

RESOLUTION NO. 2006- 12

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ACCEPTING THE TERMS OF A SUBORDINATION AGREEMENT ALLOWING SUBORDINATION OF THE EASEMENT FOR UTILITIES IN THE AREA OF THE PALENCIA COMMERCIAL ACCESS ROAD.

RECITALS

WHEREAS, State of Florida Department of Transportation ("FDOT"), has presented to the County a Subordination Agreement, attached hereto as Exhibit "A," incorporated by reference and made a part hereof, to allow subordination an easement for utilities to St. Johns County for Marshall Creek Paseo Reyes Subdivision located in the Palencia Commercial Access Road area; and

WHEREAS, FDOT is requesting subordination of the easement for utilities granted to St. Johns County to allow relocation of an FDOT drainage easement into the easement area granted to St. Johns 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 accepts the terms of the Subordination Agreement and authorizes the Chairman of the Board to execute said Subordination Agreement substantially in the form attached.

PASSED AND ADOPTED this 10 day of January, 2006.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

By: Patricia DeGrande
Deputy Clerk

Rendition Date: 1-12-06

Exhibit "A" to Resolution

23-UTL.01-

This instrument prepared by
or under the direction of:
Kenneth S. Davis
District General Counsel
Florida Department of Transportation
1109 South Marion Avenue
Lake City, Florida 32025-5874

PARCEL NO.
SECTION
F.P. NO.
STATE ROAD
COUNTY OF

SUBORDINATION OF UTILITY INTERESTS

THIS AGREEMENT, entered into this _____ day of _____,
20____, by and between the STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION, 1109 South Marion Avenue, Lake City, Florida
32025-5874, hereinafter called the FLORIDA DEPARTMENT OF
TRANSPORTATION, and _____,
hereinafter called Utility.

W I T N E S S E T H:

WHEREAS, the Utility presently has an interest in certain
lands that have been determined necessary for highway purposes; and

WHEREAS, the proposed use of these lands for highway purposes
will require subordination of the interest claimed in such lands by
Utility to the Florida Department of Transportation; and

WHEREAS, the Florida Department of Transportation is willing
to pay to have the Utility's facilities relocated if necessary to
prevent conflict between the facilities so that the benefits of
each may be retained.

NOW, THEREFORE, in consideration of the mutual covenants and
promises of the parties hereto, Utility and Florida Department of
Transportation agree as follows:

Utility hereby subordinates to the interest of Florida
Department of Transportation, its successors, or assigns, any and
all of its interest in the lands as follows, viz:

RECORDED:

| INSTRUMENT | DATE | FROM | TO | O.R. |
|---------------------------|---------|-------------------------|---------------------|-----------------------------|
| Easement for Utilities | 4/14/05 | Marshall Creek, Ltd. | St. Johns County | BOOK/PAGE 2450/1658-1661 |

1. The Utility shall have the right to construct, operate, maintain, improve, add to, upgrade, remove, and relocate facilities on, within, and upon the lands described herein in accordance with the Florida Department of Transportation's current minimum standards for such facilities as required by the Florida Department of Transportation, Utility Accommodation Manual in effect at the time the agreement is executed. Any new construction or relocation of facilities within the lands will be subject to prior approval by the Florida Department of Transportation. Should the Florida Department of Transportation fail to approve any new construction or relocation of facilities by the Utility or require the Utility to alter, adjust, or relocate its facilities located within said lands, the Florida Department of Transportation hereby agrees to pay the cost of such alteration, adjustment, or relocation, including, but not limited to the cost of acquiring appropriate easements.
2. Notwithstanding any provisions set forth herein, the terms of the utility permits shall supersede any contrary provisions, with the exception of the provision herein with reimbursement rights.
3. The Utility shall have a reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 1 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that such rights do not interfere with the operation and safety of the Florida Department of Transportation's facilities.
4. The Utility agrees to repair any damage to Florida Department of Transportation facilities and to indemnify the Florida Department of Transportation against any loss or damage resulting from the Utility exercising its rights outlined in Paragraphs 1 and 3 above.

IN WITNESS WHEREOF, the Florida Department of Transportation hereto has executed this agreement on the day and year first above written.

Signed, sealed and delivered
in the presence of witnesses:

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

BY: _____

Witness:
Print Name: _____

Robert L. Parks
District Director
for Transportation
Development

Witness:
Print Name: _____

District Two

STATE OF Florida

COUNTY OF St. Johns

The foregoing instrument was acknowledged before me this
_____ day of _____, 20____, by James E. Bryant,
Chairman, of St. Johns County Board of County Commissioners
a _____ ~~Corporation, on behalf of the Corporation,~~ who is
personally known to me or who has produced
_____ as identification.

