

RESOLUTION NO. 2015- 21

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ACCEPTING A GRANT OF DRAINAGE EASEMENT AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A RIGHT OF WAY CONSENT AGREEMENT TO IMPROVE DRAINAGE ON DARTMOUTH ROAD IN ST. AUGUSTINE SOUTH.

WHEREAS, Florida Power & Light Company (hereinafter "FPL") has requested the County execute a Right of Way Consent Agreement, attached hereto as "Exhibit A", incorporated by reference and made a part hereof; and

WHEREAS, Frank Ashdji has executed a Grant of Drainage Easement, attached hereto as "Exhibit B", incorporated by reference and made a part hereof; and

WHEREAS, the Grant of Drainage Easement and Right of Way Consent Agreement are required to provide drainage improvements on Dartmouth Road in St. Augustine South; and

WHEREAS, the County has determined that approving and executing the Right of Way Consent Agreement is in the overall interests of the County.

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 authorizes the County Administrator, or designee, to execute the Right of Way Consent Agreement and accept the Grant of Drainage Easement.


Section 3. To the extent that there are typographical errors that do not change the tone, tenor, or concept of the Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of the Circuit Court is instructed to record the original Easement and Right of Way Consent Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED this 3 day of February, 2015,
by the Board of County Commissioners of St. Johns County, Florida

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

By: _____


Priscilla L. Bennett, Chair

ATTEST: Cheryl Strickland, Clerk

By: _____


Deputy Clerk



RENDITION DATE 2/5/15

RIGHT-OF-WAY CONSENT AGREEMENT

FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P.O. Box 14000, Juno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, hereinafter referred to as "Company", hereby consents to St. Johns County, a political subdivision of the State of Florida whose mailing address is 500 San Sebastian View, St. Augustine, FL 32084 hereafter referred to as "Licensee", using an area within Company's right-of-way granted by that certain agreement recorded in Deed Book 192, at Page 413, Public Records of St. Johns County, Florida. The said area within the Company's right-of-way, hereinafter referred to as "Lands", is more particularly described on Exhibit "A" attached hereto. The use of Lands by Licensee shall be solely for the purpose of construct and maintain a 1-foot swale as shown on the plans and specifications submitted by Licensee, attached hereto as Exhibit "B".

In consideration for Company's consent and for the other mutual covenants set forth below, and for Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensee agrees to obtain all necessary rights from the owners of the Lands in the event Licensee does not own said Lands; to obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Lands; and at all times, to comply with all requirements of all federal, state, and local laws, ordinances, rules and regulations applicable or pertaining to the use of the Lands by Licensee pursuant to this Agreement.

2. Licensee understands and agrees that the use of the Lands pursuant to this Agreement is subordinate to the rights and interest of Company in and to the Lands and agrees to notify its employees, agents, and contractors accordingly. Company specifically reserves the right to maintain its facilities located on the Lands; to make improvements; add additional facilities; maintain, construct or alter roads; maintain any facilities, devices, or improvements on the Lands which aid in or are necessary to Company's business or operations; and the right to enter upon the Lands at all times for such purposes. Licensee understands that in the exercise of such rights and interest, Company from time-to-time may require Licensee, to relocate, alter, or remove its facilities and equipment, including parking spaces and areas, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company, in its opinion, from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment, parking spaces and areas, and other improvements within thirty (30) days of receiving notice from Company to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Company; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Company retains the right to enter upon the Lands and make said relocation, alteration, or removal of Licensee's facilities, equipment, parking spaces and areas, and other improvements and Licensee hereby agrees to reimburse Company for all of its costs and expense incurred in connection therewith upon demand.

