICENSOR:

By: Edward H. Conley

SEMINOLE GULF RAILWAY, L.P.
By it's General Partner,
SEMINOLE GULF RAILWAY, INC.

By: Harry E. Neeves
Harry E. Neeves
Vice President, Real Estate
And Public Projects



Attest: Charlie Green, Clerk

By: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS
Clerk Of The Courts
LEE COUNTY, FLORIDA

By: [Signature]
Chairman

APPROVED AS TO FORM:

By: [Signature]
County Attorney

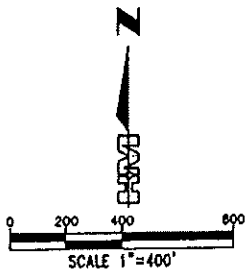
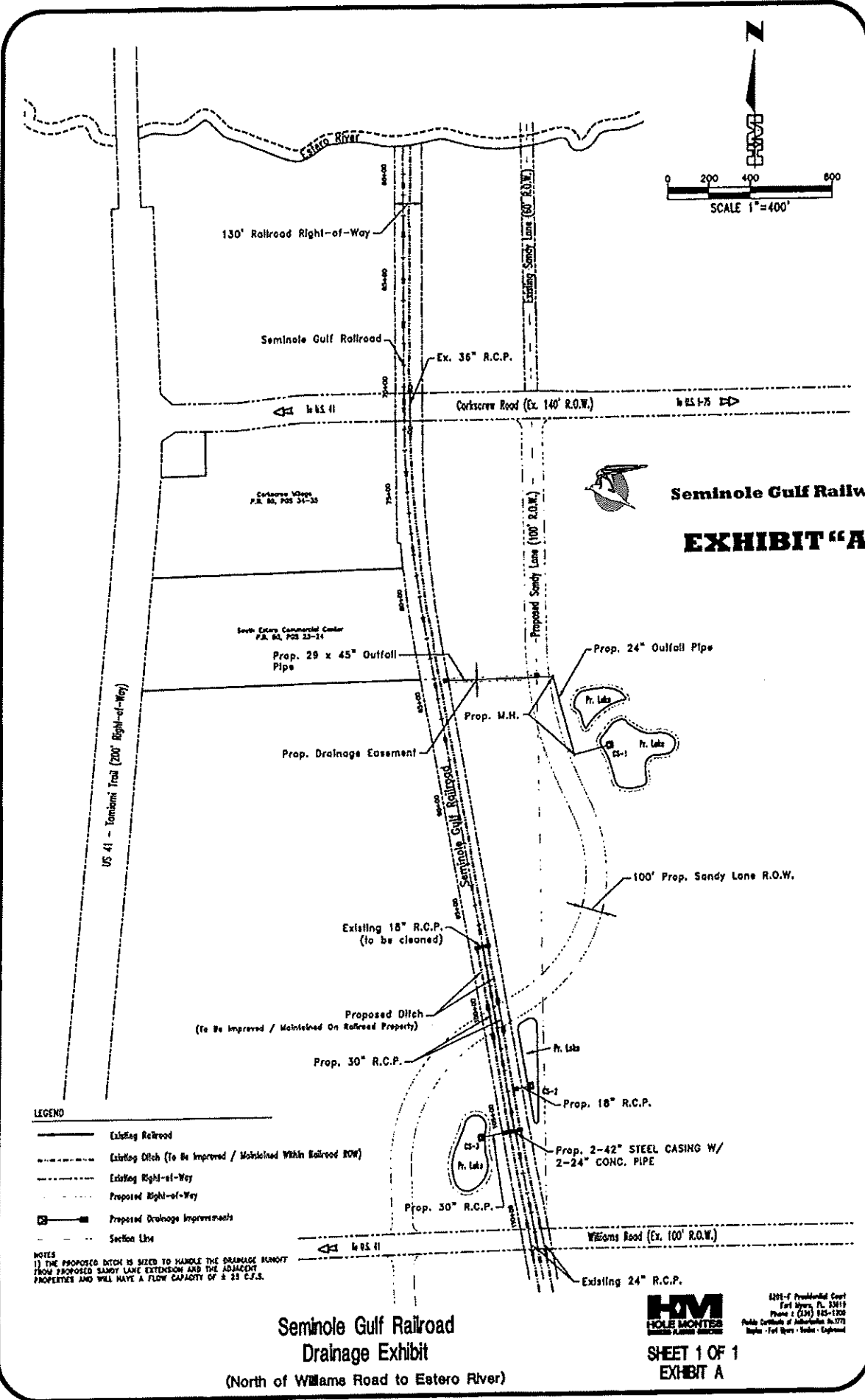
ACKNOWLEDGMENT OF
SEMINOLE GULF RAILWAY, L.P.

