

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2010 | 2011 | 2012 | 2013 | 2014 |
|--|------------|------------------|------------|-------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | * | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |
| Is Item Included in Current Budget? | Yes _____ | | No _____ | | |
| Budget Account No.: | Fund _____ | Department _____ | Unit _____ | | |
| Object _____ | | | | | |
| Reporting Category _____ | | | | | |

* **B. Recommended Sources of Funds/Summary of Fiscal Impact:** There is no fiscal impact associated with this item. However, the estimated cost to complete the early conditions is estimated at \$350,000.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

 5/12/10
 OFMB
 5/14/10
 Contract Development and Control

B. Legal Sufficiency:


 Assistant County Attorney

At the time of our review the Settlement Agreement was not executed and Exhibits A & B were not available.

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues (Cont'd):

Condition of Approval No. 5 requires the County to install a fence or railing on the beach to the mean high water line, in order to create a demarcation between public and private beach property. The County has been advised by the Florida Fish and Wildlife Commission and the Florida Department of Environmental Protection that State policy is to discourage encumbrances, including fences, due to adverse impacts to sea turtles. Consequently, the County expects that required state permits will not be obtainable. The Stipulated Settlement Agreement provides that Condition of Approval No. 5 will be modified to acknowledge the County's right to proceed if, despite its best efforts, the County is unable to obtain the requisite state permits for the requested barrier.

Condition of Approval No. 6 requires the County to retain one or more Registered Professional Archaeologists that are agreeable to the Town to perform specified archaeological work on the Project. The County's concern with Condition of Approval No.6 is that it was intended to prevent the County's current archaeological expert, Bob Carr, from performing work on the Project, based on a belief on the part of Town staff that Bob Carr was biased in favor of the County. The Stipulated Settlement Agreement provides that Condition of Approval #6 will be modified to acknowledge the Town's ability to choose its own archaeological consultant, should it not agree with the County's choice.

Condition of Approval No. 10 requires the County to apply for designation of the park as a historic site on the National Register of Historic Places within one year of the adoption of the Resolution. The Stipulated Settlement Agreement provides that Condition of Approval No.10 would be modified to allow for the historic designation application to be made within one year of the County's notice to the Town of its intent to resume development of the park.

Condition of Approval No. 14 requires the County to enter into a Memorandum of Agreement ("MOA") with the State Historic Preservation Officer ("SHPO"), the Miccosukee, the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, and the Town of Highland Beach, regarding "what steps will be taken to protect the Subject Property during its development," and includes a specific form and content for the MOA. The County objected to the requirement that the County enter a MOA, because the SHPO had already advised the County that a MOA was not required by the State and because some of the specified Indian Tribes were not responsive to the County's requests for input on the Project. The Stipulated Settlement Agreement would modify Condition of Approval No. 14, by acknowledging that the County is only required to make reasonable efforts to negotiate with the identified third parties for the MOA.

Condition of Approval No. 43 requires the County to replace a planned 6 foot high vinyl fence with a 6 foot high concrete decorative wall on the western property line. The Stipulated Settlement Agreement provides that Condition of Approval will be modified to resolve the potential discrepancies between the County's initial landscaping plan and the wall requirement, by including a reconciled landscaping plan reflecting all of the required elements.

In light of the foregoing, staff recommends approval of the Stipulated Settlement Agreement, which will resolve the County's concerns regarding the objectionable conditions of approval and obviate the need for further litigation.

The County remains obligated to proceed with certain conditions (No 20, 22, 24 and 43) within the timeframes set forth in the development order. Specifically, the County is required to; 1) clear and grub the West Parcel, remove existing paving and grade the perimeter landscape buffers and the balance of the site, 2) install the southern and western perimeter buffers identified in the plan which includes the installation of a 6' masonry wall, and 3) restoration of the on-site wetland; all within 180 days of the approval

of the settlement agreement and amended development order by the Town of Highland Beach. The County will have the right to install two signs on the property indicating that the site is the "Future Home of the Cam D. Milani Park." The cost of these improvements is estimated to be \$350,000 and the remainder of the funds currently allocated to this Park will be reallocated to creating additional beach access capacity in the Parks' South Region.

The Town is planning to consider the settlement agreement and amendment to the development order on May 4, 2010.

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

PALM BEACH COUNTY,
a political subdivision of the State
of Florida,

Case Nos.: 502009CA018459XXXXMB AY
502009CA024429XXXXMB AG

Plaintiff/Petitioner,

v.

TOWN OF HIGHLAND BEACH,
a municipal corporation of the
State of Florida,

Defendant/Respondent.

