

RESOLUTION NO. 2008- 6

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A CERTAIN PURCHASE AND SALE AGREEMENT OF EASEMENT FOR A 15-FOOT WIDE DRAINAGE EASEMENT BETWEEN HIDDEN CREEK ESTATES HOME OWNERS' ASSOCIATION INCORPORATED AND ST. JOHNS COUNTY, AND TO ACCEPT A DRAINAGE EASEMENT

RECITALS

WHEREAS, on October 2, 2007, the Board of County Commissioners voted to exercise the right and power of eminent domain to acquire a 15-foot wide easement across a private road for drainage purposes; and

WHEREAS, in the interim Hidden Creek Estates Home Owners' Association Incorporated, by a majority vote, executed and presented to the County a Purchase and Sale Agreement of Easement, and Drainage Easement, attached hereto as Exhibits "A" and "B", incorporated by reference and made a part hereof; and

WHEREAS, acquisition of this Easement is required to install underground drainage facilities and is critical to alleviate drainage issues in this area; and

WHEREAS, acceptance of this easement will better serve the health, safety and welfare of the citizens in this area and the general public.

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 authorizes the execution of a Purchase and Sale Agreement of Easement and accepts the Drainage Easement in the form attached hereto.

Section 3. The Clerk is instructed to file the original Purchase and Sale Agreement in the Clerk's Office and record the original Drainage Easement in the Official Records of St. Johns County, Florida.

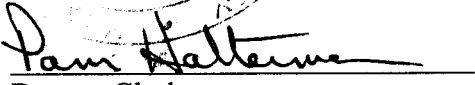
PASSED AND ADOPTED, this 8th day of January, 2008.

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

BY:


Thomas G. Manuel, Chairman


ATTEST: Cheryl Strickland, Clerk


Deputy Clerk

RENDITION DATE 01/11/08

PURCHASE AND SALE AGREEMENT of EASEMENT

THIS PURCHASE AND SALE AGREEMENT of EASEMENT ("Agreement") is made and effective as of _____, 2007, by and between **HIDDEN CREEK ESTATES HOME OWNERS' ASSOCIATION INCORPORATED**, a Florida nonprofit corporation, whose address is c/o Paul J. Linser, President of the Hidden Creek Estates Home Owners' Association Incorporated, 6713 Hidden Creek Boulevard, St. Augustine, Florida 32086 ("Seller"), and **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is, 4020 Lewis Speedway, St. Augustine, Florida 32084 ("Buyer").

WITNESSETH:

WHEREAS, the County is desirous of purchasing a perpetual easement on a portion of property, as described in Exhibit "A", incorporated by reference and made a part hereof, owned by the Seller and Seller is desirous of selling upon the terms and conditions hereinafter expressed; and

WHEREAS, it is in the public interest for the Buyer to acquire easement rights as set out in the Drainage Easement (hereinafter "Easement") for installation of underground drainage.

NOW THEREFORE, it is mutually agreed as follows:

1. Purchase Price.

(a) The purchase price ("Purchase Price") is **Eleven Thousand dollars and 00/100 (\$11,000.00)**, subject to the prorations hereinafter provided. The Purchase Price shall be paid as follows:

<u>Payment</u>	<u>Due Date</u>	<u>Amount</u>
(i) Deposit to be held in Escrow by Escrow Agent (hereinafter defined)	Due within thirty (30) days of Commission Approval (hereinafter defined)	\$ 1,100.00
(ii) Cash to Close	Closing Day	<u>\$ 9,900.00</u>
TOTAL PURCHASE PRICE		\$11,000.00

Payment of the Purchase Price shall be in cash or other immediately available funds.

2. Title Examination.

(a) Buyer shall have 60 days to examine Seller's title to the property contained in said Easement to determine if it wants to acquire said Easement; and

(b) Buyer shall notify Seller in writing ("Title Notice") within 10 days after Buyer's receipt of the Commitment or a denial thereof, if it discloses any defects in the title to the Property, other than the Permitted Encumbrances. Any such defects appearing in the Commitment not timely noted by Buyer in the Title Notice shall be deemed to have been waived by Buyer. In the event the Commitment discloses any defect or denial and such is timely noted in a Title Notice, Seller, at Seller's sole option and expense, shall have 60 days from the date it receives the Title Notice within which to cure such defect or denial (with a corresponding extension to the Closing Date as necessary). If after the expiration of such 60-day period, Seller has not cured title defects or denial, then in such event, Buyer's remedies shall be limited solely to either (x) accepting such title to the Property as Seller shall be able to convey, without adjustment to or diminution of the Purchase Price or (y) terminating this Agreement and receiving a return of the Deposit.

