

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20041595

1. REQUESTED MOTION:

ACTION REQUESTED: Approve the Railroad Crossing Agreement by and between the Simon Property Group, Inc. and Seminole Gulf Railroad for a two-lane crossing at Sandy Lane in conjunction with the development of the Coconut Point DRI.

WHY ACTION IS NECESSARY: Condition of proportionate share payments or offset(s) for the development of the Coconut Point DRI Regional Mall and Retail Center.

WHAT ACTION ACCOMPLISHES: Provides approval for the Railroad Crossing documents pursuant to the Developer Agreement for the Coconut Point DRI.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 3

C12A

3. MEETING DATE:

12-21-2004

4. AGENDA:

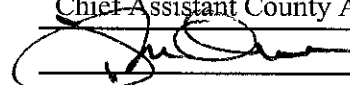
- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER Development Agmt.

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION General Services
- BY: David M. Owen
Chief Assistant County Attorney



7. BACKGROUND:

On October 21, 2002, the Coconut Point DRI Development Order was approved and executed by the Board of County Commissioners. A part of that Development Order contemplates a two-lane extension of Sandy Lane, a portion of which crosses the Seminole Gulf Railroad which requires a Crossing Agreement between the Developer and the Railroad, with provisions for a subsequent Agreement between the Railroad and the County when the road improvements are dedicated to the County for ownership and maintenance.

(BACKGROUND CONTINUED - NEXT PAGE)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Samuel</i> N/A 11-23-04	N/A	N/A	<i>11/23/04</i>	<i>11/22/04</i>	OA	OM	RISK	GC	<i>Samuel</i> 11-23-04
					<i>RK 11/23</i>	<i>11/23/04</i>	<i>11/23</i>	<i>11/23/04</i>	

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED TO 12-21-04
- OTHER

on 12-07-04

CO. ATTY. II
FORWARDED 12/3/04
TO CO. ADMIN.
R. J. Sam

BACKGROUND: (Continued)

On February 24, 2004, the Coconut Point DRI Development Agreement was approved and executed by the Board of County Commissioners. The Development Agreement provides at Article Three, A., "Proportionate Share Obligation", Paragraph 2.(b)(4) that the offsets to the second installment of the proportionate share be evidenced by certain documents; in this case, the Board's approval of the Railroad Crossing Agreement by and between the Developer and the Seminole Gulf Railroad, which is attached hereto and has been deemed acceptable by County staff.

The Developer / Seminole Gulf Railroad Agreement of April 12, 2004 has a provision at Paragraph 6.(b) for the transfer of the Crossing Agreement (the "New License Agreement" option), which was negotiated between Seminole Gulf Railroad and County staff for the transfer of the Crossing when the Sandy Lane improvements, to include the Railroad Crossing, are contributed to the County for ownership and maintenance. The proposed "New License Agreement" is Exhibit B to the April 12, 2004 Agreement between the Developer and the Seminole Gulf Railroad.

Staff recommends Board of County Commissioners' approval of the April 12, 2004 License Agreement by and between the Simon Property Group, Inc. and Seminole Gulf Railroad for the purpose of fulfilling the provision of the Development Agreement relating to an offset to the proportionate share payment for 2004, which is due no later than December 31, 2004.

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: December 6, 2004

TO: Elizabeth Walker, Director

Public Resources

and

Kathy Geren

Public Resources

FROM:


David M. Owen

Chief Assistant County Attorney

**RE: ITEM C-12-b, REGULAR MEETING OF DECEMBER 7, 2004;
RECAP SHEET**

Ladies;

Please defer the above matter to the Board's regular meeting of December 21, 2004 so that it may be taken up at that meeting with other similar matters concerning the Coconut Point DRI.

Thank you.

