

RESOLUTION NO. 2002- 266

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT AUTHORIZING THE PURCHASE AND USE OF CERTAIN DRAINAGE FACILITIES AND APPROVING A GRANT OF EASEMENT AND COVENANTS IN CONNECTION WITH THE RACETRACK ROAD WIDENING PROJECT.

RECITALS

WHEREAS, pursuant to the Julington Creek Plantation Development Order, the County has the obligation to undertake a road widening project regarding Racetrack Road; and

WHEREAS, in connection with the drainage requirements of said project the County has a need for the use of drainage facilities constructed and owned by D.R. Horton, Inc. – Jacksonville; and

WHEREAS, D.R. Horton, Inc. – Jacksonville has agreed to allow the County use of their drainage facilities subject to the terms and conditions as set forth in the Agreement attached hereto as Exhibit “A”, incorporated by reference and made a part hereof; and

WHEREAS, the Grant of Easement and Covenants, attached hereto as Exhibit “B”, incorporated by reference and made a part hereof, is required for ingress and egress to and over said drainage facilities.

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 of St. Johns County hereby approves the terms and conditions of the Agreement and the Grant of Easement and Covenants and authorizes the County Administrator to execute said Agreement and Grant of Easement and Covenants.

Section 3. The Clerk of the Courts of St. Johns County is instructed to record the original Agreement and Grant of Easement and Covenants in the Official Records of St. Johns County, Florida, and mail executed copies of this Resolution and the Agreement and Grant of Easement and Covenants to D.R. Horton, Inc. – Jacksonville, 9456 Phillips Highway Suite 1, Jacksonville FL 32256.

PASSED AND ADOPTED, this 10th day of December, 2002.

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

BY: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

Patricia DeGrande
Deputy Clerk

RENDITION DATE 12-11-02



Prepared by and record and return to:
St. Johns County Real Estate Division
4020 Lewis Speedway
St. Augustine, Florida 32084

Exhibit A to Resolution

AGREEMENT

(Drainage Pond)

THIS AGREEMENT (Drainage Pond), made this _____ day of November, 2002, between **D. R. HORTON, INC. – JACKSONVILLE**, a Delaware corporation, whose address is 9456 Phillips Highway, Suite 1, Jacksonville, Florida 32256, (hereinafter called Grantor), and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 (hereinafter called Grantee).

WITNESSETH:

WHEREAS, Grantor is the owner of certain lands more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, the Property is located within the lands generally referred to as Julington Creek Plantation and are subject to the provisions of that certain Amended and Restated Julington Creek Plantation Development Order, Resolution 93-159, as amended (the "Development Order"); and

WHEREAS, pursuant to the Development Order, the Grantee has the obligation to undertake a road widening project regarding Racetrack Road, which project also includes the design and construction of approximately 1.6 miles of eight foot wide sidewalk along the widened road right-of-way, the installation of oak trees on 50 foot spacing (approximately 108 trees) within the new medians of the widened Racetrack Road provided that the newly installed oak trees are similar in size to the oak trees in the existing medians (4" minimum diameter) of Racetrack Road westerly of the portion of Racetrack Road that is to be widened and the installation of sleeves (collectively, the "Racetrack Road Project"). The location of the portion of roadway that is subject to the Racetrack Road Project is depicted on the site plan attached hereto as Exhibit "B"; and

WHEREAS, in connection with the drainage requirements of the Racetrack Road Project and certain drainage needs associated with Parcel 65A (Tiffany Oaks) of Julington Creek Plantation, Grantor has obtained Permit Number 40-109-21253-11 (the "Permit") from the St. Johns River Water Management District, and has, pursuant to the Permit, constructed the retention pond upon the Property (the "Pond") in compliance with the Permit; and

WHEREAS, the Grantor agrees to grant an easement (the "Easement") to Grantee allowing for the use of the Pond on the Property in substantially the form attached hereto as Exhibit "B"; and

WHEREAS, in addition to constructing the Pond and agreeing to grant to Grantee certain rights in the Property, the Grantor has also constructed appurtenant improvements thereto,

including the oversizing of drainage piping and structures within subdivisions located with Julington Creek Plantation and generally referred to as Parcel 56A (Pine Chase, Parcel 1), Parcel 59 (Sutton Hollow) and Parcel 65A (Tiffany Oaks) (collectively, the Pond and appurtenant improvements described in this paragraph are the "Grantor Improvements"); and

WHEREAS, Grantor is willing to comply with Grantee's requests upon the payment by Grantee of the sums described herein and upon Grantee's agreement that it will complete the Racetrack Road Project in accordance with the provisions hereof.