3. Licensee agrees that it will not use the Lands in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Lands or may tend to cause a hazardous condition to exist. Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across or stored on the Lands, which restricts, impairs, interferes with, or hinders the use of the Lands by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its

sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Lands and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

4. Licensee hereby agrees and covenants to prohibit its agents, employees, and contractors from using any tools, equipment, or machinery on the Lands capable of extending greater than fourteen (14) feet above existing grade and further agrees that no dynamite or other explosives shall be used within the Lands and that no alteration of the existing terrain, including the use of the Lands by Licensee as provided herein, shall be made which will result in preventing Company access to its facilities located within said Lands. Unless otherwise provided herein, Licensee agrees to maintain a one hundred and fifty (150) foot wide area, clear of any activities, with a lineal measurement of seventy five (75) feet on each side of the centerline of Company's existing and planned facilities.

5. Licensee understands and agrees that the planting of trees, shrubs, and other foliage capable of exceeding fourteen (14) feet in height at full maturity is not permitted within Company's Lands.

6. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade and all poles or standards supporting light fixtures are to be of a non-metallic material.

7. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be constructed of a non-metallic material and sprinkler heads are to be set so the spray height does not exceed fourteen (14) feet above existing grade and does not make contact with any Company's facilities. Aboveground systems shall not be installed within or across Company patrol or finger roads and underground systems crossing said patrol and finger roads are to be buried at a minimum depth of one (1) foot below existing road grade.

8. Licensee agrees to warn its employees, agents, contractors and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Company within the Lands are of high voltage electricity and agrees to use all safety and precautionary measures when working under or near Company's facilities. Licensee hereby acknowledges the receipt and required execution of Form 360 "Exhibit C" prior to the commencement of construction within the Lands.

9. Licensee agrees, at all times, to maintain and keep the Lands clean and free of debris. Except as provided herein, Licensee further understands and agrees that certain uses of the Lands are specifically prohibited; such uses include but are not limited to recreational purposes, hunting and camping, and Licensee agrees to notify its employees, agents, contractors, and invitees accordingly.

10. The use of the Lands by Licensee shall be at the sole risk and expense of Licensee, and Company is specifically relieved of any responsibility for damage or loss to Licensee or other persons resulting from Company's use of the Lands for its purposes.

11. Notwithstanding any provision contained herein, Licensee agrees to reimburse Company for all cost and expense for any damage to Company's facilities resulting from Licensee's use of the Lands and agrees that if, in the opinion of Company, it becomes necessary as a result of Licensee's use of the Lands for Company to relocate, rearrange or change any of its facilities, to promptly reimburse Company for all cost and expense involved with such relocation, rearrangement or change.

12. Licensee agrees it will exercise its privileges hereunder at its own sole risk and agrees to indemnify and save harmless Company, its parent, subsidiaries, affiliates, and their respective officers, directors, agents and employees (hereinafter referred to as FPL Entities), from all liability, loss, cost, and

expense, including attorneys' fees, which may be sustained by FPL Entities to any person, natural or artificial, by reason of the death of or injury to any person or damage to any property whether or not due to or caused by the negligence of FPL Entities, arising out of or in connection with the herein described purposes by Licensee, its contractors, agents, or employees; and Licensee agrees to defend at its sole cost and expense and at no cost and expense to FPL Entities any and all suits or action instituted against FPL Entities, for the imposition of such liability, loss, cost and expense.

13. Licensee shall, during the period of this Agreement, maintain at its sole expense a liability policy with minimum limits of \$1,000,000 for bodily injury or death of person(s) and \$1,000,000 for property damage arising out of a single occurrence. Said policy shall be endorsed to insure against obligations assumed by Licensee in the indemnity (Paragraph 12). A certificate of insurance shall be furnished to Company evidencing that said policy of insurance is in force and will not be cancelled or materially changed so as to affect the interests of FPL Entities until ten (10) days written notice has been furnished to Company. Upon request, copies of policies will be furnished to Company. Licensee understands and agrees that the use of the Lands for the purposes described herein is expressly contingent upon acceptance and compliance with the provisions contained herein.

14. This Agreement will become effective upon execution by Company and Licensee and will remain in full force and effect until completion of Licensee's use of the Lands pursuant to this Agreement, unless earlier terminated upon ninety (90) days written notice by Company to Licensee, or at the option of Company, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained herein.