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Agreement is made and entered into this ____ day of _____, 2009, by and between PALM BEACH COUNTY, a charter county and political subdivision of the State of Florida, and TOWN OF HIGHLAND BEACH, a municipal corporation of the State of Florida.

RECITALS

WHEREAS, Palm Beach County submitted a special exception use application to the Town of Highland Beach on December 19, 2001, to obtain a special exception for the location of a proposed County park – Palm Beach County Cam D. Milani Park (the Subject Property) and

WHEREAS, the special exception use application was abated during litigation between the County and the Subject Property's former owner; and

WHEREAS, at the conclusion of the litigation, the County requested that the Town resume consideration of the special exception use application on February 27, 2007; and

WHEREAS, Palm Beach County submitted an updated special exception use application package to the Town; and

WHEREAS, the Town of Highland Beach's Town Commission considered the special exception use application at hearings on November 4, 2008, December 2, 2008, January 6, 2009, and April 27, 2009; and

WHEREAS, the Town of Highland Beach's Town Commission adopted Resolution R009-004, (the Development Order) which approved a special exception use application with 43 conditions of approval associated with the special exception use; and

WHEREAS, Palm Beach County filed a Writ of Petition for Certiorari in the Fifteenth Judicial Circuit in and for Palm Beach County, case styled, Palm Beach County v. Town of Highland Beach, Case No.: 50 2009 CA 018459 XXXX MB AY, appealing the Development Order (the appeal), which was denied; and

WHEREAS, Palm Beach County also filed an action for declaratory and injunctive relief, in the Fifteenth Judicial Circuit in and for Palm Beach County, case styled, Palm Beach County v. Town of Highland Beach, Case No.: 50 2009 CA 024429 XXXX MB AG, contesting the Development Order (the action); and

WHEREAS, both parties wish to resolve both the pending appeal and action in order to avoid the time and expense of litigation; and

WHEREAS, Palm Beach County intends to postpone its development of the Subject Property to prioritize other means of providing beach access to the citizens of Highland Beach and Palm Beach County.

NOW THEREFORE, in consideration of the foregoing Whereas Clauses which the parties agree are true and correct and are incorporated into this Agreement, the parties agree as follows:

MODIFICATION TO THE CONDITIONS OF APPROVAL

1. The Town Commission of the Town of Highland Beach agrees to the following amendments to the Conditions of Approval adopted as part of its Development Order.

- a. Condition #5 to be amended as follows, "As part of the Compliance Package, the County shall submit a drawing indicating the type of demarcation fencing or railing (which may include notices or signs attached thereto identifying adjacent property) which it proposes to install on the beach to create delineation between public and privately owned properties along the northern and southern property lines to the mean high water line for the East Parcel (Parcel "A"). The placement of the demarcation fencing or railing shall be subject to the County obtaining permits from the appropriate authorities; however, the County shall be excused from compliance with this condition if, after a good faith effort, the County is unable to obtain required permits from the appropriate authorities, including but not limited to the Florida Department of Environmental Protection and the Florida Fish and Wildlife Commission."
- b. Condition #6 to be amended as follows, "The County shall retain one or more Registered Professional Archaeologists (hereinafter "the Archaeologists"), who are members or meet the standards of the Register of Professional Archaeologists (ROPA) who will work toward the

development of the Park Management Plan to address the planning, construction and maintenance measures to protect the archaeological resources on the Subject Property. These measures shall be incorporated into the Park Management Plan for the Subject Property as required in 4b, above. The Archaeologists shall be on the Archaeological Site (the East Parcel – Parcel “A”) of the Subject Property at all times during clearing and construction to monitor and inspect the activities of the County’s contractors, employees, and consultants. If the Town finds the County’s archaeological consultant unacceptable, the Town may choose to hire its own archaeological consultant to review the work performed under this condition and the County shall reimburse the Town for reasonable expenses incurred as part of the Town’s archaeologist’s review.”

- c. Condition #10 to be amended as follows, “Within one (1) year of the County’s notice of intent to resume development, the County shall apply for National Register of Historic Places (NRHP) designation of the Archaeological Site. Immediately upon receipt of the NRHP determination the County shall provide evidence of its receipt of the determination to the Town. If the Archaeological Site is nominated, Palm Beach County agrees to accept the nomination;”
- d. Condition #14 to be amended as follows, “The County shall make reasonable efforts to negotiate and enter into a Memorandum of Agreement (MOA) with the SHPO, the Miccosukee, the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, and the Town of Highland