NOW THEREFORE, Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to them in hand paid by Grantee, the receipt of which is hereby acknowledged, and Grantee hereby agree as follows:

1. Grantor and Grantee agree that the statements made and set forth in the "Whereas" clauses hereinabove are true and correct to the best of their knowledge.
2. The Grantor has agreed to provide and has completed the Grantor Improvements, and Grantee has inspected the Grantor Improvements and accepted them as constructed in their "AS IS, WHERE IS" condition. Grantee agrees to pay Grantor the sum of \$266,081.19 for the completed Grantor Improvements attached hereto as Exhibit "C" and to pay Grantor the sum of \$437,500.00 for the value of the Property on which the Pond is located. Grantee agrees to pay the foregoing total sum of \$703,581.19 at the same time that this Agreement is executed by the parties hereto.
3. The Grantor further agrees to grant to Grantee the Easement over the Property. The Grantee agrees that the Easement is solely and only for the use of the Grantee to provide for the drainage requirements of the Racetrack Road Project. Accordingly, the Grantee's rights pursuant to the Easement may not be assigned to any person for any purpose other than to be used for the drainage requirements of the Racetrack Road Project.
4. The Grantee agrees that it will use its best efforts to complete the Racetrack Road Project by December 31, 2004. Other than the Permit, the Grantee has the obligation to, at its sole cost and expense, obtain and comply with any and all permits, licenses or other governmental requirements and approvals needed for the construction, modification, alteration, operation, use, replacement, repair or removal of the Racetrack Road Project. Grantee shall perform and require its agents, servants, employees and contractors to perform all work in connection with the construction, installation, operation, maintenance, use, repair, replacement or removal of the Racetrack Road Project with reasonable care and in such a manner so as to not damage or unreasonably interfere with the Pond or other property of the Grantor. If the Pond or Grantor's other property is damaged as a result of Grantee's actions or omissions, the Grantee shall promptly repair such damage, at Grantee's sole cost and expense, to the reasonable satisfaction of Grantor.
5. Both the Grantor and the Grantee shall comply with all applicable governmental or quasi-governmental laws, ordinances, rules, regulations of every kind pertaining to their respective interest in the Property, including without limitation, any applicable law,



ordinance, rule or regulation regarding or relating to environmental protection, pollution, sanitation or safety. Neither the Grantor nor the Grantee will commit or suffer any waste as to their interest in the Property, nor will they use or permit any use of their interest in the Property for any illegal purpose or in any such way as to constitute a public nuisance or in any way so as to violate or breach any applicable law, rule, regulation or ordinance to which their interest in the Property is subject.

6. This Agreement and the obligations and rights set forth above are running with the land and shall be binding upon, and insure to the benefit and burden of the successor and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Grant of Easement as of 17th day of November, 2002.

Signed, sealed and delivered in the presence of:

D. R. HORTON, INC. - JACKSONVILLE

Sharlene Mattice
Print Name: SHARLENE MATTICE
Donna Stevenson
Print Name: Donna Stevenson

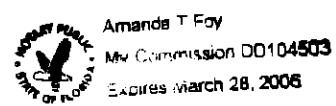
By: [Signature]
Name: JAN S. DOAN
Its: VICE PRESIDENT LAND DEVELOPMENT

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 17th day of November, 2002, by JAN DOAN, the VICE PRESIDENT of D. R. Horton, Inc.-Jacksonville, a Delaware corporation, on behalf of the corporation, who (check one) is personally known to me or has produced _____ as identification.