15. The use granted herein as shown on Exhibit "B" shall be under construction by Licensee within one (1) year of the effective date of this Agreement and the construction shall be diligently pursued to completion. Licensee shall give Company ten (10) days prior written notice of its commencement of construction. "Under construction" is the continuous physical activity of placing the foundation or continuation of construction above the foundation of any structure or improvement permitted hereunder. Under construction does not include application for or obtaining a building permit, a site plan approval or zoning approval from the appropriate local government agency having jurisdiction over the activity, purchasing construction materials, placing such construction materials on the site, clearing or grading the site (if permitted) in anticipation of construction, site surveying, landscaping work or reactivating construction after substantially all construction activity has remained stopped for a period of two (2) months or more. Licensee acknowledges that failure to have the use under construction within the one (1) year time period will result in immediate termination of this Agreement in accordance with Paragraph 14 herein for failing to comply with the provisions contained herein unless Licensor grants a written extension for a mutually agreed upon time. Any request for an extension of time shall be submitted in writing by Licensee no later than thirty (30) days prior to the expiration of the one (1) year period for the project to be under construction.

16. The term "Licensee" shall be construed as embracing such number and gender as the character of the party or parties require(s) and the obligations contained herein shall be absolute and primary and shall be complete and binding as to each, including its successors and assigns, upon this Agreement being executed by Licensee and subject to no conditions precedent or otherwise.

17. Should any provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. In the event of any litigation arising out of enforcement of this Consent Agreement, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

18. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of the company, which consent shall not be unreasonably withheld.

19. Licensee agrees that any review or approval by Company of the plans and/or specifications submitted by Licensee attached hereto as Exhibit "B", the approval of the identity of any contractors, subcontractors and materialmen, or the delivery by Company of any construction specifications to Licensee, is solely for the purpose of processing this Consent, and without any representation or warranty whatsoever to Licensee with respect to the adequacy, correctness or efficiency thereof or otherwise and it is understood that such Company's approval does not absolve Licensee of any liability hereunder. Further, Licensee, in connection with the construction, maintenance and/or removal of improvements depicted on Exhibit "B" to the Agreement, agrees to observe and fully comply with all construction, operation and maintenance standards, as well as all applicable laws, rules and regulations of the United States, the State of Florida, and all agencies and political subdivisions thereof, including without limitation, the National Electric Safety Code and the Occupational Safety & Health Administration regulations, standards, rules, registers, directives or interpretations.

20. This Agreement includes and is subject to the provisions described on the attached Addendum.

The parties have executed this Agreement this _____ day of _____, 20__.

Witnesses:

FLORIDA POWER & LIGHT COMPANY

Signature:
Print Name: _____

By: _____
Its: _____
Print Name: _____

Signature:
Print Name: _____

Witnesses:

**LICENSEE:
ST. JOHNS COUNTY, a political subdivision
of the State of Florida**

Signature:
Print Name: _____

By: _____
Its: _____
Print Name: _____

Signature:
Print Name: _____

(Corporate Seal)

ADDENDUM

- 1. No equipment capable of exceeding 14 feet in height is permitted within Company's right-of-way.**
- 2. Licensee agrees to keep a drivable access path to Company's right-of-way and facilities clear at all times during the period of right-of-way use.**
- 3. Licensee agrees to contact Kel Teems at (386) 763-6102 to schedule an onsite Safety Six presentation prior to beginning construction.**

EXHIBIT "A"

A PARCEL OF LAND LYING IN A FLORIDA POWER AND LIGHT EASEMENT BETWEEN DARTMOUTH ROAD AND CORNELL ROAD AS SHOWN ON THE PLAT OF ST. AUGUSTINE SOUTH UNIT NO.1, MAP BOOK 8, PAGE 33, AND ST. AUGUSTINE SOUTH UNIT NO.4, MAP BOOK 8, PAGE 36 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EAST 20.00 FEET OF SAID FLORIDA POWER AND LIGHT EASEMENT, LYING IMMEDIATELY ADJACENT TO THE WEST LINE OF LOTS 956 THRU 958 IN UNIT NO. 4 OF SAID PLAT, AND LOTS 214 THRU 218 AND A DRAINAGE EASEMENT IN UNIT NO. 1 OF SAID PLAT AND BEING BOUNDED ON THE NORTH BY THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 213 OF UNIT NO. 1 OF SAID PLAT, AND BEING BOUNDED ON THE SOUTH BY THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 956 OF UNIT NO. 4 OF SAID PLAT. PARCEL CONTAINING 6720.00 SQUARE FEET, MORE OR LESS.

EXHIBIT B

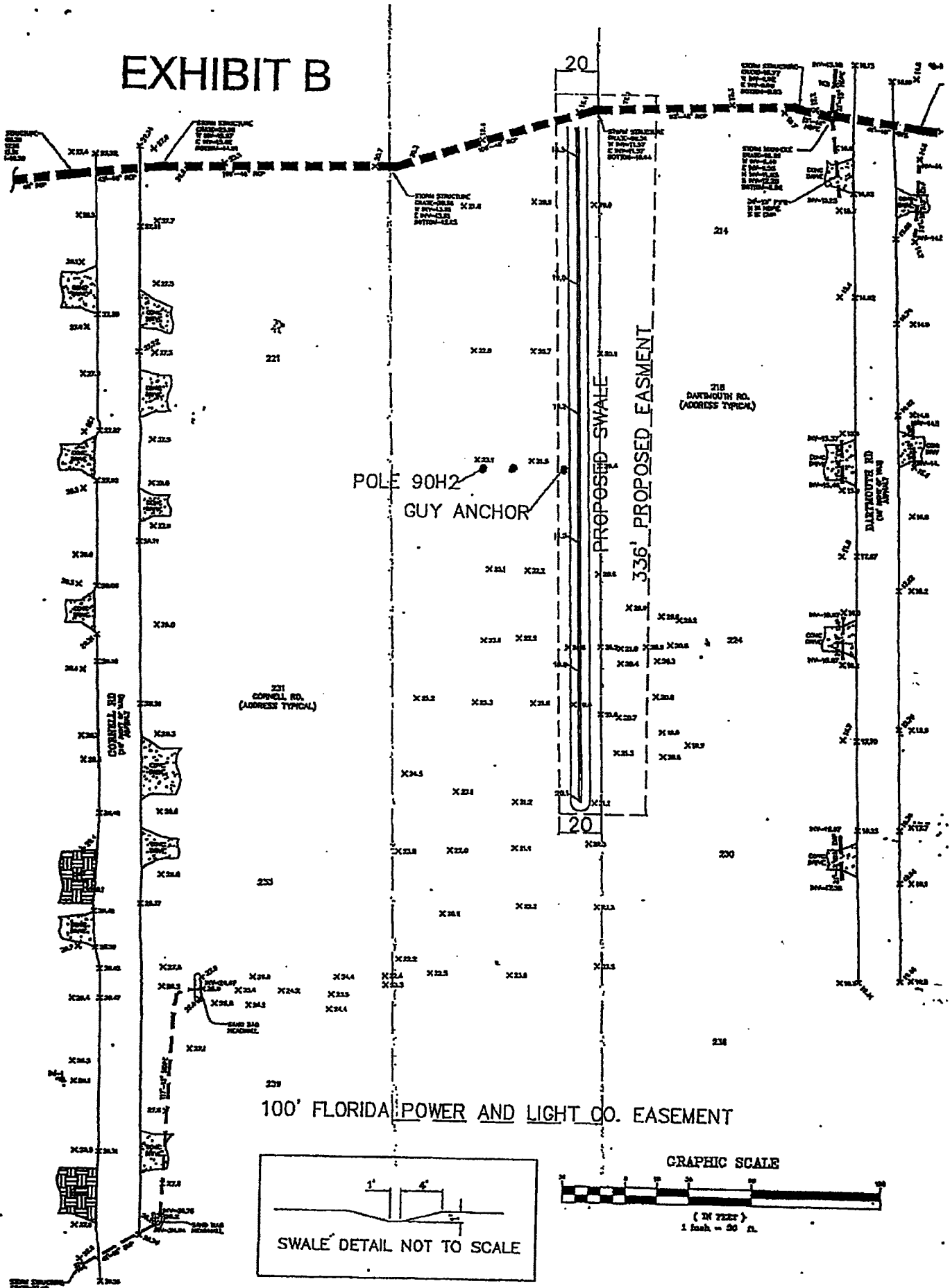




EXHIBIT "C"

FPL.

NOTIFICATION OF FPL FACILITIES

Customer/Agency St. Johns County
 Developer/Contractor Name _____
 Location of Project _____
 FPL Representative _____
 Developer/Contractor Representative _____

Date of Meeting/Contact: _____
 Project Number/Name: _____
 City: _____
 Phone: _____
 FPL Work Request #/Work Order #: _____

FPL calls your attention to the fact that there may be energized, high voltage electric lines, both overhead and underground, located in the area of this project. It is imperative that you visually survey the area and that you also take the necessary steps to identify all overhead and underground facilities prior to commencing construction to determine whether the construction of any proposed improvements will bring any person, tool, machinery, equipment or object closer to FPL's power lines than the OSHA-prescribed limits. If it will, you must either re-design your project to allow it to be built safely given the pre-existing power line location, or make arrangements with FPL to either deenergize and ground our facilities, or relocate them, possibly at your expense. You must do this before allowing any construction near the power lines. It is impossible for FPL to know or predict whether or not the contractors or subcontractors, and their employees, will operate or use cranes, digging apparatus or other mobile equipment, or handle materials or tools, in dangerous proximity to such power lines during the course of construction, and, if so, when and where. Therefore, if it becomes necessary for any contractor or subcontractor, or their employees, to operate or handle cranes, digging apparatus, draglines, mobile equipment, or any other equipment, tools or materials in such a manner that they might come closer to underground or overhead power lines than is permitted by local, state or federal regulations, you and any such contractor or subcontractor must notify FPL in writing of such planned operation prior to the commencement thereof and make all necessary arrangements with FPL in order to carry out the work in a safe manner. Any work in the vicinity of the electric lines should be suspended until these arrangements are finalized and implemented.

The National Electrical Safety Code ("NEC") prescribes minimum clearances that must be maintained. If you build your structure so that those clearances cannot be maintained, you may be required to compensate FPL for the relocation of our facilities to comply with those clearances. As such, you should contact FPL prior to commencing construction near pre-existing underground or overhead power lines to make sure that your proposed improvement does not impinge upon the NEC clearances.

It is your responsibility and the responsibility of your contractors and subcontractors on this project to diligently fulfill the following obligations:

1. Make absolutely certain that all persons responsible for operating or handling cranes, digging apparatus, draglines, mobile equipment or any equipment, tool, or material capable of contacting a power line, are in compliance with all applicable state and federal regulations, including but not limited to U.S. Department of Labor OSHA Regulations, while performing their work.
2. Make sure that all cranes, digging apparatus, draglines, mobile equipment, and all other equipment or materials capable of contacting a power line have attached to them any warning signs required by U.S. Department of Labor OSHA Regulations.
3. Post and maintain proper warning signs and advise all employees, new and old alike, of their obligation to keep themselves, their tools, materials and equipment away from power lines per the following OSHA minimum approach distances (refer to OSHA regulations for restrictions):

| <u>*Power Line Voltages</u> | <u>**Personnel and Equipment</u> (29 CFR 1910.333 and 1926.600) | <u>Cranes and Derricks</u> (29 CFR 1926.1407, 1408) | <u>Travel under or near Power Lines (on construction sites, no load)</u> (29 CFR 1926.600 - Equipment) (1926.1411 - Cranes and Derricks) | |
|-----------------------------|--|--|---|---------|
| 0 - 750 volts | 10 Feet | 10 Feet | 4 Feet | 4 Feet |
| 751 - 50,000 volts | 10 Feet | 10 Feet | 4 Feet | 6 Feet |
| 69,000 volts | 11 Feet | 15 Feet | 10 Feet | 10 Feet |
| 115,000 volts | 13 Feet | 15 Feet | 10 Feet | 10 Feet |
| 138,000 volts | 13 Feet | 15 Feet | 10 Feet | 10 Feet |
| 230,000 volts | 16 Feet | 20 Feet | 10 Feet | 10 Feet |
| 500,000 volts | 25 Feet | 25 Feet | 16 Feet | 16 Feet |

*When uncertain of the voltage, maintain a distance of 20 feet for voltages up to 350,000 volts and 50 feet for voltages greater than 350,000 volts.

