IN THE SUPREME COURT
STATE OF FLORIDA

DELTA PROPERTY MANAGEMENT, INC.

Petitioner, Case No. SC09-2075

vs. 1st DCA Case No. 1D08-515

PROFILE INVESTMENTS, INC.,

Respondent.
_____/

ANSWER BRIEF OF RESPONDENT PROFILE INVESTMENTS, INC.

William S. Graessle
Florida Bar No. 498858
William S. Graessle, P.A.
219 Newnan Street, 4th Floor
Jacksonville, Florida 32202
(904) 353-6333
(904) 353-2080 facsimile

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DESIGNATION OF THE PARTIES AND REFERENCES TO THE RECORD

References herein to the Petitioner Delta Property Management, Inc. will be "Delta," or "Petitioner."

References herein to the Respondent Profile Investments, Inc. will be "Profile," or "Respondent."

References to the decision of the First District below, Case No. 1D08-515, will be (Op. ___), followed by the appropriate page number.

The Record on Appeal transmitted to this court from the First District Court of Appeal consists of seventeen (17) volumes. Citations to the Record will be (R.) followed by the applicable volume and page numbers.

Included in these seventeen (17) volumes is a "Second Supplemental Index," Volume I of which contains six (6) depositions, some of which are critical for this appeal and are cited extensively herein. References to these depositions will be by the name of the witness and page number.

STATEMENT OF THE CASE AND FACTS

The Statement of the Case and Facts provided by the Petitioner Delta contains numerous inaccuracies concerning the basis for the proceedings below, the prior decisions of the First District and of this Court and incorrectly recites numerous assertions as "facts."

While Delta's mischaracterization of the applicable judicial decisions will be addressed in the Argument, *infra*, certain assertions throughout its Statement of the Case and Facts, and the underpinning for Delta's entire argument, must be clarified at the outset. Delta's continued recitation that the subject notices of tax sale were "sent to Petitioner, Delta Property Management, Inc. as title holder at an outdated address…" (Initial Brief at 1) is fundamentally misleading [1] and that "the tax collector failed to update its records in a timely manner (id. at 30), which is without evidentiary support.

For the proposition that it was served notice at an "outdated address", Delta cites to the Final Summary Judgment Invalidating Tax Deed, which was reversed by the First District below (Op. at 2). This judgment ignored the actual facts of

[1] Delta's reference to any issue concerning its mortgagee is completely improper. The mortgagee never raised any issue which in any way relates to the issues addressed by this Court. It was obligated to seek appellate review of judgment as to its own issues, which it did not. See, e.g., Arquette Development Corp. v. Hodges, 934 So. 2d 556 (Fla. 1st DCA 2006. All aspects of the original judgment against it are final. First Continental Corp. v. Khan, 605 So. 2d 126, 130 (Fla. 5th DCA 1992). See Profile's Initial Brief before the district court (referenced as "Tab A" on the Index to Supreme Court Record at page 31).

record as it determined that this Court's prior decision in Delta Property Management, Inc. v. Profile Investments, Inc., 875 So.2d 443 (Fla. 2004) ("Profile II") and that of the First District in the appeal following remand, 913 So. 2d 661 (Fla. 1st DCA 2005) ("Profile III") were "moot." The error of this determination was explicitly addressed by the district court below and will be addressed herein.

The actual record facts concerning Delta's alleged "outdated address" are quite different than it reputedly claims here. As the First District noted in the initial appeal, Delta's "proof" that it had ever provided the tax collector or anyone else an actual change of address at any time during the year 2000, was a computer printout created in April 2001, eight months after the notices of sale were mailed in this case. As the First Districted noted in the initial appeal, 830 So. 2d 867 at 869 (Fla. 1st DCA 2002) ("Profile I"), Delta's assertion "lacks evidentiary foundation in the record." In Profile II (this Court's decision at 875 So. 2d at 444, n 4 (Fla. 2004)), this Court recognized that Delta's claim to have submitted a change of address was a mere allegation.

After remand from this Court, and after the trial court misinterpreted this Court's holding requiring yet another appeal and another reversal by the First District, 913 So. 2d 661 (Fla. 1st DCA 2005), *review denied*, 929 So. 2d 1052 (Fla. 2006) ("Profile III"), discovery was undertaken, the gist of which creates a strong inference that Delta, in fact, never provided a change of address at any time until

months after the sale herein. While this question has no ultimate legal significance to this case as will be demonstrated herein, it is critical to recognize that Delta's theory here rests on this assertion as if it were fact, in order to be able to claim that Jones v. Flowers, 547 U.S. 220 (2006) and Vosilla v. Rosado, 944 So. 2d 289 (Fla. 2006) are "analogous" and apply to this case.

In order to place the current decision of the First District in proper context, a brief review of the prior proceedings is warranted. After Profile purchased the property at a tax sale in September 2000, it sought to quiet title. Delta's response, and its only response ever in this case concerned the statutory process; it claimed it had submitted a change of address prior to the sale, and that had the clerk just utilized the statutorily required "latest assessment roll," which Delta claimed was prepared on July 1 of each year, it would have discovered Delta's "new" address and Delta would have received notice of the sale. Delta has never claimed that the statute is unconstitutional, facially or as applied to it, only that the statute required the clerk to use the alleged updated tax roll. Because the state of the law at the time was that in order to comply with its statutory duties, the clerk was required to rely solely on the information provided to it by the tax collector as to who was

entitled to notice of the sale and at what address, and this procedure had been followed, the trial court granted summary judgment in favor of Profile.[2]

Accordingly, there was no factual record whatsoever presented as to any of the underlying facts concerning Delta's alleged change of address prior to the sale (which we now know did not happen), save for the computer print out from some seven months after the sale and eight months after the notices were mailed showing Delta with a different address than that contained in the 1999 tax roll. This is why the First District held that Delta's claim that if had submitted a new address to the tax collector prior to the notice of sale was "without evidentiary foundation," and why this Court observed this was simply Delta's allegation.

On the initial appeal to the First District, the question was solely whether the clerk had any duty to determine whether there was a more recent assessment roll than that utilized by the tax collector in providing the information concerning notices to the clerk. Concluding that the 1985 amendments to Chapter 194 required the clerk to rely solely on the tax collector's information, the First District affirmed. Judge Irvin's dissent was premised upon his understanding (mistaken we now know) that an updated assessment roll is prepared by July 1 of each year.

