

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT, IN
AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

CASE NO.: 01-CA-818-13-K
PARCEL NO.: 169

Petitioner

v.

EPISCOPAL RETREAT AND CONFERENCE
CENTER, ET al.,

Respondents.

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
2013 OCT 16 AM 9:14
BY SEMINOLE CO. FLA. D.C.

CLASS REPRESENTATION

**STIPULATED FINAL JUDGMENT AND
JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENT**

THIS CAUSE having come upon the joint motion of the Petitioner, State of Florida Department of Transportation, and Respondents, Alafaya Woods Homeowner's Association, Inc. ("Association"), the Association on behalf of, and as class representative for, all 2,231 Unit and Lot Owners Within the Alafaya Woods Development ("Homeowners"), and UDR, Inc. f/k/a United Dominion Realty Trust ("UDR") (the Association, Homeowners and UDR are sometimes herein collectively referred to as the "Respondents") for the entry of this Stipulated Final Judgment and Judicial Approval of Class Settlement ("Stipulated Final Judgment"), and it appearing to the Court that the parties were authorized to enter into such a motion, the Court finding that the compensation to be paid by Petitioner is full, just, and reasonable for all parties concerned, the Court expressly approving the class settlement set forth herein, and the Court being otherwise fully advised in the premises, upon consideration:

IT IS HEREBY ORDERED AND ADJUDGED:

1. That the Court has jurisdiction of this action, of the subject property, and of the parties in this cause.

The mediated settlement reflected in this Stipulated Final Judgment is a resolution of contested and disputed claims, allegations and assertions, and the parties hereto entered into the mediated settlement principally to avoid the time, expense and aggravation of continued litigation. By entering into the mediated settlement no party admits or confirms any of the claims, allegations, assertions or opinions of any opposing party.

3. Respondents, Association, Homeowners and UDR, shall collectively have and recover of and from the Petitioner the total sum of **\$3,750,000.00 (THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS)** as full compensation for the takings involved in this cause, including but not limited to, all severance damages, statutory interest, attorneys' fees, experts' fees and litigation costs.

4. Petitioner has previously deposited the sum of **\$161,000.00 (ONE HUNDRED SIXTY-ONE THOUSAND AND 00/100 DOLLARS)** into the Registry of the Court which the amount the Association has previously withdrawn. Petitioner shall receive a credit for the \$161,000.00 deposit previously withdrawn by the Association from the Registry of the Court.

5. Within thirty (30) days from the Court's execution of this Stipulated Final Judgment, the Petitioner shall pay the sum of **\$3,589,000.00 (THREE MILLION FIVE HUNDRED EIGHTY-NINE THOUSAND AND 00/100 DOLLARS)** by check made payable to the Respondents' counsel's law firm trust account, Fishback Dominick Trust Account c/o A. Kurt Ardaman, Fishback Dominick, 1947 Lee Road, Winter Park, Florida 32789, representing the Respondents' total recovery of **\$3,750,000.00** less the previous good faith deposit of

\$161,000.00. Within five (5) business days from the clearance of the funds into the law firm trust account, the Fishback Dominick law firm shall disburse the proceeds as provided in this Stipulated Final Judgment.

6. From the \$3,589,000.00 paid into the Fishback Dominick Trust Account, UDR shall receive ~~\$810,000.00~~ **\$810,000.00** (EIGHT HUNDRED TEN THOUSAND AND 00/100 DOLLARS) as UDR's full compensation for the taking of its easement interest in this cause and for all other claims in this cause other than UDR's attorneys' and experts fees and costs which are to be paid pursuant to Paragraph 9 of this Stipulated Final Judgment.

7. From the \$3,589,000.00 paid into the Fishback Dominick Trust Account, the Association shall receive ~~\$69,000.00~~ **\$69,000.00** (SIXTY-NINE THOUSAND AND 00/100), which along with the Association's previously received \$161,000.00 from deposit into the Court Registry represents the sum of ~~\$230,000.00~~ **\$230,000.00** as the Association's full compensation for the taking of the Association's fee simple interest in Parcel 169 and the Landscape Median Easement and for all other claims in this cause other than the Association's attorneys' and experts fees and costs which are to be paid pursuant to Paragraph 9 of this Stipulated Final Judgment.

8. From the \$3,589,000.00 paid into the Fishback Dominick Trust Account, the Association on behalf of the Homeowners shall receive **\$1,460,000.00** (ONE MILLION FOUR HUNDRED AND SIXTY THOUSAND AND 00/100 DOLLARS) as the Homeowners' full compensation for the taking of their collective easement interests in this cause.

9. From the \$3,589,000.00 paid into the Fishback Dominick Trust Account, the Respondents' counsel, Fishback, Dominick, Bennett, Ardaman, Ahlers, Langley & Geller, LLP ("Fishback Dominick"), as agreed by all Respondents, shall receive the sum of **\$1,250,000.00** (ONE MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS), as

payment for all statutory attorneys' fees, experts' fees and litigation costs for Fishback Dominick's representation of all Respondents in this cause, which the Court hereby finds is reasonable.

