

RESOLUTION NO. 2011- 288

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A RELEASE AND SETTLEMENT AGREEMENT, COUNTY DEED, AND ACCEPT A WARRANTY DEED.

RECITALS

WHEREAS, this Release and Settlement Agreement (Agreement), attached hereto as Exhibit "A," incorporated by reference and made a part hereof, is the result of a pipe encroaching onto private property while a pond site was being constructed for the improvements to Roberts Road; and

WHEREAS, per the terms of the Agreement the County will convey .25 acres of adjacent County owned property to David and Frances Smith (Smith's) by County Deed, attached hereto as Exhibit "B," incorporated by reference and made a part hereof; and will pay \$10,000 to Smith's counsel, Bruce B. Humphrey, Esquire, and accept a Warranty Deed, attached hereto as Exhibit "C," incorporated by reference and made a part hereof, for 1261 square feet of property where the encroachment is located from the owners David and Frances Smith; and

WHEREAS, the property owners have requested the mineral reservations be released from the County Deed by letter from their attorney, attached hereto as Exhibit "D," incorporated by reference and made a part hereof; and

WHEREAS, once all the requirements have been completed David and Frances Smith will file a voluntary dismissal with prejudice for this case; and

WHEREAS, this was a Transportation Capital Improvement Project and is funded from the Impact Fees Zone A.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of St. Johns County, Florida, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as findings of fact.

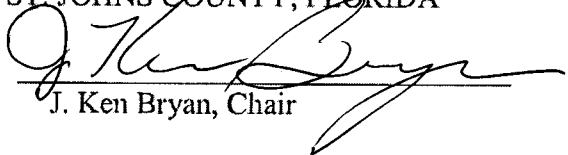
Section 2. The Board of County Commissioners hereby approves the terms of the Release and Settlement Agreement and County Deed and authorizes the County Administrator, or designee, to execute the original Release and Settlement Agreement and County Deed and accept the Warranty Deed and take all steps necessary to move forward to close this transaction.

Section 3. To the extent that there are typographical and/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.


Section 4. The Clerk is instructed to file the Release and Settlement Agreement in the Clerk's Office and record the Warranty Deed and County Deed in the public records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 4th day of October, 2011.

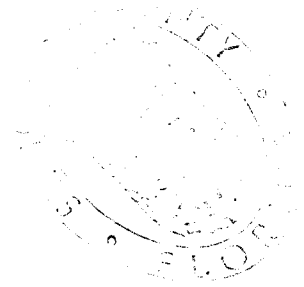
BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: 
J. Ken Bryan, Chair

ATTEST, Cheryl Strickland, Clerk

By: 
Deputy Clerk

RENDITION DATE 10/10/11



RELEASE AND SETTLEMENT AGREEMENT

FOR THE MUTUAL CONSIDERATION AS SET FORTH BELOW, the receipt and sufficiency which are hereby acknowledged by St. Johns County, Florida (hereinafter referred to as "County"), and by **DAVID SMITH and FRANCES SMITH**, (hereinafter referred to as "Smith"), for themselves and for their successors in interest, does hereby **FULLY RELEASE AND DISCHARGE**:

ST. JOHNS COUNTY
and
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS

And all of its and their heirs, insurers, legal representatives, owners, successors, agents, attorneys, assigns, servants, and employees, and all other persons, firms and corporations who might be liable (hereinafter referred to as "Released Parties") of and from any and every claim, demand, or cause of action(s) whatsoever which Smith now has or may hereafter have against the Released Parties, now known or unknown, resulting from or in any manner connected with the below referenced litigation, including but not restricted to any and every claim, demand or cause of actions for, or on account of personal injuries, damage to property, loss of property, loss of use of property, taking of property, loss of time, loss of services, society, or consortium, expenses, impairment or loss of any right, or any other loss, cost or damage of any nature whatsoever, sustained by or accruing to Smith, specifically including any right of Smith, whether statutory, contractual or otherwise, to claim attorney's fees, together with Smith's right to assert a claim against or recover from said parties for contribution or indemnity in any action by any party or third party for loss, damage or injury now known, or unknown, resulting from, or in any manner connected with or growing out of the litigation styled as *DAVID SMITH and FRANCES SMITH, his Wife v St. Johns County, a Political Subdivision of the State of Florida*, Seventh Judicial Circuit, St. Johns County, Florida, Case No. CA09-3543, Division 55, which were asserted therein or which could have been asserted. This Release and Settlement Agreement is subject to approval of the St. Johns County Board of County Commissioners.