**For personnel approaching insulated secondary conductors less than 750 volts, avoid contact (Maintain 10 Feet to bare energized conductors less than 750 volts). For qualified personnel and insulated aerial lift equipment meeting requirements of 29 CFR 1910.333, distances may be reduced to those shown in 29 CFR 1910.333 Table S-5.

4. All excavators are required to contact the Sunshine State One Call of Florida, phone number 1-800-432-4770 or 811 a minimum of two working days (excluding weekends) in advance of commencement of excavation to ensure facilities are located accurately.
5. Conduct all locations and excavations in accordance with the Florida Statute 556 of the Underground Facilities Damage Prevention & Safety Act and all local city and county ordinances that may apply.
6. When an excavation is to take place within a tolerance zone, an excavator shall use increased caution to protect underground facilities. The protection requires hand digging, pot holing, soft digging, vacuum methods, or similar procedures to identify underground facilities.

A copy of this notification must be provided by you to each contractor and subcontractor on this project, to be shared with their supervision and employees prior to commencing work on this project.

Attached to RAW Consent Agreement

Means by which this notification was provided to customer and/or contractor

_____ Address

_____ FPL Representative Signature

_____ Date

_____ Customer/Developer/Contractor Representative Signature

_____ Date

Prepared by:
St. Johns County
500 San Sebastian View
St. Augustine, FL 32084

EXHIBIT "B" TO RESOLUTION

GRANT OF DRAINAGE EASEMENT

THIS INDENTURE, made this ____ day of _____, 2014, between FRANK ASHDJI, whose address is 45 Anastasia Lakes Drive, St. Augustine, Florida 32080, hereinafter called GRANTOR, and ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084, hereinafter called GRANTEE.

WITNESSETH: That Grantor, for and in consideration of the benefit that Grantor will receive, the receipt of which is hereby acknowledged, has granted and conveyed to the Grantee, its successors and assigns, an ingress and egress easement with the right, privilege, and authority to said Grantee, its successors and assigns, to drain surface waters either above or below the surface of the ground, together with the right to install and maintain drainage structures, on, along, over, through, across, or under the following described land situate in St. Johns County, Florida to wit:

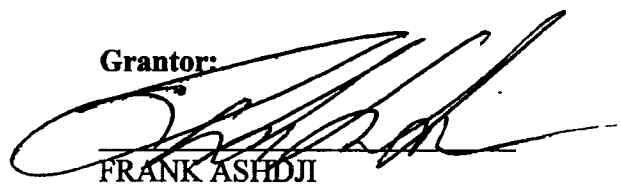
Property described on attached EXHIBIT "A", incorporated by reference and made a part hereof.

IN WITNESS WHEREOF, the said Grantor has hereunto set hand and seal the day and year first above written.

Signed and Sealed in Our
Presence as Witnesses:

(Sign) Sheri Lewis
(Print) Sheri Lewis

(Sign) Debbie Taylor
(Print) Debbie Taylor

Grantor:

FRANK ASHDJI

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 13th day of June, 2014, by Frank Ashdji, who is personally known to me or has produced Driver's License as identification.

Debbie Taylor
Notary Public

My Commission Expires: _____

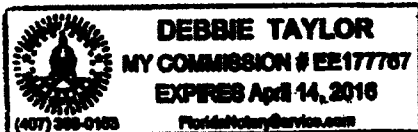
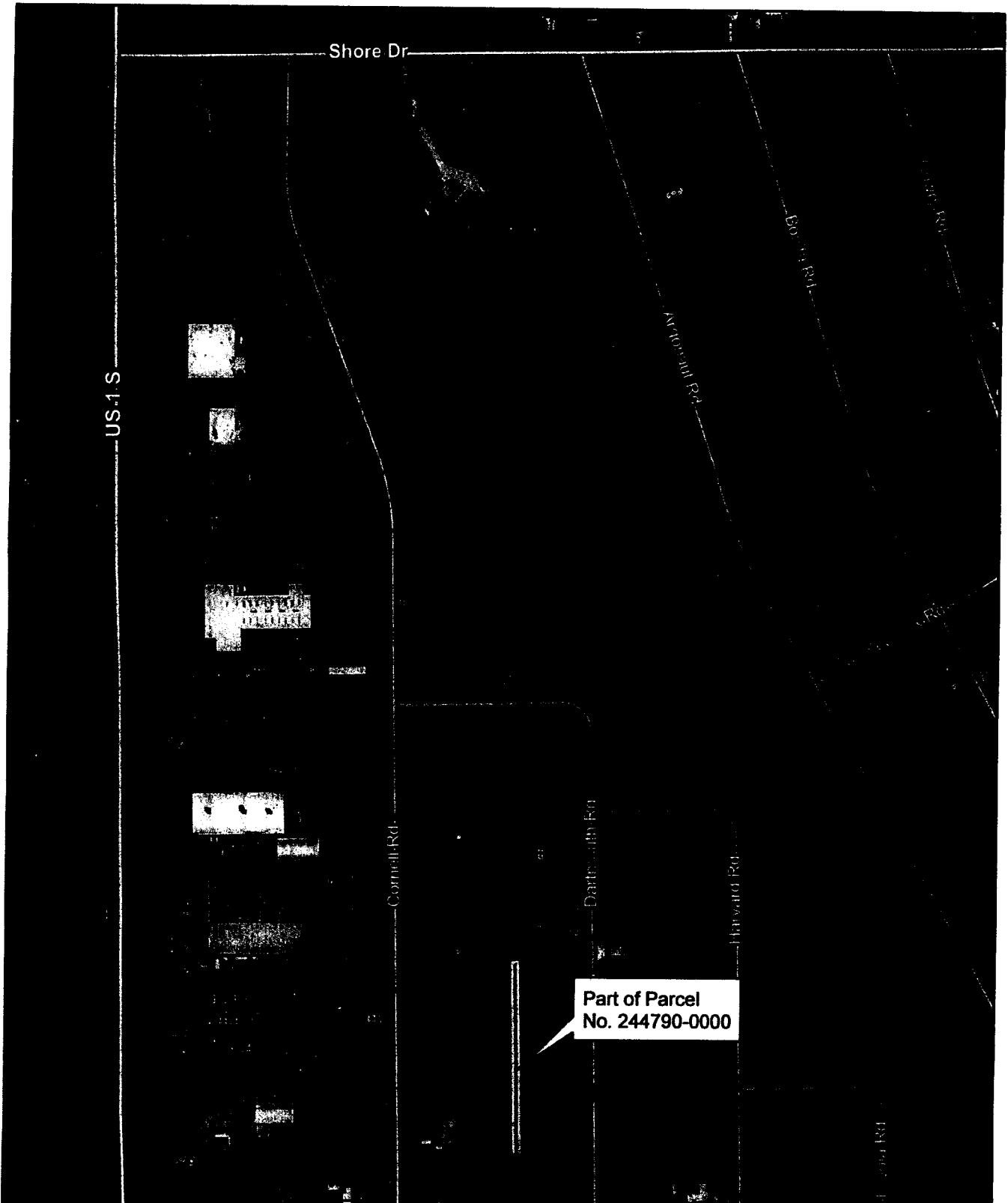


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Part of Parcel
No. 244790-0000



2013 Aerial Imagery
0 100 200
Feet
June 24, 2014

Drainage Easement

Land Management
Systems
Real Estate
Division
(904) 209-0764

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