Amanda T. Foy
Notary Public, State of Florida
Name: Amanda T. Foy

My Commission Expires DD104503
My Commission Number is: 3/28/06



Signed, sealed and delivered
in the presence of:

ST. JOHNS COUNTY, FLORIDA

Print Name: _____

Name: _____

Its: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this ____ day of November, 2002, by _____, the _____ of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of St. Johns County, who (check one) () is personally known to me or () has produced _____ as identification.

Notary Public, State of Florida
Name: _____

My Commission Expires _____
My Commission Number is: _____

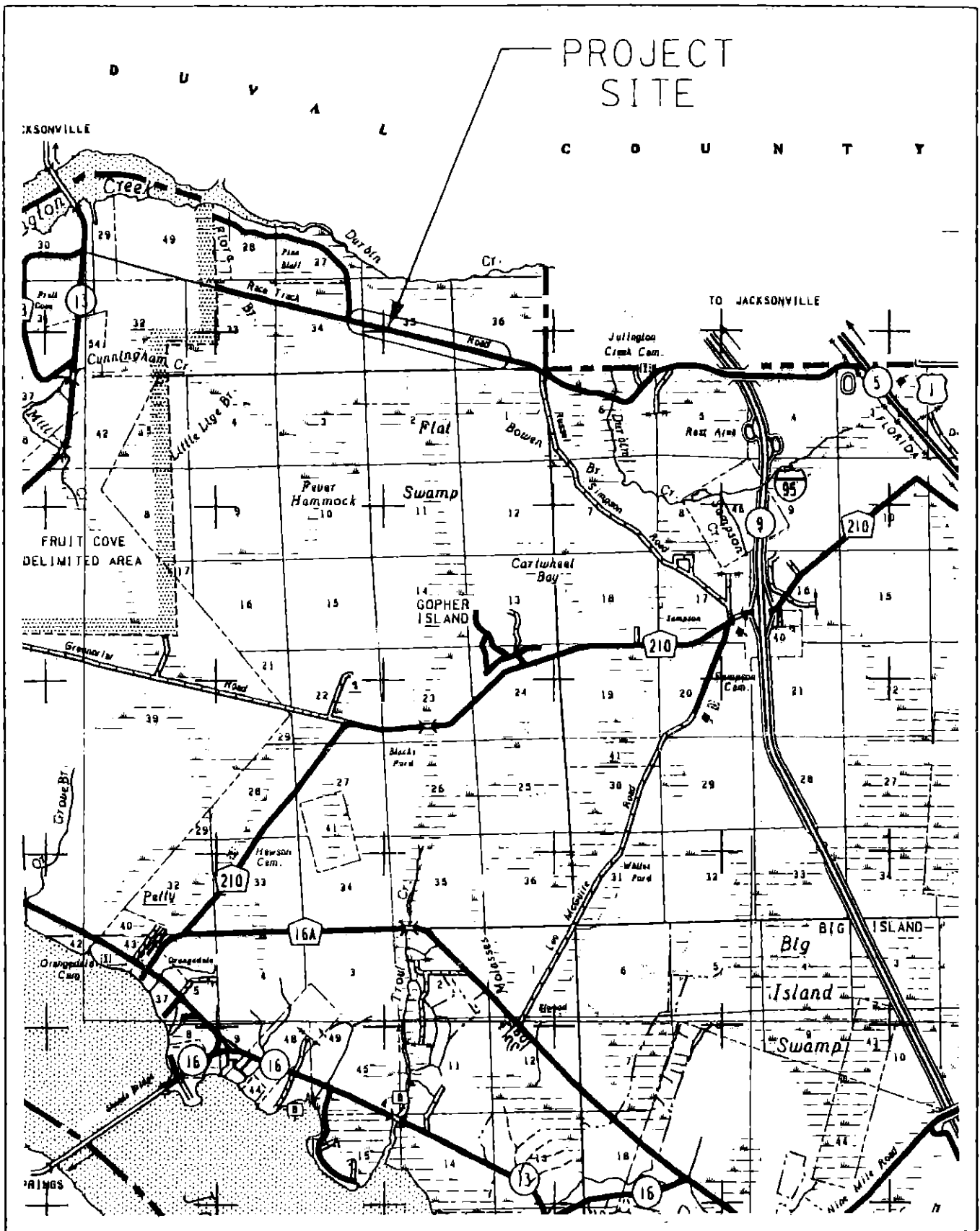


EXHIBIT "A" to Agreement

Tract T-6, Julington Creek Plantation, Parcels 64 and 65, Phase I, according to the subdivision plat thereof recorded in Map Book 44, pages 86 through 98, of the public records of St. Johns County, Florida.



Exhibit "B" to Agreement



**England-Thimms
& Miller, Inc.**
CONSULTING & DESIGN ENGINEERS
14775 ST. AUGUSTINE ROAD
JACKSONVILLE, FLORIDA 32258
PHONE NUMBER (904) 642-8990

RACE TRACK ROAD
VICINITY MAP

PROJ. NO. 1 98-239
DATE:
SCALE:
SHEET NO. 1

D:\07\2102
 02/04/01 PW
 P:\07\2102\0201\0201.dwg

EXHIBIT "C" to Agreement

**RACETRACK ROAD IMPROVEMENTS
CONSTRUCTED FOR ST. JOHNS COUNTY BY D.R. HORTON, INC. -
JACKSONVILLE**

Clear and Grub Tract T-6	\$16,498.08
Excavate Excess Pond	\$88,849.03
Dress Pond Slopes	\$ 2,060.45
Sod Pond Slopes	\$10,104.94
Seed and Mulch Around Pond	\$ 508.21
48 inch RCP - 6' to 8' Deep	\$37,477.80
Control Structure - 6' to 8' Deep	\$11,520.00
48 inch MES	\$ 4,500.00
Drainage As-Builts	\$ 200.68
18 inch (County Size) RCP from D3 to D11	\$ 3,552.00
36 inch (County Size) RCP from D11 to D12	\$26,000.00
42 inch (County Size) RCP from D12 to D13	\$42,250.00
54 inch (County Size) RCP from D13 to D14	\$12,480.00
54 inch (County Size) RCP from D14 to MES	\$10,080.00
TOTAL IMPROVEMENTS FOR COUNTY BENEFIT	\$266,081.19



Prepared by and record and return to:
St. Johns County
4020 Lewis Speedway
St. Augustine, Florida 32084

Exhibit B to Resolution

GRANT OF EASEMENT AND COVENANTS