Beach regarding what steps will be taken to protect the Subject Property during its development. The Memorandum of Agreement shall generally be in the form of and include the content of the attached Exhibit "A." The County shall be considered to have made reasonable efforts to negotiate the MOA if it seeks participation by each of the parties by sending by regular and certified mail, a letter generally in the form and include the content of the attached Exhibit "B" which is incorporated herein, and the parties fail to respond within 90 days of the written invitation. Regardless of whether or not any of the third parties referenced hereinabove decline to enter into the MOA, the County agrees to make reasonable efforts to negotiate and enter into a MOA with those third parties that do agree to participate."

e. Condition #43 to be amended as follows, "The perimeter landscaping plan for the southern and western perimeters of the West Parcel (Parcel "B") called for in Condition #20 shall include a 6' high (above grade) concrete decorative wall rather than a 6' high (above grade) opaque vinyl fence for the western property line of the West Parcel (Parcel "B") as originally proposed in the Conceptual Landscape Plan dated October 16, 2008. The six foot high (above grade) concrete decorative wall for the western property line of Parcel B shall be constructed and completed within one year of the execution of this Settlement Agreement. Additionally, on the eastern boundary of Parcel "B" of the Subject

Property, the County shall install a means of physically restricting vehicular access to the West Parcel as shown on Exhibit C.

The perimeter landscaping plan for the southern and western perimeters of the West Parcel (Parcel "B") and the access restrictions on the eastern boundary of Parcel "B" shall be as depicted in the Landscaping Plan, which is attached hereto as Exhibit C. To the extent that the requirements of condition #43 and #20 conflict, the terms of this amended Condition #43 shall prevail."

- f. The Development Order will be amended to allow for completion of all conditions of approval within 2 years following the date of the County's notice of intent to resume development consistent with the intent of Article II Section 30-21(g)(2)(b), except that Conditions 20, 22, and 43 shall be completed within one year of the execution of this Settlement Agreement.

2. The parties acknowledge the existence of a property line dispute between Palm Beach County and Boca Highlands Condominium Association regarding the perimeter of the Subject Property. The Town of Highland Beach agrees to extend the deadlines for performance of the requirements of Conditions 20, 22, and 43 if litigation is initiated regarding the property line dispute between Palm Beach County and Boca Highlands Condominium Association that prevents the County from meeting the timing requirements of Conditions 20, 22, and 43. The time extension may be granted administratively by the Building Official upon written request by the County. If the Site Plan changes required to accommodate resolution of the property line dispute do not constitute a substantial deviation from the Original Site Plan, then the Site Plan changes can be approved

administratively by the Building Official. If the Site Plan changes are substantial deviations, then the Site Plan changes must be approved by the Town Commission, but permission for such deviation shall not be unreasonably withheld.

PROJECT POSTPONEMENT

3. If the Town of Highland Beach adopts the amendments to the Development Order set forth herein, the County agrees not to proceed with development of Cam D. Milani Park, other than compliance with Conditions 20, 22, 24, and 43, for a period of 10 years from the date of adoption for the amended Development Order. Upon the 5 year anniversary of the effective date of the amended Development Order, the County shall provide a status report to the Town of the County's intentions with respect to continued development of the Subject Property. The status report is for information purposes only, but shall, at a minimum include what actions the County has taken to increase beach access at other beach parks in the district, and the beach access level-of-service standard contained in the County's Comprehensive Plan.

4. The County has the right to extend the post-ponelement, at its sole option, for 2 periods of 5 years each for a maximum postponement of up to 20 years. After 9 years, but no later than 6 months prior to the ten year anniversary of the effective date of the amended Development Order, the County shall provide written notice of its intent to resume development of the Subject Property, or to exercise its option for an additional 5 year time extension of the abatement period. If the County exercises its option for an additional 5 year time extension of the abatement period, the County shall notify the Town in writing no later than 6 months prior to the expiration of the 5 year extension of its intent to either exercise its option for a second 5 year time extension of the abatement period, or its intent to resume development. Only two year time extensions of the abatement period shall be allowed.

5. If the County fails to provide written notice of its intent to either use the time extensions provided for herein or to resume development at the end of the abatement period(s), then the Development Order shall be deemed null and void.

6. The County's rights under the amended Development Order shall remain in full force and effect, even though the County hereby agrees to postpone development of the Subject Property for up to 20 years, except as may be otherwise provided for herein. If the County chooses to resume development no earlier than 10 years but no later than 20 years, development will proceed according to the conditions set forth in the Amended Development Order, regardless of any Town Code changes that may have occurred during the time since the Amendment Development Order was adopted. If the County proposes to develop the Subject Property such that it substantially deviates from the Amended Development Order, the County's request will be subject to the provisions of the Town Code in effect at the time of the adoption of the Amended Development Order, (identified by X).