10. As set forth in the pleadings and orders in this cause, Respondent, Homeowners is a certified class comprised of all 2,231 lot owners of the single-family lots (excludes UDR's lot/tract) in the Alafaya Woods Subdivision that were members of the Association at the time of the Petitioner's taking of the Parcel 169 occurring on July 18, 2001. To the extent any prior orders are inconsistent with the foregoing sentence, this Stipulated Final Judgment modifies such to be consistent with the foregoing sentence. The recovery of \$1,460,000.00 set forth in paragraph 8 for the Homeowners equates to approximately \$654.41 per lot owner. This per lot recovery value treats all members of the class equitably relative to each other, which the Court deems appropriate given the facts and circumstances of this cause.

11. The Court expressly finds that the amount of approximately \$654.41 per lot owner (less the Association's administrative costs described herein) is full, complete, just, and reasonable compensation for the taking of each lot owner's (2,231 class member's) easement interests, *inter alia*, as such amount falls within a range of compensation estimated by the Homeowners' expert appraiser for damage caused by the loss of the easement interests taken by the Petitioner as stated in the "Damage Study" referenced in the Joint Stipulation dated June 27, 2011 and filed with this Court. Further, the Court finds that the amount of approximately \$654.41 per lot (less the Association's administrative costs described herein) is reasonable and just given that Petitioner disputes any and all liability for the Homeowners' inverse condemnation claims brought in this cause.

12. The settlement of the Homeowners' class claims were negotiated at arm's length, are not collusive, and fall within a range reasonably estimated by the Homeowners' expert appraiser. This amount is fair and adequate given the uncertainties of a jury quantification of the value of the easement interests taken and the legal issues that would otherwise potentially be subject to review and/or modification on appeal. The Homeowners' probability of success at the trial level for receiving some level of compensation is reasonable, but numerous issues would be ripe for review and/or modification on appeal since Petitioner disputes its liability for such claims and has asserted its intent to appeal any jury verdict awarding compensation to the Homeowners.

13. The named class representative of the Homeowners' class is the Association. Pursuant to Florida Rule of Civil Procedure 1.221, the Association is authorized to act as class representative regarding any matter for which the Association could bring a class action under the Rule, including expressly inverse condemnation claims. The Association is expressly found to be an adequate class representative and understands the claims typical to the class. The Association, as class representative, shall not be paid an incentive payment for its representation of the class. However, the Association will be paid for and may retain up to five percent (or \$73,000.00) of the \$1,460,000.00 awarded to the Homeowners for the Association's reasonable administrative costs for the Association's reasonable efforts in locating and noticing Homeowners' class members and disseminating and administering the payment of the settlement amount to members of the Homeowners' class, including for postage, notices, mailings, title searches, skip traces, auditing and accounting fees, and attorneys' fees and costs relating to such duties.

14. The Association's disbursement of settlement funds to Homeowners' class members shall be in equal amounts, or so that the disbursement to each lot owner equals the quotient of (\$1,460,000.00 minus the Association's permitted administrative cost) divided by 2,231. The disbursement to each lot owner may be rounded to the nearest whole cent and remainders kept by the Association for administrative costs. The Association shall have the right, but not obligation, to deposit the Homeowners' class settlement funds in an interest or non-interest bearing account or short-term certificates of deposit with maturities of no more than 1 year.

15. The Homeowners' class is represented by the law firm of Fishback Dominick. The Court expressly finds that the law firm has adequately represented the class in this cause as a law firm with expertise in inverse condemnation and eminent domain litigation. In particular, A. Kurt Ardaman and Daniel W. Langley are both board certified in City, County, and Local Government law and AV-rated by Martindale Hubbell and have combined experience of over 38 years in inverse condemnation and eminent domain litigation. Further, the attorneys' fees, experts' fees and litigation costs paid to Fishback Dominick and Respondents' experts as set forth herein are reasonable and just given the novel issues, extended litigation, enormous efforts and complexities of all the causes of action, results, certainty and other matters in this case and the class action certification.

16. Upon Fishback Dominick's disbursement of \$1,460,000.00 to the Association from the settlement funds paid by the Petitioner for the settlement of Homeowners' claims, Fishback Dominick and its lawyers shall be discharged as class counsel for the Homeowners and shall have no further responsibilities for ongoing representation of the Homeowners; provided however, this does not preclude the Association from retaining Fishback Dominick and its

lawyers in the future to assist the Association with its administrative duties concerning the Homeowners' class or for any other purposes.

17. The Association possesses the means to effectively disseminate information amongst all members of the Homeowners' class, and the Association shall ultimately be responsible for the disbursement of the settlement payment to the Homeowners less the Association's permitted administrative costs. The Association shall make reasonable efforts to inform Homeowners' class members of this class settlement and shall require proof of any class member's entitlement to that member's share of the settlement amount per lot. Such reasonable efforts shall include, but are not limited to, posting of Association meetings in accordance with Chapter 720, Florida Statutes to be held regarding this settlement, publication and/or advertisement, and dissemination of mailings to identifiable members of the Homeowners' class. Notice to Homeowners' class members shall set forth the Homeowners' per lot settlement amount and how class members may request and obtain their portion of the settlement.

18. Within one-hundred and twenty (120) days of the Association's receipt of Homeowners' settlement funds pursuant to this Stipulated Final Judgment, the Association shall publish a notice, published at least twice and each being published at least seven (7) days apart, in the legal section of a local newspaper that meets the requirements of Section 50.011, Florida Statutes (the "Constructive Notice") to notify Homeowners class members of the per lot settlement amount and how and when Homeowners class members may request and obtain their portion of the settlement.

19. Homeowners' class members shall have until the earlier of (i) one-hundred twenty (120) days from the first publication date of the Constructive Notice, or (ii) three-hundred and sixty-five (365) days from the entry of this Stipulated Final Judgment to make a request for their

share of the Homeowners' settlement amount ("Claims Request Deadline"). Any members of the Homeowners' class that fail to make their request by the Claims Request Deadline shall have no further right to their portion of the settlement funds, and such remaining sums shall be paid into and vest in the reserve account of the Association and be owned and used by the Association for the benefit of the then current members of the Association and their successors and assigns in interests. The Court finds such to be equitable and just since the Homeowners' class members' claims arose out of a taking of the common property of the Association, and the Association's reserve account benefits the common property of the Association and its members.

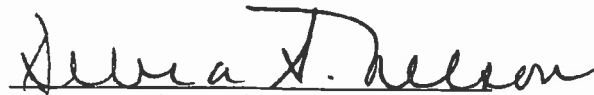
20. As a condition of disbursement of settlement funds to each member of the Homeowners' class, the Association may require, among other relevant and reasonable information, persons claiming to be members of the Homeowners' class to provide proof of identity and proof of ownership of a lot/unit in the Alafaya Woods Subdivision as of July 18, 2001 in order to evidence they are, in fact members of the Homeowners' class. Further, to the extent that any member of the Homeowners' class consists of more than one (1) person or entity due to joint ownership of a lot/unit as of July 18, 2001, the Association may require each owner to execute a joint request for settlement funds and agreement on how to disburse the funds for that jointly owned lot. In the event there is a dispute as to whom is entitled to receive settlement funds for any member of the class, the Association is not required to make any disbursements relating to such disputed claims, and if disputed claims are not resolved to the satisfaction of the Association before the occurrence of the Claims Request Deadline, then such amounts under dispute shall be forfeited to the Association and such funds shall be paid into and vest in the Association's reserve account and otherwise treated in the same manner as provided in Paragraph 19 for a class member's failure to meet the Claims Request Deadline.

21. The Association should make disbursements of the Homeowners' class settlement funds after the occurrence of the Claims Request Deadline, but not more than ninety (90) days after the occurrence of the Claims Request Deadline. Disbursements concerning the Association's permitted administrative cost may be made at any time.

22. There shall not be any option for any member of the Homeowners' class to opt out of the settlement between the parties in this cause and this Stipulated Final Judgment to pursue independent claims against Petitioner since the statute of limitations for bringing such independent claims would have expired because the taking occurred on July 18, 2001.

23. This Court reserves jurisdiction to enforce the terms and provisions of this Stipulated Final Judgment and Judicial Approval of Class Settlement.

DONE AND ORDERED this 16 day of OCT 2013, in Chambers at the Seminole County Courthouse, Sanford, Florida.


Debra S. Nelson, Circuit Judge

Conformed copies to:

Scott W. Foltz, Esquire
Matthew F. Childs, Esquire
A. Kurt Ardaman, Esquire
Daniel W. Langley, Esquire
Christopher R. Conley, Esquire

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**JOINT MOTION FOR ENTRY OF STIPULATED FINAL JUDGMENT AND JUDICIAL
APPROVAL OF CLASS SETTLEMENT**

COMES NOW the undersigned counsel on behalf of their clients and the Respondents for themselves, the parties hereby request that this Court enter the above Stipulated Final Judgment and Judicial Approval of Class Action Settlement.

For Petitioner

Scott W. Foltz, Esquire
Florida Bar No.: _____
Matthew F. Childs, Esquire
Florida Bar No.: _____
Florida Department of Transportation

Respondents' Counsel

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Respondent, UDR, Inc.

By: Dennis Sandidge
Its: Vice President

Respondent, Alafaya Woods
Homeowner's Association, Inc. as class
representative of the 2,231 members of
the Court approved Homeowners' class.

By: J. Steve Moody
Its: President

And

By: Cynthia Gill
Its: Vice President

Respondent, Alafaya Woods Homeowner's
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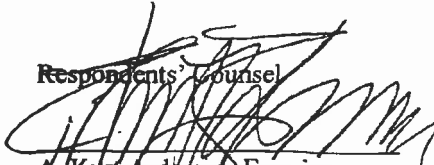
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Scott W. Foltz, Esquire
Florida Bar No.: 8591610
Matthew F. Childs, Esquire
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Florida Department of Transportation

Respondents' Counsel



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