[2] This prior law, e.g., Alwani v. Slocum, 540 So. 2d 908 (Fla. 2d DCA 1989); Eurofund 40-6 Ltd. v. Terry, 755 So. 2d 835 (Fla. 5th DCA 2000) was specifically addressed and disapproved of by this Court in Vosilla v. Rosado, 944 So. 2d 289 (Fla. 2006).

From this premise, he reasoned that the clerk should have utilized the information contained in this (non-existent) updated assessment roll. Again, there was no record whatsoever of whether there really is a new assessment roll as of July 1 of each year, whether the tax collector or clerk had access to a more recent assessment roll than the 1999 roll which was used, or whether Delta had, in fact, submitted a change of address to anyone at any time prior to this sale.

These factual questions were at that point irrelevant to the disposition of the case because the dispositive legal question on appeal concerned the clerk's duties as it related to reliance solely on the tax collector's information which was the sole question presented to this Court in Profile II.

In Profile II, this Court quashed the First District's opinion, and announced a new rule of law: "[T]he clerk erred by mailing the notice to Delta at the address listed in the tax collector's statement (i.e., the 1999 address) without determining if the 2000 tax assessment roll was available." 875 So. 2d 444. This Court held that "the notice of the tax deed sale should have been mailed to the titleholder's new address if that address was reasonably ascertainable from the latest tax assessment roll…"(emphasis supplied). (Id. at 448). This case was remanded for further proceedings consistent with this opinion.

Upon remand to the circuit court, Profile immediately filed a motion for summary judgment (R.V.I, 032-131) on the grounds that the year 2000 tax roll

allegedly containing Delta's new address had not been completed and certified when the notices of sale were mailed, and thus, was not available to the Clerk (R.V.I, 032-131). Profile filed a certified copy of the "Certificate of Roll" from the tax collector, proving that the year 2000 tax roll was not certified until over two months after the notices were mailed and over a month after the sale. Profile argued that this dispositively answered this Court's question and that applying this new duty on the clerk as required by Profile II would have yielded the exact same result: the year 2000 assessment roll was not available to the clerk until after the notices of sale were sent, and title should be quieted in Profile.

Delta ignored Profile's motion and instead filed a "Motion to Implement Appellate Mandate," arguing that this Court's decision constituted a ruling that it was entitled to a judgment in its favor, which the circuit court was required to enter as a mere "ministerial" act (R.V.I, 134-165). The circuit court accepted this argument and entered an "Order Denying Plaintiff's Motion for Summary Judgment and Granting Defendant's Motion to Implement Appellate Mandate" and entered a Final Summary Judgment quieting title in Delta (R.V.II, 302-307).

Profile appealed (R.V.II, 350-353) and the First District reversed, 913 So. 2d 661 (Fla. 1st DCA 2005) (Profile III). Its decision was based upon the fact that this Court's decision in Profile II identified the dispositive factual question to be determined on remand as to whether there was, in fact, an "updated assessment

roll" available to the clerk prior to sending the notices of sale, and if so, was Delta's alleged "new address" included therein. The First District held that reversal was necessary because:

> On remand, the trial court did not allow Profile to present any new evidence concerning the availability of the tax assessment roll and entered summary judgment in Delta's favor. We find there is a factual dispute over whether Delta's new address was reasonably ascertainable from the latest tax assessment roll available at the time the clerk mailed the notices of the tax deed sale. Because there are genuine issues of material fact that are in dispute, summary judgment is not appropriate.

It remanded the case for a trial on this issue "as required by the supreme court's decision." 913 So. 2d at 661, 662 (Fla. 1st DCA 2005). Critically, this Court denied Delta's petition for review. 929 So. 2d 1052 (Fla. 2006).

Following remand, Delta and Profile engaged in discovery including the taking of the deposition of Mildred Wootson, the employee in the Clerk's office who handled the tax deed sale at issue herein, including the preparation of the notices of sale (Wootsen Deposition, at p. 7-9; 15-22).[3] The deposition of James Helms and Jeremy Bromm of the Property Appraiser's office, and Alvin Crooms

[3] During discovery, the Duval County Tax Collector, Clerk of Court and Property Appraiser determined they had a significant interest in the impact this case could have on their respective roles in the tax deed process. These constitutional officers sought to intervene (R.V.IV, 735-739), which Profile supported (id. at 747-751) and which Delta opposed (id. at 740-746). The trial court entered its order denying the intervention (R.V.V, 794-796). These same officers have filed a Motion for Leave to File Amicus Curiae Brief in this Court.

from the Tax Collector's office were also taken.[4]

Cross-motions for summary judgment were filed as were these depositions (R.V.IV, 671-672; 781-784).

Profile's Motion for Summary Judgment was based upon the undisputed fact that there is no "updated assessment roll," prepared by the Property Appraiser's office on July 1st which would be available to the tax collector or clerk. The July 1 date is simply the beginning of a process of updating the assessment roll and after several statutory steps, culminates in a final tax roll being certified (Helms Deposition, at p. 11-25); in this case, the certification of the 2000 tax roll occurred in October, over two months after the notices of sale had been prepared and served by the Clerk and a month after the sale of the subject property (Helms Deposition, at p. 25; Crooms Deposition, at p. 27). This certified roll is the only legally existing tax roll.

Further, Profile proved that even if the tax collector could access the ongoing updating process when it compiled the information for the clerk as to who should receive notice of the tax sale, which it could not, nor the clerk (Crooms

[4] The deposition of Kiki Bartsocas (Delta's principal) and Judith Califano, a "friend" of Ms. Bartsocas, who allegedly sent Delta's change of address to the tax collector were also taken. These depositions raised serious question as to whether, in fact, Delta ever mailed the change of address when Ms. Califano claimed: not only did the Delta "letterhead" she used (after Delta allegedly moved) contain an incorrect address and telephone number for Delta, but suspiciously, both testified that no records exist containing any information concerning Delta's address or changes of address sent to the tax collection during this time period.

Deposition, at p.33), Delta's alleged "new" address was not contained within the Property Appraiser's records and thus was not available to the tax collector or the clerk when the notices of sale were mailed (see Helms Deposition, at p. 16; 32; 56-57). In short, the "latest assessment roll," when these notices were prepared and mailed, was the roll for 1999, which was the roll used by the tax collector and clerk in this case.

