

RESOLUTION NO. 2009- 137

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF THE NOCATEE PRESERVE ACCESS PARCEL AGREEMENT AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE SAID AGREEMENT.

RECITALS

WHEREAS, SONOC Company, LLC, a Delaware limited liability company, has presented the Nocatee Preserve Access Parcel Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, to allow the public access to the Nocatee Preserve; and

WHEREAS, SONOC has offered conveyance of a 4.74 acre preserve access parcel to provide for a trailhead and parking area to enhance public access to the Nocatee Preserve and to minimize environmental impacts associated with improving public access to the Nocatee Preserve using the existing trail road. There is no requirement that the Preserve Access Parcel be conveyed to the County; and

WHEREAS, to the extent that there are typographical, or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

NOW THEREFORE, be it resolved by the Board of County Commissioners of St. Johns County, Florida, as follows:

1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.
2. The Board of County Commissioners of St. Johns County hereby approves the terms and conditions of the Nocatee Preserve Access Parcel Agreement and authorizes the County Administrator to execute said Agreement.
3. The Clerk of the Court is instructed to file the original Nocatee Preserve Access Parcel Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED this 5th day of May, 2009.

**BOARD OF COUNTY COMMISSIONERS
ST. JOHNS COUNTY, FLORIDA**

By: Cyndi Stevenson
Cyndi Stevenson, Chair

ATTEST: Cheryl Strickland, Clerk

By: Pam Halterman
Deputy Clerk

RENDITION DATE 5/7/09



**NOCATEE PRESERVE ACCESS
PARCEL AGREEMENT**

This NOCATEE PRESERVE ACCESS PARCEL AGREEMENT is made this _____ day of _____, 2009, by and between SONOC Company, LLC, a Delaware Limited Liability Company ("SONOC") and ST. JOHNS COUNTY, FLORIDA (the "County").

RECITALS

WHEREAS, the County is the owner of the Nocatee Preserve, an approximately 1,630 acre passive park located on the Intracoastal Waterway, south of Nocatee Parkway; and

WHEREAS, SONOC is the owner of an approximately 4.74 acre parcel generally located adjacent to the northerly portion of the Nocatee Preserve and more particularly described in the attached Exhibit A (the "Preserve Access Parcel"); and

WHEREAS, to provide for a trailhead and parking area to enhance public access to the Nocatee Preserve and to minimize environmental impacts associated with improving public access to the Nocatee Preserve using the existing trail road access, the County seeks to acquire the Preserve Access Parcel from SONOC; and

WHEREAS, SONOC is the primary landowner within the Nocatee Development of Regional Impact, and with Nocatee master developer The PARC Group, Inc. (the "Developer"), is in the process of developing Nocatee into a mixed-use, master-planned community; and

WHEREAS, there is no requirement that the Preserve Access Parcel be conveyed to the County; and

WHEREAS, the St. Johns County Land Development Code requires certain mitigation for impacts resulting from tree clearing; and

WHEREAS, the County and County Administrator are currently reviewing a request for a non-zoning variance to recognize that the donation of the Preserve Access Parcel is an acceptable form of mitigation for impacts to protected trees and to award a total of \$443,000 of credit (known as "Tree Bank Credit"); and

WHEREAS, SONOC seeks recognition from the County that the conveyance of the Preserve Access Parcel would satisfy tree mitigation requirements;

NOW, THEREFORE, in consideration of ten and 00/100 dollars and other good and valuable consideration, the sufficiency of which is hereby acknowledged by each party; the parties hereby agree to the following:

1. **Conveyance of the Preserve Access Parcel.** Upon satisfaction of the closing conditions described below, SONOC shall convey to the County the Preserve Access Parcel by special warranty deed in the form attached as Exhibit B.
2. **Closing Costs.** SONOC shall be responsible for any documentary stamp taxes if and when due and for providing the County with an Ownership and Encumbrance Report. The County shall record the deed. The County may procure title insurance and/or a survey at its expense.
3. **Credit for Conveyance of Preserve Access Parcel Usable by Developer for Tree Mitigation.** Consistent with the approval of the non-zoning variance relating to conveyance of the Preserve Access Parcel, the County agrees that the Developer and its assigns are entitled to credit for conveyance of the Preserve Access Parcel for use as mitigation for impacts to trees that are otherwise unmitigated under Part 4.01 of the St. Johns County Land Development Code and any other applicable County tree protection regulations. The parties agree that the amount of the mitigation credit (a/k/a "Tree Bank Credit") shall be the cash equivalent of four hundred forty three thousand and no/100 dollars (\$443,000.00).
4. **Closing Conditions.** This obligations of the parties under this Agreement are contingent upon the complete satisfaction of the following conditions:
 - 4.1 The County must have approved the non-zoning variance application relating to conveyance of the Preserve Access Parcel in a form acceptable to the applicant (the PARC Group, Inc.).
 - 4.2 The appeal period for petitions for certiorari challenging the non-zoning variance and challenges to the non-zoning variance under section 163.3215, Florida Statutes, must have passed, without an appeal or challenge having been filed as of the date of Closing.
 - 4.3 No other appeal or legal challenge relating to the effectiveness of this Agreement or the non-zoning variance shall be pending as of the date of Closing.
5. **Closing.** Within thirty (30) days of the satisfaction of the conditions described in section 5 above, SONOC shall deliver the deed to the County (the "Closing") together with any other documents reasonably necessary to effectuate the transaction as may be prepared by the County at its expense.
6. **Status of Preserve Access Parcel.** The County is familiar with the physical condition of the Preserve Access Parcel and acknowledges and agrees that the Preserve Access Parcel is being conveyed by SONOC in an "as is" condition as of Closing. SONOC disclaims any warranty, express or implied, with respect to the Preserve Access Parcel. Acquisition of title to the Preserve Access Parcel by the County shall be deemed full and complete acceptance by the County of the Preserve Access Parcel.

7. **Termination.** In the event that the conditions of section 5 have not been fully satisfied within six (6) months of the date that this Agreement has been fully executed, SONOC, the Developer, or the County may terminate this Agreement by providing the parties written notice of termination. Upon the rendering of such notice, the parties shall be relieved of any and all obligations created under this Agreement.
8. **Notices.** All notices, demands, requests or replies provided for or permitted between the parties under this Agreement shall be in writing and may be delivered by any one of the following methods: (a) by personal delivery; (b) by certified mail deposited with the United States Postal Service, postage prepaid; (c) by deposit with an overnight express delivery service; or (d) by facsimile transmission with sender's confirmed receipt. For purposes of notice, the addresses of the parties are as follows, but such may be modified by each party by giving the other party notice in accordance with this section:

The County:

Mary Ann Blount
St. Johns County Real Estate Division
500 San Sebastian View
St. Augustine, FL 32084
Phone: (904) 209-0762
Facsimile: (904) 209-0763

with copy to:

Patrick McCormack, Esq.
St. Johns County Attorney
500 San Sebastian View
St. Augustine, FL 32084
Phone: (904) 209-0805
Facsimile: (904) 209-0806

SONOC:

Harry Francis
4310 Pablo Oaks Court
Jacksonville, FL 32224
Phone: (904) 223-7511
Facsimile: (904) 223-7499

with copy to:

Spencer N. Cummings, Esq.
Pappas Metcalf Jenks & Miller, P.A.
245 Riverside Avenue, Suite 400
Jacksonville, FL 32202
Phone: (904) 353-1980
Facsimile: (904) 353-5217

The PARC Group, Inc.:

Greg Barbour
4314 Pablo Oaks Court
Jacksonville, Florida 32224
Phone: (904) 992-9750
Facsimile: (904) 992-4114

with copy to:

Spencer N. Cummings, Esq.
Pappas Metcalf Jenks & Miller, P.A.
245 Riverside Avenue, Suite 400
Jacksonville, FL 32202
Phone: (904) 353-1980
Facsimile: (904) 353-5217