IT IS FURTHER AGREED AS FOLLOWS:

The County will provide to Smith:

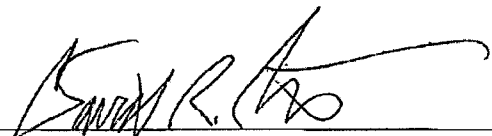
1. Within forty-five (45) days of this Agreement being fully executed, the title to the triangularly-shaped parcel adjacent to the Smith's western boundary as depicted on Attachment "A" and highlighted in yellow and described as Parcel 2. The County will convey this parcel by County Deed and attach a legal description, Attachment "B", for the .25 acre parcel.
2. Within forty-five (45) days of this Agreement being fully executed, Ten Thousand Dollars (\$10,000.00) to the Smith's counsel, Bruce B. Humphrey, Esquire. Such figure is

inclusive of any alleged damages, attorneys' fees, expert fees, and costs, and inclusive of any other potentially claimed damages, fees, or costs.

3. Satisfactory compliance with the five requirements listed by number on the December 10, 2009 letter from Kenneth Lovell of the SJRWMD, attached as Attachment "C".
4. Within ninety (90) days of this Agreement being fully executed, an engineering certification that the drainage culverts installed on the County's access road are sufficient.

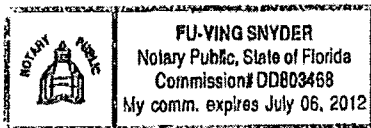
Smith will provide to the County:

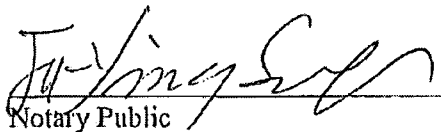
1. A fully completed and signed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification) to be included with the return of this executed Agreement.
2. Within forty-five (45) days of this Agreement being fully executed, conveyance of approximately 1261 square feet depicted on Attachment "D" and highlighted in purple and described as Parcel 1, owned by David and Frances Smith, to be conveyed to the County by Warranty Deed. During the same time period, Smith shall provide to the County releases of said property from any existing mortgages or any other encumbrances attached to said property.
3. Within forty-five (45) days of this Agreement being fully executed, file a voluntary dismissal with prejudice for case No. CA09-3543.



DAVID SMITH

Sworn to and subscribed before me this 14th day of September 2011, by FU-YING SNYDER on behalf of DAVID SMITH, who is personally known to me or produced FLDL as identification.





Notary Public

Frances Smith

FRANCES SMITH

Sworn to and subscribed before me this 14th day of September, 2011,
by FU-YING SNYDER on behalf of FRANCES SMITH, who is personally known
to me or produced driver's license as identification.