THIS GRANT OF EASEMENT AND COVENANTS running with the land, made this _____ day of November, 2002, between **D. R. HORTON, INC. – JACKSONVILLE**, a Delaware corporation, whose address is 9456 Phillips Highway, Suite 1, Jacksonville, Florida 32256, (hereinafter called Grantor), and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084 (hereinafter called Grantee).

WITNESSETH: That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to them in hand paid by Grantee, the receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed to the Grantee, its successors and assigns forever, an unobstructed right of way and non-exclusive perpetual easement with the right, privilege, and authority to said Grantee, its successors and assigns, the right to construct, lay, use, maintain, improve, and/or repair either above or below the surface of the ground storm water pond and drainage facilities, on, along, over, through, across, or under the following described land situate in St. Johns County, Florida subject to the parameters described in the obligations of the Grantor set forth below to wit:

Property attached hereto as Exhibit "A," incorporated by reference and made a part hereof (the "Easement Premises")

TOGETHER with the right of said Grantee, its successors and assigns, of ingress and egress to and over said above described premises, and for doing anything necessary or useful or convenient, or removing at any time any and all of said improvements upon, over, under, or in said lands, together also with the right and easement, privileges, and appurtenances in and to said land which may be required for the enjoyment of rights herein granted.

Further, for and in consideration of the consideration of the mutual covenants and promises made herein, Grantee and Grantor, for themselves and their successors and assigns, hereby also agree as follows:

1. Grantor shall cooperate with the Grantee in obtaining all necessary approvals and permits from the appropriate governmental agencies in connection with the Grantee's use of the drainage facilities located within the Easement Premises. Grantee acknowledges and agrees that the drainage facilities located within the Easement Premises have been constructed in compliance with Permit Number 40-109-21253-11 (the "Permit") issued by the St. Johns River Water Management District.