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 17 day of October,
2007 by Harry E. Neeves, who is personally known to me.

Virginia M. Gibens Seal
Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Virginia M. Gibens
Commission # DD712183
Expires: SEP. 20, 2011
BONDED THRU ATLANTIC BONDING CO., INC.



Seminole Gulf Railway LP
EXHIBIT "A"

LEGEND

	Existing Railroad
	Existing Ditch (To Be Improved / Maintained Within Railroad ROW)
	Existing Right-of-Way
	Proposed Right-of-Way
	Proposed Drainage Improvements
	Section Line

NOTES
1) THE PROPOSED DITCH IS SIZED TO HANDLE THE DRAINAGE RUNOFF FROM PROPOSED SANDY LANE EXTENSION AND THE ADJACENT PROPERTIES AND WILL HAVE A FLOW CAPACITY OF 2.85 C.F.S.

**Seminole Gulf Railroad
Drainage Exhibit**
(North of Williams Road to Estero River)

HM
HOLE MONTER
REGISTERED PROFESSIONAL ENGINEER
2021-F Professional Seal
Fort Myers, FL 33919
Phone: (239) 825-1200
Public Drafting of Architecture No. 072
Regist. - Fort Myers - Sevier - Englewood

SHEET 1 OF 1
EXHIBIT A

UNIVERSITY MICROFILMS INTERNATIONAL, 300 North Zeeb Road, Ann Arbor, MI 48106-1500, (734) 769-0700, www.umi.com

EXHIBIT "B"
RELEASE AND INDEMNIFICATION

FOR VALUE RECEIVED, and in consideration of being authorized by Seminole Gulf Railway L.P., a Delaware limited partnership ("Licensor") to enter upon the property of Licensor in the performance of the contract between the undersigned contractor (the "CONTRACTOR") and Lee County, Florida ("Licensee"), with respect to the construction which traverses the railroad lines of Licensor (the "Construction") pursuant to the License Agreement attached hereto as Exhibit "A" (the "Agreement"), the undersigned, intending to be legally bound, agree as follows:

1. CONTRACTOR will comply with all the obligations of Licensee with respect to construction and maintenance of the Utility under the Agreement, including, without limitation, the provisions of Paragraph 2 thereof.

2. CONTRACTOR acknowledges and appreciates the risks and danger assumed and attendant upon the exercise of the permission granted hereunder, and assumes all risk of injury (including death) to itself, its officers, employees and agents, or to its property, occurring or arising while or resulting from being upon or about the property of Licensor, regardless of Licensor's fault or negligence.

3. CONTRACTOR, for itself and for its successors and assigns, agrees to release, indemnify, defend and save harmless Licensor and CSX Transportation, Inc. ("CSXT") and their respective officers, employees, agents, successors and assigns, from and against all damages, losses, claims, demands, suits, costs or expenses, including counsel fees, which Licensor or CSXT may suffer or sustain, or be subject to, directly or indirectly, for personal injury, death or property damage suffered by anyone whomsoever (including Licensor, CSXT and CONTRACTOR) and arising out of or caused either wholly or in part by the work performed on Licensor's property by the undersigned, regardless of the fault, failure or negligence of Licensor or CSXT.

4. In conformance with Section 725.06 Florida Statutes, to the extent it applies to this indemnity, the specific consideration given for the promises of the CONTRACTOR set forth in this Release and Indemnification is the right granted CONTRACTOR to perform work on Licensor's property, together with One Dollar (\$1.00) in hand paid by Licensor to CONTRACTOR, receipt whereof is hereby acknowledged, and the adequacy of which CONTRACTOR accepts as completely fulfilling the obligations of Licensor under the requirements of Section 725.06 Florida Statutes.

5. CONTRACTOR agrees to obtain the insurance specified in paragraph 8(e) of the Agreement. If insurance is provided on a claims-made basis, then in addition to the coverage requirements specified in paragraph 8(e) of the Agreement, CONTRACTOR agrees to make every effort to maintain similar insurance for at least two years following completion of the construction or maintenance of the Utility. If the insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with construction of the Utility.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this _____ day of _____, 200__.

ATTEST:

CONTRACTOR:

By: _____

Title: _____

Title: _____