Recognizing that it had no factual basis for its position and that the answer to the issue identified by this Court in Profile II would result in its loss of the case, Delta completely abandoned its theory. From that point forward, Delta has never again argued that if the clerk had just looked to the latest assessment roll as required by the statute, argument with which this Court agreed, its new address would have been available and it would have received notice of the sale. Instead, it claimed that the decisions of the United States Supreme Court in Jones v. Flowers, 547 U.S. 20 (2006), and of this Court in Vosilla v. Rosado, 944 So. 2d 289 (Fla. 2006), authorized the trial court to ignore this Court's decision in Profile II and the First District's mandate in Profile III.

Approximately two months after the summary judgment hearing, the trial court entered a "Final Summary Judgment Invalidating Tax Deed" (R. 818-827), accepting Delta's theory.

The trial court held that Jones v. Flowers required the Clerk to take additional reasonable steps to provide notice to the titleholder, holding:

> [i]n the present case, such additional reasonable steps were possible and practicable, but not taken. The additional steps could have included checking for the hard-copy change of address form submitted by Delta; reviewing the preliminary or final 2000 tax assessment roll; checking the current address(es) shown for Delta on the online records of the State of Florida, Secretary of State, Division of Corporations, and checking the Clerk's own records to see if Delta was involved in other litigation in which it had provided a current address.
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> The Tax Collector's Office also frequently receives notices of changed address, and forwards them on a daily basis to the Property Appraiser's Officer; however, it neither retains copies of those notices nor maintains a log of those changed addresses, and does not verify that the new addresses are incorporated by the Property Appraiser's Office into the updated tax assessment roll. The simple expedient of keeping a copy of those notices, or scanning them into a computer database, would allow for ease of address-checking when a notice is returned as undeliverable.

There was no evidence presented on whether any of these acts were possible, practical or reasonable and no discussion of the fact that these "duties" are not authorized by the governing statutes or required by any decisional law. It, in fact, represents a fundamental misunderstanding of Jones v. Flowers and completely ignored the actual testimony of the representatives of the property appraiser, tax collector and clerk.

Profile again appealed and the district court, after reviewing the prior decisions in this case from both this Court and its prior reversal, noted that "the sole question within the scope of previous remands was whether the 2000 assessment roll was available to the clerk of the court when it mailed the notices of sale and, if so, whether Delta's alleged "new" address was contained therein." Recognizing that the discovery undertaken and filed in support of Profile's Motion for Summary Judgment conclusively demonstrated that there was no updated assessment roll at the time the notices of sale were mailed in this case and, therefore, the "latest assessment roll" was the one actually used, the district court reversed (Op. at 3).

The district court rejected Delta's theory that, first, Jones v. Flowers and Vosilla v. Rosado represented a change in the law which the trial court was obligated to follow, and held that the law of case doctrine prevented Delta from avoiding the controlling legal question determined by this Court in Profile II. In ruling that Delta was not allowed to abandon one theory and then try a new one after nine years of litigation and three appeals, a tactic which is precluded by the law of the case doctrine, the district court held:

> The doctrine of the law of the case is…a principle of judicial estoppel." Fla. Dep't of Transp. V. Juliano, 801 So. 2d 101, 102 (Fla. 2001). It applies when "successive appeals are taken in the same case." Id. It requires that questions of law actually decided on appeal must govern the case in the appellate court and in the lower tribunal in all subsequent stages of the proceeding. Id. Its purpose is "to lend

> stability to judicial decisions and the jurisprudence of the state, as well as to avoid 'piecemeal' appeals to bring litigation to an end as expeditiously as possible." Strazzulla v. Hendrick, 177 So. 2d 1, 3 (Fla. 1965). Although the doctrine is "a self-imposed restraint that courts abide by," State v. Owen, 696 So. 2d 715, 720 (Fla. 1997), once made by the appellate court, such decisions "will seldom be…" reconsidered or reversed…" "Under the law of the case doctrine, a trial court is bound to follow prior rulings of the appellate court as long as the facts on which such decision are based continue to be the facts of the case." Juliano, 801 So. 2d at 102.

As the district court explained, it did not matter that Jones and Vosilla had not been rendered before either Profile I and Profile II. Because the facts in this case have never changed, nor had Delta's theory that it argued through three prior appeals, that the clerk had not complied with the statute, "Delta's theory of further action on the part of the clerk could have been raised in the infancy of this case, some eight to nine years ago." (Op. at 8) The First District held that the trial court was bound by the prior rulings of the appellate courts "as long as the facts on which such decisions are based continue to be the facts of the case." (Id., citing Fla. Dep't of Transp. V. Juliano, 801 So. 2d at 101-102). The First District ultimately held that the trial court should have entered summary judgment in favor of Profile "on the only claim Delta ever raised for adjudication in the prior appeals." (Op. at 8).

The district court went on the explain why the decisions in Jones and Vosilla are substantively inapposite: the issue in Jones was the claim of the landowner there that the Arkansas statutory procedure was facially unconstitutional, a claim

which Delta never made, but instead argued "successfully that the clerk must utilize the most recently available tax roll in determining to what address notice should be sent." (Id. at 9). The district court recognized that the Arkansas statute at issue in Jones required only notice by certified mail and then nothing further if it knows that delivery has failed. Finding that was inadequate to meet due process standards, the United States Supreme Court noted that "many states already require in their statutes that the government do more than simply mail notice to delinquent owners, either at the outset or as a follow up measure if initial mailed notice is ineffective." (547 U.S. at 228) (emphasis supplied). The Supreme Court specifically identified Florida as one of the states that requires more than simple mailed notice and whose statute, therefore, comports with due process (id. n. 2).

The First District also addressed the inapplicability of this Court's decision in Vosilla, wherein the delinquent tax payers lost their residence at a tax sale as a result of notice being sent to an old address despite the established fact that the owners proved they had, in fact, provided the tax collector and the clerk in advance with a current mailing address. The First District noted that this Court specifically avoided considering the constitutionality of 197.522, but found instead a due process deprivation "where the taxing authority receives actual notice from the titleholder of a change of address but sends the notice of the tax deed sale to the former address." (Op. at 10) (citing Vosilla, 944 So. 2d at 293).