2. Grantor agrees that it shall be responsible for the maintenance of the drainage facilities located within the Easement Premises and keep them in good condition and repair and in compliance with all applicable laws, rules, regulations and ordinances, particularly including the Permit, provided however, that both parties agree to comply with the terms and conditions of the Permit in their use and operation of the said drainage facilities.
3. Grantor agrees that it shall provide to Grantee a stormwater treatment facility of sufficient size to provide 178,600 cubic feet of treatment volume located within the Easement Premises, provided however that the drainage herein provided to the Grantee shall be solely and only for the purpose of providing for the drainage needs of Grantee in its construction and operation of certain improvements and widening of Racetrack Road pursuant to the Agreement (Drainage Pond) between Grantee and Grantor dated of even date herewith. This easement shall be subject to all of the terms and conditions set forth in said Agreement (Drainage Pond). The volume herein provided to Grantee is intended to accommodate one inch of runoff from the approximately 38.0 acres of right-of-way for the built-out section of Racetrack Road and approximately 11.2 acres of offsite contributing drainage area to the system, all of which is associated with the Racetrack Road Project (as that term is used in the Agreement (Drainage Pond)), and all as contemplated by the Permit. All of the Racetrack Road Project is required to be completed by the Grantee pursuant to the provisions of that certain Amended and Restated Julington Creek Plantation Development Order, Resolution 93-159, as amended.
4. Grantor agrees that it has constructed the drainage facilities within the Easement Premises in a condition that will lawfully attenuate the storm water runoff from all contributing drainage basins for the 25/year 24/hour and the 5/year 24/hour design storm events so that the post-developed discharge rate is no greater than the pre-developed discharge rate. The contributing drainage basin of the Racetrack Road Project shall consist of a conceptual built-out road section consisting of 200' right-of-way with 8,500 linear feet of 4-lane divided, swale section roadway and a bike path/pedestrian walkway on one side. The resultant hydraulic gradient shall comply with the St. Johns County Land Development Code.
5. Grantor also agrees that it has constructed and maintained said drainage facilities in a condition that does not violate any existing or proposed local, state or federal permits and includes a conceptual contributing drainage basin for the Racetrack Road Project consisting of 200' right-of-way with 8,500 linear feet of 4-lane divided, swale section roadway and a bike path/pedestrian walkway on one side.
6. Grantee shall not assign its rights hereunder to any person or entity, except only that Grantee may assign its rights hereunder to another governmental entity that would also require ownership of Racetrack Road, it being understood and agreed that the drainage easement granted hereby is intended to serve the drainage requirements of Grantee resulting from the Racetrack Road Project.

7. Grantee agrees that it has inspected the drainage facilities described herein as constructed by Grantor and agrees that they know of no reason why the statements made by Grantor herein are not true and correct. Accordingly, Grantee accepts the drainage facilities constructed by Grantor in their "AS IS, WHERE IS" condition.
8. This Easement covenant and the obligations and rights set forth above are running with the land and shall be binding upon, and insure to the benefit and burden of the successor and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Grant of Easement as of ____ day of November, 2002.

Signed, sealed and delivered
in the presence of:

D. R. HORTON, INC. – JACKSONVILLE

Print Name: _____

Name: _____

Its: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of November, 2002, by _____, the _____ of D. R. Horton, Inc.-Jacksonville, a Delaware corporation, on behalf of the corporation, who (check one) (____) is personally known to me or (____) has produced _____ as identification.

Notary Public, State of Florida
Name: _____

My Commission Expires _____
My Commission Number is: _____

EXHIBIT "A" to Grant of Easement

Tract T-6, Julington Creek Plantation, Parcels 64 and 65, Phase I, according to the subdivision plat thereof recorded in Map Book 44, pages 86 through 98, of the public records of St. Johns County, Florida.