Print Name: _____
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by ROBERT L. PARKS, District Director for Transportation Development, District Two, who is personally known to me to be the person who executed the foregoing instrument and who did not take an oath.

Print Name: _____
Notary Public in and for the
County and State last aforesaid.
My Commission Expires: _____

IN WITNESS WHEREOF, the Utility has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

ATTEST: St. Johns County, Florida

Print Name Board of County Commissioners

Its Chairman

BY: _____

Print Name: James E. Bryant

Its Chairman

Signed, sealed and delivered in
the presence of:

53604

DEE 21 PAGE 503

SPD NO. 167-Revised 3-10-55
SECTION NO. 7802-110
STATE ROAD NO. 5
ST. JOHN'S COUNTY

(Ind.)

DRAINAGE EASEMENT

THIS EASEMENT made this 19th day of September, A. D. 1955
between H. W. MIZELL and wife, ELOISE MIZELL

as the first part 10 and the STATE OF FLORIDA, for the use and benefit of the State Road Department of Florida, Holland Building, Tallahassee, Florida, as the second party.

WITNESSETH: That the first part 10 in consideration of the sum of One Dollar and other valuable considerations paid, the receipt of which is hereby acknowledged, hereby grant unto the second party, its successors and assigns, a perpetual easement and right of way for the purpose of clearing, excavating, constructing and maintaining outfall and drainage ditches and drains in, upon and through the following described land in St. Johns County, Florida, to-wit:

LATERAL DITCH RIGHT OF STATION 603 + 76.00

That part of

Section 4, Township 6 South, Range 29 East EXCEPT portion conveyed to the State Road Department in easement dated June 15, 1939, recorded in Deed Book 121, page 426 and also except certain right of way conveyed to the State of Florida, recorded in Deed Book 107, page 58 to 92, St. Johns County Records.

1/2" within 14 feet on each side of the following described Ditch Survey Line:

Commence on the North line of Section 4, Township 6 South, Range 29 East at a point 170.18 feet Easterly from the Northwest corner of said Section 4 and run thence South 38 deg. 04' 47" East 1990.22 feet to the Point of Beginning of said Ditch Survey Line; from said Point of Beginning run North 51 deg. 59' 19" East 48 feet; thence North 22 deg. 54' 13" East 46 feet; thence North 33 deg. 10' 17" East 315.64 feet; thence North 61 deg. 17' 13" East 339.95 feet; thence North 72 deg. 04' 13" East 110.55 feet; thence North 74 deg. 24' 13" East 119 feet to the end of said ditch.

Containing .697 acre, more or less.

TO HAVE AND TO HOLD the same unto the second party, its successors and assigns, together with immunity unto the second party, its successors or assigns, from all claims for damages, if any, arising from or growing out of such construction and/or maintenance, to the lands, if any, owned by the first part, lying adjacent or contiguous to the lands hereinabove described.

IN WITNESS WHEREOF the first parties have hereunto set their hands and seals this 19th day of September, A. D. 1955.

Signed, sealed and delivered in the presence of:

Hirley Johnson
Mary B. Johnson

H. W. Mizell (SEAL)
Eloise Mizell (SEAL)

(SEAL)

(ACKNOWLEDGMENT FORM FOR MARRIED PERSONS)

STATE OF FLORIDA

COUNTY OF ST. JOHNS

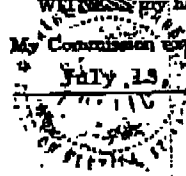
Before me, the undersigned authority, this day personally appeared H. W. MIZELL
and ELOISE MIZELL

his wife, to me well known and known to me to be the individuals described in and who executed the fore-
going instrument, and they severally acknowledged before me that they executed the same for the pur-
poses therein expressed.

WITNESS my hand and official seal this 19th day of September, A. D. 1955

My Commission Expires:

July 13, 1959



Shirley Johnson
Notary Public for the County
and State aforesaid.

(ACKNOWLEDGMENT FORM FOR SINGLE PERSONS)

No. 53604 SEP 19 1955
at 9:57 o'clock PM recorded in the
Public Records of St. Johns County, Florida in the
book and page next above.
STRAKE HAYES, Clerk, Florida Court
By Mildred Gault Deputy Clerk

4

PREPARED BY:

KATHRYN F. WHITTINGTON, ESQ.
PAPPAS METCALF JENKS & MILLER, P.A.
245 RIVERSIDE AVENUE, # 400
JACKSONVILLE, FL 32202

Public Records of
St. Johns County, FL
Clerk # 2005042864,
O.R. 2450 PG 1658-1661
06/03/2005 at 10:24 AM,
REC. \$17.00 SUR. \$18.50