9. **Remedies.** The parties may enforce this Agreement solely by action for specific performance, except where performance by the breaching party is impossible.
10. **Third Party Beneficiary.** The Developer is a third party beneficiary of this Agreement.
11. **Miscellaneous.**
 - 11.1 **Entire Agreement; Modification.** This Agreement contains the entire agreement between the parties. All prior agreements, understandings, representations, and statements, oral and written, are merged into this Agreement. This Agreement cannot be modified except in writing signed by the party against whom enforcement is sought.
 - 11.2 **Applicable Law.** This Agreement shall be governed by and constructed in accordance with the laws of the State of Florida.
 - 11.3 **Counterparts.** This Agreement and any of the Closing documents called for in this Agreement may be executed separately by the parties or in counterparts, each constituting a duplicate original. All such counterparts shall constitute one and the same agreement.
 - 11.4 **Severability.** If any provision contained in this Agreement shall be held invalid, illegal, or unenforceable in any respect, the remaining provisions shall continue to be fully effective.
 - 11.5 **Recording.** Neither party shall record this Agreement in the Official Records books kept by the St. Johns County Clerk of Court. However, both parties acknowledge this document is a public record and that it will be produced by the County upon request.

- 11.6 **Waiver.** Either party reserves the right to waive in whole or in part any provision which is for such party's benefit. No such waiver shall be effective unless it is in writing. Any waiver shall be limited to the matter specified in the writing. No waiver shall be considered a waiver of any other or subsequent default and no delay or omission in exercising the rights and powers granted herein shall be construed as a waiver of such rights and powers.
- 11.7 **Time is of the Essence.** Time is of the essence in this Agreement. In the event that any date under this Agreement falls on a Saturday, Sunday, or legal holiday, such date shall be automatically extended to the next business day.
- 11.8 **Terms and Conditions of this Agreement Survive Closing.** All terms and conditions of this Agreement shall survive Closing.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the date first above written.

WITNESSES:

SONOC COMPANY, LLC, a Delaware Limited Liability Company

By: _____

[Print Name]

Print Name: _____

Its: _____

[Print Name]

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, as _____, of the SONOC COMPANY, LLC, a Delaware Limited Liability Company.

(Print Name _____)
NOTARY PUBLIC, State of Florida
Commission # _____
My Commission Expires:
Personally Known _____
or Produced I.D. _____
[check one of the above]
Type of Identification Produced

WITNESSES:

ST. JOHNS COUNTY, FLORIDA,
a political subdivision of the State of Florida

[Print Name]

By: _____
Print Name: _____
Title: County Administrator

[Print Name]

Legal form approved:

County Attorney

STATE OF FLORIDA)
COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____, as County Administrator, of ST. JOHNS COUNTY, FLORIDA, on behalf of the County.

(Print Name _____)
NOTARY PUBLIC, State of Florida
Commission # _____
My Commission Expires:
Personally Known _____
or Produced I.D. _____
[check one of the above]
Type of Identification Produced



Robert M. Angas Associates, Inc.
Land Surveyors, Planners and Civil Engineers
Since 1924

14775 Old St. Augustine Road
Jacksonville, FL 32258
Tel: (904) 642-8550
Fax: (904) 642-4165

December 17, 2008
Nocatee
Page 1 of 2

Work Order No. 08-259.00
File No. 120D-33A

Equestrian Park

A portion of Section 57 of the William Travers Grant, and a portion of Section 59 of the Travers or Palmes Grant, both lying in Township 4 South, Range 29 East, St. Johns County, Florida, being more particularly described as follows:

For a Point of Reference, commence at the corner common to Section 28, Section 51 of the Ben Chaires Grant, and Section 55 of the Pedro Miranda Grant, all lying in said Township 4 South, Range 29 East, thence North $84^{\circ}57'28''$ East, along the Northerly line of said Section 55, a distance of 1134.93 feet to its intersection with the Southeasterly right of way line of Nocatee Parkway, a variable width right of way as presently established, thence South $52^{\circ}47'44''$ West, departing said Northerly line and along said Southeasterly right of way line, 802.77 feet to its intersection with the Easterly line of those lands described and recorded in Official Records Book 1462, page 667 of said Public Records; thence Southerly and Southeasterly, along said Easterly line, the following three (3) courses: Course one, thence South $18^{\circ}11'09''$ East, departing said Southeasterly right of way line, 2579.07 feet; Course two, thence South $82^{\circ}56'08''$ East, 711.14 feet; Course three, thence South $08^{\circ}44'16''$ East, 2825.89 feet; thence South $81^{\circ}15'44''$ West, departing said Easterly line, 556.47 feet to Easterly most Southeast corner of Parcel "A", as described and recorded in Official Records Book 2868, page 1691 of the Public Records of said county, and the Point of Beginning.