DMO/dm

xc: Robert W. Gray, Deputy County Attorney
Timothy Jones, Chief Assistant County Attorney
Dawn Perry-Lehnert, Assistant County Attorney
Scott Gilbertson, P.E., Director, DOT
Andy Getch, DOT
Lisa Pierce, Supervisor, Minutes Department

*on recap
12-06-04
[Signature]*

AGENDA UPDATE

FROM



DIVISION OF PUBLIC RESOURCES

MEETING OF DECEMBER 7, 2004

RE: CONSENT 12(B)-RAILROAD CROSSING AGREEMENT

Attached please find additional back up for the above referenced agenda item. Please place this in your agenda book.

Thank you.

**SEND TO: BOARD - ALBION HALL JANES JUDAH ST. CERNY
COMMISSION RECEPTION DESK
DONALD STILWELL, COUNTY MANAGER
BILL HAMMOND, DEPUTY COUNTY MANAGER
HOLLY SCHWARTZ, ASSISTANT COUNTY MANAGER
PETE WINTON, ASSISTANT COUNTY MANAGER
ANTONIO MAJUL, BUDGET SERVICES
JAMES LAVENDER, PUBLIC WORKS
BOB GRAY, DEPUTY COUNTY ATTORNEY
LISA PIERCE, MINUTES DEPARTMENT
PUBLIC RESOURCES OFFICE**

DATE AND TIME DISTRIBUTED: 12-01-04 4:00 PM

EXHIBIT "B"

**LICENSE AGREEMENT FOR PUBLIC GRADE CROSSING
SANDY LANE EXTENSION, LEE COUNTY, FL. MILEPOST AX 981.16**

THIS LICENSE AGREEMENT made as of this ____ day of _____, 200__ 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 use the crossing existing as of the date of this Agreement, and for permission as of this date of this agreement to install, maintain, use, and remove, if required, to Licensor's specifications a public crossing at grade over and across the right of way and track of the Licensor's Arcadia-Vanderbuilt Beach line, said public crossing to be located at approximately milepost AX 981.16 in Lee County, Florida, as more fully shown in Exhibit A (all and any part of said public crossing or any appurtenances thereto shall hereinafter be referred to as the "**Crossing**"); and

WHEREAS, Licensor is willing to accord to Licensee a License to use the Crossing, 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 construct, improve, use, maintain, repair, renew, and ultimately remove the Crossing and Signals across and over the said tracks, right of way and property of Licensor at the located aforesaid; provided however, that Licensor reserves the right to perform all work on Licensor's property, including work related to the maintenance, repair, renewal or removal of the Crossing and Signals in which event Licensee shall pay Licensor the full, substantiated cost and expense of all labor, materials and equipment furnished by Licensor in performing such work, including but not limited to any expense incurred in protecting trains, persons using the Crossing, or other property.

2. (a) Licensee shall pay Licensor within thirty (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 which are not otherwise installed by Licensor directly at its own cost.

(b) Licensee shall pay Licensor an annual signal and gate system maintenance fee of \$2,820.00. The signal and gate maintenance fee will be payable annually starting as of the date of execution of this Agreement by the County as Licensee. These fees will cover incidental maintenance and crossing signal inspections and Federal and State regulatory tests. Specific maintenance or capital expenditures, all repairs related to damage of improvements, or crossing renewal projects costing more than \$500.00 shall be paid for by Licensee prior to commencement of such projects. The maintenance fee set forth in this section shall be adjusted each year commencing as of the execution of this Agreement in accordance with changes in the Consumer Price Index - All Urban Consumers for the South, Population 50,000-450,000 (1982-1984=100). The final index figure for the calendar year 2002 shall be the base period for adjustments. The adjustments shall be made by calculating the percent of increase in the index figure between the base period and the calendar year prior to the year being adjusted.

3. (a) The Crossing shall be public, and shall be located, constructed and maintained in exact accordance with Exhibit A, and no departure shall at any time be made therefrom except upon permission in writing granted by Licensor; provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State of Florida and competent jurisdiction, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the Crossing. Supervision over the location of the construction work, inspection of the repair, alteration, renewal, relocation and removal of the Crossing shall be subject to the approval of Licensor, or its successors or assigns.