7. During the abatement period, the County may place no more than two signs (1 on west parcel and 1 on east parcel) on the property indicating that "Future Home of Cam D. Milani Park," in the form indicated in the Sign Detail attached hereto as Attachment 1.

8. The County shall be responsible for maintaining the Subject Property, including specifically the wall and any landscaping placed on the West Parcel (Parcel "B") during the abatement period. Within one year of the effective date of the Amended Development Order, the County shall clear and grub the West Parcel, remove the existing paving and grade the perimeter landscape buffers and the balance of the site as provided for in the Demolition/Grading Plan, which is attached hereto as Exhibit "D". The West Parcel shall be seeded with grass. No permanent irrigation system shall be installed other than what may be needed for southern and

western perimeter landscape buffers. The West Parcel shall be regularly trimmed and maintained pursuant to the requirements of the Town's Code.

SETTLEMENT OF LITIGATION

9. Provided the Town Commission of the Town of Highland Beach amends the Development Order as set forth herein, the County will dismiss with prejudice the action for declaratory and injunctive relief referenced above within 30 days of such amendment.

ATTORNEYS' FEES AND COSTS

10. Each party will be responsible for its own attorneys' fees and costs incurred prior to the execution of this Settlement Agreement, and throughout the performance of this Settlement Agreement.

11. It is the intent of the parties that the Circuit Court reserve jurisdiction to enforce this Settlement Agreement against each of the parties.

12. Each party to this Settlement Agreement hereby releases each other party, its elected officials, appointed officers, employees, consultants, and agents from any claim related to the subject matter of this Settlement Agreement arising out of facts occurring prior to the date hereof. Provided, however, that this paragraph will not operate to release the parties from performance under this Settlement Agreement or for any claims arising out of facts occurring after the date hereof.

MISCELLANEOUS

13. The headings or captions of articles, sections or subsections used in this Settlement Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Settlement Agreement. The parties hereto agree and warrant that they have had

the benefit of consultation with legal counsel prior to entering into this Settlement Agreement, such that all language herein shall be construed equally against the parties, and such that all parties waive any right, claim, argument or defense that any language of this Settlement Agreement should be construed strictly against its drafter.

14. The parties agree that upon execution of this Settlement Agreement, the County will have "commenced development," as that term is used by the Town Code, the phasing periods referenced herein notwithstanding. Accordingly, the Town waives the right to rescind or invalidate the Development Order on grounds that the County has not "commenced development" as long as the County performs the initial site development conditions of 20, 22, 24 and 43 and any other requirements as set forth herein.

15. This Settlement Agreement shall only be amended or modified through written amendment approved by the Board of County Commissioners of the County and the Town of Highland Beach.

16. This Settlement Agreement and its attachments represent the entire agreement of the parties with respect to the Subject Property. No agreement, statement, or promise made by any party, or to any employee, elected or appointed official or officer, consultant, or agent of any other party, which is not contained in this Settlement Agreement shall be binding or valid as to matters covered by this Settlement Agreement.

17. The full and complete performance of each of the conditions, terms and provisions set forth in the above articles and sections is essential to the agreement of each of the parties to enter into this Settlement Agreement, such that each party hereby waives any defense of substantial performance to any claim that it has failed to fully and completely perform any of the conditions or obligations imposed upon it pursuant to this Settlement Agreement.

18. Each of the parties hereto represents and warrants to the other its respective authority and power to enter into this Settlement Agreement, acknowledges the validity and enforceability of this Settlement Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. Each party also hereby represents, warrants and covenants to the other that the undersigned officers have been duly authorized to execute this Settlement Agreement such that this Settlement Agreement has been validly entered into by the respective party, and that this Settlement Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof.

19. This Settlement Agreement shall be governed, construed and enforced in accordance with the laws of the State of Florida.

20. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or five (5) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County:

Palm Beach County Administrator
Board of County Commissioners
Robert Weisman
301 North Olive Avenue, Suite 1001
West Palm Beach, Florida 33401-1989
Facsimile: 561-355-3982

With copies to:

Assistant Palm Beach County Attorney
Amy Taylor Petrick, Esquire
County Attorney's Office
300 North Dixie Highway, Suite 359
West Palm Beach, Florida 33401
Facsimile: 561-355-4234

If to the Town of Highland Beach: [insert contact info here]

With copies to: [insert contact info here]

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being given notice.

21. Nothing in this Settlement Agreement entitles Palm Beach County to any particular planning or zoning decision, and nothing in this Settlement Agreement shall be construed to delegate any of the Town of Highland Beach's governmental authority to Palm Beach County, or visa-versa.