From said Point of Beginning, thence South $56^{\circ}30'47''$ East, 45.85 feet; thence South $51^{\circ}04'03''$ East, 48.97 feet; thence South $82^{\circ}23'06''$ East, 32.63 feet; thence South $52^{\circ}22'26''$ East, 33.87 feet; thence South $08^{\circ}04'20''$ East, 89.08 feet; thence North $65^{\circ}08'51''$ West, 38.61 feet; thence South $37^{\circ}39'33''$ East, 60.62 feet; thence South $07^{\circ}55'23''$ West, 46.14 feet; thence North $86^{\circ}59'42''$ West, 26.43 feet; thence South $77^{\circ}51'52''$ West, 47.00 feet; thence South $11^{\circ}20'07''$ East, 62.76 feet; thence North $79^{\circ}37'13''$ East, 41.95 feet; thence South $55^{\circ}22'55''$ East, 28.54 feet; thence North $79^{\circ}57'42''$ East, 24.05 feet; thence South $74^{\circ}24'09''$ East, 48.86 feet; thence South $76^{\circ}50'49''$ East, 40.90 feet; thence South $25^{\circ}43'45''$ East, 92.46 feet; thence South $37^{\circ}25'43''$ East, 95.72 feet to a point lying on the Northerly line of Greenway Mitigation Parcel "G", as described and recorded in Official Records Book 2629, page 721 of said Public Records; thence South $85^{\circ}59'06''$ West, along said Northerly line and its Westerly prolongation, and along the boundary line of Greenway Mitigation Parcel "F", as described and recorded in said Official Records Book 2629, page 721, a distance of