(b) The construction, maintenance, repair, alteration or removal of the Crossing shall 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 of the Licensor by Licensor, or its successors or assigns.

(c) Licensor shall perform such maintenance of the Crossing on Licensor's property as it may determine is required for the safe operation and maintenance of the properties of Licensor and its lessees. If necessary to protect the property, traffic, patrons, or employees of Licensor, or any other person from damage or injury, Licensor may with reasonable notice to Licensee at any time make such repairs and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of Licensee. Any costs incurred by Licensor pursuant to this paragraph shall be reimbursed to Licensor by Licensee within thirty (30) days from receipt of an invoice from Licensor.

(d) The Crossing shall include adequate drainage facilities necessary or appropriate for the prevention of flooding or any other kind of water damage in the general area, and said drainage facilities shall be installed, repaired, maintained and cleaned at all times at the sole risk, cost and expense of Licensee. Unless otherwise agreed upon between the parties, all such work to be performed on Licensor's property shall be performed by Licensor.

(e) Licensor's right of supervision over the location of the construction or maintenance work and inspection of the Crossing from time to time thereafter shall extend for such distance on each side of the Crossing as may, in Licensor's judgment, be necessary to support and sustain the tracks and roadbed of Licensor and which will cover adequate sight preview of the Crossing by approaching trains. Licensee agrees to keep the right of way clear of trees and other growth at its sole cost to the satisfaction of Licensor for a distance of 500 feet each side of the Crossing centerline for the entire width of the right of way of Licensor.

4. (a) Licensee, at its own cost and expense, when performing any work in connection with the Crossing shall 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 shall not be notified at least three (3) weeks in advance of the performance of any work in connection with the Crossing.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time Licensor should deem 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 Crossing, Licensor shall have 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 shall 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, shall 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 Crossing or Signals in any manner whatsoever, it shall submit plans to Licensor and obtain its written approval thereto before any work or alteration of the structure is performed. Licensor reserves the right to make reasonable adjustments in its charges in connection with any such work.

6. Licensor shall have the right from time to time and at the sole cost and expense of Licensee, to take up and replace all or any part of the Crossing or Signals in order to maintain, repair or renew facilities of Licensor within the Crossing, and to bill Licensee for all costs therefor. Licensor will provide the Licensee with notice and justification for Licensor's work prior to such activities; however, Licensee shall have no

approval rights with respect to Licensor's maintenance of the Crossing or Signals.

7. Licensor shall have the right at all times to paramount use of the track(s) and right of way at the Crossing, and Licensee shall exercise all reasonable care in the use of the Crossing and shall require Licensee's officers, employees and agents and others permitted hereunder to use the Crossing, likewise to use all reasonable care in the use of the Crossing.

8. (a) The sole responsibility for protecting the aforesaid Crossing from the standpoint of safety and the duty of otherwise policing the Crossing shall rest exclusively on Licensee at all times and under all circumstances. Licensee shall 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 Crossing. In addition, Licensee shall 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 which shall alert the public to the existence of the crossing.

(b) If Licensor should at any time, and from time to time, request Licensee to take any other reasonable measures to protect the Crossing (either new or additional), Licensee, at its sole cost and expense, shall 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 shall not be construed to protect Licensor Entities from their own negligence, and shall be 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 shall extend up to but shall 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 solely from Licensee's use of the Crossing.

(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 Crossing, 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 County to perform any work on the land area relating to this License or any work relating to any other provisions of this License shall be required by County to sign the indemnification agreement attached hereto as

Exhibit "B", and to provide the following insurance:

(i) Any contractor employed by the County shall 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 Five Million Dollars (\$5,000,000) written on the ISO form. The policy shall contain NO exclusions. The policy is to name Licensor, as the named insured, and shall name as additional insured CSXT.

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

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

(iv) 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 CSXT Corporation.

(v) Such policies of insurance shall be endorsed to provide thirty (30) days' notice to each name Insured by the insurance company before any reduction to or cancellation of the policies. Licensor shall 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 shall obtain insurance coverage as outlined in paragraph 8 (e) above.

9. Licensee will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances of Licensor, arising solely as the result of the construction and use of the Crossing. Licensee agrees to pay to Licensor, on demand the full cost and expense of repairing or restoring Licensor's facilities as the result of such settling.

10. Upon termination of this License Agreement or upon the removal or abandonment of the Crossing, all the rights of the Licensee hereunder shall cease and terminate, and this instrument shall thereupon terminate without any liability on the part of either party to the other party except only as to any charges and liability accrued prior thereto, and the obligation of Licensee at Licensor's request to remove its Crossing from Licensor's property. All property of Licensor shall be restored in good condition and to the

satisfaction of the Licensor. If Licensee fails or refuses to remove its Crossing and appurtenances under the foregoing conditions, Licensor shall be privileged 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 assessments, taxes or property charges of any kind shall be made against Licensor or its property by reason of this Agreement or the construction of the Crossing of Licensee. Licensee further covenants and agrees to pay Licensor, promptly upon 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 Crossing or any fees or charges related thereto. Licensee agrees to pay all sales and use taxes if applicable, which may be due for any changes, fees or other payments made to Licensor under this Agreement.

12. (a) The rights conferred hereby shall be the privilege of Licensee only, and no assignment or transfer hereof shall be made without the consent and agreement in writing of Licensor being first had and obtained.

(b) In the event Licensee desires to transfer the crossing to any other person, firm or corporation or Government entity, Licensee shall provide thirty (30) days' prior written notice of such 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 shall assume without limitation all obligations of the Licensee under this Agreement.

(c) Despite any transfer of this License by Licensee in violation of paragraphs 12(a) and 12(b), Licensee will retain all liability including that which would otherwise be transferred to the transferee of the License.

13. The burden of obtaining all permits and approvals which may be necessary or appropriate shall be upon Licensee and shall be at the sole risk, cost and expense of Licensee whose responsibility it shall be 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.

14. The terms of this License Agreement shall be binding and effective upon the parties hereto, and unless and until terminated, as hereinbefore provided, this License Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, subject however, to the provisions of Section 12 hereof.

15. All notices which may or are required to be given, or served or sent by any party to the other parties pursuant to this License Agreement shall be in writing and shall

be deemed to have been properly given or sent, if hand delivered or mailed by registered or certified mail, return receipt requested, with postage prepaid. Each notice shall be mailed as aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice shall be 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, such notices shall 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

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 SGLR:

**SEMINOLE GULF RAILWAY, L.P.
By its General Partner,
SEMINOLE GULF RAILWAY, INC.**

By: _____
**Gordon H. Fay
President**

**ATTEST: CHARLIE GREEN
CLERK OF THE COURTS**

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

By: _____
Deputy Clerk

By: _____
Its Chairman

APPROVED AS TO FORM:

By: _____
Office of the Lee County Attorney

**ACKNOWLEDGMENT OF
LEE COUNTY**

STATE OF FLORIDA
LEE COUNTY

The foregoing instrument was acknowledged before me this ____ day of _____
200_, by _____ is personally known to me and who is personally known to
me as the Chairman of the Board of County Commissioners of Lee County, on behalf of
the County.

_____ Seal

NOTARY STATE OF FLORIDA

**ACKNOWLEDGMENT OF
SEMINOLE GULF RAILWAY, L.P.**

STATE OF FLORIDA
LEE COUNTY

The foregoing instrument was acknowledged before me this ____ day of _____
200_, by Gordon H. Fay, who is personally known to me and who is did take an oath as
President of Seminole Gulf Railway, Inc., on behalf of the Corporation, in its capacity as
general partner of Seminole Gulf Railway, L.P.

_____ Seal

ACKNOWLEDGMENT OF CSX TRANSPORTATION, INC.

CSXT Transportation, Inc. as lessor of certain railroad property to Seminole Gulf Railway, LP pursuant to the Lease Agreement, which leasehold interests include the property that is described in this Agreement (the "Agreement") to which Consent is appended, hereby consents to Seminole Gulf Railway LP entering into this Agreement and consents to the occupancy of the Subject Property for the purpose and on the terms described in the Agreement. Nothing contained in this Consent shall make, or be deemed to make, CSXT a party to this Agreement.

WITNESS FOR CSXT:

CSXT TRANSPORTATION, INC.

By:

Date:

SIMON PROPERTY GROUP



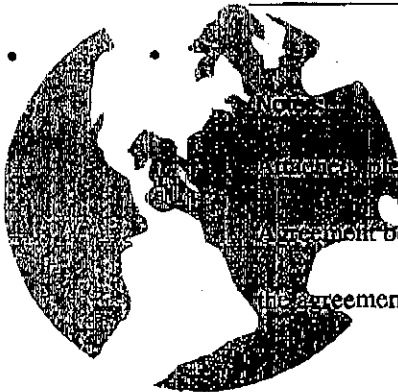
To: David Owen Fax: (239) 335 2606

From: Matt Doelger, Simon Property Group Date: 11/16/2004

Re: Coconut Point Development Agrmt. Pages: 5 (incl. cover)

CC:

Urgent For Review Please Comment Please Reply Please Recycle



.....

Please find the language from the Development Agreement requiring that the License Agreement be approved by the Board of County Commissioners, as well as your letter approving the agreement dated 7/21/04.

317-685-7299 (fax)

Please contact me at (317) 263 8177 or mdoelger@simon.com if I can provide further information.

I will be out on vacation from ~~11/12/04~~ through ~~11/19/04~~. Please contact Rise Friedman at (317)

263-7107.

7971.

Thanks again,

Matt

By 11/23 for 12/7
Boce mtg.

.....

ARTICLE III. TERMS OF THE AGREEMENT

A. SATISFACTION OF PROPORTIONATE SHARE OBLIGATION

1. General

- a. The project's proportionate share obligation is \$14,770,000. The proportionate share was derived from the project's transportation impacts based on the development parameters set forth in attached Exhibit C.
- b. A significant change in the assumed uses or mix of uses will require a re-evaluation of the DRI transportation impacts. A significant change is one that would increase the external project traffic by 5% or more or that would change the projected distribution and assignment of project traffic so as to result in a net increase in road miles of significantly and adversely impacted road links.
- c. If a reduction of the transportation mitigation is sought based upon modification of the approved development parameters, then a Notice of Proposed Change to the Coconut Point DRI D.O. must be filed by the entity seeking the reduction in accordance with the applicable Florida Statutes.

2. Payments

- a. *First Installment.* On or before December 31, 2003 or coincident with the issuance of the first building permit within Coconut Point DRI (excepting public uses mandated by the DRI D.O.), the Developer will pay Lee County \$6,270,000.
 - (1) The payment must be made in cash.
 - (2) Full payment entitles the Developer to obtain building permits for all non-retail uses and up to 400,000 square feet of retail uses within the DRI.
 - (3) Road impact fees paid by the Developer prior to the first cash payment will be offset against the second installment of the transportation proportionate share assessment.
- b. *Second Installment.* On or before December 31, 2004 or the issuance of the first building permit for retail uses over 400,000 square feet, whichever ever occurs first, the Developer will pay Lee County \$8,500,000. The payment may be in the form of cash or as offsets against the proportionate share as follows:

- (1) *Completed land dedications.* Land dedications for the

individual segments described in Section III.A.3 that have been formally accepted by the Board of County Commissioners prior to the installment due date.

- (2) *Roads constructed and accepted for county maintenance.* Construction costs for road segments contemplated under section III.A.4 that are completed and formally accepted by the County prior to the installment due date.
- (3) *Road impact fee payments.* Road impact fees paid by the Developer in conjunction with building permits issued prior to payment of the first installment.
- (4) *Railroad right-of-way costs.* Costs attributable to a two lane right-of-way crossing for Sandy Lane Extension as contemplated by section III.A.4.g, including utility crossings, paid by either McArdle or the Developer and evidenced in a railroad crossing agreement approved by the Board prior to the installment due date.

- c. Prior to payment of the first installment of the transportation proportionate share obligation, both McArdle and the Developer have the right to terminate this Development Agreement and utilize traffic mitigation Option 1 described in the DRI D.O. Written notice of this election must be provided to the County. The project will then be subject to the County's concurrency management regulations.

3. Land Dedication

a. *Acceptance Requirements*

- (1) Land dedications must meet the requirements set forth in LDC §2-275(3)(b). The County will require clear and unencumbered fee title. All submittal documents must be reviewed and approved by the County Attorney's office prior to acceptance.
- (2) Right-of-way dedicated within the boundaries of the DRI will be valued as of the day prior to the DRI and zoning approval (October 20, 2002). The entire DRI will be used as the parent tract for valuation purposes.
- (3) Right-of-way dedicated outside the DRI boundaries will be valued as of the date of the dedication. The parent tract for valuation purposes will be determined by consultation with Lee County Lands Division.
- (4) Land dedications will be considered an offset against the proportionate share obligation if made by the Developer prior



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number ~~(239) 335-2226~~

Facsimile (239) 335-2606

Bob Janes
District One

Douglas R. St. Carry
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing Examiner

July 21, 2004

Mr. Matt Doelger
Development Director
Simon Property Group
115 West Washington Street
Indianapolis, Indiana 46204

BY: FACSIMILE [(317) 685-7299] & FEDERAL EXPRESS

**RE: LICENSE AGREEMENT; PRIVATE ROAD CLOSING AT
AX 981.18, SANDY LANE EXTENSION**

Dear Mr. Doelger:

Per your telephone request of yesterday afternoon, I am advising in reference to the above as follows:

I have reviewed the above subject Agreement between the Seminole Gulf Railway, LP and SPG Development Co., LP, et al., to include Paragraph 6. therein.

The document reviewed was dated as of December 24, 2003, unexecuted and provided by Mr. Thomas Schneider on that date. I have not reviewed either any further iterations of the Agreement from that date, nor the final executed instrument.

The December 24, 2003 draft of the License Agreement at Paragraph 6. provides the mechanisms for the transfer of the private License Agreement to the County. As you may know, the County has elected to enter into a new License Agreement with the Seminole Gulf Railroad (SGLR) pursuant to that option provided for in the December 24, 2003 Agreement. The County's License Agreement verbiage was finalized as to text on February 19, 2004 (attached letter to Gordon H. Fay, President, SGLR). The proposed transfer of the Railroad Crossing License Agreement from SPG to the County pursuant to Paragraph 6. is acceptable to the County according to those terms.

LICENSE AGMT. - SANDY LN. EXT.doelger.wpd

Mr. Matt Doelger
July 21, 2004
Page 2

**RE: LICENSE AGREEMENT; PRIVATE ROAD CLOSING AT
AX 981.18, SANDY LANE EXTENSION**

Neither the County nor this office make any further representations or comments with respect to the "SPG" License Agreement with SGLR. If Paragraph 6. of the December 24, 2003 draft has been materially revised from the proposed text, then the County's affirmation of the transfer is hereby rescinded.

I hope this letter will be of some use for your present needs.

Cordially,



David M. Owen
Chief Assistant County Attorney

DMO/dm
Attachment

xc: Robert W. Gray, Deputy County Attorney
Timothy Jones, Chief Assistant County Attorney
Dawn Perry-Lehnert, Assistant County Attorney
James Lavender, Director, Public Works Administration
Scott Gilbertson, P.E., Director, DOT
Andy Getch, DOT
Thomas J. Schneider, Executive Vice President, Simon Property Group
Gordon H. Fay, President, Seminole Gulf Railroad