

Ruth Nettles

090349-WS

From: Trina Collins [TCollins@RSBattorneys.com]
Sent: Tuesday, October 13, 2009 4:33 PM
To: Filings@psc.state.fl.us
Cc: jphoy@uiwater.com; keweeks@uiwater.com; pcflynn@uiwater.com; Martin Friedman; Christian W. Marcelli; Trina Collins
Subject: Filing in Docket No. 090349-WS; Cypress Lakes Utilities, Inc.'s Application for a Limited Proceeding Water and Wastewater Rate Increase in Polk County, Florida
Importance: High
Attachments: PSC Clerk 04 (3rd RAI).ltr.pdf

- a. Martin S. Friedman, Esq.
Christian W. Marcelli, Esq.
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Sanlando Center
2180 W. State Road 434, Suite 2118
Longwood, FL 32779
Phone: (407) 830-6331
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Email: cmarcelli@rsbattorneys.com
- b. Docket No. 090349-WS; Cypress Lakes Utilities, Inc.'s Application for a Limited Proceeding Water and Wastewater Rate Increase in Polk County, Florida - Filing the Utility's response to the Commission Staff's third data request dated October 9, 2009, correspondence requesting additional information to complete the application.
- c. Cypress Lakes Utilities, Inc.
- d. 12 Pages.
- e. Letter to Commission Clerk - 1 page; response attachments - 11 pages.

10/13/2009

DOCUMENT NUMBER-DATE
10519 OCT 13 8
FPSC-COMMISSION CLERK

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REPLY TO CENTRAL FLORIDA OFFICE

October 13, 2009

E-FILING

CENTRAL FLORIDA OFFICE
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2180 W. STATE ROAD 434, SUITE 2118
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MARTIN S. FRIEDMAN, P.A.
BRIDGET M. GRIMSLEY
CHRISTIAN W. MARCELLI
BRIAN J. STREET

Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 090349-WS; Cypress Lake Utilities, Inc.'s Application for a Limited Proceeding
Water and Wastewater Rate Increase in Polk County, Florida
Our File No. 30057.182

Dear Ms. Cole:

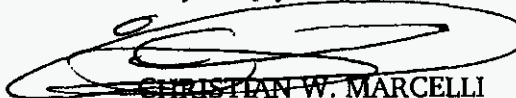
Enclosed for filing in the above-referenced docket is the response of Cypress Lake Utilities, Inc.'s (the "Company") to Staff's third data request dated October 9, 2009. Staff has requested the following information in order to complete its analysis in the above-referenced docket.

1. Please provide a copy of the agreement between Cypress Lakes Associates, Ltd. (CLA) and Cypress Lakes Utilities, Inc. (CLU) that was executed in December of 2006.

RESPONSE: Please see the attached agreement titled, "Agreement For Water And Wastewater Service Cypress Lakes Phase 12".

Should you or the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



CHRISTIAN W. MARCELLI
For the Firm

CWM/tlc
Enclosures

cc: John Hoy, Chief Regulatory Officer (w/enclosures) (via e-mail)
Ms. Kirsten Weeks (w/enclosures) (via e-mail)
Patrick C. Flynn, Regional Director (w/enclosures) (via e-mail)

AGREEMENT FOR WATER AND WASTEWATER SERVICE

CYPRESS LAKES, PHASE 12

This Agreement is entered into this 22 day of December, 2006 by and between Cypress Lakes Associates, Ltd. (hereinafter referred to as "Developer"), and Cypress Lakes Utilities, Incorporated, a Florida corporation (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate in Polk County, Florida, hereinafter referred to as "Property" and more fully described in Exhibit A attached hereto, and

WHEREAS, Utility is engaged in the business of furnishing water and wastewater service to the public in its service territory as authorized by its Certificate of Public Convenience and Necessity, and

WHEREAS, Developer desires Utility to provide water and wastewater service to the Property to serve 120 residential building lots and Utility desires to provide water and wastewater service to the Property according to the terms and conditions of this Agreement.

WHEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants:

1. That Developer is the owner of or is duly authorized to act on behalf of the owners of the Property, and;
2. That Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the water and wastewater systems contemplated by this Agreement.
3. That Developer will convey to the Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form satisfactory to Utility's legal counsel, and in conformance with the amendment to the Declaration of Covenants, Conditions, Restrictions, and Easement Agreement, substantially in the form attached hereto as Exhibit B (the "Amendment Declaration").

DOCUMENT NUMBER-DATE

10519 OCT 13 08

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ARTICLE II

Construction and Installation of Facilities by Developer

1. The Developer hereby agrees to construct and install the complete distribution, collection and interconnection facilities (hereinafter collectively referred to as "Facilities") including but not limited to water and wastewater mains, pumping stations, valves, services, and other facilities as are reasonably required to provide adequate water and wastewater service (in accordance with applicable governmental standards) to all units to be constructed within the Property. Developer shall be responsible for interconnecting the Facilities with adequate diameter water and wastewater mains to Utility's existing water and wastewater systems at a point specified by Utility.
2. The Facilities to be constructed by Developer pursuant to Paragraph 1 of this Article II when installed, will meet the reasonable needs of the customers within the Property. All plans, specifications and construction shall be in accordance with applicable standards, requirements, rules and regulations and agencies of the State of Florida and respective County authority.
3. All materials used shall be new, first-class, and suitable for the uses made thereof.
4. Developer warrants all construction, materials, workmanship, and the trouble-free operation of the Facilities for one year after completion of each phase or section.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
6. All of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility that are necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation of the Facilities. Developer shall furnish Utility with lien waivers in a form satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities construction herein.

7. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, authorizing Utility to own, operate and maintain the Facilities and providing reasonably adequate rights of access and working space for such purposes.
8. Developer shall, upon transfer to Utility of the Facilities, provide to Utility operating manuals, permits, as-built drawings, and all other information reasonably required to operate, maintain, and repair the Facilities.

ARTICLE III

Developer Contribution/Connection Fees

Developer agrees to pay Utility half of the cost of necessary improvements to the Utility's wastewater treatment facility, including costs associated with engineering design, permitting, and construction activities, and whose total estimated cost is \$250,000. Developer agrees to pay Utility \$125,000 upon execution of this Agreement, which will be applied toward its obligation to pay half of the actual cost of engineering design, permitting, and construction activities.

ARTICLE IV

Utility Service, Rates and Charges

1. Upon installation of the Facilities, completion of the interconnection and payment of fees by Developer, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service.
2. Water and wastewater usage charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service from time to time on file with the Florida Public Service Commission and then in effect.

ARTICLE V

Inclusion in Service Area

Upon the execution of this Agreement, Utility shall petition the Florida Public Service Commission for permission to include the Property in Utility's service area as approved by the Florida Public Service Commission. In the event that the Florida Public Service Commission shall fail to approve and grant said petition to include the Property in Utility's service area within twelve (12) months from the date hereof, either party hereto shall have the right to terminate this Agreement at any time until the Property is included in the said service area. The Developer shall be responsible for payment of all costs associated with said

petition and make a deposit in the amount of \$12,000 with the Utility for said expenses

ARTICLE VI

General

1. This Agreement is intended to be performed in the State of Florida and shall be governed by the laws of the State of Florida.
2. Except as provided for in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligation hereunder, if such failure, default or delay is caused by strikes or other labor problems; by forces of nature; unavoidable accident; fire; acts of the public enemy; interference by civil authorities; acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission; delays in receipt of materials; or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
3. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
4. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
5. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
6. Notices and correspondence required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility: Cypress Lakes Utilities, Inc.
2335 Sanders Road
Northbrook, Illinois 60062
Attn: Ms. Lisa Grossett, Chief Operating Officer