The district court recognized (Op. at 11) that this Court in Vosilla utilized the reasoning of the United States Supreme Court's decision in Mullane v. Central Hanover Bank & Trust Co., 330 U.S. 306, 314 (1950): determining whether a particular method of notice is reasonably calculated to provide adequate notice requires "due regard for the practicalities and peculiarities of the case" (Vosilla, 944 So. 2d at 294). This Court's holding in Vosilla was that the owners having, in fact, provided the correct address triggered a due process requirement that the clerk take additional steps to notify the owners of a tax deed sale, i.e., mail notice to that correct address. The First District here pointed out that Delta has never relied upon a "practicalities and peculiarities" exception to the statutes, as had the owners in Vosilla, but instead has consistently and successfully argued that the statute itself required use of the alleged updated tax roll. Because the record evidence showed the latest assessment roll was the one that was used here, and that Delta's alleged new address did not appear in even the preliminary roll at the time notices were prepared, the First District reversed and remanded the case with instructions that a summary judgment in favor of Profile be entered. The correctness of the district court's rulings will be demonstrated in the argument section which follows.

SUMMARY OF ARGUMENT

The First District correctly recognized that this Court's decision in the prior appeal, 875 So.2d 443 (Fla. 2004), determined that the controlling question for determination on remand was whether there was a more recent assessment roll available to the clerk when preparing the notices of sale.

Discovery conclusively proved that there was no more recent assessment roll at the time these notices were sent. As a matter of law, the only assessment roll which exists, and is therefore available to the tax collector or the clerk, is that certified by the property appraiser which in this case this occurred over two months after the sale. Discovery also proved that even if the clerk could have accessed the preliminary assessment roll, Delta's alleged new address was not contained therein.

Once Delta realized its theory had no factual basis, it improperly attempted to change its theory to claim entitlement to the U.S. Supreme Court's decision in Jones v. Flowers and this Court's decision in Vosilla v. Rosado. The district court below correctly recognized that Delta was prohibited from doing this under the law of the case doctrine, and also correctly held that neither Jones v. Flowers or Vosilla v. Rosado apply here.

The First District was correct on each of these issues and its decision should be approved.

ARGUMENT

I. THE FIRST DISTRICT REACHED THE CORRECT RESULT FOR THE CORRECT REASONS

The First District's actual holding in this case is that the law of the case doctrine required the trial court to implement this Court's decision in Profile II and adjudicate the controlling issue identified therein. The district court also analyzed and rejected Delta's assertion that this Court's decision in Vosilla v. Rosado, 944 So. 2d 289 (Fla. 2006), and the United States Supreme Court's decision in Jones v. Flowers, 126 S. Ct. 1708 (2006), are analogous "intervening decisions" or have any applicability to this case. The district court was correct in each of these determinations, which will be addressed serially.

A. STANDARD OF REVIEW

Because the First District's decision is founded on issues of law, review is *de novo*. Volusia County v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000); Barrier v. Rainey, 890 So. 2d 357 (Fla. 1st DCA 2004).

B. THE FIRST DISTRICT CORRECTLY APPLIED THE LAW OF THE CASE DOCTRINE

The dispositive issue presented on this appeal is the First District's recognition that the trial court erred in failing to follow the decision of this Court in Profile II, which held that the dispositive question in this case was whether the year

2000 assessment roll was available to the clerk when it mailed the notices of sale and, if so, whether Delta's alleged "new" address was contained therein.

The district court held that the law of the case doctrine (addressed below) should have led the trial court to adjudicate this issue; because there was no dispute of material fact that the tax collector and clerk did utilize the "latest assessment roll" to serve the notices of sale, the tax sale should have been upheld.

The First District correctly determined that the discovery undertaken and filed with the court in connection with Profile's Motion for Summary Judgment conclusively demonstrated that there was no updated assessment roll at the time the notices of sale were mailed in this case (Helms Deposition, at p. 25). The deposition testimony of James Helms conclusively demonstrated that the July 1 date is not when there is an updated assessment roll available to the tax collector or the clerk. This date has been claimed by Delta from the beginning of this case, and which was the focus of this Court's decision in Profile II, as the alleged time when the Property Appraiser had to submit an "updated assessment roll" to the Department of Revenue pursuant to Section 193.023(1), Florida Statutes.

The record here conclusively demonstrates that this is not a final assessment roll and was not available to the tax collector or the clerk to determine where the notices of tax sale should be sent. Delta's abandoned theory, on which no record evidence has ever been presented to any court (again, the initial appeal to this

Court was from a summary judgment), was that there was a July 2000 assessment roll which was, in fact, the "latest assessment roll" which the Tax Collector was obligated to use when preparing the information it supplies to the Clerk for service of the notices of sale. Delta's theory was that had the Clerk "just looked" at the year 2000 assessment roll, it could have used Delta's new address for serving the notice of sale. In Profile I, the First District recognized this claim was without an evidentiary basis and in Profile II this Court recognized it was simply an allegation. After years of litigation, we now known that the actual record evidence presented by Mr. Helms' testimony demonstrates Delta's theory is without a factual or legal basis (id. at 14-16; 31; 56-57).

As James Helms testified, the Property Appraiser is statutorily obligated to provide a preliminary valuation roll to the Department of Revenue ("DOR") by July 1st of each year; this is merely the first step in a process which lasts for over three months (id. at 12-25). The July 1st valuation roll is merely a preliminary roll, the beginning of the process by which the valuation of properties for each county, and the form in which the various Property Appraisers maintain that information, is reviewed by the DOR pursuant to its criteria (id. at 12-25).

At the conclusion of this process, the Property Appraiser certifies this tax roll to the Tax Collector (id. 25). This certified roll is the only legal assessment roll for that year. It is the only assessment roll to which the tax collector or clerk

has access. (Crooms Deposition, at p. 27; 33). In this case, it is uncontradicted that the year 2000 assessment roll was complete and certified on October 19, 2000, two months after the notices of sale were sent herein and more than six months before Delta's alleged change of address was actually received.

As Mr. Crooms explained, the Tax Collector receives only one tax roll from the Property Appraiser each year, and that is the one that is finally certified in October (Crooms Deposition, at p. 27). It has no other change of address information supplied it by Property Appraiser unless a mistake has been made by the Property Appraiser who specifically advises the tax collector in writing so that the tax bills which are mailed after certification are corrected (id. at 33).

Accordingly, Profile proved there was no dispute of fact that the "latest assessment roll" which the Tax Collector is required to use in compiling the list of those to whom notices of a tax sale are to be sent, and at what address, in this case was the roll certified in October 1999 and this was the roll used by the tax collector and the clerk here.

Even if it is assumed *arguendo* that the preliminary July 1, 2000 roll should or even could have been reviewed by the Clerk prior to mailing the notices of sale, an issue on which there is no factual support and no legal authority, Profile was still entitled to a judgment as a matter of law.

As Mr. Helms testified (Helms Deposition, at p. 16; 31; 56-57) the preliminary assessment roll sent by the Duval County Property Appraiser to the Department of Revenue on June 20, 2000 pursuant to its July 1 statutory submission date (id. at 14) confirmed that Delta's address for the subject property was still listed on Phillips Highway, where it was listed in the 1999 assessment roll used by the tax collector here. This is where the notice of sale was sent and where notice of sale was posted by the Sheriff; it was not the address which Delta claimed was its "new" address which the Clerk had available and was somehow obligated to utilize, a contention by Delta that we now know is false. This is dispositive of any even theoretical claim by Delta as to the Clerk's breach of its statutory obligations.

In short, the unrebutted record evidence is that the certified roll for the year 2000 was not finalized until October, two months after the notices of sale were mailed in this case. Even if this Court were to hold the Clerk should have utilized the preliminary assessment roll (even though this record is clear that neither the clerk nor the tax collector has any authority or ability to access the Property Appraiser's preliminary records), the evidence showed that **Delta's alleged new address was not contained therein**. (Helms Deposition, at p. 16; 31; 56-57).

The district court correctly held that the trial court was bound to follow the prior appellate decisions in this case and that this issue was dispositive.

This Court has made unequivocally clear that neither the district courts nor trial courts are free to ignore controlling precedent from this Court or ignore the law of the case. Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973). See also Hines v. State, 983 So. 2d 721 (Fla. 1st DCA 2008). The district court here correctly recognized that the trial court fundamentally violated its obligation to follow the law by determining, *ipse dixit*, that it was free to disobey this Court's decision in Profile II and the First District's decision in Profile III.

The reason this doctrine was utilized by the First District is because after the discovery undertaken in Profile II and Profile III, Delta clearly recognized that the theory it has pressed since the onset of this case was, in light of the actual evidence, without a legal or factual basis. It knew based on the actual evidence that there is no "updated assessment roll" available to anyone, including the tax collector and the clerk, until it is certified, which occurred here two months after the notices of sale were mailed and three months after notice was posted. Further, it knew that its alleged "new" address was not contained even in the preliminary assessment roll in existence at the time the Clerk mailed the notices of the sale and, in fact, it knew that there existed a serious question as to whether it had ever submitted a change of address to anyone in 2000.

As a result, Delta completely abandoned that theory and instead advocated an entirely different theory, a claim it had never made, that in order to comply with

due process requirements, the clerk had additional duties not specified in the statute that it was required to perform and its failure to do so deprived Delta of due process.

It is well-settled that a party may not simply abandoned the theory that it has argued throughout the trial and appellate courts and then, when it realizes that theory has no factual basis, decide to argue a new and completely different theory.

Delta had never before claimed that the statute was unconstitutional, either facially or as applied, and it never claimed that the clerk had duties other than those mandated by the statute.

As the First District's decision makes explicit, the doctrine of the law of the case is a principle followed by courts to avoid reconsideration of points of law which were, or should have been, adjudicated in a former appeal of the same case. It is also applied where an issue could have been but was not raised. See Williams v. City of Minneola, 619 So. 2d 983, 987 (Fla. 5th DCA 1993) (citing Airvac, Inc. v. Ranger Insurance Company, 330 So. 2d 467 (Fla. 1976). The "manifest injustice" exception was found to exist in Williams. The issue which the city attempted to again raise on a subsequent appeal, that of sovereign immunity (which it had raised on the first appeal and which had been the subject of an intervening decision between appeals) had been raised but not addressed by the district court in the prior appeal. The court held it would be manifestly unjust to apply the doctrine

where it was the court's decision not to address the issue (id. at 988). Here, Delta has sought to raise an issue it never raised in the three prior appeals, thus the "manifest injustice" exception is not applicable.

Delta claims that the law of the case doctrine is not applicable when a summary judgment remands a case for further factual development as the "litigated to finality requirement" is missing (Petitioner's Initial Brief at 28). This is inapplicable in the context of this issue. While Delta recognizes that this Court remanded the case "for further proceedings consistent with this opinion," 875 So. 2d at 448, and claims "this Court did not limit the parameters of the evidentiary hearing to be held on remand," it fails to acknowledge what those further proceedings ultimately revealed: Delta's theory was factually basis. Stated as diplomatically as possible, it is extraordinary that Delta makes this argument as it convinced the trial judge after remand in Profile II that this Court's "remand for further proceedings consistent with its opinion" meant only that the judge was supposed to perform the "ministerial act" of entering a judgment in favor of Delta and attempted to prevent the preparation of any record. When the judge accepted this representation of this Court's decision, Profile appealed and the First District reversed. 913 So. 2d 661 (Fla. 1st DCA 2005). Significantly, and dispositive of this entire line of argument, this Court denied Delta's petition for review of the First District's remand for a trial on the dispositive question as to the existence of the

"latest assessment roll." If, as Delta now argues, this "due process roadmap" was established by this Court in Profile II, then this Court would have certainly accepted review and affirmed Delta's theory. It, of course, did no such thing. The First District correctly recognized in this most recent decision the dispositive question in both Profile II and Profile III and correctly recognized that the record contained the uncontradicted answer to that question.

Delta's assertion that manifest injustice has occurred because "Delta has now spent ten years in litigation over its basic due process rights" which this court pointedly recognized in Delta II [Profile I]" is patently wrong. Delta has spent ten years in litigation claiming that the clerk did not follow the statute, a point with which this Court agreed but which Delta abandoned when it realized it had no factual basis.

Here, there is no injustice, much less any manifest injustice, resulting from application of the law of the case. As the First District correctly held, a party who does not raise a claim and who goes to trial and appeal (here multiple appeals) on a theory which it later determines will not prevail, is bound by the appellate courts' prior determinations of law. Here, in stark contrast to the facts constituting manifest injustice in Williams, Delta successfully argued to this Court that the clerk had failed to follow its statutory obligations, an argument which this Court accepted. There is no semblance of a manifestly unjust result here. Like all other

parties, Delta is not allowed to change its theory after nine years of litigating its prior claim and any other result would completely undermine the entire concept of judicial finality. The district court below was correct: nothing precluded Delta from raising initially any issue as to the constitutionality of the statute or any alleged additional duty that the clerk should have performed in order to comport with due process. It did not do so. The district court's determination that the law of the case doctrine prevented Delta from changing its theory was correct and should be approved.