WITNESSES:

PALM BEACH COUNTY, FLORIDA

By: Board of County Commissioners

[Signature]

By: Chairman of the Board of County
Commissioners

[Print Name]

[Print Name]

[Signature]

[Date]

[Print Name]

Amy Taylor Petrick

Approved as to Legal Form and Sufficiency
Palm Beach County Attorney's Office

WITNESSES:

TOWN OF HIGHLAND BEACH
By: Town Commission

[Signature]

By: Mayor

[Print Name]

[Print Name]

[Signature]

[Date]

[Print Name]

Approved as to Legal Form and Sufficiency
Town Attorney

PART I GENERAL

- 1.01 SITE PREPARATION
2.01 SITE PREPARATION
3.01 SITE PREPARATION
4.01 SITE PREPARATION

- 1.02 QUALITY ASSURANCE
2.02 QUALITY ASSURANCE
3.02 QUALITY ASSURANCE
4.02 QUALITY ASSURANCE

- 1.03 PLANT MATERIAL
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- 1.04 MAINTENANCE AND HANDLING
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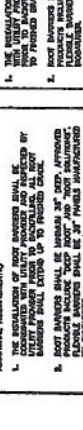
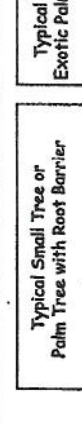
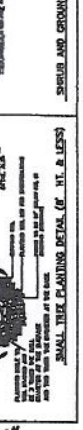
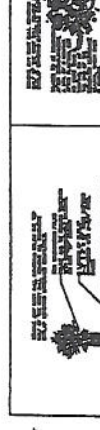
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Urban design KIDDAY STUDIOS
Urban Planning & Design
Landscape Architecture
Communication Graphics

Cam D. Milani Park
Highland Beach, Florida
Parcel B Landscape Plan - Phase 1

Specifications
LP-4
of 4

DETAILS AND NOTES
1. All planting shall be installed in accordance with the following specifications...

DETAILS AND NOTES
2. All planting shall be installed in accordance with the following specifications...

DETAILS AND NOTES
3. All planting shall be installed in accordance with the following specifications...

DETAILS AND NOTES
4. All planting shall be installed in accordance with the following specifications...

DETAILS AND NOTES
5. All planting shall be installed in accordance with the following specifications...

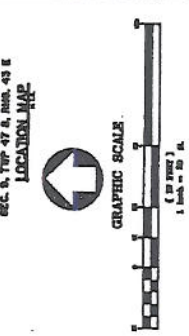
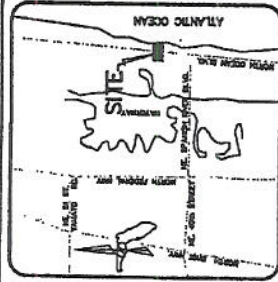


MICHAEL B. SCHORAH & ASSOCIATES, INC.
 ENGINEERS • DEVELOPERS • CONSULTANTS • PLANNERS
 250 FOREST HILL BLVD., SUITE 200
 WEST PALM BEACH, FLORIDA 33409
 TEL. (407) 844-0200
 FAX (407) 844-0202

CAM D. MILANI PARK
 SITE GRADING PLAN
 PROJECT DESCRIPTION

| | |
|------------|----------|
| SCALE | 1" = 30' |
| DRAWN BY | M.A.M. |
| CHECKED BY | M.A.M. |
| DATE | 12/15/00 |
| REVISIONS | |
| NO. 1 | AS SHOWN |
| NO. 2 | |
| NO. 3 | |
| NO. 4 | |
| NO. 5 | |
| NO. 6 | |
| NO. 7 | |
| NO. 8 | |
| NO. 9 | |
| NO. 10 | |
| NO. 11 | |
| NO. 12 | |
| NO. 13 | |
| NO. 14 | |
| NO. 15 | |
| NO. 16 | |
| NO. 17 | |
| NO. 18 | |
| NO. 19 | |
| NO. 20 | |

ADD NO. III
 SHEET NO. 1
 OF 1 C



LEGEND
 EXISTING ELEVATION
 PROPOSED ELEVATION
 SLOPE DIRECTION

NOTE:
 ALL AREAS OUTSIDE OF THE LANDSCAPE BUFFER AND SETBACK REQUIREMENTS SHALL BE INSTALLED TO MAINTAIN OR IMPROVE THE QUALITY OF THE ADJACENT WETLANDS WITH PLANT SPECIES 87% AND 92%.

48 HOURS BEFORE BEGINNING OF CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) AT 1-800-432-4770. SURVEY STATE ONE CALL OF FLORIDA, INC.

