MEMORANDUM

Agenda Item No. 13(A)(1)

TO:	Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners	**DATE:**	May 5, 2009
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution authorizing the amendment of a certain settlement in an Inverse Condemnation lawsuit, authorizing payment of $216,380.22 to the Acosta Family Limited Partnership

The accompanying resolution was placed on the agenda by the County Attorney.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: May 5, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 13(A)(1)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Mayor's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **Housekeeping item (no policy decision required)**

_____ **No committee review**

2

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 13(A)(1)
5-5-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE AMENDMENT OF A CERTAIN SETTLEMENT IN AN INVERSE CONDEMNATION LAWSUIT, AUTHORIZING PAYMENT OF $216,380.22 TO THE ACOSTA FAMILY LIMITED PARTNERSHIP IN CONNECTION WITH A COUNTY ROAD LOCATED ON N.W. 74 STREET FROM N.W. 84 AVENUE TO N.W. 87 AVENUE IN MIAMI-DADE COUNTY, FLORIDA

WHEREAS, on June 15, 2002, the Acosta Family Limited Partnership, a Florida Limited Partnership, ("Owner") filed against Miami-Dade County in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 02-18214 (CA-27), a Complaint for Damages, Inverse Condemnation, and Injunctive Relief in connection with the maintenance of a county road located on N.W. 74 Street from N.W. 84 Avenue to N.W. 87 Avenue, in Miami-Dade County, Florida; and

WHEREAS, the Owner and County entered into a prior Agreement, dated May 13, 2004, facilitating the construction of (1) a four-lane roadway on N. W. 74th Street from N. W. 87th Avenue to approximately 300 feet east of N.W. 84th Avenue and (2) a two-lane roadway on N.W. 87th Avenue from approximately 300 feet south of N.W. 74th Street to approximately 500 feet north of N.W. 74th Street, which was approved by Miami-Dade County Resolution R-480-04, dated April 13, 2004; and

WHEREAS, the County and Owner now desire that this initial construction project be re-designed to allow for a future six (6) lane roadway along N.W. 74th Street and Owner and the County have reached a Settlement Agreement to accomplish this objective; and

WHEREAS, the County and Owner agree that it is in their mutual best interests for the County to assume the responsibility for the construction of the roadway, subject to the terms and conditions contained in the Settlement Agreement; and

WHEREAS, the Owner will convey, at no cost to the County, the right-of-way fronting the Owner's property to facilitate the construction of the roadway; and

WHEREAS, the County will reimburse the Owner $216,380.22 for off-road work required for the design and construction of the roadway; and

WHEREAS, the terms for the settlement of said case are fully delineated in the Settlement Agreement attached hereto as Exhibit 1 to this resolution; and

WHEREAS, it is in the best interest of the County to settle all the issues involved under the terms delineated in the Settlement Agreement, and the County Attorney hereby recommends said settlement as set forth in Exhibit 1 to this resolution,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board ratifies and adopts those matters set forth in the foregoing recitals.

Section 2. This Board approves the acceptance of the property legally described in the Right-of-Way Deed attached to Exhibit 1 to this resolution and authorizes the County Mayor or his designee to execute the Settlement Agreement in substantially the form attached hereto as Exhibit 1 and made a part hereof.

Section 3. The County Attorney is hereby authorized to compromise and settle on behalf of the County for a total sum of $216,380.22, inclusive of all interest, attorneys' fees and costs, all claims against the County filed in the above Circuit Court case in substantially the terms specified in the Settlement Agreement attached thereto.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of May, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Jorge Martinez-Esteve

AGREEMENT

This Agreement is made and entered into this _____ day of March, 2009 ("Agreement"), by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, herein referred to as the "County", and the ACOSTA FAMILY LIMITED PARTNERSHIP, a Florida Limited Partnership, hereinafter referred to as the "Owner", for the conveyance of certain right-of-way and construction of roadway improvements on N. W. 74th Street extending from N. W. 87th Avenue to N. W. 84th Avenue, and an adjoining portion of N.W. 87th Avenue, as depicted in plans identified in County Project Number 20030156 (hereinafter the "Project").

WHEREAS, Owner is the owner of the real property legally described on Exhibit "A" attached hereto (the "Owner's Property");

WHEREAS, as the result of Owner asserting claims against the County, the Owner and County entered into a prior Agreement, dated May 13, 2004, facilitating the construction of (1) a four-lane roadway on N. W. 74th Street from N. W. 87th Avenue to approximately 300 feet east of N.W. 84th Avenue, with left turn lanes, sidewalks, curb and gutters, signage, pavement markings, continuous storm drainage system and street lighting, and (2) a two-lane roadway on N.W. 87th Avenue from approximately 300 feet south of N.W. 74th Street to approximately 500 feet north of N.W. 74th Street (the "Initial Project");

WHEREAS, the County and Owner now desire that the Initial Project be re-designed to allow for a future six (6) lane roadway along N.W. 74th Street and Owner and the County have been negotiating how best to accomplish this objective;

WHEREAS, the County and Owner agree that it is in their mutual best interests for the County to assume the responsibility for the Project, subject to the terms and conditions herein, and have agreed to execute this Agreement in furtherance thereof;

WHEREAS, the Owner will convey, at no cost to the County, the right-of-way legally described in Exhibit "B" ("Right-of-way") to facilitate the construction of the Project; and

WHEREAS, the Parties have or will execute this Agreement pursuant to proper authorization of their governing boards or other responsible representatives.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound agree as follows:

Section 1. Construction. The County agrees to construct the Project.

Section 2. Costs. The parties agree that the construction of the Project, all ancillary work related thereto and all costs and expenses related thereto, shall be the sole responsibility of the County or its agents, and the County shall exercise all responsibilities, pertaining to construction administration and inspections. The parties are hereby released of all obligations related to the Initial Project other than any obligations specifically included herein.

Section 3. Off-Road Work and Modifications required by R/W Donation. The County shall pay $152,685.22 to reimburse Owner for the design and construction of Owner's off-road work, $44,495.00 for valve vault relocation, and $19,200.00 to reimburse the Owner for modifying the property as required by the R/W Donation. Under no circumstances shall the County be responsible for the payment of more than $216,380.22 for this work or any other expenses related to the Initial Project or the Project incurred by the Owner or the Owner's agents prior to the execution of this Agreement. Such payments shall be made within 30 days of entry of an amended final judgment ratifying this agreement.

Section 4. Good Faith. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement.

Section 5. Dedication. Owner agrees to dedicate, or cause to be dedicated, the strip of land described in Exhibit "B" attached hereto, which shall be used for roadway, sidewalk or other proper purposes. This dedication shall be made simultaneously to the execution of this Agreement, by means of the Right-of-way Deed attached hereto as Exhibit "D". Owner further agrees to remove, within thirty (30) days of execution of this Agreement by the parties hereto, and at the Owner's sole cost, any objects, improvements, or structures located on the land described in Exhibit "B". The County agrees to construct a sidewalk along N.W. 74th Street running the length of the strip of land described in Exhibit "B" and provide curb cuts from N.W. 74th Street into the two entrances to the Property.

The parties hereto understand and agree that in the future the sidewalk and or its configuration may be affected, modified, or removed by the County or FDOT to accommodate any widening of N.W. 74th Street. Nothing herein shall be construed to prevent County from making future modifications to 74th Street as part of another project, nor to prevent the County from exercising its condemnation power in the future. Nothing herein shall be construed as giving Owner any property rights in the sidewalk and curb cuts. Any provision of this Agreement concerning the existence, location, size or other characteristic of any curb cut or sidewalk shall not confer a vested right of access or other compensable property right therein, and shall not limit the County's authority in the future to remove, close, modify or relocate same according to applicable

Florida law. In addition, nothing herein shall be construed as a waiver of any defenses that the County may have in the event of future litigation over future modifications and Owner's rights, or as a waiver of claims, rights, interests, or entitlements Owner may have under applicable Florida law, except as otherwise provided herein. The provisions in this paragraph shall survive the transfer of jurisdiction over 74th Street to any other governmental entity.

Section 6. Medians. In the event the County, in its sole discretion, decides in the future to change N.W. 74th Street from an undivided roadway to a divided roadway, the County hereby agrees to provide a directional median opening on N.W. 74th Street allowing egress from Owner's Property to eastbound N.W. 74th Street as shown on Exhibit "C" attached hereto.

Nothing herein shall be construed to prevent County from making future modifications to 74th Street as part of another project, nor to prevent the County from exercising its condemnation power in the future. Nothing herein shall be construed as giving Owner any property rights in the directional median opening. Any provision of this Agreement concerning the existence, location, size or other characteristic of any median opening shall not confer a vested right of access or other compensable property right therein, and shall not limit the County's authority in the future to remove, close, modify or relocate same according to applicable Florida law. In addition, nothing herein shall be construed as a waiver of any defenses that the County may have in the event of future litigation over future modifications and Owner's rights, or as a waiver of claims, rights, interests, or entitlements Owner may have under applicable Florida law, except as otherwise provided herein. The provisions in this paragraph shall survive the transfer of jurisdiction over 74th Street to any other governmental entity.

Section 7. Project Responsibility. The parties hereby understand and agree that the County is solely responsible for all other aspects of the Project.

Section 8. Successors and Assigns. This Agreement shall be binding upon and enforceable against and shall inure to the benefit of the successors and assigns of the parties hereto.

Section 9. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the County at: Ms. Esther L. Calas, P.E.
Director, Public Works Department
Suite 1640
111 NW First Street
Miami, Florida 33128

With a copy to: County Attorney
28th Floor
111 NW First Street
Miami, Florida 33128

If to Owner at:

Evelio Acosta
8505 NW 74th Street
Miami, FL 33166

With a copy to:

Goldstein, Tanen & Trench, P.A.
One Biscayne Tower; Suite 3700
Two South Biscayne Blvd.
Miami, Florida 33131

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails.

Section 10. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes in its entirety any letter of intent, memorandum of understanding or prior agreement heretofore executed by the parties. Any waiver, alteration, or modification of any of the provisions of this Agreement or cancellation or replacement of this Agreement shall not be valid unless in writing and signed by the party against which such waiver, alteration or modification is sought to be enforced.

Section 11. Headings. Section headings herein are for convenience of reference only and shall in no way define, limit or affect this Agreement or the interpretation hereof.

Section 12. Construction of Agreement.

a) This Agreement shall be construed and governed in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

b) In construing this Agreement, the use of any gender shall include every other and all genders, and captions and section and paragraph headings shall be disregarded.

c) All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

Section 13. Expenses. Except as otherwise expressly provided herein, the parties shall each pay their own costs and expenses, including without limitation legal and accounting expenses related to the transactions provided for herein.

Section 14. Enforcement. If any material provision of this Agreement shall be determined to be invalid, illegal, or unenforceable, the parties shall diligently attempt to renegotiate such provisions to conform to applicable law and to the intention of the parties in order to maintain the Agreement in full force and effect.

Section 15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be but one and the same instrument.

[Balance of Page Intentionally Blank]

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

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA,
BY ITS BOARD OF
COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
County Manager

Date: _____

Approved by County Attorney
as to form and legal sufficiency _____

ATTEST:

ACOSTA FAMILY LIMITED PARTNERSHIP, a Florida Limited Partnership

ACOSTA REALTY INVESTMENTS, INC., a Florida corporation, as General Partner

BY: _____
Witness

BY: _____
Witness

Date: 3/30/09

BY: _____
Evelio Acosta, Officer and Director

(Seal)

NOTARY PUBLIC-STATE OF FLORIDA
Margie Caparros Oyarzun
Commission # DD675436
Expires: MAY 16, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

Exhibit "A"

Short Legal Description

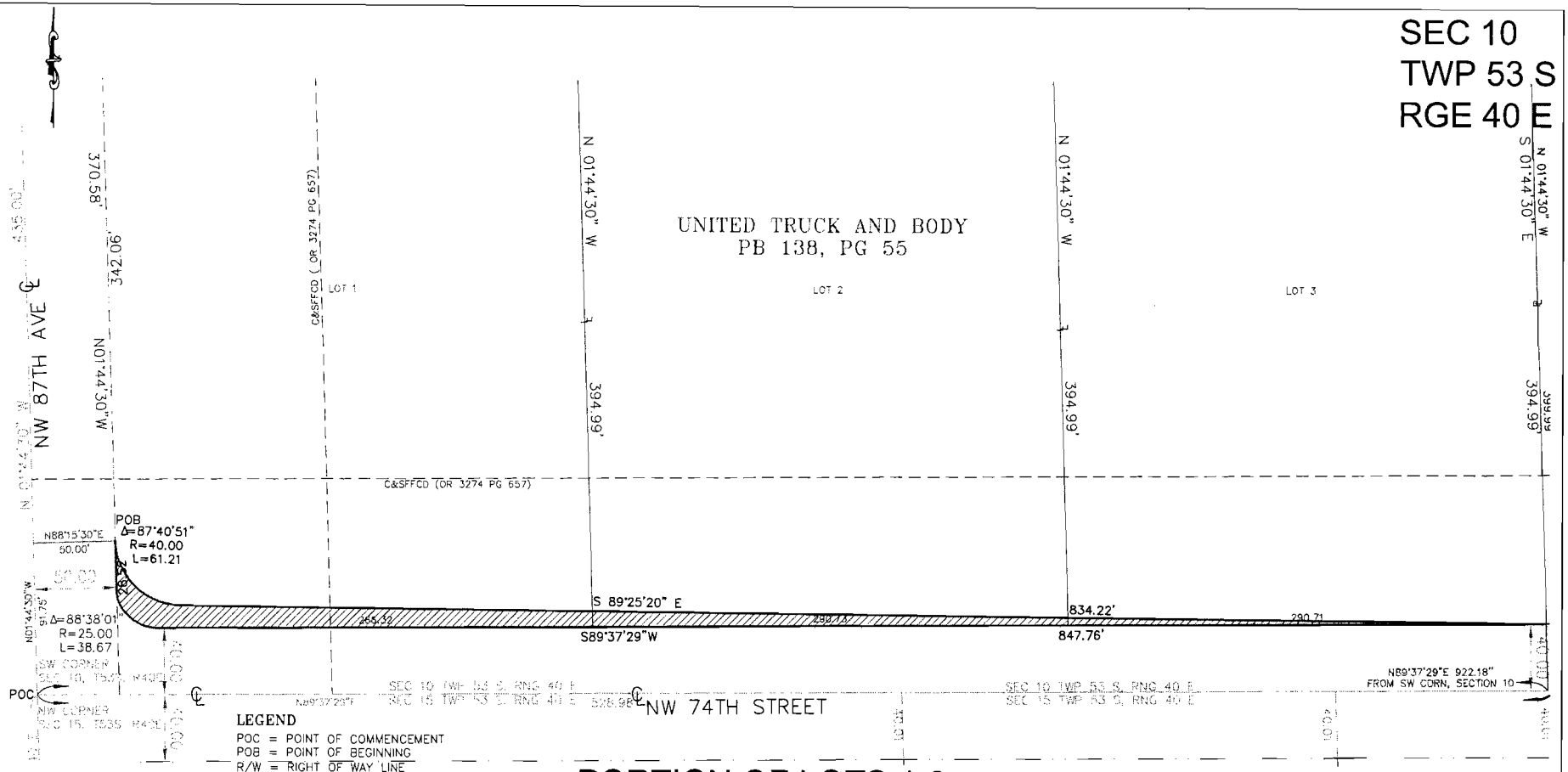
UNITED TRUCK AND BODY PB 138-55 LOTS 2 & 3 BLK 1 LOT SIZE 229676 SQFT
F/A/U 30-3010-004-0020 OR 17996-0178/0182 0198 4