If to Developer: Cypress Lakes Associates, Ltd.
C/o Community Investment Corporation
11300 4th Street North, STE. 130
St. Petersburg, Florida 33716
Attn: Mr. Alan Taylor

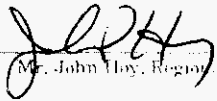
With copy to: Ballast Point Group
11300 4th Street North, Ste. 200
St. Petersburg, FL 33716
Attn: Julie Panelli

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

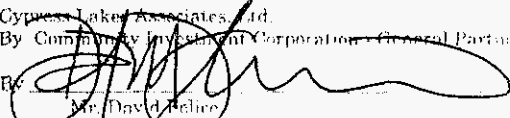
7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
8. The Exhibits to this Agreement are a part hereof and are hereby incorporated in full by reference.
9. If this Agreement is not executed prior to December 27, 2006, then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

Cypress Lakes Utilities, Incorporated

By 
Mr. John Hoy, Regional Vice President

ATTEST:

Cypress Lakes Associates, Ltd.
By Community Investment Corporation, General Partner
By 
Mr. David Pelice


ATTEST:

EXHIBIT "A"

The East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida; LESS AND EXCEPT the East 132 feet of the South 330 feet thereof;

TOGETHER WITH

A non-exclusive easement for ingress, egress and utility purposes as provided for and described in an instrument entitled "Declaration of Easement" recorded in Official Records Book 2978, Page 1031, of the public records of Polk County, Florida, over and across the following described land:

The South 30 feet of the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida;

TOGETHER WITH

The West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the East 330.0 feet thereof and LESS AND EXCEPT the South 330.0 feet thereof;

TOGETHER WITH

The East 330.0 feet of the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the South 330.0 feet thereof. Excepting therefrom any portion of the above described land lying within the maintained right of way known as Max Cash Road as depicted on Polk County Maintained Right-of-Way Map recorded May 16, 1990, in Map Book 11, Page 55, of the public records of Polk County, Florida;

TOGETHER WITH

The West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida;

TOGETHER WITH

A non-exclusive easement for ingress, egress and utility purposes as provided for and described in an instrument entitled "Declaration of Easement" recorded in Official records Book 2978, page 1031, of the public records of Polk County, Florida, over and across the following described land:

The South 30 feet of the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, Polk County, Florida;

AND

The South 30 feet of the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida.

FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENT AGREEMENT

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENT AGREEMENT (this "Amendment") is made by Cypress Lakes Associates, Ltd., a Florida limited partnership ("Declarant") and Cypress Lakes Utilities, Inc., a Florida corporation, ("Utilities, Inc.").

WITNESSETH:

WHEREAS, Declarant is the owner of all of the Property, as defined in the Declaration of Covenants, Conditions Restrictions and Easement Agreement, as recorded in Official Records Book 3668, Page 1174 of the public records of Polk County, Florida (the "Declaration"), less and except the property (the "Utilities Property") described on Exhibit "A" attached hereto, and further less and except the property (the "Phase 11 Property") lying within the plat of Cypress Lakes Phase 11, according to the plat thereof, recorded in Plat Book 133, pages 12 and 13 of the public records of Polk County, Florida; and

WHEREAS, Utilities, Inc. owns the Utilities Property; and

WHEREAS, Section 17 of the Declaration provides that the parties that own the land affected by the amendment may modify the Declaration; and

WHEREAS, Declarant desires to modify the Declaration as set forth herein;

NOW, THEREFORE, the Declaration is amended pursuant to the following terms.

AMENDMENT

1. Declarant owns the property ("Phase 12") described on Exhibit "B" attached hereto, and Declarant intends to develop Phase 12 as part of the Cypress Lakes Mobile Home Park as defined in the Declaration.

2. Phase 12 is hereby added to the description of the Property in the Declaration, and all references to the Property in the Declaration shall be deemed to include Phase 12.

3. Notices. Section 18 of the Declaration is deleted and replaced in its entirety with the following:

Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (a) hand delivered, including delivery by courier service, (b) overnight mail, by nationally recognized carrier, with tracking service, (c) sent by facsimile and U.S. mail sent the same day, or (d) sent

by certified mail, return receipt requested, postage pre-paid, addressed as shown below, or to such other address as the parties may substitute by written notice to the other. All notices sent by hand delivery, overnight mail or facsimile shall be effective on the date delivered, and all notices forwarded by certified mail shall be effective on the date three days following the date of deposit in the U.S. Mail. The address and facsimile numbers to which any notices or communications are to be sent are as follows:

If to Cypress Lakes: CYPRESS LAKES ASSOCIATES, LTD.
11300 Fourth Street North, Suite 200
St. Petersburg, FL 33716
Attention: David M. Felice
Facsimile: 727-579-0145

If to Utilities, Inc.: CYPRESS LAKES UTILITIES, INC.
2335 Sanders Road
Northbrook, IL 60062
Attn: Ms. Lisa Crossett, Chief Operating Officer
Facsimile: 847-498-2066

4. Except as specifically provided in this Amendment the terms and provisions of the Declaration remain in full force and effect.


IN WITNESS WHEREOF, this Amendment has been executed by the Declarant and Utilities, Inc. as of the date first stated above.

Cypress Lakes Associates, Ltd.
By: Community Investment Corporation,
its general partner

By: 
David M. Felice, Vice President

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 30th day of November, 2006, by David M. Felice, as Vice President of Community Investment Corporation, a Florida Corporation, the General Partner of Cypress Lakes Associates, Ltd. He/She is personally known to me or has produced _____ as identification and did (did not) take an oath.


Notary Public
Printed: Judy L. Pennala

Notary Seal



CONSENT TO FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENT AGREEMENT AND SUBORDINATION OF MORTGAGES

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY ("Northwestern") is the mortgage under a certain Amendment and Restatement of Mortgage and Spreader Agreement (the "Northwestern Mortgage"), dated November 1, 2004 and recorded in Official Records Book 05988, Pages 0654-0697, Document Instrument # 2004232280, and that certain Corrective Amendment and Restatement of Mortgage and Spreader Agreement (the "Northwestern Corrective Mortgage"), dated November 1, 2004 and recorded at Book 06260, Pages 1600-1642, Document Instrument No. 2005145983 of the public records of Polk County, Florida, given by Cypress Lakes Associates, Ltd. Northwestern hereby consent to this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easement Agreement applicable to the real property subject to the Northwestern Mortgage, and Northwestern hereby joins in this Amendment.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation

By: Northwestern Investment Management Company, LLC, a Delaware limited liability company, its wholly-owned affiliate and authorized representative



By: Henry F. Lange
Name: Henry F. Lange
Its: Managing Director

(corporate seal)

By: Paul J. Hanson
Name: Paul J. Hanson
Its: Assistant Secretary

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

SANDRA DONALDSON
NOTARY PUBLIC
STATE OF WISCONSIN

The foregoing instrument was acknowledged before me this 9th day of October, 2006, by Henry F. Lange and Paul J. Hanson, Managing Director and Assistant Secretary, respectively, of Northwestern Investment Management Company, LLC, on behalf of THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation. They are personally known to me and did take an oath.

Sandra Donaldson
Sandra Donaldson, Notary Public

My commission expires: November 29, 2009

WACHOVIA BANK, NATIONAL ASSOCIATION (the "Wachovia") is the mortgagee under a certain Mortgage, Assignment of Rents and Security Agreement and Financing Statement, dated April 1, 2004, and recorded in Official Records Book 5724, Page 0592, of the public records of Polk County, Florida, given by Cypress Lakes Associates, Ltd.; and that certain Mortgage, Assignment of Rents and Security Agreement and Financing Statement, dated May 26, 2005, and recorded in Official Records Book 6260, Page 1570, of the aforesaid public records; and that certain Mortgage, Assignment of Rents and Security Agreement and Financing Statement, dated May 26, 2005, and recorded in Official Records Book 6260, Page 1699, of the aforesaid public records (collectively, the "Wachovia Mortgages"). Wachovia hereby consents to this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easement Agreement applicable to the real property subject to the Wachovia Mortgages, and Wachovia hereby joins in this Amendment.

