

ITEM #74

**ADDITIONAL MATERIAL
10:00 A.M. REGULAR MEETING**

MARCH 20, 2018

**SUBMITTED AT THE REQUEST OF
OFFICE OF THE COUNTY ATTORNEY**

CURRENT PROPOSED DRAFT (PARTIES ARE CONTINUING TO DISCUSS)

Mediated Settlement Agreement

1. Shaw Farms & Land Company of Florida, LLC and Dania Place, LLC (collectively, the “Shaws”) own approximately thirty-eight (38) acres of property (the “Shaw Property”) in close proximity to Fort Lauderdale-Hollywood International Airport (the “Airport”). The Shaw Property is legally described as follows:

Parcels “A” and “B” of D.D.K. PLAT, according to the Plat thereof, as recorded in Plat Book 131, Page 19 of the Public Records of Broward County, Florida, being a portion of the SE ¼ of Section 27, Township 50 South, Range 42 East;

Less and Except Parcel No. 1405 in that certain Stipulated Corrected Order of Taking Nunc Pro Tunc recorded in Official Records Book 18474, Page 825, that Order of Taking recorded at Official Records Book 19693, Page 919 and that certain Notice of Filing Legal Descriptions of Property Taken Pursuant to Order of Taking Official Records Book 19693, Page 907, all of the public records of Broward County, Florida, and more fully described as follows:

A parcel of land being a portion of Parcel "A" of D.D.K. Plat, as recorded in Plat Book 131, Page 19, of the public records of Broward County, Florida, in Section 27, Township 50 South, Range 42 East, said parcel also being a portion of the proposed 34:1 Clear Zone for Runway 27 Left, Fort Lauderdale-Hollywood International Airport, said parcel being more particularly described as follows:

Commence at the Southeast corner of the Southeast One-Quarter (SE ¼) of said Section 27; thence on a grid bearing of South 89 degrees 45'20" West along the south line of the said Southeast One-Quarter (SE 1/4) a distance of 683.85 feet to the Southerly extension of the East line of said Parcel "A"; thence North 01 degree 57'30" West along the said Southerly extension and the said East line thereof, a distance of 522.69 feet to a point on the South line of said proposed Clear Zone, said point being the POINT OF BEGINNING; thence continue North 01 degree 57'30" West along said East line, a distance of 441.24 feet, to the North line of said Parcel "A"; thence South 53 degrees 35'42" West along said North line, a distance of 292.06 feet; thence South 49 degrees 35'42" West continuing along said North line, a distance of 301.71 feet to the South line of said proposed Clear Zone; thence South 81 degrees 27'29" East along said South line, a distance of 485.27 feet to the POINT OF BEGINNING.

Together with

Parcels “A,” “B” and “C,” of THE RITA W. SHAW PLAT, according to the Plat thereof, recorded in Plat Book 146, Page 25, of the Public Records of Broward County, Florida, being a portion of Sections 27 and 34, Township 50 South, Range 42 East; LESS therefrom that portion thereof taken by Broward County, a political subdivision of the State of Florida by Stipulated Corrected Order of Taking Nunc Pro Tunc recorded in Official Records Book 18474, Page 825, that Order of Taking recorded at Official Records Book 19693, Page 919 and that certain Notice of Filing Legal Descriptions of Property Taken Pursuant to Order of Taking Official Records Book 19693, Page 907, all of the public records of Broward County, Florida identified thereon as Parcel 1415.

And

Parcel “A” of C.I.D.B. Plat, according to the Plat thereof, as recorded in Plat Book 140, Page 28 of the Public Record so Broward County, Florida being a portion of the NE ¼-NE ¼ of Section 34, SE ¼-SE ¼ of Section 27, Township 50 South, Range 42 East.

2. This lawsuit, an inverse condemnation action filed by the Shaws in 2015 (the “Lawsuit”), alleges that Broward County (the “County”) took and significantly damaged the Shaw Property by causing flooding, loss of access, and other adverse effects in connection with the County’s expansion of the Airport’s south runway.

3. The Shaw Property is comprised of the following components more-fully described above:

- a. The DDK Plat property (“DDK”), comprising approximately seven (7) acres; and
- b. The Rita Shaw and CIDB properties (collectively, the “South Parcels”), comprising approximately thirty-one (31) acres.

4. On September 1, 2017, the Court entered an Order of Taking finding that, as a result of the construction of the south runway expansion including NE 10th Street, the County “took” the following property interests on the following dates:

- a. As of July 1, 2012, a permanent flowage easement over the entirety of the Shaw Property;
- b. As of August 21, 2012, all of the use and value (the full fee simple interest) of DDK; and
- c. As of October 1, 2012, several hundred trees on DDK.