EASEMENT FOR UTILITIES
(MARSHALL CREEK)
Paseo Reyes

THIS EASEMENT executed and given this 14th ^{RS} day of April, 2005 by **MARSHALL CREEK, LTD.**, a Florida limited partnership, whose address is 7502-B US Highway 1 North, St. Augustine, Florida 32095, hereinafter called "Grantor," to **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is c/o Clerk of Courts, P. O. Drawer 349, St. Augustine, Florida 32085, hereinafter called "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, Grantor does hereby agree as follows:

1. Grantor does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto Grantee a non-exclusive permanent easement and right-of-way to install, construct, operate, maintain, repair, replace and remove pipes and mains constituting the underground water distribution system and sewer collection system, (including lift stations if applicable) and all other equipment and appurtenances as may be necessary or convenient for the operation of the underground water and sewer utility services (hereinafter referred to as "Utility Lines and Associated Equipment") over and upon the real property described on Exhibit A attached hereto containing an area of approximately 1.93 acres (the "Easement Area"); together with rights of ingress and egress on and over the Easement Area as necessary for the use and enjoyment of the easement herein granted. This easement is for water and sewer utility services only and does not convey any right to install other utilities such as cable television service lines.

The easement herein granted is subject to covenants, restrictions, easements, liens and encumbrances of record, if any.

(a) Grantor reserves the right and privilege to use and occupy and to grant to others the right to use and occupy (i) the surface and air space over the Easement Area for any purpose which is consistent with the rights herein granted to Grantee; and (ii) subsurface of the Easement Area for other utility services or other purposes which do not interfere with the rights herein granted to Grantee, including, without limitation, the right to install, construct, operate, maintain, repair, replace and remove telecommunications, telephone, telegraph, electric, gas and drainage facilities and foundations, footing and/or anchors for surface improvements.

Paseo Reyes
(00115257.DOC.)

Yulet - BCC Secty
P. Degradable ¹

(b) All Utility Lines and Associated Equipment will be installed, operated and maintained at all times beneath the surface of the Easement Area provided that the same may be temporarily exposed or removed to the surface when necessary or desirable for the purpose of repairing and/or replacing the same. Provided, however, that Associated Equipment that is customarily installed above ground may be installed above ground subject to the right of Grantor, consistent with good engineering practices to approve the location of such above ground installation in its reasonable discretion.

(c) The easement granted by this instrument may be relocated to a location acceptable to the Grantee at any time upon Grantor's request provided that Grantor bears the cost of relocating the underground water and sewer utility lines and facilities located within the Easement area. At Grantor's request, and upon relocation of such lines at Grantor's expense, Grantee and Grantor shall execute an instrument in recordable form relocating the easement hereby granted to the new Easement Area designated by and in the title of the Grantor.

(d) Grantee shall exercise the easement rights conveyed herein in a manner which will not unreasonably interfere with use and occupancy of residential or commercial improvements constructed upon the adjacent property owned by Grantor.

2. Grantee, by acceptance of this Easement, hereby agrees to maintain sewer force mains and gravity sewer lines located within the Easement Area. The Grantee's maintenance of gravity sewer lines shall extend "manhole to manhole", but shall not include a responsibility for maintenance of sewer service laterals. The Grantor or Grantor's successors and assigns shall be responsible for the maintenance of such sewer service laterals. Grantor hereby specifically indemnifies and holds Grantee harmless from and against costs and expenses associated with installation, maintenance, repair or replacement of sewer service laterals. The Grantee shall maintain all water mains and other elements of the water distribution system up to and including the water meter or meters. Grantor or Grantor's successors and assigns shall be responsible for maintaining any water lines between the water meter and the improvements served by the utility system.

3. After any installation, construction, repair, replacement or removal of any utility lines or equipment as to which easement rights are granted, 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, but Grantee shall not be responsible for restoration of sod, landscaping, planting, pavement or other similar surface improvements. Grantor or Grantor's successors and assigns shall be solely responsible for replacement of any such sod, landscaping, planting, pavement or other surface improvements which are required to be removed in connection with installation, construction, repair, replacement or removal of utility lines or equipment. Nothing in this section shall, however, relieve Grantee of liability for damage caused to improvements by Grantee's negligence.

4. This Grant of Easement shall inure to the benefit of and be binding upon Grantee and its successors and assigns.

5. For the purposes of the terms and conditions of this Grant of Easement, "Grantor" means the owner from time to time of the Easement Area or any part thereof.

EXHIBIT A

Easement Area

PASEO REYES DRIVE AND PASEO VEREDA DRIVE AS SHOWN ON THE PASEO REYES PLAT RECORDED IN MAP BOOK 54, PAGES 10 THROUGH 11 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA.