

RESOLUTION NO. 2020- 27

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A PURCHASE AND SALE AGREEMENT, ON BEHALF OF THE COUNTY, FOR THE ACQUISITION OF A PERPETUAL EASEMENT NECESSARY FOR THE WINTON CIRCLE DRAINAGE PROJECT.

RECITALS

WHEREAS, the owners of certain property located north of Winton Circle have presented to St. Johns County a Purchase and Sale Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, for the purchase of a perpetual easement across a portion of their property; and

WHEREAS, the easement will allow the County to perform necessary drainage improvements and do routine maintenance to a drainage system to help alleviate flooding in this area; and

WHEREAS, it is in the best interest of the County to purchase the easement for the health, safety and welfare of its citizens.

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 Purchase and Sale and Agreement and authorizes the County Administrator, or designee, to execute the Agreement on behalf of the County and move forward to close the transaction.

Section 3. The Clerk is instructed to file the original Purchase and Sale Agreement in the office of the Clerk of the Circuit Court.

Section 4. 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.

PASSED AND ADOPTED by the Board of County Commissioners this 4 day of February, 2020.

ATTEST: Brandon Patty, Clerk

By: Pam Halter
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: Jeb S. Smith
Jeb S. Smith, Chair



RENDITION DATE 2/6/20

Purchase and Sale Agreement for Easement

PURCHASE AND SALE AGREEMENT FOR EASEMENT

THIS PURCHASE AND SALE AGREEMENT FOR EASEMENT ("Agreement") is made by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is, 500 San Sebastian View, St. Augustine, Florida 32084, ("Buyer") and **RANDOLPH W. HEATH** and **LINDA HEATH**, husband and wife, (hereinafter referred to collectively herein as "Seller"), whose address is 4855 Winton Circle, St. Augustine, Florida 32086-5632.

WITNESSETH:

WHEREAS, Buyer has developed a drainage construction project designed to help alleviate flooding in a low-lying area of St. Johns County (the "Winton Circle Drainage Project"); and

WHEREAS, in order to facilitate the Winton Circle Drainage Project, the Buyer is desirous of purchasing a perpetual non-exclusive easement on a portion of the property owned by Seller located at 4855 Winton Circle, St. Augustine, FL 32086, and Seller is desirous of selling said easement upon the terms and conditions hereinafter expressed; and

WHEREAS, it is in the public interest for Buyer to acquire easement rights on, under and over said parcel of land that is more particularly described on Exhibit "A" attached hereto, incorporated by reference and made a part hereof (hereinafter the "Easement Area"), for drainage, drainage structures and a stormwater retention pond.

NOW THEREFORE, it is mutually agreed as follows:

1. Recitals. The above Recitals are incorporated into the body of this Agreement, and such Recitals are adopted as Findings of Fact.

2. Purchase Price. The purchase price ("Purchase Price") for the Easement shall be \$40,000.00. Payment of the Purchase Price to Seller shall be in cash or other immediately available funds.

3. Closing. Closing shall take place at the offices of St. Johns County at 500 San Sebastian View, St. Augustine, Florida 32084 on or before sixty days (60) from the Effective Date of this Agreement (the "Closing Date").

4. Seller's Representations. Seller represents to Buyer that it owns fee simple title to the Easement Area and has full right and authority to execute this Agreement and to consummate the transactions contemplated hereby, subject to the terms, provisions and conditions hereof, and that there are no known encumbrances, easements, licenses, grants, restrictions, limitations or other impairments other than those of public record that may obstruct or interfere with the Buyer's use and

enjoyment of the Easement or otherwise frustrate the purpose of the Easement. Seller makes no other representations nor grants any warranties of any kind, whether express, implied, statutory, or otherwise, including without limitation, any warranty of title or for quality or fitness for any particular use or purpose.

5. Closing Procedure and Documents.

(a) At the Closing, simultaneously with the payment of the Purchase Price by Buyer, Seller shall deliver or cause to be delivered to Buyer a non-exclusive perpetual easement (the "Easement") conveying easement rights for drainage, drainage structures and a stormwater retention pond to Buyer on, over and under the Easement Area. The Easement shall contain substantially the same terms and conditions as set forth in the form of easement attached hereto as Exhibit "B" and by this reference incorporated herein. If the Easement Area does not have physical or legal access to a dedicated public road, street or highway, the Seller shall provide the Buyer with an easement for physical and legal access to the Easement Area from a dedicated public road, street or highway in a location acceptable to Seller in its sole discretion, provided that such location shall be adequate to allow Buyer full use and enjoyment of the easement rights granted in the Easement.

(b) At the Closing, Buyer shall deliver the funds necessary to close the transaction contemplated by this Agreement to Seller, in accordance with Section 2.

(c) At the Closing, Seller and Buyer shall mutually execute and deliver to each other a closing statement in customary form.

(d) At the Closing, Seller and Buyer shall execute such further documents and agreements as are reasonably appropriate or reasonably necessary to consummate the transaction as herein contemplated.

(e) In the event that it is determined at any time prior to the Closing that the execution of the Easement and conveyance of the easement rights contemplated herein will result in an adverse impact to Seller's title to the Easement Area, including without limitation the acceleration of any mortgage or conflict with any other easement encumbering the Seller's property, Seller shall promptly provide written notice to Buyer of such a determination, and Seller's obligation to execute the Easement will be deemed null and void and Seller and Buyer shall be automatically relieved of and from any and all further agreements and obligations to one another under this Agreement.

6. Closing Expenses; Additional Buyer Payment.

(a) Buyer shall prepare all documents necessary to close the transaction contemplated herein and shall pay all closing costs, including without limitation, appraisal and surveying costs. Buyer shall be responsible for expenses related to obtaining consent and joinders to the Easement from Florida Power & Light and the Seller's mortgagee in amount not to exceed Two Thousand Dollars and NO/100 (\$2000.00) total. In the event that such cost and expenses exceed Two Thousand Dollars and NO/100 (\$2000.00) total and Buyer elects not to pay such

exceedance, than Seller shall be relieved of all obligations and responsibilities under this agreement. Buyer shall be responsible for an amount not to exceed Three Thousand Three Hundred Dollars and NO/100 (\$3,300.00) for attorney's fees actually incurred by the Seller. At the Closing, Seller shall provide Buyer with documentation of the attorney's fees incurred by Seller.

(b) In addition to the Purchase Price and to the closing costs and attorney's fees described in Section 6(a) above, Buyer shall pay to the Seller a sum in the amount of Two Thousand Five Hundred Dollars and NO/100 (\$2,500.00) per month (the "Compensation Payments") commencing on the date of commencement of construction within the Easement Area and continuing every month or portion of a month thereafter until the completion of construction within the Easement Area, as compensation for any and all inconvenience, noise, loss of income, or business damage the Seller may experience as a direct or indirect result of the Winton Circle Drainage Project. The date of commencement of construction (the "Commencement Date") shall be set forth by the Buyer in a written notice provided to the Seller no later than ten (10) days prior to commencement of construction and the first of the Compensation Payments shall be due on the Commencement Date and thereafter for every month or fraction thereof until completion of construction. The date of completion shall be set forth by the Buyer in a written notice provided to the Seller upon completion of construction (the "Completion Date"). The Commencement Date shall occur on or before twelve (12) months of the Effective Date of this Agreement, and the Completion Date shall occur on or before six (6) months of the Commencement Date.

The parties acknowledge and agree that the Compensation Payments pursuant to this Section 6(b) represent full and complete compensation to Seller for any for any inconvenience, noise, loss of income, or business damage Seller, or either of them, may experience as a direct or indirect result of the Winton Circle Drainage Project and that Seller shall in no event be entitled to any further or additional payment or recovery from Buyer other than the Compensation Payments for any such inconvenience, noise, loss of income, or business damage.

7. Survival. All covenants, terms, provisions, representations and warranties set forth in this Agreement, except as specifically provided otherwise herein, shall at the Closing be merged into the Easement. All agreements and obligations of the parties under Sections 5(a) and 6(b) herein shall survive the Closing and delivery of the Easement.

8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement.

9. Modification Must be in Writing. No amendment, modification or termination of this Agreement shall be valid unless executed in writing and signed by the applicable duly authorized representatives of Seller and Buyer.

10. No Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.

11. Assignability. This Agreement may not be assigned by Seller or Buyer without the written consent of all parties.

12. Time. Time is of the essence of all provisions of this Agreement.

13. Notices. Any notice hereunder must be in writing and delivered by hand (receipt of delivery required); certified mail, return receipt requested; or Federal Express or equivalent courier service, and shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the parties shall be set forth below or as may be designated by notice to the other from time to time.

Seller: Randolph W. Heath
Linda Heath
4855 Winton Circle
St. Augustine, Florida 32086-5632

With a copy to: Kathryn Whittington, Esq.
236 San Marco Avenue
St. Augustine, FL 32084

Buyer: St. Johns County
County Administrator
500 San Sebastian View
St. Augustine, Florida 32084

With copy to: St. Johns County
County Attorney
500 San Sebastian View
St. Augustine, Florida 32084

All other correspondence, not classified as notices, may be delivered, disseminated and/or submitted by any means acceptable to both parties, specifically including, faxing, e-mailing or text messaging.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties and there are no agreements, representations or warranties, oral or written which have not been incorporated herein.

15. Applicability. This Agreement shall be binding upon and shall inure to the benefits of the parties hereto and their respective successors and, to the extent that assignment is permitted hereunder, their assigns.

16. Section Headings. Section Headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any or its provision.

17. Board of County Commission Approval. This Agreement is subject to the adoption of a resolution by the St. Johns County Commissioners authorizing the County Administrator to execute this Agreement and approving the performance of this Agreement by Buyer.

18. Effective Date. The Effective Date of this Agreement shall be the first date upon which this Agreement or its valid counterparts are properly executed by all named parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement or its counterparts.

WITNESSES:

R. F. Whittington 1/7/20
 Signature Date
 Kathryn F. Whittington
 Print
W. WELDON 1/7/20
 Signature Date
 W. Weldon
 Print

SELLER:

Randolph W. Heath 1-7-2020
 Randolph W. Heath Date
Linda Heath 7 Jan 2020
 Linda Heath Date

WITNESSES:

 Signature Date

 Print

 Signature Date

 Print

BUYER:

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

By: _____
 Hunter S. Conrad Date
 County Administrator

ATTEST: Brandon Patty, Clerk

By: _____
 Deputy Clerk

Exhibit "A"

The "Easement Area"

A Part of Government Lot 10, Section 18, Township 8 South, Range 30 East, St. Johns County, Florida, being more fully described as follows:

The exact configuration and boundaries of the Easement Area will be mutually agreed to by SELLER and BUYER and will be further defined by a Boundary Survey to be prepared by BUYER. In the event that the SELLER and BUYER cannot mutually agree upon the exact configuration and boundaries of the Easement Area, this contract will be deemed null and void, and SELLER and BUYER shall be relieved of and from any and all further obligation to one another hereunder.

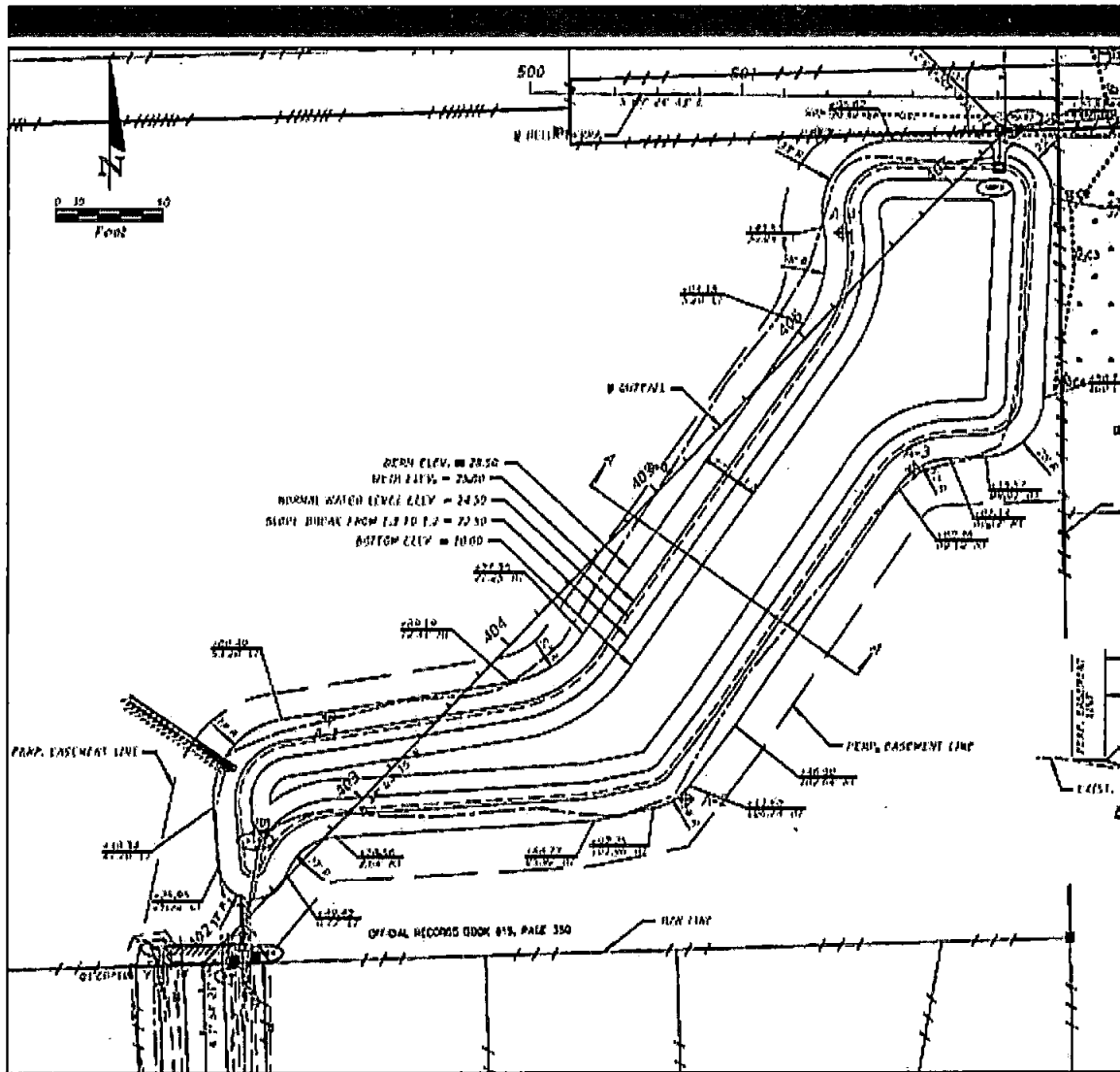


Exhibit "B"

Form of Easement

Exhibit "B"

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

**AMENDED
GRANT OF PERPETUAL, NON-EXCLUSIVE DRAINAGE EASEMENT**

THIS EASEMENT executed and given this ____ day of _____, 2020, (the "Easement") by **RANDOLPH W. HEATH** and **LINDA HEATH**, husband and wife, whose address is 4855 Winton Circle, St. Augustine, Florida 32086-5632, hereinafter collectively called the "Grantor", to **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 the "Grantee".

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, said Grantor hereby gives, grants, dedicates and conveys to the Grantee, its successors and assigns forever, an unobstructed right-of-way and non-exclusive permanent drainage easement with the right, privilege and authority to said Grantee, its successors and assigns, to use, construct, install, operate, maintain, improve, and/or repair, either above or below the surface of the ground, stormwater pond and drainage facilities (the "Facilities") on, along, over, through, across or under the following described land, situate in St. Johns County, Florida, to wit:

Property as described on attached Exhibit "A", incorporated by reference and made a part hereof (the "Easement Area").

THIS EASEMENT corrects the legal description and replaces that certain Easement Deed recorded in Official Records Book 1151, page 14, of the public records of St. Johns County, Florida.

TOGETHER with the right to said Grantee its successors and assigns, of ingress and egress, to and over the above described Easement Area, and for doing anything necessary, useful or convenient for the enjoyment of the easement rights herein granted; provided, however, that the rights granted hereunder shall not interfere with Grantor's use and occupancy of residential or commercial improvements constructed on property owned by Grantors adjacent to the Easement Area.

AND GRANTOR hereby reserves for itself and its successors and assigns, and for the benefit of Grantor's adjacent land, all rights to use and occupy, and to grant to others all rights to use and occupy, the Easement Area for any purpose not inconsistent with, and that does not interfere with Grantee's use and enjoyment of, the easement rights granted hereunder, including without limitation the right for Grantor to continue its use of the entire Easement Area and the stormwater retention pond located therein in conjunction with its equestrian boarding, training

and riding business, including use by fish, waterfowl, livestock, and other animals, except during construction of the pond in accordance with Sections 1 through 5 below.

By acceptance of this Easement and the easement rights granted herein, Grantee agrees that:

1. Grantee shall be solely responsible for the construction, maintenance and repair of the Facilities constructed by Grantee within the Easement Area and shall keep such structures and facilities in good workmanlike condition and repair and in compliance with all applicable local, state, and federal laws, rules, regulations, ordinances and applicable permits.

2. Grantee shall take no action either before or after construction of the Facilities that may result in the complete drawdown of the water level within the stormwater retention pond.

3. To the extent consistent with the standard of care in the construction industry, defined as the ordinary and reasonable degree of care required of a prudent professional under the circumstances, any fencing Grantee installs during construction of the Facilities shall include breaks or openings to allow Grantor's waterfowl access to the stormwater retention pond located within the Easement Area and shall be promptly removed after completion of construction; provided, however, that, while it shall take reasonable precautions, Grantee shall not be liable in any way for any loss, injury or damage to any such waterfowl that may occur during construction.

4. After any installation, construction, repair, replacement or removal of the Facilities, Grantee shall refill any holes or trenches in a proper and workmanlike manner to the condition existing prior to such installation, construction, repair, replacement or removal.

5. To the extent permitted by law, Grantee shall indemnify and hold Grantor harmless from and against any liability or damage caused by Grantee's negligence, or the negligence of its agents, employees or contractors, and arising from Grantee's or public use of the rights granted under this Easement or the Facilities located within the Easement Area, including the grantee's installation, construction, maintenance, repair or replacement of the Facilities. Nothing contained in this Easement, including this paragraph, is intended to nor shall be construed to operate as a waiver on the part of Grantee of the limitations of liability set forth in section 768.28, Florida Statutes, or of Grantee's sovereign immunity.

[SIGNATURES APPEAR ON FOLLOWING PAGES.]

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

Signed and Sealed in Our Presence as Witnesses:

Grantor:

(sign) _____
(print) _____

Randolph W. Heath

(sign) _____
(print) _____

Linda Heath

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2020, by Randolph W. Heath and Linda Heath, who are personally known to me or have produced _____ as identification.

Notary Public
My Commission expires: _____

Signed, sealed and delivered in the presence of:

Grantee:
ST. JOHNS COUNTY, FLORIDA

Witness: _____
(Name Printed or Typed)

By: _____
Print Name: _____
Title: _____

Witness: _____
(Name Printed or Typed)

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ as _____ of ST. JOHNS COUNTY, FLORIDA and who is personally known to me or has produced _____ as identification.

Notary Public
My Commission expires: _____

EXHIBIT "A"

[Easement Area]




2019 Aerial Imagery
January 6, 2020

*Purchase and Sale Agreement
Grant of Easement
Heath Parcel
Winton Circle Drainage Project*

Land Management
Systems
Real Estate
Division
(904) 209-0790
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.