Exhibit "B"

Strip of Land to be dedicated

[See Attached Survey]

SEC 10
TWP 53 S
RGE 40 E



LEGEND

POC = POINT OF COMMENCEMENT
POB = POINT OF BEGINNING
R/W = RIGHT OF WAY LINE
L = ARC DISTANCE
R = CURVE RADIUS
L = LOT LINE
P = PROPERTY LINE
C = CENTER LINE
Δ = DEFLECTION ANGLE

PORTION OF LOTS 1-3

UNITED TRUCK AND BODY

PLAT BOOK 138, PAGE 55

To be Acquired for R/W

Parcel Area: 6,515 s.f. = 0.150 Acres
Parent Tract Area: 344,380 s.f. = 7.906 Acres
FOLIO NO. 22-3010-004-(0010,0020)

NOTE:
Bearings and aliquot parts of sections are based upon July 1965, Map of TOWNSHIP 53 S RANGE 40 E prep by: METROPOLITAN DADE COUNTY PUBLIC WORKS DEPARTMENT

120 90 60 30 0
SCALE: 1'=60'

NOT A SURVEY

NW 74th Street
Section 10

REVISION	BY	DATE		BY	DATE
			PRELIM	JT	2/22/08
			FINAL	JT	3/06/08
			CHECKED		

PROJECT NO. 2006-0444
PARCEL NO. 15

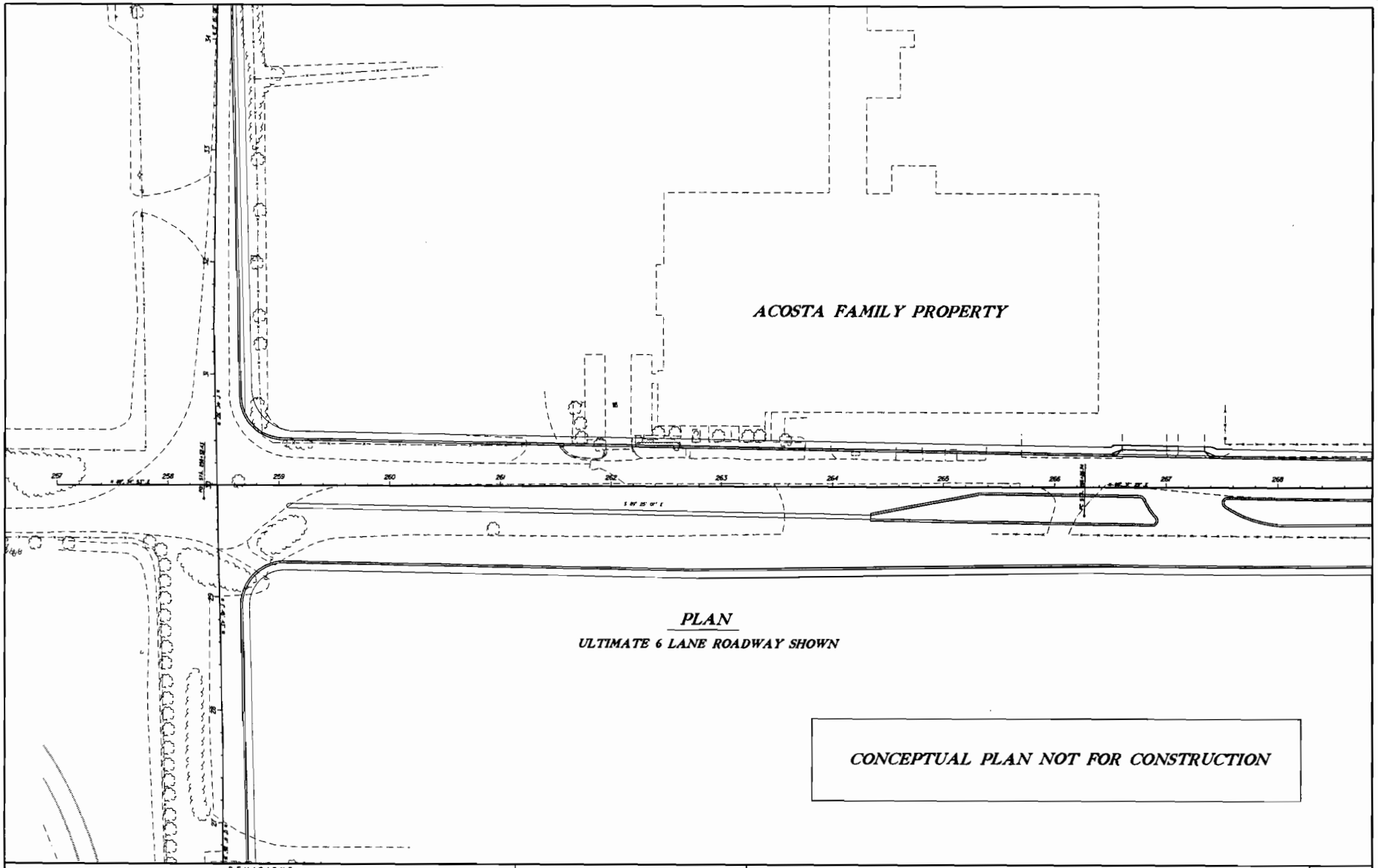
14

Exhibit "C"

Median Opening

[See Attached]

16



PLAN

ULTIMATE 6 LANE ROADWAY SHOWN

CONCEPTUAL PLAN NOT FOR CONSTRUCTION

REVISIONS					
DATE	BY	DESCRIPTION	DATE	BY	DESCRIPTION

ACOSTA FAMILY LIMITED PARTNERSHIP

NW 74TH ST. PROPOSED DIRECTIONAL MEDIAN OPENING AT ACOSTA FAMILY PROPERTY "EXHIBIT D"

SHEET NO.

#USER# #DATE# #TIME# #FILE#

Exhibit "D"

Right-of-Way Deed

[See Attached]

Return to:
Right of Way Division
Miami-Dade County Public Works Dept.
111 N.W. 1st Street
Miami, FL 33128-1970
Instrument prepared by:
Jose Vidal
Miami-Dade County Public Works Dept.
111 N.W. 1st Street
Miami, FL 33128-1970
Folio No. 22-3010-004-(0010,0020)
User Department Public Works Dept.

RIGHT-OF-WAY DEED TO MIAMI-DADE COUNTY

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

THIS INDENTURE, Made this 15th day of April, A.D. 2009, by and between **ACOSTA FAMILY LTD PARTNERSHIP, a Florida limited partnership**, whose Post Office Address is 8505 NW 74th Street, Miami FL, 33166, party of the first part, and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, and its successors in interest, whose Post Office Address is 111 N.W. 1st Street, Suite 1610, Miami, Florida 33128-1970, party of the second part,

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of One Dollar ($1.00) to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and for other and further good and valuable considerations, does hereby grant, bargain and sell to the party of the second part, and its successors in interest, for right-of-way purposes or any other proper purposes, all the right, title, interest, claim or demand of the party of the first part, in and to the following described land, situate, lying and being in Miami-Dade County, State of Florida, to-wit:

See Exhibit "A" Attached

It is the intention of the party of the first part, by this instrument, to convey to the said party of the second part, and its successors in interest, the land above described for the purposes described above and for all purposes incidental thereto.

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever, claiming by, through or under it.

IN WITNESS WHEREOF, the said party of the first part, by its General Partner(s), has caused these presents to be signed for and on its behalf, the day and year first above written.