5. The Court ordered the County to convey an “Initial Offer” to the Shaws stating what the County was willing to pay to fully compensate the Shaws for the property interests taken. In connection therewith, the Shaws and the County exchanged appraisals of the value of the property interests taken. Each party’s appraisal recognizes that the permanent flowage easement over the entirety of the South Parcels renders the South Parcels commercially unmarketable and undevelopable. Due to that substantial impact of the judicially-declared permanent flowage easement, the parties’ respective appraisers each independently determined that the value of the permanent flowage easement on the South Parcels was ninety percent (90%) of the fair market value of the full fee simple interest of the South Parcels.

6. The parties participated in mediation on February 16, 2018 and February 23, 2018.

7. The Shaws seek to recover the full value of the property interests taken, together with applicable prejudgment interest from the respective dates of taking, attorneys’ fees, and expert and other litigation-related costs.

8. The Shaws have presented appraisal values of the property interests addressed in the Order of Taking. Those values, which are determined as of the respective 2012 dates of taking, are as follows:

- a. For the full fee simple interest in DDK, \$7,460,000;
- b. For the permanent flowage easement across the South Parcels, \$25,600,000; and

c. For the trees taken on DDK, \$183,000.

9. The Shaws also seek the following amounts;

a. Prejudgment interest exceeding \$9,000,000;

b. Attorneys' fees with the Shaws representing that the amount of "Lodestar" fees being approximately \$573,000 as of the date of this Mediated Settlement Agreement; and

c. Reimbursement for expert and other litigation-related costs in the amount of \$285,548.34.

10. Thus, the Shaws seek, in total, in excess of \$43,000,000.

11. The County's experts believe the value of the property interests taken is \$26,728,000. When adding prejudgment interest, and attorneys' fees and costs claimed by the Shaws, the County's valuation of the damages is \$34,873,000.

12. Importantly, whether the outcome of the trial were a judgment of \$34.9 million or \$43 million, going to trial would expose the County to significant additional potential attorneys' fees and would result in the County acquiring only an undevelopable permanent flowage easement on the South Parcels.

13. The County does not believe it is reasonable to accept this level of financial exposure and wind up with (aside from DDK) an undevelopable easement. Even if the County subsequently takes, through eminent domain, the Shaws' remaining property interests in the South Parcels, the full additional compensation for such taking would likely exceed \$4 million (exclusive of additional attorneys' fees and costs).

14. Pursuant to this Mediated Settlement Agreement, the parties stipulate and agree that the County is properly exercising its delegated authority in furtherance of a public purpose, and

the property hereby acquired by the County is reasonably necessary for this public purpose. Additionally, the acquisition of these parcels will allow the County to provide for and implement more robust airspace protection than that currently afforded airport operators under Florida Statutes Chapter 333 Airport Zoning, and allows the development of land for future Port Everglades, Fort Lauderdale-Hollywood International Airport, or County use for the benefit of the people of Broward County.

15. For these reasons, and because the Shaws would also lack the ability to develop the South Parcels, the parties believe settlement of this Lawsuit is in their mutual interest.

16. Subject to the terms and conditions stated herein, the County agrees to pay to the Shaws Forty Two Million Dollars (\$42,000,000.00) as full compensation for all of the Shaw Property, in fee simple, and in full satisfaction of any and all claims asserted (or that could have been asserted) exclusive of attorneys' fees, experts' fees, and costs. Two-thirds of this sum, Twenty Eight Million Dollars (\$28,000,000.00), shall be paid to Shaw Farms & Land Company of Florida, LLC, and one-third of this sum, Fourteen Million Dollars (\$14,000,000.00), shall be paid to Dania Place, LLC. No sums shall be paid to DANIA FARMS, INC. At least thirty (30) days before the payment is due, the Shaws shall inform the County, in writing, of the representative and address where checks representing this payment shall be delivered.

17. If requested by the County, the Shaws will execute and deliver to the County a special warranty deed to all of the Shaw Property, which warranty deed shall be subject to the conditions, reservations, restrictions, and easements of record, provided that said deed shall not reimpose same. The Shaws also agree to deliver to the County any other documents the County determines are reasonably required to ensure full and good conveyance to the County of all of the Shaw Property including any improvements thereon. Title to the Shaw Property shall vest in the

County as of the date of the payment of said funds. Therefore, the acquisition of the Shaw Property by County shall be as of the date of the payment and no portion of the payment shall be for prejudgment interest.

18. The County shall also pay the following amounts as part of the full compensation due the Shaws pursuant to Article 10, Section 6(a) of the Florida Constitution and Sections 73.091 and 73.092 of the Florida Statutes, subject to the County's receipt from the Shaws of detailed documentation establishing those amounts: Attorneys' fees in the amount of \$573,000; and experts' fees and litigation costs in the amount of \$285,548.34.