WACHOVIA BANK, NATIONAL ASSOCIATION

By: Katia S. Moore
Name: KATIA S. MOORE
Title: VP

State of Florida
County of Hillsborough

The foregoing instrument was acknowledged before me this 30th day of November, ²⁰⁰⁴~~2005~~, by Katia S. Moore, as Vice President of WACHOVIA BANK, NATIONAL ASSOCIATION, who is personally known to me or who has produced _____ as identification.

Pamela Palmer

Notary Public

Name: _____

Commission Expires: _____

Commission No. _____



Pamela F. Palmer
My Commission DD337678
Expires September 12, 2008

EXHIBIT "A"

Parcel 1: Water Treatment Facility

A parcel of land lying in Section 34, Township 26 South, Range 23 East, Polk County, Florida being more particularly described as follows:

Commence at the Southeast corner of said Section 34, thence South 89 deg. 22'28" West, along the South line of said Section 34, for 208.28 feet; thence North 00 deg. 37'32" West, leaving the South line of said Section 34, for 62.58 feet to the Point of Beginning; thence North 55 deg. 35'25" West, for 11.35 feet; thence North 30 deg. 08'37" East for 20.55 feet; thence North 60 deg. 53'05" East, for 11.57 feet; thence North 04 deg. 48'35" East, for 81.93 feet; thence South 70 deg. 40'59" East, for 87.15 feet; thence South 41 deg. 58'43" East, for 24.15 feet; thence South 01 deg. 32'04" East for 38.00 feet; thence South 87 deg. 41'13" West for 101.37 feet; thence South 70 deg. 00'08" West for 7.14 feet; thence South 34 deg. 02'09" West for 21.14 feet to the Point of Beginning.

Parcel 2: Sewage Treatment Facility

A tract of land lying in Section 34, Township 26 South, Range 23 East, Polk County, Florida, being more particularly described as follows:

Commence at the Southeast corner of Section 34, Township 26 South, Range 23 East, Polk County, Florida; thence North 00 deg. 48'46" West, along the Easterly line of said Section 34, a distance of 2270.65 feet to the Southerly right of way of State Road #700 and #35, also known as U.S. Highway 98 (150 feet wide); thence North 47 deg. 17'40" West, along the Southerly right of way of said U.S. Highway 98 a distance of 1297.31 feet to a point on a curve to the right of which the radius point lies North 42 deg. 42'05" East, a radial distance of 5824.26 feet; thence along the arc in a Northwesterly direction, passing through a central angle of 06 deg. 26'52", an arc length of 655.45 feet to a point along said curve; thence South 49 deg. 08'58" West, a distance of 57.61 feet to the Point of Beginning of the Sewage Treatment Facility; thence South 10 deg. 18'32" East, a distance of 237.43 feet; thence South 02 deg. 07'38" East, a distance of 59.01 feet; thence South 53 deg. 02'17" West, a distance of 66.47 feet; thence North 43 deg. 24'57" West, a distance of 73.58 feet; thence North 36 deg. 27'45" West, a distance of 199.36 feet; thence North 74 deg. 43'47" East, a distance of 70.39 feet; thence North 27 deg. 01'16" West, a distance of 12.48 feet; thence North 52 deg. 17'35" East, a distance of 145.67 feet to the Point of Beginning.

Parcel 3

The benefits, appurtenant to Parcel 2, derived from right of way easement recorded in OR Book 3668, page 1198, Public Records of Polk County, Florida.