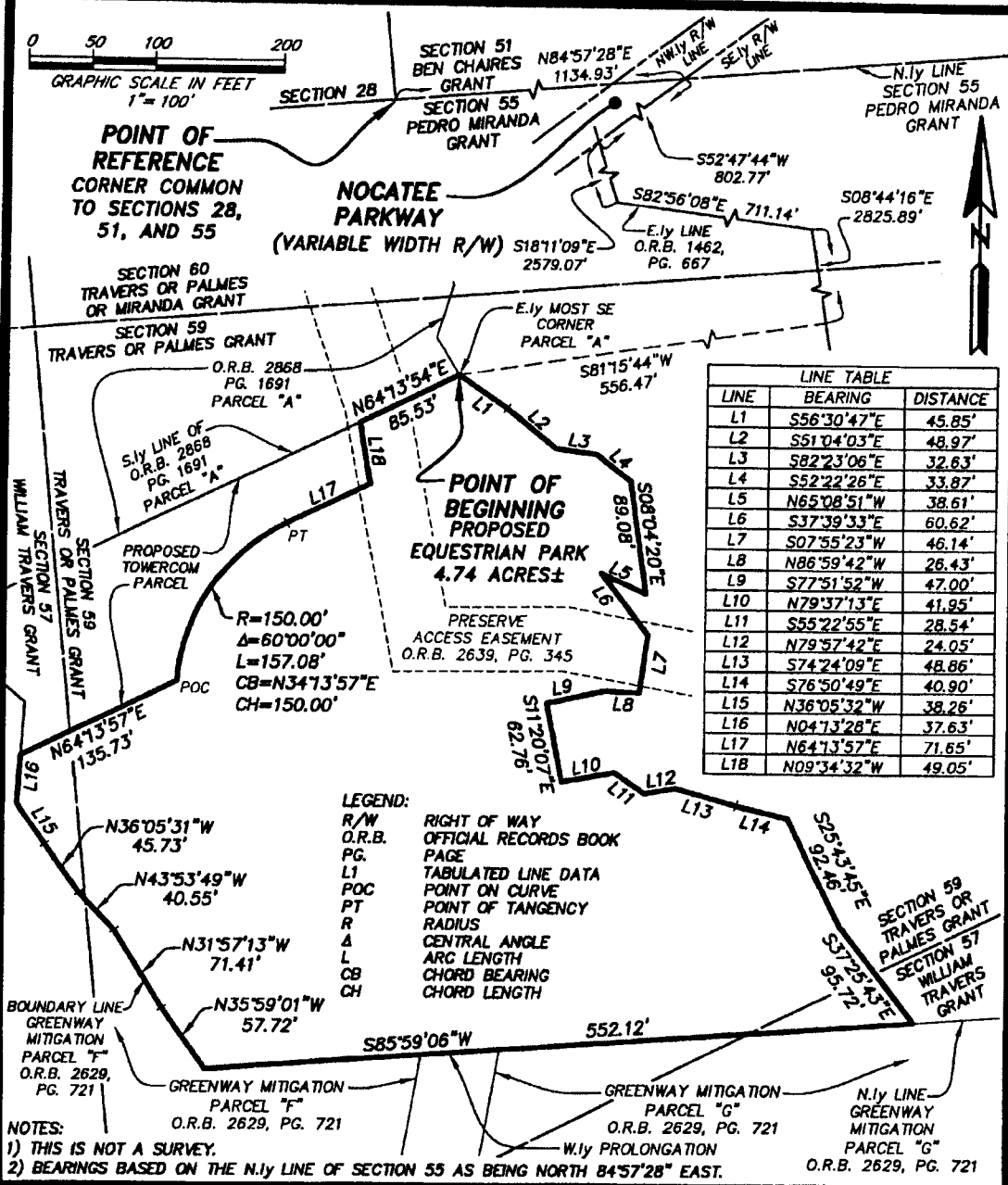
Equestrian Park

552.12 feet; thence Northwesterly, along said boundary line of Greenway Mitigation Parcel "F", the following six (6) courses: Course one, thence North 35°59'01" West, 57.72 feet; Course two, thence North 31°57'13" West, 71.41 feet; Course three, thence North 43°53'49" West, 40.55 feet; Course four, thence North 36°05'31" West, 45.73 feet; Course five, thence North 36°05'32" West, 38.26 feet; Course six, thence North 04°13'28" East, 37.63 feet; thence North 64°13'57" East, departing said boundary line, 135.73 feet to a point on a curve concave Southeasterly, having a radius of 150.00 feet, thence Northeasterly, along the arc of said curve, through a central angle of 60°00'00", a arc length of 157.08 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of North 34°13'57" East, 150.00 feet; thence North 64°13'57" East, 71.65 feet; thence North 09°34'32" West, 49.05 feet to a point lying on the Southerly line of said Parcel "A"; thence North 64°13'54" East, along said Southerly line, 85.53 feet to the Point of Beginning.

Containing 4.74 acres, more or less.

SKETCH TO ACCOMPANY DESCRIPTION OF

A PORTION OF SECTION 57 OF THE WILLIAM TRAVERS GRANT,
AND A PORTION OF SECTION 59 OF THE TRAVERS OR PALMES GRANT,
BOTH LYING IN TOWNSHIP 4 SOUTH, RANGE 29 EAST,
ST. JOHNS COUNTY, FLORIDA,
BEING MORE PARTICULARLY DESCRIBED IN SEPARATE ATTACHMENT.



NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



Robert M. Angas Associates, inc.
LAND SURVEYORS, PLANNERS AND CIVIL ENGINEERS
SINCE 1924

14775 St. Augustine Road, Jacksonville, FL 32258 Tel: (904) 642-8550
Certificate of Authorization No.: LB 3624

SCALE: 1" = 100'

DATE: DECEMBER 17, 2008

Damon J. Kelly
DAMON J. KELLY
PROFESSIONAL SURVEYOR AND MAPPER
STATE OF FLORIDA LS No. 6284