19. If, upon review of the above-referenced documentation, the County wishes to challenge any of these amounts, the presiding court shall determine the amount of such fees and/or costs. In such event, the parties shall not be precluded from claiming that any subsection of Section 73.092 of the Florida Statutes is applicable or inapplicable and the Shaws shall be paid their reasonable attorney's fees for litigating the amount of attorney's and/or expert fees and costs to be awarded. *[Need to discuss whether this entitlement to fees on fees, or fees on costs, is only applicable if the Shaws recover at least \$573,000 in any such proceeding].*

20. The Shaws shall have continued possession of the Shaw Property for ninety (90) days after the Court enters the Order of Taking and Stipulated Partial Final Judgment Approving Mediated Settlement Agreement ("Partial Final Judgment") (referenced below) to enable its tenant-at-will, Dania Farms, Inc., to wind down its business.

21. Payment by the County shall be due on the later of the end of this ninety (90) day period or five business days after notice from the Shaws that they and all tenants and occupants, further described below, have vacated the property. Possession of the Shaw Property and ownership of all plants and trees remaining on the Shaw Property shall vest in the County as of the

date of payment. Neither the Shaws nor Dania Farms, Inc. may remove any trees or plants from DDK (the Shaws assert that such removal is not physically possible due to flooding problems and lack of access).

22. The Shaws agree not to encumber the Shaw Property or take any action to encumber the Shaw Property from the date hereof and throughout the extended possession period. The Shaws further represent that, to the best of their knowledge, the Shaw Property is free and clear of all liens, taxes, encumbrances and claims of every kind, except for real estate and personal property taxes for the year 2018 and those encumbrances shown in the public record. The Shaws represent that, since October 9, 2017, the date of the title search performed by County, they have not taken any action, nor are they aware of any action taken, that would encumber the Shaw Property and that they are not aware of any improvements or alterations to the Shaw Property that could result in a lien being recorded against same.

23. The Shaws represent that no other person or entity has any ownership or possessory interest in all or any portion of the Shaw Property except for the possessory interests of Dania Farms, Inc., Wrightscapes, Inc. (which operates a business on the property at will without a written lease), and John Bulow and Lazaro Roque, who reside on the property (Lazaro Roque only on days he is working for Dania Farms, Inc.) both at will (without written leases).

24. The parties will, subject to the approval hereof by the Broward County Board of County Commissioners, move for the entry of a Partial Final Judgment which shall supersede the Order of Taking entered in this cause and shall: (i) approve this Mediated Settlement Agreement and direct the parties to comply with same; (ii) retain jurisdiction to enforce this Mediated Settlement Agreement; and (iii) provide for the Court to retain jurisdiction to determine the amount of attorneys' fees, experts' fees, and costs in the event County wishes to challenge same.

25. This Mediated Settlement Agreement shall fully resolve all claims, as to the County, which were or could have been filed by the Shaws or Dania Farms, Inc., in connection with the subject matter of the Lawsuit; it shall not, however, affect the County's claims against any person or entity other than the Shaws, whether or not a current party to the Lawsuit. The County, Shaws, and Dania Farms, Inc. shall execute and deliver full, general mutual releases releasing all claims they did file or could have filed against each other in connection with the Lawsuit. However, these releases shall not release the parties from their respective obligations under this Mediated Settlement Agreement and shall become effective only upon the payment of all sums required hereunder including the payment of all agreed or adjudicated attorneys' fees and experts' fees and costs including any fees for litigating the amount of fees.

26. Within ten (10) days of the payment by County of all amounts due hereunder, the Shaws shall execute and deliver a Satisfaction of the Partial Final Judgment.

27. The County shall bring the terms of this Mediated Settlement Agreement (and any County resolutions authorizing the acquisition of the Shaw Property) before the Broward County Board of County Commissioners ("Board") for a vote at a meeting on March 20, 2018. If approved by the Board, the parties shall forthwith submit the Stipulated Order for entry by the Court. If rejected by the Board or if title to the Shaw Property is unmarketable, this Mediated Settlement Agreement shall become null and void, inadmissible in any court proceeding, and of no force or effect, and the action shall proceed to trial at the first available docket.

28. The Office of the County Attorney is authorized to execute this Mediated Settlement Agreement on behalf of the County.

Dated March 19, 2018

SHAW FARMS & LAND COMPANY DANIA PLACE, LLC
OF FLORIDA, LLC

By: _____

By: _____

As Its: _____

As Its: _____

DANIA FARMS, INC.

BROWARD COUNTY, a political
subdivision of the State of Florida

By: _____

By: _____

As
Its: _____

Alexander J. Williams, Jr. Date
Senior Assistant County Attorney
As Its: Counsel

As counsel for Plaintiffs