

**IN THE SUPREME COURT OF FLORIDA**

RAWLIS LESLIE, DEBORAH  
CROSBY, DONELL PITTMAN,  
LINDA TSCHUDI, LASHARAW,  
INC., and THADUS RUSS, on behalf  
of themselves and all other similarly  
situated,

Petitioners,

v.

THE ST. JOE COMPANY,

Respondent.

**FILED**  
THOMAS D. HALL  
2010 NOV 19 PM 3:41  
CLERK, SUPREME COURT  
BY \_\_\_\_\_

Case No. \_\_\_\_\_

L.T. No. 1D04-5462

**APPENDIX TO PETITION FOR ALL WRITS RELIEF OR,  
ALTERNATIVELY, FOR LEAVE TO  
FILE WRIT OF CORAM NOBIS IN THE DISTRICT COURT**

Robert G. Kerrigan  
Florida Bar No. 134044  
*bob@kerrigan.com*  
Kerrigan, Estess, Rankin, McLeod, &  
Thompson, LLP  
P.O. Box 12009  
Pensacola, Florida 32591  
(850) 444-4402  
(850) 444-4494

*Attorney for Petitioners*



## APPENDIX

1. Class Certification Order (Nov. 9, 1994)
2. Opinion (July 29, 2005)
3. Letter from James Wolf, Chief Judge to Barbara J. Pariente, Chief Justice, Florida Supreme Court (Mar. 4, 2005)
4. Letter from James Wolf, Chief Judge to Mark Mahon, State Representative (Mar. 31, 2005)
5. Letter from James Wolf, Chief Judge to David Coburn, Staff Director, Senate Ways and Means Committee (Mar. 31, 2005)
6. Modification of Deed Restriction and Reverter (Dec. 13, 2007)
7. Second Modification of Deed Restriction and Reverter (June 27, 2008)
8. Certification of Compliance With Deed Restriction (Sept. 26, 2008)



IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT,  
IN AND FOR GULF COUNTY, FLORIDA

RAWLIS LESLIE, et al.

Plaintiffs,

CLASS REPRESENTATION

v.

CASE NO: 03-368CA

THE ST. JOE COMPANY,

Defendant.

---

**CLASS CERTIFICATION ORDER**

THIS CAUSE is before the Court on Plaintiffs' Motion for Class Certification of Property Damages Claims and Supporting Memorandum dated July 8, 2003, Defendant's Response in Opposition to Plaintiffs' Motion for Class Certification dated September 22, 2004, and Plaintiffs' Reply to Defendant's Response in Opposition to Plaintiffs' Motion for Class Certification of Property Damages Claims dated September 27, 2004. On September 29 and November 1, 2004, the Court held an evidentiary hearing on these matters. The Court, after consideration of the pleadings, the exhibits, deposition transcripts, expert testimony, the arguments, the case file, and the relevant case law, finds that the Plaintiffs are entitled to class representation.

**BACKGROUND**

On August 19, 2003, Plaintiffs filed this class action lawsuit in state court against The St. Joe Company ("St. Joe"). Plaintiffs' First Amended Complaint, dated November 5, 2003, alleges continuing trespass, continuing private nuisance, unjust enrichment, strict liability, negligence, medical monitoring injunctive relief, statutory strict liability pursuant to Section 376.313(3), Florida Statutes, and action on the case. By order entered April 23,

2004, the Court denied Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint, dated January 15, 2004, except as to the claim for action on the case, which was dismissed with prejudice. The order also denied Defendant's request that the Court defer this case to the Florida Department of Environmental Protection ("DEP") and abate these proceedings under the doctrine of primary jurisdiction.

Plaintiffs' Motion for Class Certification of Property Damages Claims seeks certification of the remaining property damages claims.<sup>1</sup> Under the property damages claims, Plaintiffs seek to recover property damages allegedly arising from environmental contamination associated with a paper mill facility formerly operated by St. Joe in Port St. Joe, Gulf County, Florida. See First Amended Complaint at pp. 19-26 and 30-1. In requesting class certification of their property damages claims, Plaintiffs assert that hazardous substances contained within industrial waste from the facility were deposited by St. Joe within a primarily residential community located across Highway 98 from the facility. See Plaintiffs' Motion for Class Certification of Property Damages Claims and Supporting Memorandum dated July 8, 2003 at pp. 8-11.

#### MILLVIEW

The community at issue is commonly known as either North Port St. Joe or "the Quarters," the latter term relating to its history as a section of Port St. Joe in which predominately African-American persons resided. See Leslie 8/10/04 Depo. p. 142; Fowler 9/29/04 Test. p. 118. However, governmental reports typically reference the community as "Millview," the name given for much of the platted area beginning with the

---

<sup>1</sup>The Court is not being asked to certify at this time a claim for medical monitoring injunctive relief.

opening of the paper mill in 1938. See Plaintiffs' Exhibit 6, 8, and 11-14. For purposes of this Class Certification Order, the area will be referred to as Millview.

A portion of Millview, mainly along a sand ridge running roughly parallel to Highway 98, was already developed when the paper mill began operating. See Plaintiffs' Exhibits 4-6, 8, and 29 at pp. 34-5. Beginning sometime after the mill opened, large volumes of paper mill waste were disposed by truck in low lying areas of the community, often forming piles that were subject to erosion by wind and rain, played on by children, and from time to time mechanically spread. See, e.g., Plaintiffs' Exhibit 29, p. 48, *et seq.*; Fowler 10/28/04 Depo., pp. 260-1; Leslie 8/10/04 Depo., pp. 98-9; Russ 9/13/04 Depo., p. 112. A major former wetland and surface water area within Millview and lying to the east of Martin Luther King Boulevard is referred to by DEP as "the sock." See Plaintiffs' Exhibit 11 at p. 4; see also Plaintiffs' Exhibit 29 at p. 39. The Plaintiffs allege the filling of the sock with paper mill waste occurred throughout most of the 1950's. See Russ 9/13/04 Depo., p. 189. The Plaintiffs further allege additional filling of low lying areas with paper mill waste occurred outside the sock, including areas west of Martin Luther King Boulevard. See, e.g., Russ 9/13/04 Depo., p. 200; see also Plaintiffs' Exhibit 29, p. 48, *et seq.*; Fowler 10/28/04 Depo., pp. 37-41, 121, 123, and 161-4.

The Plaintiffs allege the materials placed by St. Joe in Millview included all of the waste materials generated at the paper mill except garbage. See 9/13/04 Russ Depo., p. 122. Plaintiffs' expert has testified that significant portions of this industrial waste would have included materials expected to contain hazardous substances, including heavy metals such as arsenic, lead, vanadium, and mercury, polycyclic aromatic hydrocarbon (PAH) compounds and polychlorinated biphenyls ("PCBs"). See, e.g., Fowler references

*infra*; see also Plaintiffs' Exhibits 11 and 28. The Plaintiffs allege that a DEP limited investigation within the sock, further supported by a three-phase investigation throughout Millview conducted by a university professor retained by Plaintiffs, demonstrates that hazardous substances consistent with paper mill waste contamination exist in soils throughout Millview, both at and below the ground surface. See Plaintiffs' Exhibits 11 and 29. Plaintiffs' expert concludes:

The aerial extent and magnitude of contamination observed in the subdivision increases with each sampling event. It is clear that contamination can be found throughout the subdivision either directly at the surface or in the shallow subsurface.

Plaintiffs' Exhibit 29, p. 52. The Plaintiffs allege the levels of contaminants exceed guidelines established by both the United States Environmental Protection Agency ("EPA") and DEP. See Plaintiffs' Exhibit 34. The Plaintiffs allege that the DEP also has performed tests indicating that paper mill waste deposited in Millview has polluted the underlying groundwater. See Plaintiffs' Exhibits 11 and 29.

### **THE REPRESENTATIVE PLAINTIFFS**

The Court finds that each class representative owns real property within the below-approved class boundaries, within which all properties are part of a contiguous community or neighborhood.

### **CLASS ACTIONS**

The Supreme Court of Florida has explained that "[t]he purpose of the class action is to provide litigants who share common questions of law and fact with an economically viable means of addressing their needs in court." *Johnson v. Plantation General Hosp. Ltd. Partnership*, 641 So.2d 58, 60 (Fla. 1994). Florida's class action rule (Rule 1.220,

Fla.R.Civ.P.) was patterned after federal class action Rule 23; therefore, federal decisions interpreting the federal rule are persuasive in interpreting the Florida rule. See *Toledo v. Hillsborough County Hosp. Auth.*, 747 So.2d 958, 960 n. 1 (Fla. 2d DCA 1998); *Concerned Class Members v. Sailfish Point, Inc.*, 704 So.2d 200, 201 (Fla. 4<sup>th</sup> DCA 1998).

A case does not become a class action merely because it bears the legend "class representation." *Policastro v. Selk*, 780 So.2d 989, 991 (Fla. 5<sup>th</sup> DCA 2001). Rather, the party seeking class certification has the burden of pleading and proving each and every element required by Rule 1.220 for certification of the class. See *Execu-Tech Business Systems, Inc. v. Appleton Papers, Inc.*, 743 So.2d 19, 21 (Fla. 4<sup>th</sup> DCA 1999); *Courtesy Auto Group, Inc. v. Garcia*, 778 So.2d 1000 (Fla. 5<sup>th</sup> DCA 2001). Moreover, the burden of proving that a class action is appropriate must be satisfied at the hearing, not at an unspecified later time. *Andrews v. AT&T*, 95 F.3d 1014, 1023 (11<sup>th</sup> Cir. 1996).

The trial court has the obligation to conduct a "rigorous analysis" to ensure that each provision of Rule 1.220 is met, and there must be a sound basis in fact, not supposition, supporting the findings. See *Baptist Hosp. of Miami, Inc. v. Demario*, 661 So.2d 319, 321 (Fla. 3d DCA 1995). Determining whether the class action requirements are satisfied is committed to the trial court's discretion.

Historically, the trial court was not entitled to examine the merits in determining the certification question. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156 (1974). But four years after *Eisen*, the Supreme Court decided *Cooper & Lybrand v. Livesay*, 437 U.S. 463 (1978), in which it stated: "Class determination generally involves considerations that are 'enmeshed in the factual and legal issues comprising the plaintiffs' cause of action'" and "[t]he more complex determinations required in Rule 23(b)(3) class actions entail even

greater entanglement with the merits." Going beyond the pleadings may be necessary to understand the claims, defenses, relevant facts and applicable substantive law. See, e.g., *Gen. Tel. Co. of S.W. v. Falcon*, 457 U.S. 147, 160 (1982) ("it may be necessary for the court to probe behind the pleadings before coming to rest on the certification question"); *Humana, Inc. v. Castillo*, 728 So. 2d 261, 266 (Fla. 2d DCA 1999); *Stone v. Compuserve Interactive Services, Inc.* 804 So. 2d 383, 387 (Fla. 4th DCA 2001). Judge Easterbrook of the Seventh Circuit recently observed that "nothing in the 1966 amendments to Rule 23, or the opinion in *Eisen*, prevents the [trial] court from looking beneath the surface of a complaint to conduct the inquiries identified in that rule and exercise the discretion it confers." *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672 (7th Cir. 2001).

#### **FLORIDA RULE OF CIVIL PROCEDURE 1.220**

Class certification in Florida is governed by Florida Rule of Civil Procedure 1.220.<sup>2</sup> Rule 1.220 is divided into five separate categories, lettered (a) – (e). The Court must comply with the requirements for each category. Rule 1.220(a) enumerates four prerequisites to class actions. Rule 1.220(b) identifies the three possible types of class actions. Rule 1.220(c) speaks to specific pleading requirements in class actions. Rule 1.220(d) addresses notice requirements. Rule 1.220(e) provides for settlement and dismissal after a class has been certified.

#### **RULE 1.220(a) FINDINGS**

The four prerequisites to class actions articulated in Rule 1.220(a), each of which must be present before the trial court may consider class certification, are referred to as (1) *numerosity*, (2) *commonality*, (3) *typicality* and (4) *adequacy*. See *W.S. Badcock Corp.*

---

<sup>2</sup> The equivalent federal rule is Federal Rule of Civil Procedure 23.

v. Myers, 696 So. 2d 776 (Fla. 1st DCA 1996).

**Numerosity.** This requires the Court to find, based upon evidence, that the number of class members is "so numerous that separate joinder is impractical." See *Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 266 (Fla. 5th DCA 2002). Courts have concluded a class as small as twenty-five persons facially satisfies the requirement. See *Estate of Bobinger v. Deltona Corp.*, 563 So. 2d 736, 743 (Fla. 2d DCA 1990). Trawick's *Florida Practice and Procedure* states, at Section 4-8:

Ordinarily a class should exceed 50 members to qualify. The general test for impracticability is whether the names and number of members of the class will be unstable.

(footnotes omitted.)

In this case, the class currently includes over three hundred property owners with record ownership of almost four hundred parcels. In addition (as illustrated by Deborah Crosby, 8/10/04 Depo., pp. 13-4, who jointly owns inherited property in Millview with several siblings), the names and number of members of the class will be unstable and expected to grow as older residents pass away leaving their properties to multiple heirs, making individual naming of all members of the class as plaintiffs impractical at best. Consequently, subject to the further findings of the Court, the members of the presumptive class is large enough that it would be impractical to join individual members.

**Commonality.** This factor requires the Court to conclude that the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class. That is, questions of law or fact raised by the representative plaintiffs' claims must be common with those raised by the claims of all or a substantial number of the class members. The class action

proponent should demonstrate "a common right of recovery based on the same essential facts." *Broin v. Phillip Morris Co., Inc.*, 641 So. 2d 888, 890 (Fla. 3d DCA 1994); *State Farm Mutual Automobile Ins. Co. v. Kendrick*, 822 So. 2d 516, 517 (Fla. 3d DCA 2002). The court must look at the commonality of claims and defenses, the result sought to be accomplished, the object of the action, or the question involved in the action. *Broin* at 890; *Imperial Towers Condominium, Inc. v. Brown*, 338 So. 2d 1081, 1084 (Fla. 4th DCA 1976) (quoting *Port Royal, Inc. v. Conboy*, 154 So. 2d 734 (Fla. 2d DCA 1963)). The primary consideration in determining commonality is whether the claims of the representative members arise from the same course of conduct giving rise to the remaining claims and whether the claims are based on the same legal theory. See *Braun*, 827 So. 2d at 267 (citation omitted). The commonality threshold is not high. See *W.S. Badcock Corp.*, *supra*.

In the instant case, the Plaintiffs allege damages arising from the disposal and spread of soil and groundwater contaminants within Millview based on the acts of St. Joe in conducting its paper mill business over the years. All of the Plaintiffs' claims focus on the impact upon the property interests of the residents in Millview affected by St. Joe's release of contaminants onto and into the soil and groundwater within Millview through its historical operations.

The issues relating to the Plaintiffs' claims and St. Joe's liability are common to the class and to this case, and a benefit would be achieved by resolution in one forum. Plaintiffs have sued St. Joe to recover actual economic damages associated with its dumping of hazardous substances in Millview. See § 768.81(4)(b), Fla. Stat.

**Typicality.** The Court must find that the claim or defense of the representative party is typical of the claim or defense of each member of the class. This element examines the

relationship between the representative's claims and the class members' claims. Thus, the representative's claims must be typical of those in the class. See Fla.R.Civ.P. 1.220(a)(3).

Although individual class members may be entitled to different amounts of damages or may have varying individual defenses, this in and of itself is not fatal to a class action. See *Broin*, 641 So.2d at 891. Any individualized questions regarding the extent of damages will not defeat certification. See *In re Lloyd's Amer. Trust Fund Litig.*, 1988 WL 50211 \*14 (S.D.N.Y. 2/6/98).

Where claims are based on the same legal theory and all class members seek the same remedy, class treatment is appropriate. See *Badcock*, 696 So.2d at 780. The typicality prerequisite is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of the absent class members so as to assure that the absentees' interests will be fairly represented. See e.g., *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994). The prerequisite is satisfied if each class member's claim arises from the same course of events that led to the claims of the representative parties and each class member makes similar legal arguments to prove the defendants' liability. *Id.* at 58; See *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525 (8th Cir. 1996).

These class representatives have alleged wrongful conduct by St. Joe similarly affecting them and the proposed class members. They have asserted essentially the same claims and legal theories for liability and compensation arising from the alleged acts and omissions of St. Joe's paper mill operations on behalf of themselves and all of the proposed class members. All of the putative class members herein seek the same types of relief, which is based on the same type of conduct: the alleged wrongful release of

hazardous substances into the soil and groundwater in and under private property in the community of Millview.

**Adequacy.** This requires a conclusion that the representative party can fairly and adequately protect and represent the interests of each member of the class. See Fla.R.Civ.P. 1.220(a)(4). The adequacy requirement is divided into two components: adequacy of counsel to handle the matter and adequacy of the named representative. Adequate representation is met if the class representatives have enough in common with the proposed class members and, with the experience of their attorneys, can prosecute the class action on behalf of the class. See *Broin*, 641 So. 2d at 892.

**a. Adequacy of counsel**

While there is little case law on this issue, the threshold is whether counsel will properly prosecute the class action. The inquiry is whether counsel is qualified, experienced, and able to conduct the litigation. Rule 1.220(a)(1), Fla.R.Civ.P.; see *Broin*, 641 So.2d at 892; *Colonial Penn Ins. Co. V. Magnetic Imaging Systems, Ltd.*, 694 So.2d 852, 854 (Fla. 3d DCA 1997); *Weiss v. York Hospital*, 745 F.2d 78, 81 (3d Cir. 1984); *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968), *vacated on other grounds*, 714 U.S. 156 (1974). The experience, qualifications and resources of proposed class counsel are not challenged by St. Joe.

**b. Adequacy of the named representative(s)**

The class representatives here have interests that are co-extensive with those of the class as a whole. The class representatives have assumed the commitment of time and effort required to participate in the discovery and trial processes. They are fairly distributed throughout the class area.

### **RULE 1.220(b) FINDINGS**

The trial court must additionally find and specify at least one of the following three bases in order for a claim or defense to be maintainable as a class: (1) there exists a **risk of inconsistent verdicts** or verdicts which would substantially impair nonparties' interests; (2) the actions of the party opposing the class has made **injunctive or declaratory relief** for the class appropriate; or (3) the claim or defense raises **common questions of law or fact which predominate** over any question of law or fact affecting any individual, and **class representation is superior**.

**Claim or defense raises common issue of law or fact.** The (b)(3) provision is generally used where the primary relief sought is damages. To qualify for (b)(3) certification, the class must meet a two-prong test: (a) the **common questions must predominate** over any questions affecting only individual members; and (b) the **class resolution must be superior** to other available methods for the fair and efficient adjudication of the controversy. See *Terry L. Braun, P.A. v. Campbell*, 827 So. 2d 261, 269 (Fla. 5th DCA 2002).

#### **A. Predominance**

The common questions presented by this litigation predominate over any individual issues or determinations which might be required. As in *Johnson v. Orleans Parish School Board*, 790 So.2d 734 (La. App. 2001), *writ den.*, 801 So.2d 378 (La. Sup. 2001), a similar environmental case involving a community built in the area of a former landfill, certification of a class in this case has a sound basis in fact. It is based upon the alleged creation and persistence of paper mill waste in Millview that is claimed to have resulted in widespread contamination of this well-defined community in excess of federal

and state guidelines.

This common course of alleged conduct by St. Joe, the common issues of St. Joe's alleged liability therefor, the common questions of environmental science in determining affected areas, and the common questions of how those areas are, in fact, impacted, make class treatment appropriate. See e.g., *Maywalt v. Parker & Parsley Petroleum Co.*, 147 F.R.D. 51, 55 (S.D.N.Y. 1993). Common questions of liability, causation, and remedies not only predominate but overwhelm any individualized issues under these circumstances.

If these claims were tried separately, the amount of repetition would be manifestly unjustified. To the extent that each claim of each plaintiff depends upon proof concerning the history of the operations at the plant, the nature, timing, extent and cause of [contamination], the kinds of remedies, if any, appropriate to address future potential [contamination] . . . [and] the generalized impact on real property values, that proof would be virtually identical in each case. It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same issues. Clearly, a Rule 23(b)(3) class could properly be certified under these circumstances. *Boggs v. Divested Atomic Corp.* 141 F.R.D. 58, 67 (S.D. Ohio 1992) (class certification appropriate in action brought by residents living within six miles of a radioactive materials plant). It is difficult to imagine that class jury findings on the class questions will not significantly advance the resolution of the underlying hundreds of cases.

*Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472-73 (5th Cir. 1986).

#### **B. Superiority**

The class action must be the "superior" means by which the action is to be tried, which requires an evaluation of the manageability of the case at trial as a class action and an evaluation of the resources and limits of the court system. See *R.J. Reynolds*

*Tobacco Co. v. Engle*, 672 So. 2d 39, 41-42 (Fla. 3d DCA 1996).

The purpose of the procedural device of a class action is to conserve the resources of both the courts and the parties. See *Broin*, 641 So.2d at 888, *supra*; see also, *In re Orthopedic Bone Screw Products Liability Litigation*, 176 F.R.D. 158 (E.D.Pa. 1997). Class certification is the only realistic procedural vehicle for many of the putative class members to seek justice. "Unless the claims of the members of these classes can be litigated on a class basis, they cannot be feasibly litigated at all. While the total alleged injury to the class is large, many individual class members may not have a large enough stake to justify litigating their individual claims." *In re Ampicillin Antitrust Litigation*, 55 F.R.D. 269, 276 (D.D.C. 1972). As evidenced by the expenses incurred by Plaintiffs and St. Joe in connection with the expert reports and testimony proffered at the certification stage of the litigation, individual pursuit of the putative class members' claims, including the retention of experts to counter the merits of St. Joe's positions, would likely be prohibitively costly. An individual plaintiff with a typical residence in the affected neighborhood would likely not be able to afford to pursue a claim for property damages based upon the contamination, considering the enormous costs and energy being directed at the defense of this litigation by St. Joe. As such, the policy supporting class treatment is particularly appropriate here, where members lack the means to prosecute individual actions. See, e.g., *Rosenblatt v. Omega Equities Corp.*, 50 F.R.D. 61, 64 (D.N.Y. 1970).

### **Class Definition**

Based upon the record before the Court, the Court hereby exercises its discretion, and finds a rational basis to certify a class consisting of the following:

All owners of real property on or after June 4, 2001, located in the area within Port St. Joe, Gulf County, Florida bordered by the Apalachicola Northern Railroad Spur to the north, Peters Street and North Garrison Avenue to the east, Avenue A to the south, and U.S. 98 to the west ("Millview"), except for parcel numbers 04578-100R; 04578-000R; 04578-050R; 04577-000R; 05769-050R; 05769-000R; 05724-050R; 05724-000R; and 05685-050R. Excluded from the class are government entities and The St. Joe Company and any predecessors-in-interest thereto, any entity in which The St. Joe Company has or had a controlling interest, any employees, officers, or directors of The St. Joe Company, and the legal representatives, heirs, successors, and assigns of The St. Joe Company.

A map of which is attached to and incorporated in this Class Certification Order. This class is limited to property damages claims, maintenance of which on behalf of the class the Court determines to be appropriate under Fla.R.Civ.P., Rule 1.220(d)(4)(A). Should the trier of fact or this Court, based on a dispositive ruling, subsequently find that any portion of this proposed class is not legally entitled to recover pursuant to the theories alleged by Plaintiffs, the class definition can be further revised as anticipated by Rule 1.220(d)(1), Fla. R. Civ. P.

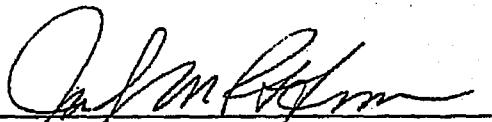
This Court, having found the requirements of Rule 1.220(a) and (b)(3) to be satisfied, hereby ORDERS that this matter proceed on behalf of a class as defined above.

Accordingly, IT IS ORDERED that:

Pursuant to Rule 1.220(d)(2), Fla. R. Civ. P., Plaintiffs shall provide notice "to each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner to be determined by the court to be most practicable under the circumstances."

Accordingly, within 30 days of this Order, Plaintiffs shall submit (i) a proposal for what steps must be undertaken to attempt to identify and locate class members; (ii) the proposed form of the notice to be given to class members that can be identified and located; and (iii) a brief regarding the form of notice that must be given to class members that cannot be identified or located. Defendant shall submit a response to such notice proposal within 21 days thereafter.

DONE and ORDERED in Gulf County, Florida on this 9 day of November, 2004.

  
JUDY M. PITTMAN  
Circuit Court Judge

Attachment

cc:

J. Michael Papantonio, Esq.  
Steven A. Medina, Esq.  
Kathleen P. Toolan, Esq.  
Robert G. Kerrigan, Esq.  
Lawrence Keefe, Esq.  
Vickie A. Gesellschaft, Esq.  
Tracy P. Moye, Esq.  
Steven R. Andrews, Esq.  
David M. Wells, Esq.  
Bryan S. Gowdy, Esq.  
Donald D. Anderson, Esq.

**OPTION B**

**1999**

**PROPOSED CLASS AREA**

USGS  
Port St. Joe, Florida, United States 10 Jan 1999





THE ST. JOE COMPANY,

Appellants,

v.

RAWLIS LESLIE, DEBORAH  
CROSBY, et al.,

Appellee.

---

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D04-5462

Opinion filed July 29, 2005.

An appeal from a non-final order from the Circuit Court for Gulf County,  
Judy M. Pittman, Judge.

David M. Wells, Donald D. Anderson, and Bryan S. Gowdy, of McGuire Woods LLP,  
Jacksonville, for Appellant.

J. Michael Papantonio, Steven A. Medina, and Kathleen P. Toolan, of Levin,  
Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola; Robert G.  
Kerrigan, of Kerrigan, Estess, Rankin & McLeod, LLP, Pensacola; Lawrence Keefe,  
Michelle Anchors, and Vickie Gesellschaft, of Anchors, Foster, McInnis & Keefe,  
P.A., Fort Walton Beach; Steven R. Andrews, and Tracy P. Moye, of Andrews &  
Moye, P.A., Tallahassee, for Appellee.

HAWKES, J.

Appellant, The St. Joe Company (St. Joe), dumped various paper mill waste  
products, such as wood chips, tree bark, lime grits, oil boiler ash, and slag onto  
locations throughout an area called "the sock." The properties were eventually sold  
to numerous individuals and contractors. Appellees are property owners who allege

injury to their individual parcels, both directly and indirectly, as a result of the dumping. Appellees' motion for class certification was premised on the following counts: (1) continuing trespass; (2) continuing nuisance; (3) unjust enrichment; (4) strict liability; (5) negligence; and (6) statutory liability under section 376.313(3), Florida Statutes (providing a civil cause of action for damages suffered as a result of a prohibited discharge or other pollutive condition; no negligence need be proven). The trial court certified a class of property owners who own parcels within "the sock," and parcels outside "the sock." It is from this non-final order that Appellant appeals.

## **I. FACTUAL AND PROCEDURAL HISTORY**

At the class certification hearing, various expert reports were submitted into evidence, but the reports differed as to whether there was evidence of soil and/or water contamination within the defined class area.

### **A. Expert opinions**

Specifically, the Florida Department of Environmental Protection (DEP) issued a report indicating that pollution from mill waste was widespread, though nothing indicated each parcel included in the class was contaminated. The report also indicated the pollution was usually found in low concentrations. Only a few of the sampled locations revealed contamination levels that exceeded DEP's risk-based

residential soil guidelines and drinking water standards. DEP did not find arsenic in the groundwater, but one test well did contain excessive levels of lead. DEP recommended further assessment of groundwater and soil within the class area.

Another expert, Dr. George Flowers, testifying on behalf of the plaintiffs, opined in his report that 46% of his soil samples revealed excessive levels of arsenic, while 3% revealed excessive levels of lead. Based on a computer program he developed, in conjunction with the random physical sampling, Flowers concluded contamination could be found "throughout" the area, and there was a risk of ongoing groundwater contamination. Significantly, although Flowers testified the contamination could be found "throughout" the area, he did not opine that each class member's parcel was contaminated.

Flowers also opined that lime grits, found in some areas of the certified class, were not likely to be a source of contamination, and he admitted his computer program predicted higher levels of arsenic than what his physical samples revealed. Furthermore, Flowers did not look for alternative explanations for the contamination.

Two other experts, Michael McLaughlin and Glen Millner, opined they did not believe there was a contamination problem. In fact, Millner opined no hazardous waste had even been dumped in the area. Both experts also opined there could be alternative sources of arsenic and lead contamination, including: paint, fertilizer,

mulches, pesticides, insecticides, herbicides, batteries, wood preservatives, used motor oil, residue from leaded gasoline, and chicken feed.

**B. Class representatives' testimony**

Several of the class representatives testified they either witnessed or were told about Appellant dumping the mill waste in the defined class area. However, none of the class representatives testified that dumping occurred on their own land, or that their land was contaminated. Neither did the class representatives testify the value of their land had decreased because of the alleged dumping. Some of the class representatives, however, did admit using some of the items that allegedly could cause arsenic and lead contamination.

**C. Property value testimony**

One expert, Dr. Thomas Jackson, opined in his report that in order to be grouped together for class-action purposes, the properties would need to be the same property type, approximately the same age, have the same concentration of hazardous substances above regulatory levels, and there would need to be only one source of contamination. Jackson was of the opinion that the subject properties were too diverse to analyze together on a common, class-wide basis, due to multiple ownership issues, multiple dates of value, and different environmental concerns.

At the class certification hearing, Dr. Jack Friedman opined that after reviewing

Jackson's report, he believed any diminution in value of the properties could be ascertained by using a mass appraisal approach. However, Friedman admitted he had not been asked to perform a mass appraisal, and had not checked with the local property appraiser to determine the feasibility of such an approach. Although Friedman asserted he could have performed a regression analysis based on Jackson's report, he failed to do so prior to his testimony.

Ultimately, the trial court certified the class after finding there were common questions pertaining to liability, causation, and remedies.

## **II. PREDOMINANCY AND CLASS CERTIFICATION**

We review class certification orders for abuse of discretion. See Seven Hills v. Bentley, 848 So. 2d 345, 352 (Fla. 1st DCA 2003).

Beyond numerosity, commonality, typicality, and adequacy, courts must determine whether the questions of law and fact common to the claims and defenses of the representative party and class members predominate over questions of law and fact affecting only individual class members. See id. at 352; Fla. R. Civ. P. 1.220(b)(3) (2004). "Common issues . . . predominate if they 'ha[ve] a direct impact on every class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief.'" Klay v. Humana, Inc., 382 F.3d 1241, 1255 (11th Cir. 2004) (citation omitted). Each party must be able to prove their own

individual case, and in so doing, prove the case of the other unnamed class members. See Earnest v. Amoco Oil Co., 859 So. 2d 1255, 1258 (Fla. 1st DCA 2003). If Plaintiffs must still present a great deal of individualized proof or argue individualized legal points to establish most or all of the elements of their claims, class certification is not appropriate. See Klay, 382 F.3d at 1255; see also Terry L. Braun, P.A. v. Campbell, 827 So. 2d 261 (Fla. 5th DCA 2002) (holding that where both liability and damages depend on individual factual determinations, claims may only be determined on individual basis).

**A. Failure to prove elements of claims**

Here, none of the class representatives testified that dumping occurred on their property, much less that their property was contaminated. Nor did the class representatives testify that their property had been physically harmed or that their property values had decreased (as opposed to speculation about their property values). Thus, Appellees failed to prove how the class representatives could prove their own trespass, unjust enrichment, negligence, strict liability, or nuisance claims, thereby proving the claims of the unnamed class members.<sup>1</sup>

---

<sup>1</sup> To sustain a trespass claim, each class representative would have to prove Appellant or Appellant's mill waste entered onto the class representative's property. See M.F. v. State, 864 So. 2d 1223 (Fla. 1st DCA 2004).

Likewise, the unjust enrichment claim was predicated on the dumping of hazardous waste, and the failure to properly control, remove, or dispose of it.

Negligence claims can only be sustained when a plaintiff proves property

## B. "Stigma" damages

Moreover, because no proof was adduced that any of the class representatives' land was contaminated, the concept of "stigma" damages is inapplicable. Cf. Finkelstein v. Dep't of Transp., 656 So. 2d 921, 924 (Fla. 1995) (recognizing concept of "stigma" damages as they apply to property which is, in fact, contaminated).

However, even if the concept of "stigma" damages is applicable, the class representatives would be required to prove "that there exists a methodology for proving class-wide impact by predominately common evidence . . . ." Earnest, 859 So. 2d at 1258. Merely providing testimony that a statistical analysis could be done, without proving that such an analysis was actually performed and was scientifically valid, is insufficient. See id. at 1260. Such an insufficiency is present in this case because although testimony was provided that a mass appraisal or regression analysis could be done, there was no evidence that one was actually performed, or, even if

---

damage, and strict liability and nuisance claims require physical harm, rather than just diminution in value. See Stephenson v. Collins, 210 So. 2d 733, 737-38 (Fla. 1st DCA 1968) (Rawls, J. dissenting) (regarding negligence claims), decision quashed on other grounds by, 216 So. 2d 433 (Fla. 1968); Monroe v. Sarasota County School Bd., 746 So. 2d 530 (Fla. 2d 1999) (same); Great Lakes Dredging and Dock Co. v. Sea Gull Operating Co., 460 So. 2d 510 (Fla. 3d DCA 1984) (regarding strict liability claims); Adams v. Star Enters., 51 F.3d 417, 423 (4th Cir. 1995) (collecting cases and determining nuisance claim could not be sustained based solely on diminution in value). But see Peters v. Amoco Oil Co., 57 F.Supp.2d 1268, 1286 (M.D. Ala. 1999) (interpreting Great Lakes Dredging as not requiring physical contact as an element of strict liability claims; also permitting negligence and nuisance claims to proceed based on diminution in value theory).

performed, that it would be accepted in the relevant property appraiser community as valid.<sup>2</sup> Thus, Appellees failed to prove there was an existing methodology to prove “stigma” damages on a class-wide basis.

### **C. Causation**

Claims for trespass, negligence, nuisance, and strict liability all require proof that the defendant caused the pollution resulting in damages. See Aramark Uniform and Career Apparel, Inc. v. Easton, 894 So. 2d 20, 23-24 (Fla. 2004). Because evidence was produced that numerous other substances or items existed that could cause lead and arsenic contamination, the issue of causation would likely vary with each class member. In fact, the class representatives’ own testimony reflected that some representatives used pressure-treated wood, while others used pesticides. Where alternative sources of liability are an issue, class certification is inappropriate. See Boughton v. Cotter Corp., 65 F.3d 823 (10th Cir. 1995). Furthermore, Appellees’ own expert, Dr. Flowers, opined that lime grits were likely not a source of contamination. Thus, for any class member whose property only contains lime grits, causation could not be established.

Even under section 376.313, Florida Statutes (2004), which does not require

---

<sup>2</sup> See Brim v. State, 695 So. 2d 268 (Fla. 1997) (noting Florida utilizes the test set forth in Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923), which requires that evidence be sufficiently tested and accepted by the relevant scientific community).

proof of causation, Appellees would not prevail. See § 376.313, Fla. Stat. (requiring only that plaintiff “plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred”); Aramark Uniform and Career Apparel, Inc., 894 So. 2d at 24. Here, although DEP reported excessive levels of pollution in some samples, there was no evidence the samples were taken from the same area where the class representatives witnessed dumping. Nor was there evidence that the waste, which the class representatives saw being dumped, exceeded DEP’s standards. Finally, Dr. Flowers’ testimony that lime grits were not a likely source of contamination, would preclude this statutory cause of action for those property owners whose parcels only contained lime grits. Thus, Appellees failed to prove how each class representative would be able to prove his or her own claim, thereby proving the claims of the unnamed class members.

Because individualized factual determinations will be necessary to determine whether a class member’s property is contaminated and, if so, what caused the contamination, the trial court abused its discretion by finding that common issues predominate. Therefore, we

REVERSE the certification order and REMAND for proceedings consistent with this opinion.

BARFIELD, and POLSTON, JJ., CONCUR.





JAMES R. WOLF  
CHIEF JUDGE

RICHARD W. ERVIN, III  
EDWARD T. BARFIELD  
MICHAEL E. ALLEN  
CHARLES J. KAHN, JR.  
PETER D. WEBSTER  
MARGUERITE H. DAVIS  
ROBERT T. BENTON, II  
WILLIAM A. VAN NORTWICK, JR.  
PHILIP J. PADOVANO  
EDWIN B. BROWNING, JR.  
JOSEPH LEWIS, JR.  
RICKY L. POLSTON  
PAUL M. HAWKES  
BRADFORD L. THOMAS  
JUDGES

JON S. WHEELER  
CLERK

DONALD H. BRANNON  
MARSHAL

**DISTRICT COURT OF APPEAL**  
FIRST DISTRICT, STATE OF FLORIDA  
TALLAHASSEE  
32399-1850

March 4, 2005

Honorable Barbara J. Pariente  
Chief Justice, Florida Supreme Court  
500 S. Duval Street  
Tallahassee, Florida 32399

RE: New Courthouse for the First District Court of Appeal

Dear Madam Chief Justice:

Thank you for giving Judge Allen and me the opportunity to address the Court concerning the First District Court of Appeal's proposal for a new courthouse to be constructed at Southwood. The First District Court of Appeal needs a new facility for three reasons: 1) lack of space; 2) insufficient parking; and 3) the nonfunctional design of the present courthouse.

The First District's existing 50,000 square foot courthouse is landlocked in downtown Tallahassee, and every office in the current facility is being utilized. There is no room to add either new judges, new law clerks, or support staff. Consultants from two leading courthouse architectural firms (Helmuth, Obato and Vassabaum, and Turner Justice) indicate that the appropriate size for a 15-judge intermediate appellate court is 77,000 square feet. The consultant for the National Center for State Courts advises us that the appropriate size for a 15-judge appellate court is 68,000 square feet. The facility that was planned in Jacksonville for 13 judges called for 80,392 square feet. This would strongly suggest that our present building is undersized for our existing needs.

Additionally, the consistent growth of our caseload will require new judges and staff in the years ahead. Since 1999 our filings have increased by 16.8%, and a fifteen-year review reveals an increase of 65%. Growth has fluctuated between minus 0.4% and 11.8% (with an average of 3.7%). Last year we had filings of 380 cases per judge. The future need for additional judges, law clerks, and staff to address the growing caseload appears to be inevitable, and adequate space to grow is essential.

Our present facility has insufficient parking. Ten of our employees do not have permanent parking spaces. People attending oral arguments and parties filing papers have no spaces. There is only one handicapped space available for an employee or court visitor. These problems will only become more acute with the building of new condominiums on Kleman Plaza. A new facility on a five-acre parcel would satisfy these needs.

Our present building is neither functional nor totally secure. Presently each judge has two elbow clerks. The new pattern at the federal level and in some states is to go to three clerks rather than adding judges. Our judicial suites have room for only one law clerk, and additional law clerks are scattered throughout the building and as far as three floors away. This hodgepodge of office assignments results in considerable inefficiency and inconvenience. Our central staff attorneys are also split into two locations.

Because of inadequate space, active case files are currently required to be kept on a separate floor from the clerk's office and the deputy clerks who work on those files. Considerable time is wasted in retrieving and transporting of files. Additionally, all except one member of the clerk's staff is located in an office which has absolutely no available space for additional personnel or even one piece of additional equipment. With the courts beginning migration to e-filing and a paperless court, additional scanners, copiers and other equipment will be required but we have no space to accommodate such equipment. Also there is no adequate space for litigants to review case files while still being observed by deputy clerk personnel to insure the integrity of the case files. A further consequence of the lack of storage spaces requires the court to keep closed cases at a warehouse two miles from the court and this could be eliminated with adequate storage space in a new courthouse and would substantially reduce the cost and time for transporting files to and from the courthouse. Also, the current separation of the mail room and

where security screening occurs for incoming mail makes for an inefficient operation for the processing of pleadings and mail throughout the courthouse.

Security is a problem for judges, as well as the marshal and clerk's offices. Judges do not have secured parking - an omission which is always cited during security audits by the U.S. Marshal Service. The present configuration does not allow us to deal with other security concerns without expending a great deal of money.

We have looked at a number of alternatives to resolve the problems. Renovations to our present facility would be costly and disruptive to court operations. We have also considered available nearby property. The only property available in the area is a building to our immediate north. The present building on that property is in poor condition. Neither of these alternatives would resolve the issue of the inefficiency of our building and would constitute nothing more than a band-aid.

We also explored a joint project with the law school, which has a 45,000 square foot addition on the approved PECO list. The new project would include courtrooms, office and classroom space. While the dean indicated a willingness to add office space for our needs, it still did not accommodate the parking or inefficiency of our current facility. In our discussions, Judge Allen and I recognized that our current building would accommodate the needs of the law school and that it could serve as an important component for solving our problems.

We, therefore, propose to build a facility for 20 judges, thus accommodating future growth, on existing state property at Southwood. (The State has 15 acres that will revert to Southwood if the project is not utilized within the next three years). A courthouse to accommodate this many judges would be 85,000 to 90,000 square feet in size. Estimates of the costs run between \$22 million and \$28 million. We are confident that a good facility can be built for \$22 million.

Subject to the approval of our judges who are meeting on March 14<sup>th</sup>, we may be able to resolve some of OSCA's space problems as part of this project. Until growth occurs which would justify the addition of judges to our court (at least 5 years after the new building is completed, assuming that third elbow clerks

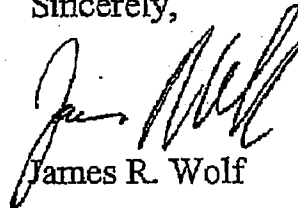
are added before new judges), we see no reason why OSCA should not be allowed to lease a 9,000 square foot portion of the new building. Attached is proposed language concerning such an arrangement. We might even be able to allocate more space during the preconstruction process.

We have discussed the necessity for moving forward this year. It is extremely unlikely that FSU's support and the availability of state land and revenue would be available in future years.

This project has been approved by the District Court of Appeal Budget Commission, as well as all the judges of this court. We would, therefore, solicit the support of the Florida Supreme Court.

If you desire any further information or have any problems with the proposal, please let me know as soon as possible. Thank you again for the court's time.

Sincerely,



James R. Wolf

JRW/jt  
attachment

cc: Justices of the Florida Supreme Court  
Lisa Goodner, State Courts Administrator  
Judges of the First District Court of Appeal  
Jon S. Wheeler, Clerk, First District Court of Appeal  
Donald H. Brannon, Marshal, First District Court of Appeal

### Proposed Language

If the First District is provided sufficient additional expense monies for maintenance, janitorial, and utility expenses for the entire new building, we would not look to the Supreme Court or OSCA budgets for contributions toward those costs. And if sufficient project funding is provided for the required paving for parking spaces for OSCA personnel, we would not look to the Supreme Court or OSCA budgets for contributions toward those costs. Obviously, however, such reimbursement will be required if maintenance, janitorial, and parking lot costs associated with the OSCA space is not provided.

It would seem that two options might be available as to finishing out the space temporarily allocated for use by OSCA. Under one option, the space could be finished out to accommodate the future needs of the First District. If this option is chosen, the Supreme Court or OSCA would be responsible for repair of any damage to the space when it is later vacated by OSCA personnel. Under a second option, the space could be finished out to accommodate the needs of OSCA. If this option is chosen, the Supreme Court or OSCA would, upon vacation of the space, of course, be responsible for altering the space to comport with the needs of the First District.

It must be understood that the First District would have complete authority over management of the building. The First District would have authority to designate the location of the space provided for OSCA's use and to designate other reasonable conditions such as locations for parking, methods and locations for entry to and exit from the provided space, procedures insuring security of the building and its contents, and periodic inspections of the provided space. Once five years of building occupancy have expired, the First District would have final authority to determine when the space must be vacated in order to accommodate the growth needs of the First District, subject to an obligation to provide at least six months' advance notice of OSCA's obligation to vacate the building.





JAMES R. WOLF  
CHIEF JUDGE

RICHARD W. ERYN, III  
EDWARD T. BARFIELD  
MICHAEL E. ALLEN  
CHARLES J. KAHN, JR.  
PETER D. WEBSTER  
MARGUERITE H. DAVIS  
ROBERT T. BENTON, II  
WILLIAM A. VAN NORTWICK, JR.  
PHILIP J. PADOVANO  
EDWIN B. BROWNING, JR.  
JOSEPH LEWIS, JR.  
RICKY L. FOLSTON  
PAUL M. HAWKES  
BRADFORD L. THOMAS  
JUDGES

JON S. WHEELER  
CLERK

DONALD H. BRANNON  
MARSHAL

DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA  
TALLAHASSEE  
32399-1850

March 31, 2005

Honorable Mark Mahon  
State Representative, District 16  
Room 1201, The Capitol  
Tallahassee, Florida 32399-1300

Re: FSU/First District Project

Dear Mark:

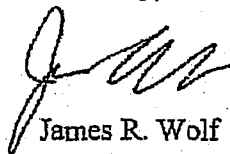
Enclosed is some information I thought you might find interesting on the Southwood project and the reverter clause to St. Joe Paper. I have also enclosed some proviso language which would probably be needed if we are able to get an appropriation.

The reversion on Parcel 3 takes effect if construction does not commence on a office building prior to January 1, 2008. Parcel 3 is 14.91 acres. If no construction takes place before January 1, 2010, Parcel 4, an additional 37.133 acres reverts.

If the Senate decides to go ahead with the project, it probably should contain language authorizing the District Court of Appeal to utilize up to five acres for construction of a new courthouse on Parcel 2 of the Southwood Office Complex. I have the legal description if needed.

Thanks again for your help.

Sincerely,



James R. Wolf

JRW/jt  
enclosure

Prepared by and Return to:  
Brian H. Bibeau  
Hopping Green Sains & Smith  
P. O. Box 6526  
Tallahassee, FL 32301

Documentary Tax Pd. \$29,394.40
Intangible Tax Pd.
Dave Lang, Clerk, Leon County
By: <i>[Signature]</i> Deputy Clerk

R990033591  
RECORDED IN  
PUBLIC RECORDS LEON CNTY FL  
BOOK: R2245 PAGE: 00040  
APR 27 1999 08:37 AM  
DAVE LANG, CLERK OF COURTS



BK: R2245 PG: 00040

### SPECIAL WARRANTY DEED

This indenture, made 16<sup>th</sup> day of APRIL, 1999, between THE ST. JOE COMPANY, a Florida Corporation with its principal office in Jacksonville, Duval County, Florida ("Party of the First Part"), and BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA, whose address is 3900 Commonwealth Blvd., Tallahassee, Leon County, Florida ("Party of the Second Part").

\*1650 PROPERTIAL DRIVE, SUITE 400  
TALLAHASSEE, FL 32307

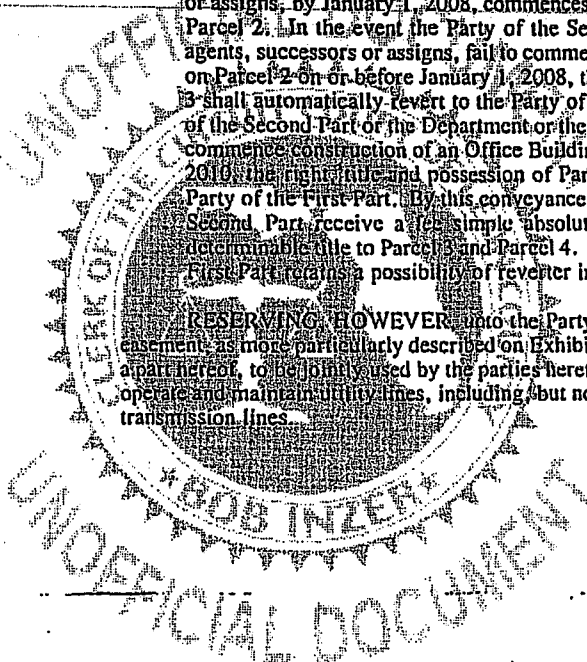
WITNESSETH: That the Party of the First Part for and in consideration of the sum of Ten Dollars, and other valuable considerations to it in hand paid by the Party of the Second Part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the Party of the Second Part and its successors and assigns forever, the following described land, in Leon County, Florida ("Real Property"), to-wit:

Parcel 1, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof, so long as the Party of the Second Part, or the State of Florida, Department of Management Services ("Department") or their agents, successors or assigns, by January 1, 2003, either (a) commences construction of an Office Building containing at least 80,000 gross square feet and otherwise meeting the criteria of Paragraph 11 of the Agreement For Land Exchange and Development executed by the parties hereto and dated January 7, 1999, ("Office Building") on Parcel 1; or (b) expends at least \$2,000,000 on development activities related to an Office Building on Parcel 1 (Expend \$2,000,000). In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to either commence construction of an Office Building on Parcel 1 or Expend \$2,000,000 on or before January 1, 2003, the right, title and possession to Parcel 1 shall automatically revert to the Party of the First Part and the Party of the Second Part shall automatically be vested with fee simple title to Alt. Parcel 1, as more particularly described on Exhibit B attached hereto, and by this reference made a part hereof. By this conveyance the parties intend that the Party of the Second Part receive a fee simple determinable title in Parcel 1 and that the Party of First Part retain a possibility of reverter in Parcel 1. If the Party of the Second Part fails to satisfy either the Office Building commencement of construction or Expend \$2,000,000 conditions related to Parcel 1, the fee simple determinable estate automatically terminates, Parcel 1 automatically reverts to the Party of the First Part, and the Party of the Second Part is automatically vested with fee simple absolute title to Alt. Parcel 1.

AND

Parcel 2, Parcel 3 and Parcel 4, as more particularly described on Exhibit A, so long as the Party of the Second Part or the Department or their agents, successors or assigns, by January 1, 2008, commences construction of an Office Building on Parcel 2. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before January 1, 2008, the right, title and possession to Parcel 2 shall automatically revert to the Party of the First Part. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before January 1, 2010, the right, title and possession of Parcel 4 shall automatically revert to the Party of the First Part. By this conveyance the parties intend that the Party of the Second Part receive a fee simple absolute title to Parcel 2 and a fee simple determinable title to Parcel 3 and Parcel 4. The parties intend that the Party of the First Part retain a possibility of reverter in Parcel 3 and Parcel 4.

RESERVING, HOWEVER, unto the Party of the First Part, a perpetual, non-exclusive easement as more particularly described on Exhibit C attached hereto and by this reference made a part hereof, to be jointly used by the parties hereto for surface water drainage and to construct, operate and maintain utility lines, including but not limited to, sewer, potable water and electric transmission lines.



SUBJECT, however to the following: all covenants, easements, conditions and restrictions of record; and zoning and regulatory ordinances of governmental agencies which affect the Real Property.

AND the Party of the First Part does hereby specially warrant the title to the Real Property, and will defend the same against the lawful claims of all persons claiming the same by, through, or under the Party of the First Part, but not otherwise.

IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its corporate name by its Sr. Vice President, attested by its Assistant Secretary and its corporate seal to be hereunto affixed the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

THE ST. JOE COMPANY

Christine M. Robbins  
Christine M. Robbins

By: Robert M. Rhodes Sr. Vice President  
Robert M. Rhodes

Sara L. Guess  
Sara L. Guess

Attest: Lawrence Paine Asst. Secretary  
Lawrence Paine  
Notary Public, State of Florida

STATE OF FLORIDA  
COUNTY OF DUVAL

Before me personally appeared Robert M. Rhodes and Lawrence Paine, to me well known and known to me to be the senior vice President and Assistant Secretary, respectively of The St. Joe Company, the corporation named, in the foregoing instrument and known to me to be the persons who as such officers of said corporation executed the same, and then and there they did acknowledge before me that said instrument is the free act and deed of said corporation; that it was executed by them as such officers for the purpose therein expressed; and that the seal thereunto affixed is the corporate seal by them in like capacity affixed, all under authority in them duly vested.

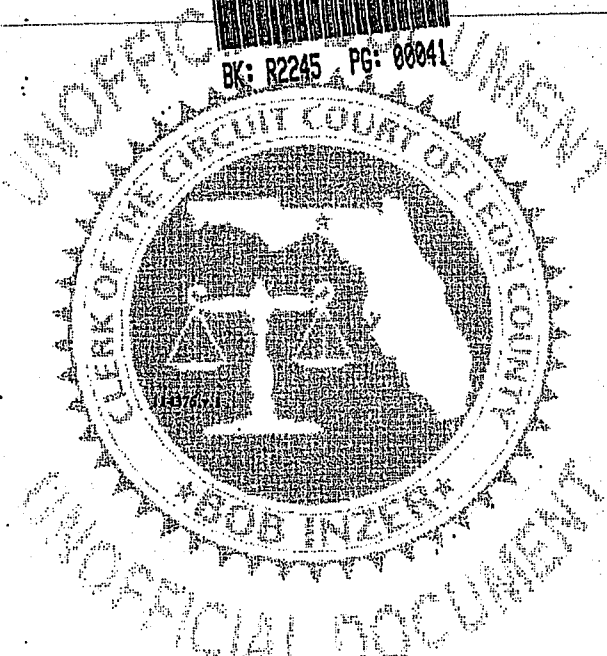
WITNESS my hand and official seal in the above named County and State, this 16th day of April, A.D., 1999.

R990033591  
RECORDED IN  
PUBLIC RECORDS LEON CHY FL  
BOOK: R2245 PAGE: 00041  
APR 27 1999 09:37 AM  
DAVE LANG. CLERK OF COURTS

Sara L. Guess  
Notary Public, State of Florida at large  
Sara L. Guess  
My Commission Expires:

BK: R2245 PG: 00041

Sara L. Guess  
MY COMMISSION # CC503698 EXPIRES  
October 19, 1999  
BONDED THRU TROY FARM INSURANCE, INC.





JAMES R. WOLF  
CHIEF JUDGE

RICHARD W. ERVIN, III  
EDWARD T. BARFIELD  
MICHAEL E. ALLEN  
CHARLES J. KAHN, JR.  
PETER D. WEBSTER  
MARGUERITE H. DAVIS  
ROBERT T. BENTON, II  
WILLIAM A. VAN NORTWICK, JR.  
PHILIP J. PADOVANO  
EDWIN B. BROWNING, JR.  
JOSEPH LEWIS, JR.  
RICKY L. POLSTON  
PAUL M. HAWKES  
BRADFORD L. THOMAS  
JUDGES



DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA  
TALLAHASSEE  
32399-1850

JON S. WHEELER  
CLERK

DONALD H. BRANNON  
MARSHAL

March 31, 2005

Mr. David Coburn, Staff Director  
Senate Ways and Means Committee  
Room 201, The Capitol  
Tallahassee, Florida 32399

Re: FSU/First District Project

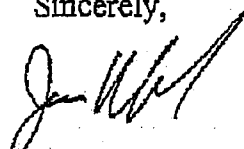
Dear David:

Enclosed is the deed with the reverter we discussed. The reversion on Parcel 3 takes effect if construction does not commence on a office building prior to January 1, 2008. Parcel 3 is 14.91 acres. If no construction takes place before January 1, 2010, Parcel 4, an additional 37.133 acres reverts.

If the Senate decides to go ahead with the project, it probably should contain language authorizing the District Court of Appeal to utilize up to five acres for construction of a new courthouse on Parcel 2 of the Southwood Office Complex. I have the legal description if needed.

If you need any further information, please let me know.

Sincerely,

  
James R. Wolf

JRW/jt  
enclosure



MODIFICATION OF DEED RESTRICTION AND REVERTER

THIS MODIFICATION OF DEED RESTRICTION AND REVERTER is made this  
13<sup>th</sup> day of December, 2007, by and between THE ST. JOE COMPANY, a Florida  
corporation ("Party of the First Part") and BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("Party of the Second  
Part").

WHEREAS, Party of the First Part conveyed to Party of the Second Part, those lands  
more particularly described in Special Warranty Deed ("Deed") dated April 16, 1999, and  
recorded in Official Records Book R2245, Page 00040, Public Records of Leon County,  
Florida (the "Property"); and

WHEREAS, the Deed contains the following deed restriction and reverter  
("Restriction" and "Reverter") on that portion of the Property identified as Parcels 2, 3 and 4  
in the Deed and which is more particularly described in Exhibit "A" attached hereto and by  
this reference made a part hereof:

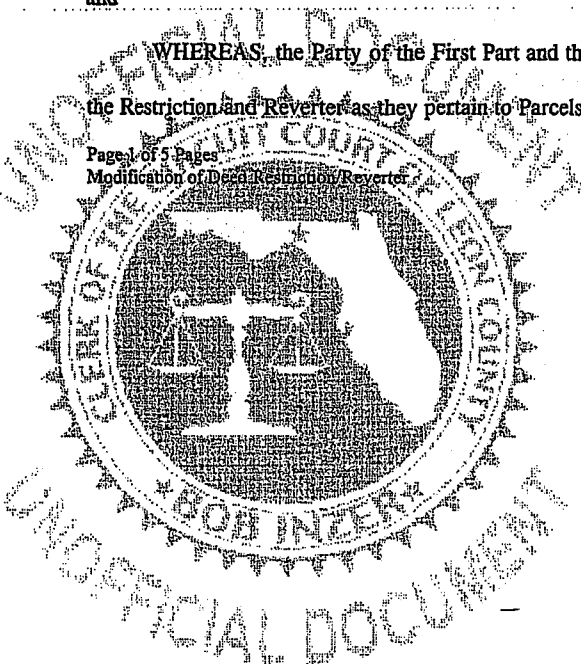
Parcel 2, Parcel 3 and Parcel 4, as more particularly described on Exhibit A, so  
long as the Party of the Second Part or the Department or their agents,  
successors or assigns, by January 1, 2008, commences construction of an Office  
Building on Parcel 2. In the event the Party of the Second Part or the  
Department or their agents, successors or assigns, fail to commence  
construction of an Office Building on Parcel 2 on or before January 1, 2008, the  
right, title and possession to Parcel 3 shall automatically revert to the Party of  
the First Part. In the event the Party of the Second Part or the Department or  
their agents, successors or assigns, fail to commence construction of an Office  
Building on Parcel 2 on or before January 1, 2010, the right, title and  
possession of Parcel 4 shall automatically revert to the Party of the First Part;

and

WHEREAS, the Party of the First Part and the Party of the Second Part wish to amend  
the Restriction and Reverter as they pertain to Parcels 2, 3 and 4; and

Page 1 of 5 Pages

Modification of Deed Restriction/Reverter

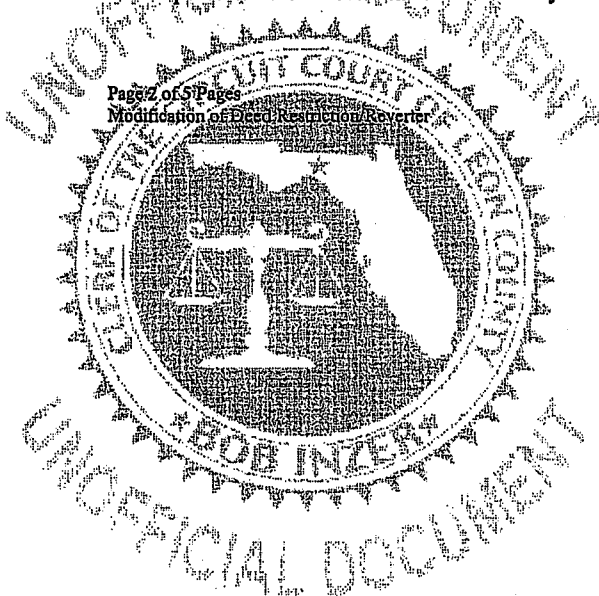


WHEREAS, the Party of the First Part and the Party of the Second Part hereby acknowledge that if the Party of the Second Part or the State of Florida Department of Management Services ("Department") or their agents, successors or assigns, by July 1, 2008, commence construction of an office building that contains at least 80,000 gross square feet and otherwise meets the criteria of Paragraph 11 of the Agreement for Land Exchange and Development executed by the parties hereto and dated January 7, 1999 ("Office Building"), on Parcel 2, the Party of the Second Part will have complied with the Restriction and the Party of the First Part will no longer have a Reverter in Parcel 3 and Parcel 4. Furthermore, upon commencement of construction, the parties hereto agree that full fee simple absolute title to Parcel 3 and Parcel 4 will automatically vest in the Party of the Second Part.

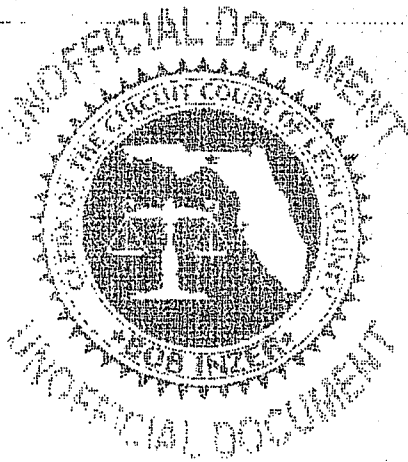
NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants, terms and conditions herein contained, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Party of the First Part and Party of the Second Part agree to the following:

1. The Restriction and Reverter in the Deed as they pertain to Parcels 2, 3 and 4 are hereby replaced and superseded by the following:

Parcel 2, Parcel 3 and Parcel 4, as more particularly described on Exhibit A, so long as the Party of the Second Part or the Department or their agents, successors or assigns, by July 1, 2008, commence construction of an Office Building on Parcel 2. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before July 1, 2008, the right, title and possession to Parcel 3 shall automatically revert to the Party of the First Part. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before January 1, 2010, the right, title and possession to Parcel 4 shall automatically revert to the Party of the First Part.



2. The term "commence construction" as referenced in the Restriction set forth in paragraph 1. above shall mean the completion of the foundation system described in the construction documents that have been approved by the local permitting authority.
3. Except as modified hereby, the original terms and conditions of the Deed shall remain unchanged and in full force and effect, and the same are hereby ratified, approved and confirmed by the Party of the First Part and the Party of the Second Part as of the date of this Modification of Deed Restriction and Reverter.



IN WITNESS WHEREOF, the parties have caused this Modification of Deed Restriction and Reverter to be executed the day and year first above written.

BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE  
STATE OF FLORIDA

By: Scott E. Woolam (SEAL)  
SCOTT E. WOOLAM,  
ACTING ASSISTANT DIRECTOR,  
DIVISION OF STATE LANDS,  
STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

Joliette Simmons  
Witness  
Joliette Simmons  
Print/Type Witness Name

Cheryl C. McCall  
Witness  
Cheryl C. McCall  
Print/Type Witness Name

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of DECEMBER 2007, by Scott E. Woolam, as Acting Assistant Director, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, who is personally known to me.

(SEAL)

Diane C. Rogowski  
Notary Public, State of Florida

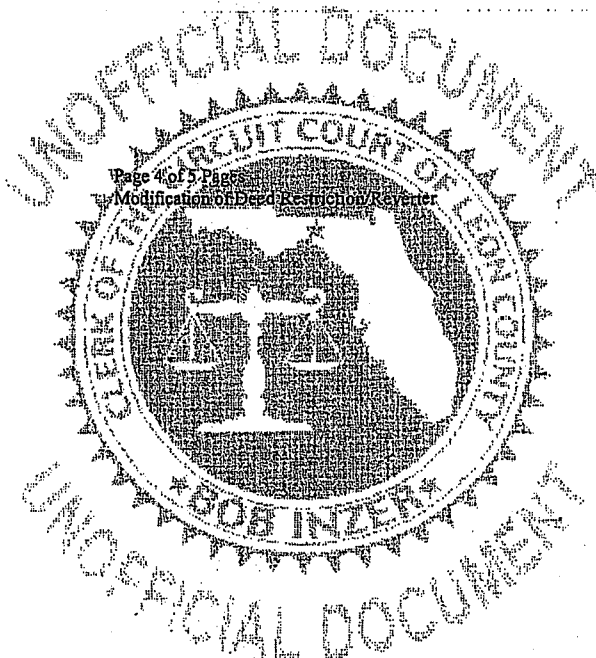
Diane C. Rogowski  
Print/Type Notary  
Commission # DD539673  
Expires May 24, 2010  
Bonded Title Plan Insurance, Inc. 800-365-7019

Approved as to Form and Legality

By: Sam L. Olsen  
DEP Attorney

Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



THE ST. JOE COMPANY, a Florida  
corporation

M. Asby  
Witness  
Melissa Hornsby  
Print/Type Witness Name

By: [Signature]  
William Wier  
Print/Type Name

Title: Vice President

[Signature]  
Witness  
Matthew J. Fitzpatrick  
Print/Type Witness Name

(CORPORATE SEAL)

STATE OF Florida  
COUNTY OF Leon

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of December, 2007, by William Wier, as Vice President of The St. Joe Company, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

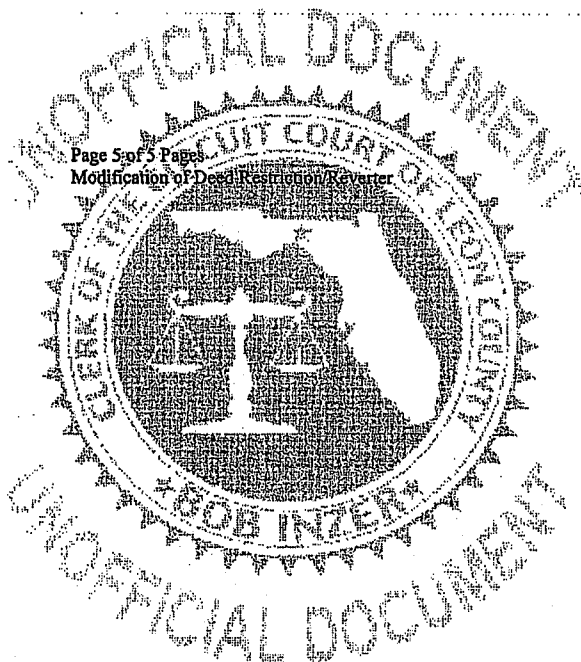
(SEAL)

[Signature]  
Notary Public, State of Florida  
Amy H. Jaskolski  
Printed/Typed/Stamped Name



Commission Number: DD 712897

Commission Expires: September 9, 2011





This instrument prepared under the supervision of:  
Gary L. Heiser, Senior Attorney  
State of Florida Department of Environmental Protection  
3900 Commonwealth Blvd., MS35  
Tallahassee, FL 32399-3000

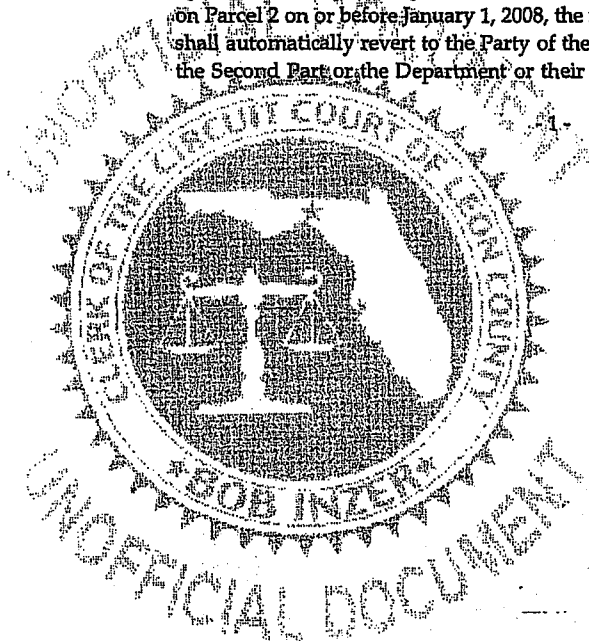
**SECOND MODIFICATION OF DEED RESTRICTION AND REVERTER**

THIS SECOND MODIFICATION OF DEED RESTRICTION AND REVERTER is made  
this <sup>th</sup>27 day of June, 2008, by and between THE ST. JOE COMPANY, a Florida corporation  
("Party of the First Part") and BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT  
TRUST FUND OF THE STATE OF FLORIDA ("Party of the Second Part").

WHEREAS, the Party of the First Part conveyed to the Party of the Second Part, those  
lands more particularly described in Special Warranty Deed ("Deed") dated April 16, 1999, and  
recorded in Official Records Book R2245, Page 00040, Public Records of Leon County, Florida;  
and

WHEREAS, the Deed contains the following deed restriction and reverter ("Restriction"  
and "Reverter") on the real property identified as Parcels 2, 3 and 4 in the Deed (the  
"Property"), and which is more particularly described in Exhibit "A" attached hereto and by  
this reference made a part hereof:

Parcel 2, Parcel 3 and Parcel 4, as more particularly described on Exhibit "A", so  
long as the Party of the Second Part or the Department or their agents, successors  
or assigns, by January 1, 2008, commences construction of an Office Building on  
Parcel 2. In the event the Party of the Second Part or the Department or their  
agents, successors or assigns, fail to commence construction of an Office Building  
on Parcel 2 on or before January 1, 2008, the right, title and possession to Parcel 3  
shall automatically revert to the Party of the First Part. In the event the Party of  
the Second Part or the Department or their agents, successors or assigns, fail to



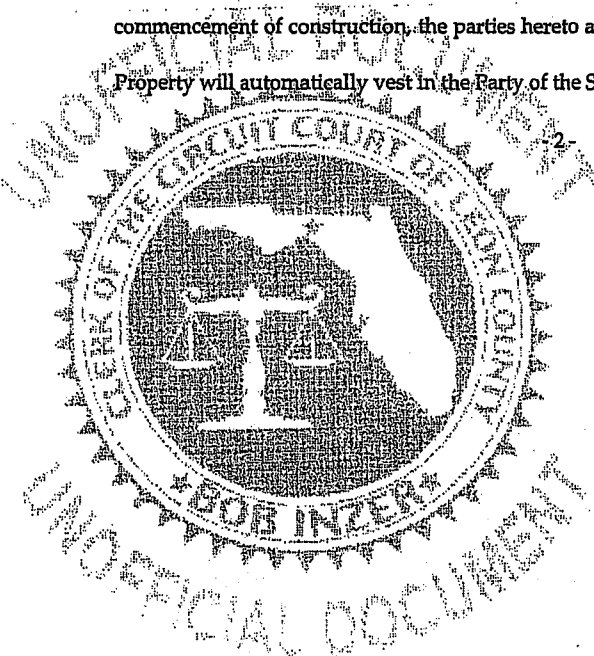
commence construction of an Office Building on Parcel 2 on or before January 1, 2010, the right, title and possession of Parcel 4 shall automatically revert to the Party of the First Part;

and

WHEREAS, the Restriction and the Reverter were modified by that certain Modification of Deed Restriction and Reverter dated December 13, 2007, and recorded December 14, 2007, in Official Records Book 3801, Page 1912, Public Records of Leon County, Florida (the "First Modification"); and;

WHEREAS, the Party of the First Part and the Party of the Second Part wish to again amend the Restriction and Reverter as they pertain to Property to extend the deadline for commencement of construction of the Office Building (as hereinafter defined below) on Parcel 2 (as hereinafter defined below) to September 29, 2008; and

WHEREAS, the Party of the First Part and the Party of the Second Part hereby acknowledge that if the Party of the Second Part or the State of Florida Department of Management Services ("Department") or their agents, successors or assigns, by September 29, 2008, commence construction of an office building that contains at least 80,000 gross square feet and otherwise meets the criteria of Paragraph 11 of the Agreement for Land Exchange and Development executed by the parties hereto and dated January 7, 1999 ("Office Building"), on the real property in Leon County, Florida, described as Parcel 2 ("Parcel 2") in the Deed, the Party of the Second Part will have complied with the Restriction and the Party of the First Part will no longer have a Reverter in the Property (or any part thereof). Furthermore, upon commencement of construction, the parties hereto agree that full fee simple absolute title to the Property will automatically vest in the Party of the Second Part, free and clear of the Reverter.



NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants, terms and conditions herein contained, and Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Party of the First Part and the Party of the Second Part agree to the following:

1. The Restriction and Reverter in the Deed, as modified by the First Modification, for the Property are hereby replaced and superseded by the following:

Parcel 2, Parcel 3 and Parcel 4, as more particularly described on Exhibit "A", so long as the Party of the Second Part or the Department or their agents, successors or assigns, by September 29, 2008, commences construction of an Office Building on Parcel 2. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before September 29, 2008, the right, title and possession to Parcel 3 shall automatically revert to the Party of the First Part. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before January 1, 2010, the right, title and possession of Parcel 4 shall automatically revert to the Party of the First Part.

2. Except as modified hereby and by the First Modification, the original terms and conditions of the Deed shall remain unchanged and in full force and effect, and the same are hereby ratified, approved and confirmed by the Party of the First Part and the Party of the Second Part as of the date of this Second Modification of Deed Restriction and Reverter.



IN WITNESS WHEREOF, the parties have caused this Second Modification of Deed  
Restriction and Reverter to be executed the day and year first above written.

The St. Joe Company, a Florida corporation

By: [Signature] (SEAL)

Print/Type Name

Title: William Wier VP/GM

Ray Porch  
Witness

Ray Porch  
Print/Type Witness Name

[Signature]  
Witness

Amy H. Jaskolski  
Print/Type Witness Name

(CORPORATE SEAL)

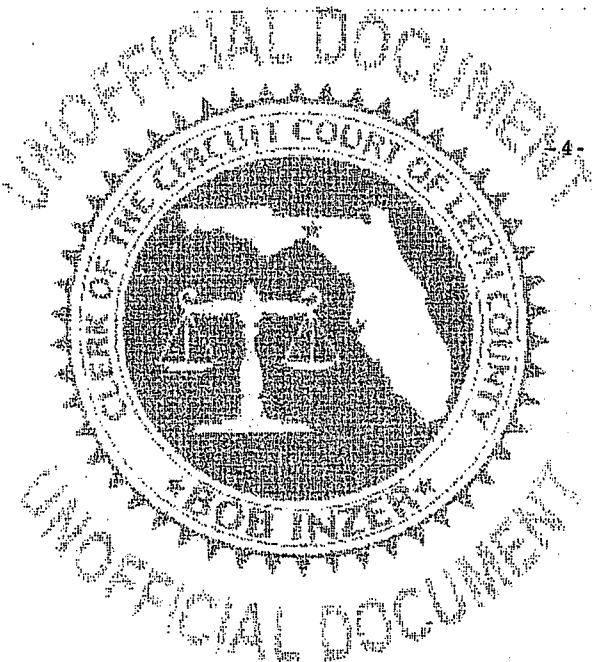
STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of June, 2008,  
by William Wier, as Vice President & General Manager of The St. Joe Company, a  
Florida corporation, on behalf of the corporation, who is personally known to me.

(SEAL)



[Signature]  
Notary Public, State of Florida  
Commission No.:  
My Commission Expires:



Board of Trustees of the Internal Improvement  
Trust Fund of the State of Florida

By: Scott E. Woolam (SEAL)

Scott E. Woolam, Acting Assistant  
Director, Division of State Lands,  
State of Florida Department of  
Environmental Protection, as agent  
for and on behalf of the Board of  
Trustees of the Internal Improvement  
Trust Fund of the State of Florida

Judy Woodard  
Witness  
Judy Woodard  
Print/Type Witness Name  
Cindy Burdick  
Witness  
Cindy Burdick  
Print/Type Witness Name

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of June  
2008, by Scott E. Woolam, as Acting Assistant Director, Division of State Lands, State of Florida  
Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of  
the Internal Improvement Trust Fund of the State of Florida, who is personally known to me.

(SEAL)



**Diane C. Rogowski**  
Commission # DD539673  
Expires May 24, 2010  
Bonded Tary Fun - Insurance, Inc. 800-385-7019

Diane C. Rogowski

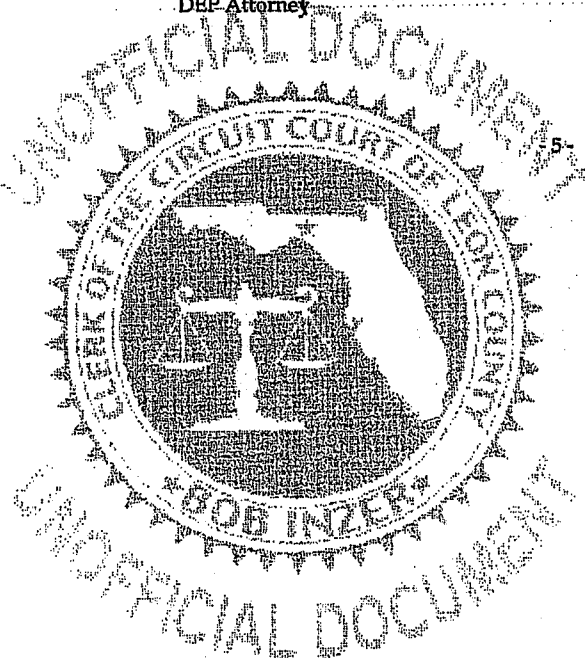
Notary Public, State of Florida

Commission No.:

My Commission Expires:

Approved as to Form and Legality:

By: Sam L. Hise  
DEP Attorney





This instrument was prepared by:  
Diane Rogowski  
Division of State Lands  
Department of Environmental Protection  
3900 Commonwealth Boulevard, MS#130  
Tallahassee, Florida 32399-3000

#### CERTIFICATION OF COMPLIANCE WITH DEED RESTRICTION

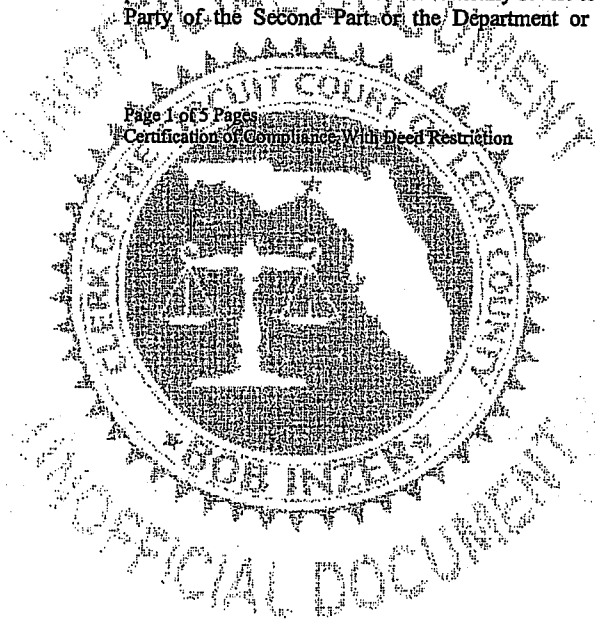
THIS CERTIFICATION OF COMPLIANCE WITH DEED RESTRICTION is made this 26<sup>th</sup> day of September, 2008, by and between THE ST. JOE COMPANY, a Florida corporation ("Party of the First Part") and BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA ("Party of the Second Part").

WHEREAS, Party of the First Part conveyed to Party of the Second Part, those lands more particularly described in Special Warranty Deed ("Deed") dated April 16, 1999, and recorded in Official Records Book R2245, Page 00040, Public Records of Leon County, Florida (the "Property"); and

WHEREAS, the Deed contains the following deed restriction and reverter ("Restriction" and "Reverter") on that portion of the Property identified as Parcels 2, 3 and 4 in the Deed and which is more particularly described in Exhibit "A" attached thereto and by reference made a part thereof:

Parcel 2, Parcel 3 and Parcel 4, as more particularly described on Exhibit "A", so long as the Party of the Second Part or the Department or their agents, successors or assigns, by January 1, 2008, commences construction of an Office Building on Parcel 2. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to commence construction of an Office Building on Parcel 2 on or before January 1, 2008, the right, title and possession to Parcel 3 shall automatically revert to the Party of the First Part. In the event the Party of the Second Part or the Department or their agents, successors or assigns, fail to

Page 1 of 5 Pages  
Certification of Compliance With Deed Restriction



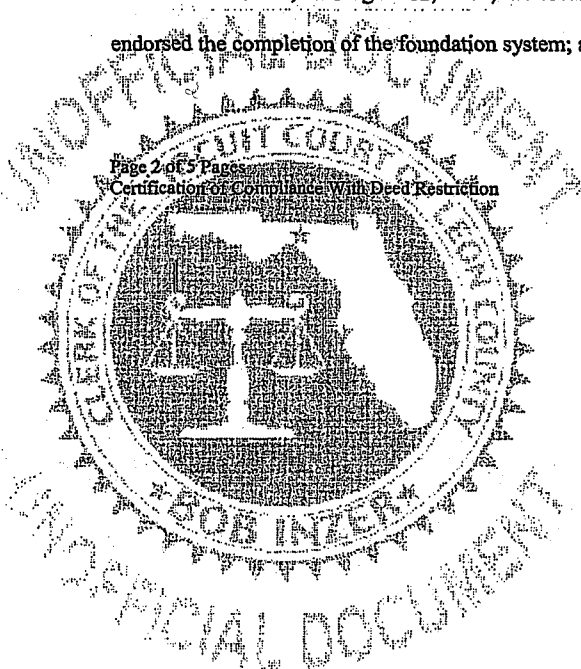
commence construction of an Office Building on Parcel 2 on or before January 1, 2010, the right, title and possession of Parcel 4 shall automatically revert to the Party of the First Part;

and

WHEREAS, the Restriction and Reverter were subsequently modified by that certain Modification of Deed Restriction and Reverter dated December 13, 2007, and recorded December 14, 2007, in Official Records Book 3801, Page 1912, Public Records of Leon County, Florida, to define the phrase "commences construction" as referenced in the Restriction and to change the date for commencement of construction of the Office Building (as defined in the Deed) on the real property in Leon County, Florida, described as Parcel 2 in the Special Warranty Deed between the parties hereto dated April 16, 1999, and recorded April 27, 1999, in Official Records Book R2245, Page 00040, Public Records of Leon County, Florida, from January 1, 2008, to July 1, 2008; and by that certain Second Modification of Deed Restriction and Reverter dated June 27, 2008, and recorded June 27, 2008, in Official Records Book 3874, Page 2340, Public Records of Leon County, Florida, to change the date for commencement of construction of the Office Building (as defined in the Deed) on the real property in Leon County, Florida, described as Parcel 2 in the Special Warranty Deed between the parties hereto dated April 16, 1999, and recorded April 27, 1999, in Official Records Book R2245, Page 00040, Public Records of Leon County, Florida, from July 1, 2008, to September 29, 2008; and

WHEREAS, on August 12, 2008, the State of Florida Department of Management Services ("DMS") completed the foundation system described in the construction documents that have been approved by the local permitting authority; and

WHEREAS, on August 12, 2008, the local permitting authority inspected, verified and endorsed the completion of the foundation system; and

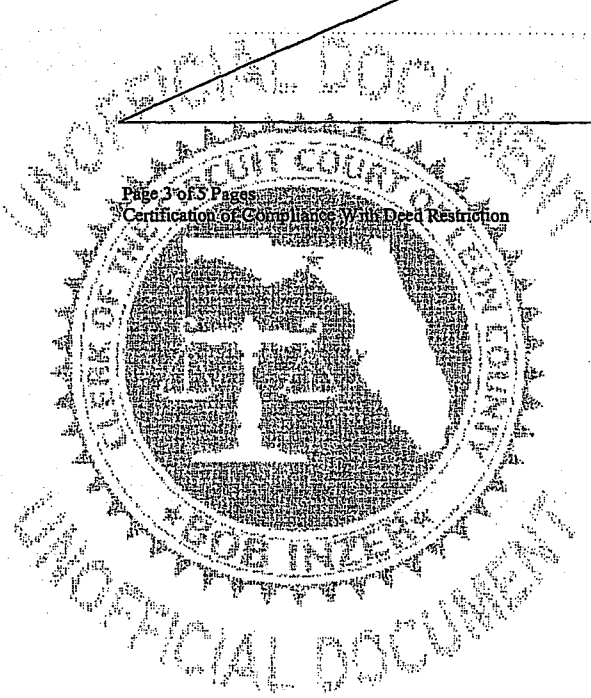


WHEREAS, Party of the First Part agrees that the Party of the Second Part or the Department did commence construction of the Office Building (as defined in the Deed) on the real property in Leon County, Florida, described as Parcel 2 in the Special Warranty Deed between the parties hereto dated April 16, 1999, and recorded April 27, 1999, in Official Records Book R2245, Page 00040, Public Records of Leon County, Florida, prior to September 29, 2008; and

WHEREAS, the parties hereto now desire to affirm that the Party of the Second Part has complied with the Restriction and the Party of the Second Part is vested with fee simple absolute title to the Property identified as Parcels 3 and 4 in the Deed.

NOW THEREFORE, in consideration of the above recitals, the Party of the First Part and the Party of the Second Part hereby agree that the Restriction has been satisfied in full, and the Party of the Second Part is vested with fee simple absolute title to the Property identified as Parcels 3 and 4 in the Deed.

IN WITNESS WHEREOF, the parties hereto have caused this Certification of Compliance with Deed Restriction to be executed the day and year first above written.



Page 3 of 5 Pages  
Certification of Compliance With Deed Restriction

BOARD OF TRUSTEES OF THE INTERNAL  
IMPROVEMENT TRUST FUND OF THE  
STATE OF FLORIDA

Cheryl McCall  
Witness

Cheryl C McCall  
Print/Type Witness Name

Judy Woodard  
Witness

Judy Woodard  
Print/Type Witness Name

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of September  
2008 by Mike Long, Assistant Director, Division of State Lands, State of Florida Department  
of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal  
Improvement Trust Fund of the State of Florida, who is personally known to me.

(SEAL)

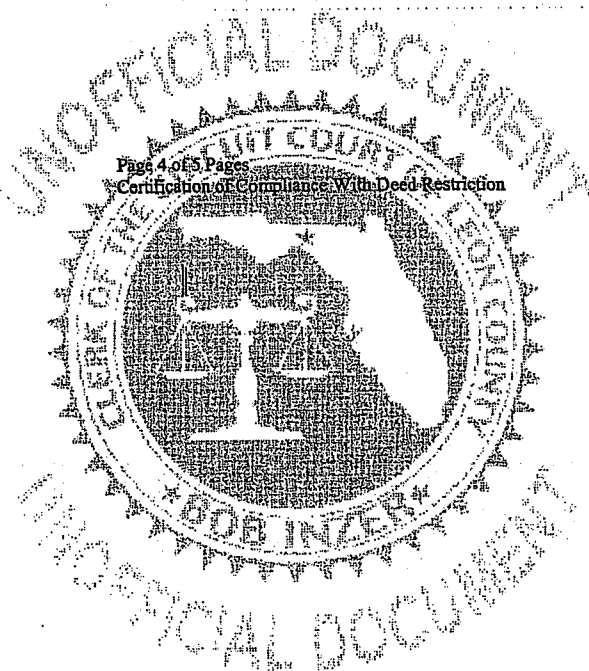
Diane C. Rogowski  
Notary Public, State of Florida

Approved as to Form and Legality

By: MMH. Hiker  
DEF Attorney

Print/Type Notary Name Diane C. Rogowski

Commission # DD539673  
Expires May 24, 2010  
My Commission Expires:



THE ST. JOE COMPANY, a Florida corporation

By: [Signature]

William W. Wier

Print/Type Name

Title: Vice President & General Manager

(CORPORATE SEAL)

Kay Porch  
Witness

Kay Porch  
Print/Type Witness Name

[Signature]  
Witness

Melissa Hornsby  
Print/Type Witness Name

STATE OF Florida  
COUNTY OF Leon

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of September, 2008, by Bill Wier, as VPIGM of The St. Joe Company, a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced \_\_\_\_\_ as identification.

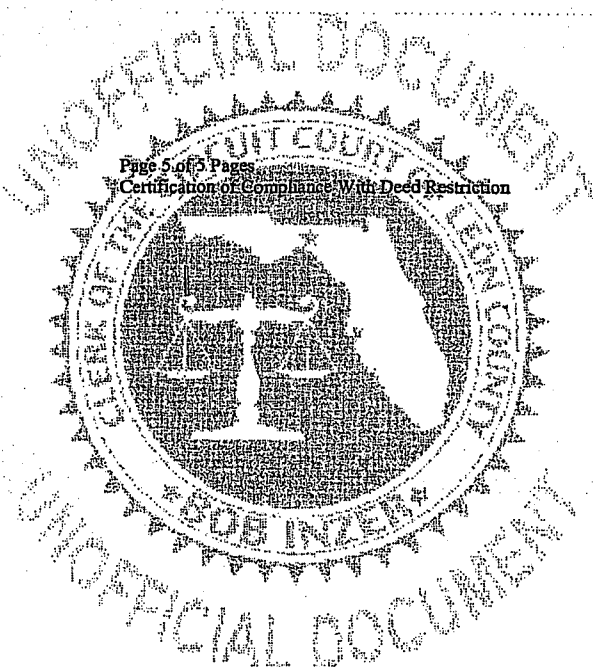
(SEAL)

[Signature]  
Notary Public, State of Florida

Amy H. Jaskolski  
Printed/Typed/Stamped Name

Commission Number:

Commission Expires:



**A Allen Nobles**  
**N & Associates, Inc.**

PROFESSIONAL LAND SURVEYING, MAPPING & ENGINEERING

3720 Pablo Avenue  
 Tallahassee, Florida 32308  
 Phone: (850)-385-1179  
 Fax: (850)-385-1464

E-mail: mail@allennobles.com

Capital Circle Office Center  
 ANA Project No 3562-P2  
 March 26, 1999

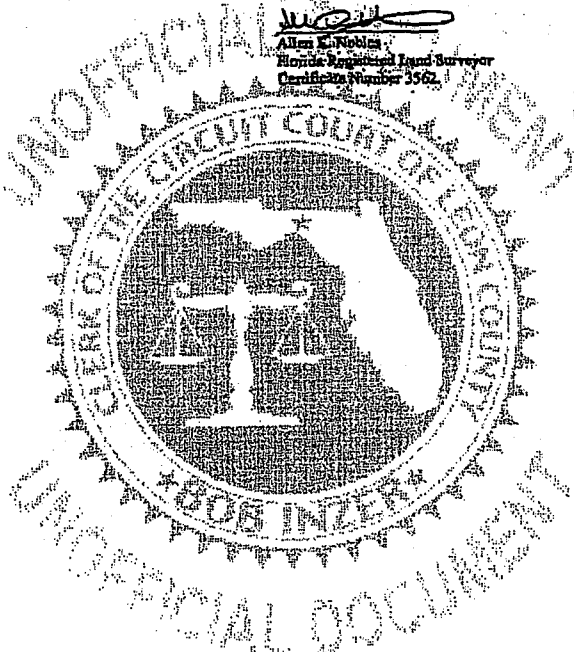
RECORDED  
 IN  
 PUBLIC RECORDS, LEON COUNTY, FL  
 BOOK 27 PAGE 08:37 AM  
 DATE REC. FILED AT TALLAHASSEE

Parcel 2 BK: R2245 PG: 00044

Commencing at a concrete monument marking the Southeast corner of Section 21, Township 1 South, Range 1 East, Leon County, Florida, thence run North 00 degrees 13 minutes 37 seconds East 937.73 feet to a nail and cap marking the centerline of the 66 foot right-of-way of Tran Road (County Road No. 259); thence run North 76 degrees 58 minutes 41 seconds West along said centerline 1469.04 feet to a point of curve to the right, thence along said curve with a radius of 3205.07 feet through a central angle of 17 degrees 06 minutes 44 seconds for an arc length of 957.24 feet (chord of 953.69 feet bears North 68 degrees 25 minutes 19 seconds West), thence North 59 degrees 51 minutes 57 seconds West 846.38 feet to the intersection of the centerline of Tran Road with the centerline of Capital Circle Southeast (State Road No. 261); thence North 12 degrees 00 minutes 01 seconds East along said centerline 1.97 feet, thence North 12 degrees 00 minutes 27 seconds East along said centerline 1844.79 feet to a point of curve to the left, thence along said curve with a radius of 3819.66 feet through a central angle of 05 degrees 31 minutes 26 seconds for an arc length of 368.25 feet (chord of 368.10 feet bears North 09 degrees 14 minutes 44 seconds East), thence leaving said centerline run North 82 degrees 45 minutes 59 seconds West 125.01 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING run North 82 degrees 45 minutes 59 seconds West along the northerly right of way of a proposed road (100 foot right of way) a distance of 407.94 feet to set iron rebar and cap marking a point of curve to the left, thence along said curve with a radius of 4425.00 feet through a central angle of 06 degrees 47 minutes 31 seconds for an arc length of 524.55 feet (chord of 524.25 feet bears North 86 degrees 09 minutes 44 seconds West) to a set iron rebar and cap, thence North 89 degrees 33 minutes 30 seconds West 254.27 feet to a set iron rebar and cap marking a point of curve to the right, thence along said curve with a radius of 30.00 feet through a central angle of 90 degrees 00 minutes 00 seconds for an arc length of 47.12 feet (chord of 42.43 feet bears North 44 degrees 33 minutes 30 seconds West) to a set iron rebar and cap on the easterly right of way of a proposed roadway (100 foot right of way), thence North 00 degrees 26 minutes 30 seconds East along said right of way 992.43 feet to a set iron rebar and cap marking a point of curve to the right, thence along said right of way curve with a radius of 750.00 feet through a central angle of 92 degrees 45 minutes 19 seconds for an arc length of 1214.16 feet (chord of 1085.85 feet bears North 46 degrees 49 minutes 10 seconds East) to a set iron rebar and cap thence South 86 degrees 48 minutes 11 seconds East along said right of way 444.13 feet to a set iron rebar and cap, thence leaving said right of way run South 00 degrees 18 minutes 28 seconds West 1433.65 feet to a set iron rebar and cap marking a point of curve to the right, thence along said curve with a radius of 3694.66 feet through a central angle of 06 degrees 09 minutes 02 seconds for an arc length of 396.61 feet (chord of 396.42 feet bears South 03 degrees 22 minutes 59 seconds West) to the POINT OF BEGINNING, containing 47.835 acres more or less.

*Allen Nobles*  
 Allen E. Nobles  
 Florida Registered Land Surveyor  
 Certificate Number 3562

EXHIBIT "A"  
 CERTIFICATION OF COMPLIANCE  
 WITH DEED RESTRICTION



**Allen Nobles**  
**& Associates, Inc.**

PROFESSIONAL LAND SURVEYING, MAPPING & ENGINEERING

2720 Pablo Avenue  
 Tallahassee, Florida 32308  
 Phone: (850)-388-1179  
 Fax: (850)-388-1404

E-mail: mail@nensurveyors.com

Capital Circle Office Center  
 ANA Project No 3562-P3  
 Revised April 14, 1999

RECORDED  
 PUBLIC RECORDS DEPT. OF CITY PL.  
 APR 27 1999 08:37 AM  
 TALLAHASSEE, FLORIDA

Parcel 3 BK: 02245 PG: 00045

Commencing at a concrete monument marking the Southeast corner of Section 21, Township 1 South, Range 1 East, Leon County, Florida, thence run North 00 degrees 13 minutes 37 seconds East 937.73 feet to a nail and cap marking the centerline of the 66 foot right-of-way of Tram Road (County Road No. 259); thence run North 76 degrees 58 minutes 41 seconds West along said centerline 1469.04 feet to a point of curve to the right, thence along said curve with a radius of 3205.07 feet through a central angle of 17 degrees 06 minutes 44 seconds for an arc length of 957.24 feet (chord of 953.69 feet bears North 68 degrees 25 minutes 19 seconds West), thence North 59 degrees 51 minutes 57 seconds West 846.38 feet to the intersection of the centerline of Tram Road with the centerline of Capital Circle Southeast (State Road No. 261), thence North 12 degrees 00 minutes 01 seconds East along said centerline 1.96 feet, thence North 12 degrees 00 minutes 27 seconds East along said centerline 1844.79 feet to a point of curve to the left, thence along said curve with a radius of 3819.66 feet through a central angle of 11 degrees 41 minutes 59 seconds for an arc length of 779.97 feet (chord of 778.61 feet bears North 06 degrees 09 minutes 27 seconds East), thence North 00 degrees 18 minutes 28 seconds East 2903.59 feet, thence leaving said centerline run South 89 degrees 57 minutes 06 seconds East 125.00 feet to the POINT OF BEGINNING. From said POINT OF BEGINNING run North 00 degrees 18 minutes 28 seconds East 812.00 feet to a set iron rebar and cap, thence South 89 degrees 41 minutes 32 seconds East 778.83 feet to a set iron rebar and cap on the westerly right of way of a proposed roadway (65 foot right of way), thence South along said westerly right of way 176.04 feet to a set iron rebar and cap marking a point of curve to the left, thence along said right of way curve with a radius of 2550.10 feet through a central angle of 13 degrees 38 minutes 55 seconds for an arc length of 607.47 feet (chord of 606.03 feet bears South 06 degrees 49 minutes 28 seconds East) to a set iron rebar and cap, thence South 13 degrees 38 minutes 58 seconds East 31.65 feet to a set iron rebar and cap, thence leaving said proposed right of way run North 89 degrees 57 minutes 06 seconds West 867.59 feet to the POINT OF BEGINNING, containing 14.91 acres more or less.


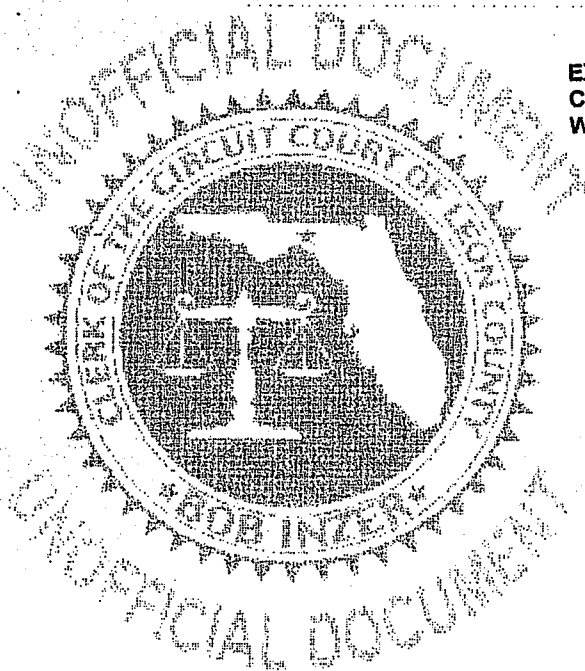
  
 Allen K. Nobles  
 Florida Registered Land Surveyor  
 Certificate Number 3562.

EXHIBIT "A"  
 CERTIFICATION OF COMPLIANCE  
 WITH DEED RESTRICTION



**A Allen Nobles**  
**N & Associates, Inc.**

PROFESSIONAL LAND SURVEYING, MAPPING & ENGINEERING

REGISTERED  
 LAND SURVEYOR  
 FEB 27 1998 08:27 AM  
 STATE OF FLORIDA  
 PROFESSIONAL LAND SURVEYOR

2720 Pablo Avenue  
 Tallahassee, Florida 32308  
 Phone: (904)-385-1177  
 Fax: (904)-385-1404

E-mail: mnd@spasurveyor.com

Capital Circle Office Center  
 ANA Project No 3562-P4  
 Revised April 26, 1999

EX: 02245 PG: 00046

Parcel 4

Commencing at a concrete monument marking the Southeast corner of Section 21, Township 1 South, Range 1 East, Leon County, Florida, thence run North 00 degrees 13 minutes 37 seconds East 937.73 feet to a nail and cap marking the centerline of the 66 foot right-of-way of Tram Road (County Road No. 259); thence run North 76 degrees 58 minutes 41 seconds West along said centerline 642.68 feet to a nail and cap marking the intersection of the Tram Road Connector (a 120 foot right-of-way) and the centerline of said Tram Road; thence run North 13 degrees 01 minutes 22 seconds East along the centerline of said Tram Road Connector 86.22 feet; thence leaving said centerline run North 76 degrees 58 minutes 38 seconds West 60.00 feet to a concrete monument on the westerly right-of-way boundary of said Tram Road Connector for the POINT OF BEGINNING. From said POINT OF BEGINNING thence run South 13 degrees 01 minutes 22 seconds West along said westerly right-of-way 53.22 feet to a concrete monument marking the north right-of-way boundary of said Tram Road; thence run North 76 degrees 58 minutes 41 seconds West along said northerly right-of-way of Tram Road 766.36 feet to a set iron rod and cap marking a point of curve to the right, thence run northwesterly along said right of way curve with a radius of 3172.07 feet through a central angle of 06 degrees 02 minutes 20 seconds for an arc distance of 334.34 feet (chord bears North 73 degrees 57 minutes 31 seconds West 334.18 feet) to a concrete monument marking the easterly boundary of the existing Capital Circle Office Center; thence leaving said northerly right-of-way run North 35 degrees 42 minutes 40 seconds East 1562.71 feet to a concrete monument; thence run North 27 degrees 52 minutes 52 seconds East 214.31 feet to a concrete monument; thence run North 21 degrees 57 minutes 48 seconds East 22.24 feet to an iron rod and cap; thence leaving said easterly boundary of the existing Capital Circle Office Center run South 69 degrees 42 minutes 56 seconds East 739.36 feet; thence run southwesterly along a non-constant curve to the right with a radius of 140.00 feet through a central angle of 40 degrees 16 minutes 49 seconds for an arc distance 98.42 feet (chord bears South 14 degrees 04 minutes 23 seconds West 96.41 feet) to a point of reverse curve to the left; thence run southwesterly along said curve with a radius of 110.00 feet through a central angle of 101 degrees 55 minutes 47 seconds for an arc distance of 195.69 feet (chord bears South 16 degrees 42 minutes 26 seconds East 170.89 feet); thence run South 67 degrees 43 minutes 00 seconds East 81.70 feet to the westerly right-of-way boundary of said Tram Road Connector; thence run southwesterly along said westerly right-of-way along a curve to the right with a radius of 690.00 feet through a central angle of 14 degrees 01 minutes 16 seconds for an arc distance of 168.83 feet (chord bears South 29 degrees 17 minutes 35 seconds West 168.41 feet) to a concrete monument; thence run South 36 degrees 18 minutes 10 seconds West along said westerly right of way 873.23 feet to a concrete monument marking a point of curve to the right, thence run southwesterly along said right of way curve with a radius of 810.00 feet through a central angle of 23 degrees 16 minutes 48 seconds for an arc distance of 329.11 feet (chord bears South 24 degrees 39 minutes 46 seconds West 326.85 feet) to the POINT OF BEGINNING; containing 37.133 acres, more or less.

The westerly 100 feet of the above property being subject to a 100' utility and drainage easement.

*Allen K. Nobles*  
 Allen K. Nobles  
 Florida Registered Land Surveyor  
 Certificate Number 3562

EXHIBIT "A"  
 CERTIFICATION OF COMPLIANCE  
 WITH DEED RESTRICTION