C. NEITHER JONES V. FLOWERS, 547 U.S. 220 (2006) NOR VOSILLA V. ROSADO, 944 So. 2d 289 (Fla. 2006) ARE APPOSITE

The Final Summary Judgment Invalidating Tax Deed reversed by the district court holds that it was free to ignore this Court's decision in Profile III and the First District's decision in Profile II because the subsequent case law rendered those decisions "moot." As demonstrated, *infra*, the trial court was not free to ignore this Court's mandate in Profile II and that of the First District in Profile III as the law of the case doctrine recognizes. Even forgetting this fundamental principle, the First District recognized that Delta's theory was legally erroneous.

Before addressing the actual holdings in Jones v. Flowers and Vosilla v. Rosado, it is important to clarify several arguments made by Delta in support of its amorphous due process argument. Delta's assertion that Profile filed no evidence

in rebuttal to Delta's claim that the clerk "did not comply with due process safeguards," again which was first made when Delta changed its theory, is fatuous. Profile objected continuously to the trial court addressing any issue other than the issue determined by this Court to be dispositive, the availability of the year 2000 assessment roll at the time the notices of sale were prepared and sent in this case. Profile filed is opposition memorandum to Delta's Motion for Summary Judgment (which was based on Jones v. Flowers and the Fifth District's decision which was then pending before this Court in Vosilla v. Rosado) (R. V.V. at 761-773). Profile moved for summary judgment against Delta on the dispositive question (id. at 785 through 793). Profile also filed the depositions of Mildred Wootsen of the clerk's office, Jeremy Bromm and James Helms of the property appraiser's office, Alvin Crooms of the tax collector's office, and of Kiki Bartsocas and Judith Califano, Delta's witnesses (Second Supplemental Index at V. I) in support of its Motion for Summary Judgment.

Delta's continued recitation that the clerk did nothing concerning the undelivered notices which were returned, and that it was "the policy of that office to do nothing with returned undelivered tax sale notices," is fundamentally misleading (Petitioner's Initial Brief at 12-13). Delta's argument on this point, like the remainder of its argument concerning the due process issue, argues isolated and out of context facts and then attributes to them some broader significance.

The record here shows conclusively that the clerk did nothing with the undelivered notices because it had no statutory authorization or direction to do anything else.

Ultimately, Delta argues that the "expanded" due process analysis of Profile II, Vosilla and Jones imposed additional duties on the clerk and that these latter two "intervening decision" apply here As recognized by the First District in its law of the case analysis, prior appeals in this case already determined the applicable law and framed the issue on remand. The rule that appellate courts when reviewing judgments on direct appeal are required to apply the law prevailing at the time, applies only if that issue has been raised below: it does not apply when there has already been an appeal on a different issue which continues to constitute the controlling issue. See, e.g., Clay v. Prudential Insurance Company of America, 670 So. 2d 1153, 1154, 1155 (Fla. 4th DCA 1996). This "intervening decision" rule would be applicable only if some intervening decision overruled or changed this Court's decision in Profile II which, of course, did not occur.

What Delta refers to as "this Court's due process roadmap" which was established in Profile II, Vosilla and Jones is nothing more than an invitation for courts to make *ad hoc* determinations regardless of the actual facts or prior proceedings in a case. There is no "due process in the air" so to speak, as Delta's amorphous theory advocates.

The starting point for understanding the actual facts of due process is this Court's decision in Dawson v. Saada, 608 So. 2d 806 (Fla. 1992), which centered on the notice provisions of Section 197.522 (1) and (2). The Fourth District had held that the clerk failed to comply with the statutory requirements by not attempting personal service of the notice of sale on the resident owners by the sheriff. While the trial court had affirmed the validity of the tax deed, the Fourth District reversed, finding that the notice provisions of both Subsection (1) and (2) (certified mail and service by the sheriff) were mandatory (id. at 807).

This Court held that the question of whether actual notice was received is irrelevant; Section 197.522(1)(d), Florida Statutes (1987), specifically provides that failure of a person to receive notice of sale does not effect the validity of the tax deed. As this Court recognized, "the relevant issue is whether the clerk complied with the notice provisions, not whether the owner actually received notice." Noting that this was a facial challenge to the constitutionality of the statute, this Court held: "in any proceeding which is to be accorded finality, due process requires notice 'reasonably calculated,' under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Id. at 808) (citing Mullane v. Central Hanover Bank & Trust Co., *supra*). Critically important for purposes of this appeal, Dawson recognized that "subject to this limitation, the legislature has the

authority to determine the extent and character of the notice which shall be given by the state before property is sold for non-payment of taxes" (id.). So long as the statute meets this basic due process concern, it is constitutional. It is not the court's function to determine whether some other or different form of notice would be preferable; once this threshold has been established, a point which was explicitly reaffirmed in Jones v. Flowers, and which will be addressed *infra*, the obligation of the courts is to ensure conformity with the statute's notice requirements.

This Court held that the comprehensive amendments to the statutory scheme governing the sale of property for the collection of delinquent taxes meet constitutional due process requirements. Section 197.522(1) meets due process requirements by requiring notice reasonably calculated to apprise landowners of the pending sale, to wit, notice by attempted certified mail. On the other hand, this Court held that the provisions of Section 197.522(2), which provides for service by the sheriff, was not mandatory, but was merely permissive, because the legislature has clearly stated that any failure on the part of the sheriff to serve notice does not affect the validity of the tax deed, nor does the failure of anyone to receive notice affect the validity of the tax deed so long as the clerk complies with the notice requirements of Subsection (1). In other words, this Court in Dawson held that the tax deed statute was constitutional so long as the clerk strictly complies with its

statutory requirements and serves notice via certified mail at the address provided by the tax collector. The sheriff's failure to serve notice upon the titleholder did not invalidate the tax deed (id. at 809).[5]

This Court's decision in Dawson v. Saada settled the due process issue governing tax sales: so long as the clerk strictly complies with the statute, the tax deed sale is valid regardless of whether notice is received.