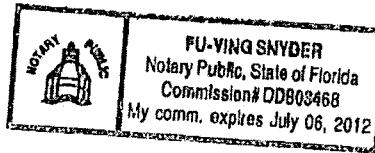
Fu-Ying Snyder
Notary Public

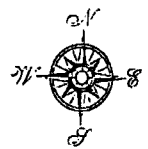
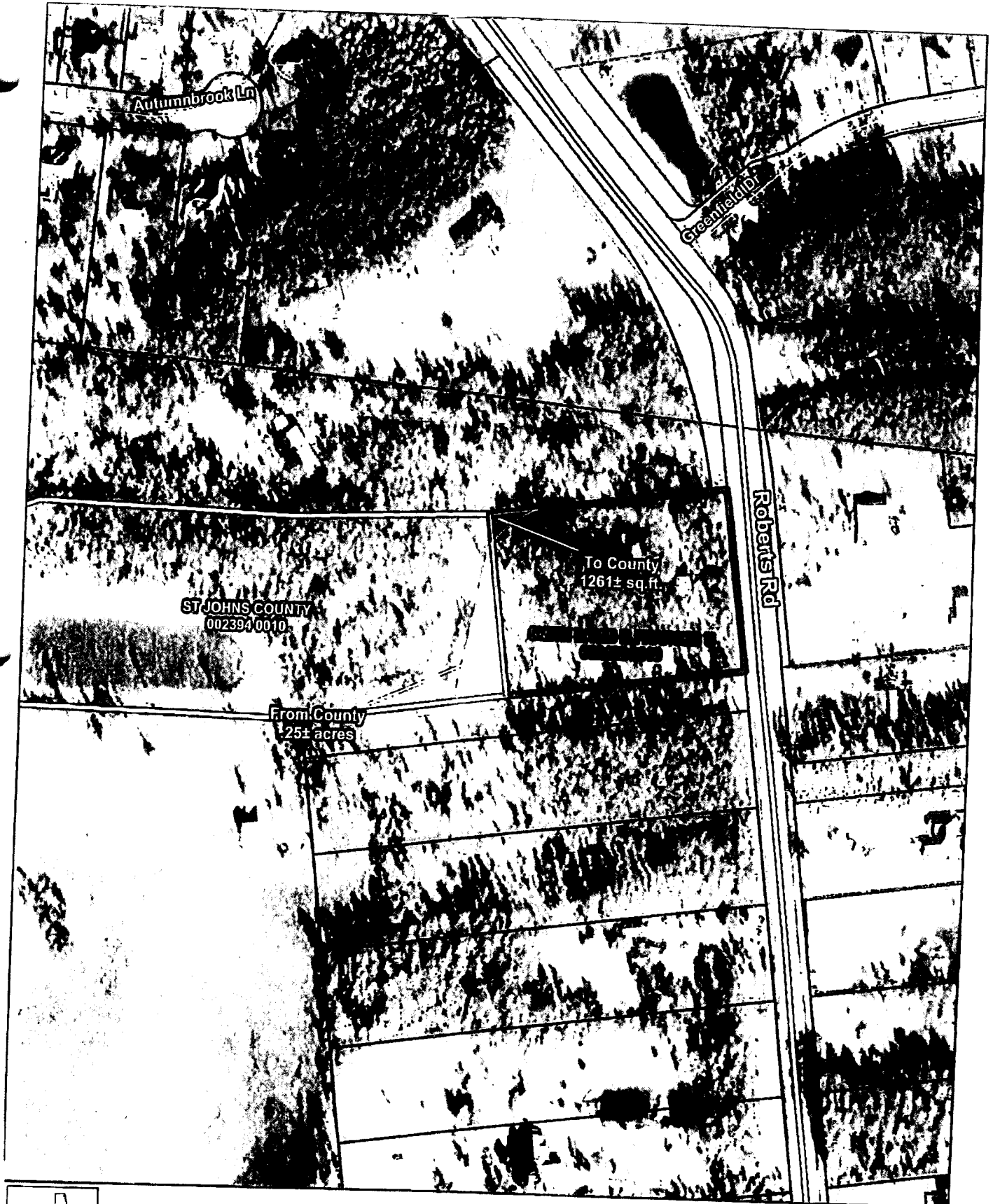
ST. JOHNS COUNTY, FLORIDA

By FU-YING SNYDER

Sworn to and subscribed before me this 14th day of September, 2011, by FU-YING SNYDER
on behalf of ST. JOHNS COUNTY, FLORIDA, who is personally known
to me or produced FLDL as identification.

Fu-Ying Snyder
Notary Public





Parcel of Interest



2009 Aerial Imagery

Disclaimer:
This map is for reference use only. Data provided are derived from multiple sources with varying levels of accuracy. The St. Johns County GIS Division disclaims all responsibility for the accuracy or completeness of the data shown herein.

ST. JOHNS COUNTY
GIS

j14246

ATTACHMENT "B"

PARCEL 2

A PART OF SECTION 39, TOWNSHIP 5 SOUTH, RANGE 27 EAST, ST. JOHNS COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK 2, MILLS COVE AS RECORDED IN MAP BOOK 15, PAGE 41 OF THE PUBLIC OF SAID COUNTY; THENCE SOUTH $82^{\circ}24'42''$ WEST, ALONG THE SOUTHERLY LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS 2258 PAGE 1329 OF SAID PUBLIC RECORDS, A DISTANCE OF 81.86 FEET; THENCE NORTH $07^{\circ}35'18''$ WEST A DISTANCE OF 16.75 FEET; THENCE NORTH $11^{\circ}41'02''$ EAST A DISTANCE OF 228.50 FEET TO A POINT ON A NON-TANGENT CURVE, SAID CURVE BEING CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 175.00 FEET; THENCE NORTHEASTERLY, ALONG AND WITH THE ARC OF SAID CURVE, A CHORD BEARING OF NORTH $38^{\circ}01'56''$ EAST AND A CHORD DISTANCE OF 9.44 FEET TO A POINT ON SAID CURVE, SAID POINT ALSO LYING ON THE WESTERLY LINE OF AFOREMENTIONED LOT 1, BLOCK 2, MILLS COVE; THENCE SOUTH $07^{\circ}30'58''$ EAST, ALONG SAID WESTERLY LINE, A DISTANCE OF 239.05 FEET TO THE POINT OF BEGINNING. CONTAINING 0.25 ACRES, MORE OR LESS.

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St. Johns River Water Management District

Kirby B. Green III, Executive Director • David W. Fisk, Assistant Executive Director
David Miracle, Jacksonville Service Center Director

7775 Baymeadows Way • Suite 102 • Jacksonville, FL 32256 • (904) 730-6270 • Fax (904) 730-6292
On the Internet at www.sjrwmd.com.

December 10, 2009

St. Johns County Engineering Division
Attn: Darrell Locklear
4020 Lewis Speedway
Saint Augustine, FL 32084 USA

Re: Roberts Road Curve Realignment
Permit No. 40-109-97669-1
Compliance Item No. 1123569
(Please reference this Permit number on all correspondence.)

Dear Darrell Locklear:

On December 8, 2009, the St. Johns River Water Management District received a letter and supporting documents from LG2 Environmental Solutions, Inc. for the above referenced permit. LG2 reports that the access lane to the stormwater pond encroached slightly onto the adjoining property. This minor encroachment affected approximately 573 square feet of wetland habitat as depicted in the above referenced submittal. LG2 is proposing to restore the wetland habitat. District staff concurs with the restoration approach. Please restore the wetland habitat within 45 days as follows:

1. Remove the over-burden of fill material and re-establish the natural wetland grade and elevation that existed prior to the placement of the fill material.
2. Install 5 wetland trees. Trees should be a minimum 5' height and 3-gallon size. Tree species should be native indigenous wetland species appropriate to the site-specific hydrology.
3. Install a minimum of 25 herbaceous wetland plants. Herbaceous species should be native indigenous wetland species appropriate to the site-specific hydrology.
4. Install a layer of pine straw over the area to minimize the opportunity for the establishment of weedy or exotic species.
5. Upon completion of items, 1-4, please provide a brief report, with photos that documents the restoration.

It appears that this project is complete; however, the District has not received the As-Built Certification from the engineer. Please provide the As-Built Certification as per permit condition.

GOVERNING BOARD

Susan N. Hughes, CHAIRMAN PONTE VEDRA	W. Leonard Wood, VICE CHAIRMAN FERNANDINA BEACH	Halsey "Harky" Huffman, SECRETARY ENTERPRISE	Hans G. Tangel III, TREASURER JACKSONVILLE
Douglas C. Bourinque VERO BEACH	Michael Eitel ONEDO	Maryam H. Ghaybi DUNEDON BEACH	Richard G. Hamann GAINESVILLE
			Arlen N. Jumper FORT MCCOY

St Johns County Engineering Division

December 10, 2009

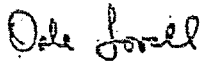
Roberts Road Curve Realignment

Application No. 40-103-97689.1

Page 2 of 2

This letter applies only to the requirements of the St. Johns River Water Management District and does not relieve you of meeting the permit requirement of other agencies. Please contact me at (904) 448-7919 or DLovell@sjrwmd.com, if you have questions.

Sincerely,



Kenneth Lovell
Compliance Manager
Department of Water Resources

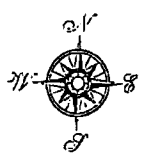
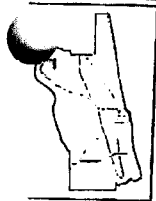
cc: RIM - Palatka

LG2 Environmental Solutions, Inc.
Attn: Nancy Goodhope
88 Ribera Street
Suite 300
St. Augustine, FL 32084

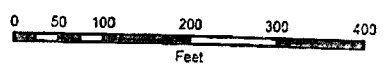
ATTACHMENT "D" CONTINUED

PARCEL 1

A PART OF LOT 1, BLOCK 2, MILLS COVE AS RECORDED IN MAP BOOK 15, PAGE 41 OF THE PUBLIC OF ST. JOHNS COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE NORTHWESTERLY CORNER OF SAID LOT 1; THENCE NORTH 82°29'02" EAST, ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 76.11 FEET TO A POINT OF CUSP; SAID POINT LYING ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 175.00 FEET; THENCE SOUTHWESTLY, ALONG AND WITH THE ARC OF SAID CURVE, A CHORD BEARING OF SOUTH 53°54'46" WEST AND A CHORD DISTANCE OF 86.66 FEET; THENCE NORTH 07°30'58" WEST, ALONG THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 41.44 FEET TO THE POINT OF BEGINNING. CONTAINING 1261 SQUARE FEET, MORE OR LESS.

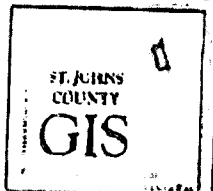


Parcel of Interest



2009 Aerial Imagery

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j14246

This Instrument Prepared By:
St. Johns County-Debbie Taylor
500 San Sebastian View
St. Augustine, FL 32084

EXHIBIT "B" TO RESOLUTION

COUNTY DEED

THIS DEED, made this _____ day of _____, 2011, by **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084 hereinafter the "Grantor" to **DAVID R. SMITH and FRANCES U. SMITH, his wife**, whose address is 1341 Roberts Road, St. Augustine, Florida 32259, hereinafter "Grantee".

WITNESSETH that the said party of the first part, for and in consideration of the sum of \$10.00 to it in hand paid by the party of the second party, receipt whereof is hereby acknowledged, has granted, bargained and sold to the party of the second part, his or her heirs and assigns forever, the following described land lying and being in St. Johns County, Florida:

SEE EXHIBIT "A", ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF (THE "PROPERTY")

IN WITNESS WHEREOF the said party of the first part has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chair, or Vice Chair, of said Board, the day and year aforesaid.

TOGETHER with all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

THIS COUNTY DEED is subject to the following non-exclusive list of exceptions:

- a. Special taxes and assessments, confirmed or unconfirmed, for improvements not yet completed, if any;
- b. Any state of facts which a good and accurate survey or inspection of the premises might reveal;
- c. Federal, State, local government (County or City), development, construction, zoning and building laws or ordinances, rules, regulations and resolutions;
- d. Rights, if any, of the public in any portion of the premises, which may fall within any public street, way or alley;

- e. All acts of the Grantee occurring prior to, or subsequent to the date of this instrument;
- f. Agreements, conditions, covenants, reservations, restrictions, and servitude of record;
- g. Easements and rights of way of record.

IN WITNESS WHEREOF the said Grantor has caused the presents to be executed in its name by its Board of County Commissioners acting by the Chairman of the Board, the day and year aforesaid.

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

BY: _____
J. Ken Bryan, Chair

ATTEST: Cheryl Strickland, Clerk

By: _____
Deputy Clerk

**STATE OF FLORIDA
COUNTY OF ST. JOHNS**

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by J. Ken Bryan, Chair of the Board of County Commissioners of St. Johns County, Florida, who is personally known to me and who did not take an oath.

Notary Public State of Florida

My Commission Expires: _____

EXHIBIT "A"

PARCEL 2

A PART OF SECTION 39, TOWNSHIP 5 SOUTH, RANGE 27 EAST, ST. JOHNS COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK 2, MILLS COVE AS RECORDED IN MAP BOOK 15, PAGE 41 OF THE PUBLIC OF SAID COUNTY; THENCE SOUTH 82°24'42" WEST, ALONG THE SOUTHERLY LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS 2258 PAGE 1329 OF SAID PUBLIC RECORDS, A DISTANCE OF 81.86 FEET; THENCE NORTH 07°35'18" WEST A DISTANCE OF 16.75 FEET; THENCE NORTH 11°41'02" EAST A DISTANCE OF 228.50 FEET TO A POINT ON A NON-TANGENT CURVE, SAID CURVE BEING CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 175.00 FEET; THENCE NORTHEASTERLY, ALONG AND WITH THE ARC OF SAID CURVE, A CHORD BEARING OF NORTH 38°01'56" EAST AND A CHORD DISTANCE OF 9.44 FEET TO A POINT ON SAID CURVE, SAID POINT ALSO LYING ON THE WESTERLY LINE OF AFOREMENTIONED LOT 1, BLOCK 2, MILLS COVE; THENCE SOUTH 07°30'58" EAST, ALONG SAID WESTERLY LINE, A DISTANCE OF 239.05 FEET TO THE POINT OF BEGINNING. CONTAINING 0.25 ACRES, MORE OR LESS.

EXHIBIT "C" TO RESOLUTION

Prepared by:
Bruce Humphrey, PA
Birchfield & Humphrey, PA
1031 LaSalle Street
Jacksonville, FL 32207-2911

WARRANTY DEED

MADE THIS _____ day of _____, 2011 by **DAVID R. SMITH and FRANCES U. SMITH**, his wife, whose post office address is 1341 Roberts Road, St. Augustine, Florida 32259, hereinafter called the Grantor, to **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose post office address is 500 San Sebastian View, St. Augustine, FL 32084, hereinafter called the Grantee:

WITNESSETH: That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in St. Johns County, viz:

SEE ATTACHMENT "A"

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same is fee simple forever.

AND THE GRANTOR hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2011.

IN WITNESS WHEREOF, that said Grantor has signed and sealed these presents the day and year first above written.

Print Witness Name: _____

DAVID R. SMITH

Print Witness Name: _____

FRANCES U. SMITH

**STATE OF FLORIDA
COUNTY OF ST. JOHNS**

THE FOREGOING INSTRUMENT was acknowledged before me this ____ day of _____, 2011 by David R. Smith and Frances U. Smith, who is personally known or who has produced a driver's license as identification.

Notary

ATTACHMENT "A" TO WARRANTY DEED

PARCEL 1

A PART OF LOT 1, BLOCK 2, MILLS COVE AS RECORDED IN MAP BOOK 15, PAGE 41 OF THE PUBLIC OF ST. JOHNS COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING COMMENCE AT THE NORTHWESTERLY CORNER OF SAID LOT 1; THENCE NORTH 82°29'02" EAST, ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 76.11 FEET TO A POINT OF CUSP; SAID POINT LYING ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 175.00 FEET; THENCE SOUTHWESTLY, ALONG AND WITH THE ARC OF SAID CURVE, A CHORD BEARING OF SOUTH 53°54'46" WEST AND A CHORD DISTANCE OF 86.66 FEET; THENCE NORTH 07°30'58" WEST, ALONG THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 41.44 FEET TO THE POINT OF BEGINNING. CONTAINING 1261 SQUARE FEET, MORE OR LESS.

EXHIBIT "D" TO RESOLUTION

St. Johns County Board of County Commissioners and
St. Johns County Community Redevelopment Agency
500 San Sebastian View
St. Augustine, Florida 32084

RE: Mineral Reservations

To Whom It May Concern:

David Smith and Frances Smith, property owners at 1341 Roberts Road, St. Augustine, Florida, respectfully request that the reserved interest of all phosphate, minerals, metals and petroleum, contained in the County Deeds be released due to the fact that it creates a cloud on the title to the property.

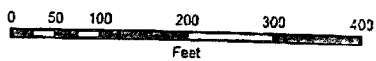
Thank you for your consideration of this request.

Sincerely,

By: B. B. H. G.
att. for David and Frances Smith



Parcel of Interest



2009 Aerial Imagery

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ST. JOHNS COUNTY
GIS

j14246