Signed, Sealed and Delivered in our presence: (2 witnesses for each signature or for all)

Witness

Maria C. Morales
Witness Printed Name

Witness

Blanca Acosta
Witness Printed Name

ACOSTA FAMILY LTD PARTNERSHIP, a Florida Limited Partnership

By: ACOSTA REALTY INVESTMENTS, INC., as General Partner

By: Evelio Acosta, Officer and Director

RW-09-RWD-ACOSTA FAMILY LTD PART

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY, that on this 15th day of April, A.D. 2009, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared EVELIO ACOSTA, an Officer of ACOSTA REALTY INVESTMENTS, INC., a Florida corporation, as General Partner of **ACOSTA FAMILY LTD PARTNERSHIP, a Florida limited partnership**, personally known to me, or proven, by producing the following forms of identification: _____, to be the General Partner(s) duly authorized on behalf of **ACOSTA FAMILY LTD PARTNERSHIP, a Florida limited partnership.** Said General Partner(s) executed the foregoing instrument freely and voluntarily for the purposes therein expressed.

WITNESS my hand and official seal in the County and State aforesaid, the day and year last aforesaid.

NOTARY PUBLIC
STATE OF FLORIDA
MELANIE BROUSSARD
Commission DD468382
Expires October 28, 2009
Bonded Thru Troy Fain Insurance 800-385-7019

Melanie B
Notary Signature

Melanie Broussard
Printed Notary Signature

NOTARY SEAL/STAMP

Notary Public, State of Florida

My commission expires: 10-28-09

Commission/Serial No. _____

The foregoing was accepted and approved on the _____ day of _____, A.D. 20_____, by Resolution No._____ of the Board of County Commissioners of Miami-Dade County, Florida.

_____
Special Assistant to the
County Manager

ATTEST: HARVEY RUVIN,
Clerk of said Board

By: _____
Deputy Clerk

RW-09-RWD-ACOSTA FAMILY LTD PART

Legal Description

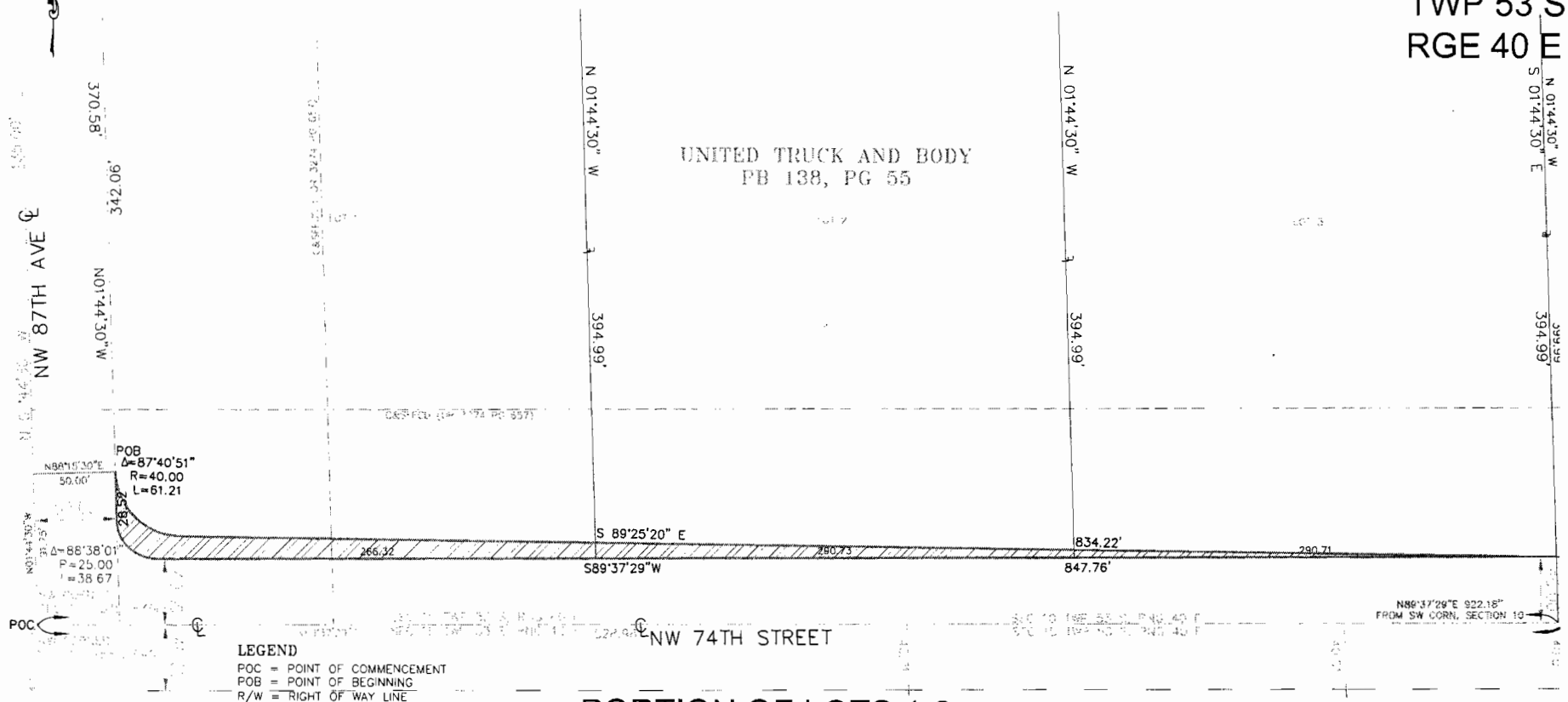
All that part of Lots 1, 2 and 3, of "United Truck and Body" subdivision, according to the plat thereof as recorded in Plat Book 138, Page 55 of the Public Records of Miami-Dade County, lying within the following described parcel of land:

Commencing at the Southwest corner of Section 10, Township 53 South, Range 40 East, Miami-Dade County Florida being the centerline intersection of NW 74th Street and NW 87th Avenue, N 01°44'30" W, with the centerline of said NW 87th Ave, a distance of 91.75 feet to a point, thence N 88°15' 30" E, leaving said centerline, a distance of 50.00 feet to a point on the easterly right of way line of NW 87th Ave., the **POINT OF BEGINNING.**

Thence with the arc of curve to the left, with a deflection angle of 87° 40' 51", with a radius of 40.00 feet, and an arc distance of 61.21 feet to a point, thence S 89° 25' 20" E, a distance of 834.22 feet to a point on the southwesterly corner of Lot 3; thence S 89° 37' 29" W, with the southerly line of the aforementioned Plat a distance of 847.76 feet to a point; thence with the arc of a curve to the right, with a deflection angle of 88° 38 '01", with a radius of 25.00 feet, and an arc distance of 38.67 feet to a point on the easterly right of way line of NW 87th Ave; thence N 01° 44' 30" W, with said right of way line, a distance of 28.52 feet to the **POINT OF BEGINNING.**

Exhibit 'A'

SEC 10
TWP 53 S
RGE 40 E



LEGEND

POC = POINT OF COMMENCEMENT
POB = POINT OF BEGINNING
R/W = RIGHT OF WAY LINE
L = ARC DISTANCE
R = CURVE RADIUS
L = LOT LINE
℄ = PROPERTY LINE
℄ = CENTER LINE
Δ = DEFLECTION ANGLE

PORTION OF LOTS 1-3

UNITED TRUCK AND BODY

PLAT BOOK 138, PAGE 55

NOT A SURVEY

To be Acquired for R/W

Parcel Area: 6,515 s.f. = 0.150 Acres
Parent Tract Area: 344,380 s.f. = 7.906 Acres
FOLIO NO. 22-3010-004-(0010,0020)

NOTE:
Bearings and aliquot parts of sections are based upon July 1965, Map of TOWNSHIP 53 S RANGE 40 E prep by: METROPOLITAN DADE COUNTY PUBLIC WORKS DEPARTMENT

120 90 60 30 0
SCALE: 1'=60'

REVISION	BY	DATE		BY	DATE
			PRELIM	JT	3/23/09
			FINAL	JT	3/26/09
			CHECKED		

NW 74th Street
Section 10

PROJECT NO. 2006-0444
PARCEL NO. 15

22