The first case decided by this Court since Dawson v. Saada which specifically addresses the interpretation of the notice statute was this Court's decision in Profile II. Again, Delta never alleged that the statute was unconstitutional, either facially or as applied to it, rather it argued successfully to this Court that the clerk's statutory duty was to use the "latest assessment roll" to determine to whom notice should mailed and at what address; Delta alleged only that it had submitted a change of address and that because there is an updated assessment roll on July 1 of each year that had not been used by the tax collector in this case, that the clerk had not complied with the statute. This Court agreed, finding that there could come a point where the information provided by the tax

[5] See also Day v. Highpoint Condominium Resorts, Ltd., 521 So. 2d 1064 (Fla. 1988), wherein this Court noted that "in the field of taxation particularly, the legislature possesses great freedom in classification." (Id. at 1066). It rejected a claim that timeshare owners are denied due process because the owners do not receive their own tax bills and are not listed as property owners on the tax rolls, holding that under the statutory tax collection scheme, "all property owners are held to know taxes are due and payable annually…"

collector "no longer represents those who are entitled to notice." 875 So. 2d at 448 and remanded the case for determination of this question.

1. Jones v. Flowers, 547 U.S. 220 (2006)

Jones v. Flowers was a facial challenge to the constitutionality of the Arkansas statutory scheme for the collection of delinquent property taxes, which required notice of the sale solely via certified letter. The question presented was to "determine whether, when notice of a tax sale is mailed to the owner and returned undelivered, the government must take additional reasonable steps to provided notice before taking the owner's property." Id. The post office returned the unopened letter marked "unclaimed." Unlike Florida, this was the only notice required by the Arkansas statutory scheme.

The Arkansas authorities negotiated a private sale with the respondent Flowers for the payment of the taxes and notice of this was again attempted on Jones, again via certified mail, which was again returned unclaimed. Flowers purchased the home, which was upheld by the Arkansas Supreme Court. The holding of the United States Supreme Court in quashing this decision was that, although "due process does not require that a property owner receive actual notice before the government may take his property… when mailed notice of a tax sale is returned unclaimed, the state must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable

to do so." Id. The critical part of this holding for purposes of this case is to recognize it was made in the context of reviewing a statutory scheme, which provided for only a single type of notice.

The Supreme Court recognized that in contrast to the Arkansas scheme at issue, "many states already require in their statutes that the government do more than simply mail notice to delinquent owners, either at the outset or as a follow up measure if initial mailed notice is ineffective" (emphasis supplied). The Supreme Court approved as consistent with due process the procedures of those states, like Florida, which already have these "additional steps" built into their statutory schemes. As the Court specified:

> Many States require that notice be given to the occupants of the property as a matter of course…or as a follow-up measure when personal service cannot be accomplished or certified mail is returned, **see Fla. Stat. §197.522(2)(a) (2003)…**

The contrast between Florida's statutory process and that at issue in Jones v. Flowers is critical for the due process issue as it demonstrates that Florida's statutory process is not impacted by its holding.

The notice provisions of Florida's scheme (cited by the Supreme Court) provide:

> 197.522 Notice to owner when application for tax deed is made.--
>
> ****
>
> (2)(a) In addition to the notice provided in subsection (1), the sheriff

> of the county in which the legal titleholder resides shall, at least 20 days prior to the date of sale, notify the legal titleholder of record of the property on which the tax certificate is outstanding. The original notice and sufficient copies shall be prepared by the clerk and provided to the sheriff. Such notice shall be served as specified in chapter 48; **if the sheriff is unable to make service, he or she shall post a copy of the notice in a conspicuous place at the legal titleholder's last known address.** The inability of the sheriff to serve notice on the legal titleholder shall not affect the validity of the tax deed issued pursuant to the notice.

Accordingly, Jones specifically recognized that the "additional reasonable step" needed to comport with its due process analysis is provided by Florida's statutory procedure. The record here demonstrates that the actual posting of notice at Delta's last known address did, in fact, occur.[6]

Unlike the trial court here who attempted, without any factual basis or legal authority, to decide what additional steps should be taken, the Supreme Court explicitly recognized that it did not have the authority to make a specific requirement as to what other step a taxing authority must take to meet due process requirements as this was an issue for the legislative branch. It explicitly rejected the suggestion that the taxing authorities had to look in the telephone book or search other public records: it suggested merely that because there are multiple reasons why a certified letter would not be claimed, that service of notice by

[6] A certified copy of the Clerk's original file was included in the record on the initial appeal. It is also included in this record as exhibits to the deposition of Mildred Wootson in the record before this Court.

regular mail would have sufficed, as would posting notice on the owner's door. 547 U.S. at 234. Again, Delta had notice posted on its door in this case.

2. Vosilla v. Rosado, 944 So. 2d 289 (Fla. 2006)

In Vosilla v. Rosado, after Jones v. Flowers, this Court reaffirmed its decision in Dawson v. Saada that the statute meets constitutional due process requirements. Because the claim in Vosilla was an "as-applied challenge," the ruling in Dawson that the statute facially is constitutional was left undisturbed (id. at 293, n. 2). This Court cited Profile II for the question it decided, that the clerk is required to mail notice of the sale to the legal titleholder at the titleholder's address "as it appears on the latest assessment roll." In discussing Profile II, this Court recognized that it had imposed a duty on the clerk to determine if a more recent assessment roll was available than that used by the tax collector; to hold otherwise would violate due process (id. at 298).

There was never any question in Vosilla that Profile II involved any other due process consideration: the clerk was required to ascertain if a more recent assessment roll had been prepared, with this Court reasoning that if there is too long a delay in preparing notices of sale from the time the tax collector's statement is provided to the clerk, "there could come a point in time when the tax collector's statement no longer represents those who are entitled to notice." (Quoting Baron v. Rhett, 847 So. 2d 1032, 1035 (Fla. 4th DCA 2003).

The treatment of Jones v. Flowers in Vosilla was to reinforce its conclusion that when taxing authorities have unique information about an intended recipient, due process may require the authority to make efforts beyond those ordinarily required by statute (id. at 299-300). This Court specifically recognized in Vosilla that its holding was based solely upon the unique facts presented therein.

Factually, the landowners in Vosilla proved they had informed the taxing authorities of their change of address on two separate occasions, including once by certified mail; the sheriff also provided actual notice to the clerk prior to the tax deed sale date that the landowners no longer lived at the address to which the certified mail notice had been sent.

As demonstrated above, and as repeated throughout this brief, Delta has never challenged the facial constitutionality of the statute, nor has it argued that the statute has been unconstitutionally applied to it.

Accordingly, neither Jones nor Vosilla have any applicability here as the First District correctly held.

In light of the Supreme Court's approval in Jones of Florida's statutory scheme which provides for both posting of notice as well as certified mail notice, this Court could well decide that it requires that the posting of notice by the sheriff, which was found to be non-mandatory in Dawson v. Saada, is now required.

However, that is an issue which is not presented in this case; it is not necessary to its disposition and not relevant to any issue legitimately presented here.

Three decisions rendered since Vosilla v. Rosado illuminate the inherent problem resulting from divorcing the holdings of Jones and Vosilla from their factual moorings as Delta asks this Court do so.

On the one hand, Singleton v. Eli B. Investment Corp., 968 So. 2d 702 (Fla. 4th DCA 2007), involved owners of property sold at a tax sale who alleged, *inter alia,* that they had not received notice of the tax deed sale, that Broward County had actual knowledge that they did not receive notice, and that this constituted a denial of due process (id. at 703-704). The district court noted that Florida law recognized the validity of tax deeds when a property owner who did not receive notice of the sale had failed to ensure that the property appraiser had notice of his proper mailing address, and upheld the sale.

Similarly, in Deutsch v. Global Financial Services, LLC, 976 So. 2d 680 (Fla. 5th DCA 2008), a final summary judgment entered in favor of a tax deed purchaser was reversed and the case remanded for further evidentiary proceedings as there were material facts in dispute as to whether the taxing authorities did, in fact, have a current address for the property owner as the owner had alleged.

On the other hand, however, is, Patricia Weingarten Associates, Inc. v. Jocalbro, Inc., 974 So. 2d 559 (Fla. 5th DCA 2008), which was a subsequent appeal

following Patricia Weingarten Associates, Inc. v. Jocalbro, Inc., 932 So. 2d 587 (Fla. 5th DCA 2006); the initial appeal remanded the case to the trial court to reconsider the notice issue in light of Jones v. Flowers.[7] On appeal from the remand, 974 So. 2d 559, the evidence showed that the notice was sent via certified mail, returned unclaimed, and the sheriff unsuccessfully attempted to personally serve the property owner, and followed this with notice by publication. Notices for the sale of numerous parcels owned by Weingarten, who in contrast to Delta here had, in fact, provided the Clerk with a change of address, were sent to an old address. The district court noted that the Clerk sent notices of the tax sale to four different addresses, all of which were returned unclaimed despite the fact that the Tax Collector was sending current tax bills to the owner's correct address.

The district court reasoned that as in Vosilla, "the Tax Collector needed to look no further than its own records to determine Weingarten's correct address." (Id. at 564) (footnote omitted). Under the circumstances presented, additional reasonable steps were available to provide adequate notice of the pending tax deed

[7] Given the recognition by Jones that Florida's statute comports with due process discussed *supra*, Profile submits this holding was erroneous and represents the unwarranted overly broad reading of Jones advocated by Delta herein.

sale. [8]

Once Delta realized it had no basis for its claim, Delta invented its "new" argument that Jones v. Flowers means it was automatically entitled to the tax sale being voided because the certified mail notice was returned to the Clerk undelivered. This position totally ignores the actual holding in Jones v. Flowers and its recognition that Florida's scheme comports with due process. Further, the holding in Vosilla would only be implicated if Delta had, in fact, proven that the taxing authorities actually had their alleged "current address," which this record conclusively proves is not the case. There is no evidence to support Delta's claim that the tax collector failed to timely update its records.

The First District correctly recognized that even if the law of the case doctrine is ignored, Jones v. Flowers and Vosilla v. Rosado do not apply to this case. Accordingly, the decision of the First District should be approved.

[8] The court in dicta stated that posting is not relevant unless done after a notice of sale sent certified mail is returned undelivered. 974 So. 2d at 565, n. 5. This is incorrect: Jones holds that Florida's additional step of posting notice provides due process. The focus on the order in which these steps are taken is misplaced. As a result, it attempts to expand Jones far beyond its actual holding. Here the exact process used could have been reversed, i.e., certified mail followed by posting, satisfying the due process analysis used in Jones v. Flowers, and the exact same result would have ensued.

II. THIS COURT SHOULD CONSIDER WHETHER JURISDICTION HAS BEEN IMPROVIDENTLY GRANTED

As demonstrated in this Answer Brief, the decision of the First District correctly applied this Court's decision in Florida Department of Transportation v. Juliano and its own decision in Parker Family Trust I v. City of Jacksonville in holding that the law of the case doctrine applied and precluded Delta from avoiding this Court's holding in Profile II.

The First District correctly recognized that neither the U.S. Supreme Court's decision in Jones v. Flowers, nor this Court's decision in Vosilla v. Rosado, in any way detracted from or altered this Court's decision in Profile II. Accordingly, there is no conflict between the First District's decision and any decision of this Court.

Neither does the First District's decision affect a class of constitutional officers. The district court's holding merely upholds and implements the decision of this Court in Profile II.

Accordingly, Profile respectfully submits that this Court consider whether jurisdiction has been improvidently granted, and if it so determines, dismiss the Petition for Review.

CONCLUSION

As demonstrated herein, the First District properly applied the law of the case doctrine and correctly held that Delta could not avoid this Court's decision in Profile II, by changing its theory after years of litigation and three appeals.

The district court also correctly determined that the United States Supreme Court's decision in Jones v. Flowers, and this Court's decision in Vosilla v. Rosado, did not in any way alter or detract from this Court's holding in Profile II.

In sum, the district court below correctly understood and implemented this Court's decision in Profile II, and its decision should be approved.

William S. Graessle
Florida Bar No. 498858
William S. Graessle, P.A.
219 Newnan Street, 4th Floor
Jacksonville, Florida 32202
(904) 353-6333
(904) 353-2080 facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by U.S. mail, postage prepaid, to John R. Hargrove, Esq., Hargrove, Pierson & Brown, P.A., 21 S.E. 5th Street, Suite 200, Boca Raton, FL 33432; John R. Beranek, Ausley & McMullen, 227 S. Calhoun Street, P.O. Box 391, Tallahassee, FL 32302-0391; Ken van Asssenderp, 225 South Adams Street, Suite 200, Tallahassee, Florida 32301; Loree L. French, 117 West Duval Street, Suite 480, Jacksonville, Florida 32202; and Thomas M. Findley, Messer, Caparello & Self, P.A., Post Office Box 15579, Tallahassee, FL 32317, on this 16th day of July, 2010.

Attorney

CERTIFICATE OF TYPEFACE

I hereby certify that I have complied with Rule 9.210(a), Fla.R.App.P., and the font size of this brief is Times New Roman 14-point.

Attorney