3. Identity and Obligation of Escrow Agent.

(a) **ACTION TITLE SERVICES OF ST. JOHNS COUNTY, INC.**, 3670 US 1 South Suite 110, St. Augustine, FL 32086, shall be Escrow Agent, at no additional charge to Seller or Buyer but with the right to serve as underwriter for the title insurance policy.

(b) If there is any dispute as to whether Escrow Agent is obligated to deliver the Deposit, or any other monies or documents which it holds or as to whom such Deposit, monies or documents are to be delivered, Escrow Agent shall not be obligated to make any delivery, but, in such event, may hold same until receipt by Escrow Agent of an authorization, in writing, signed by all the parties having an interest in such dispute directing the disposition of same, or in the absence of such authorization, Escrow Agent may hold such Deposit, monies or documents until the final determination of the rights of the parties in an appropriate proceeding. If such written authorization is not given or proceeding for such determination is not begun and diligently continued, Escrow Agent may, but not required to, bring an appropriate interpleader action or proceeding for leave to deposit such Deposit, monies or documents in court, pending such determination. Escrow Agent shall not be responsible for any acts or omissions unless the same constitutes gross negligence or willful misconduct and upon making delivery of the Deposit, monies or documents which Escrow Agent holds, in accordance with the terms of this Agreement, Escrow Agent shall have absolutely no further liability hereunder.

In the event Escrow Agent places the Deposit, monies or documents that have actually been delivered to Escrow Agent in the Registry of the Circuit Court in and for the County in which the Property is located and files an action of interpleader, naming the parties hereto, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith.

4. Closing. The closing of the sale of the Property ("Closing") shall take place at the offices of the Escrow Agent, **ACTION TITLE SERVICES OF ST. JOHNS COUNTY, INC.**, 3670 US 1 South, Suite 110, St. Augustine, FL 32086, on or before ninety days (90) from the date of this Agreement ("Closing Date"), TIME BEING OF THE ESSENCE.

5. Prorations. Any real property taxes shall be prorated on the basis of the 2007 taxes at the highest allowable discount, if applicable.

6. Seller's Representations. Seller represents to Buyer that he owns fee simple title to the Property and has full right and authority to execute this Agreement and consummate the transactions contemplated hereby subject to the terms, provisions and conditions hereof.

7. 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 the following:

(i) an exclusive perpetual Drainage Easement ("Easement") conveying the easement rights to the Property, subject only to the Permitted Encumbrances and the matters referred to on the Commitment;

(ii) a Non-Foreign Certificate and Request for Taxpayer Identification Number "FIRPTA" affidavit to be signed by seller.

(iii) an affidavit in the form required by the Title Company to delete the standard printed exception relating to the "gap" and to remove the standard printed exceptions for mechanics' lien and parties in possession other than Occupancy Tenants (except to the extent the same constitute Permitted Encumbrances).

(b) At the Closing, Escrow Agent shall deliver the Deposit and Buyer shall deliver the cash to close, to Seller, in accordance with Section 1. Buyer shall execute and deliver to Seller such consents and authorizations as Seller may reasonably deem necessary to evidence the authority of Buyer to purchase the Easement and to consummate all other actions required to be taken by Buyer under this Agreement.

(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.

8. Closing Expenses. Buyer shall pay the cost of the owner's title policy issued pursuant to the Commitment and the cost of recording the Easement, documentary stamps, and any other affiliated recording fees. Buyer will be responsible for recording fees for documents related to clearing the title of the property for closing. Each party shall bear the expense of its own legal counsel.

9. Survey and Legal Description. Between this date and Closing, Buyer shall have the Property surveyed (if applicable). Buyer shall provide written notice ("Survey Notice") to Seller within 10 days after Buyer's receipt of any such new survey ("Survey") if the Survey discloses any encroachments or any other title defects affecting the Property (other than Permitted Encumbrances). All such encroachments or defects so noted in the Survey Notice are to be regarded for all purposes under this Agreement as title defects and, as such, are to be treated in the manner provided in Section 2. Any such title defects shown on the Survey and not timely noted in the Survey Notice to Seller shall be deemed to have been waived by Buyer.

10. Condition of Property and Buyer's Right of Inspection. Buyer shall have the right for sixty (60) days from the date of this Agreement ("Inspection Termination Date") to enter upon the Property for the purpose of physically inspecting the Property and conducting surveys, studies and tests, or assessments, including but not limited to Phase 1 Environmental Study, Real Estate Appraisal, and Engineering analysis to determine the Property's suitability for Buyer's intended purpose. Seller hereby gives Buyer the right to enter upon, test and inspect the Property at Buyer's sole cost and risk. Seller agrees to provide Buyer any documents, tests, easements, wetland assessments, environmental assessments, surveys, etc., within their possession that would help Buyer make a suitability decision regarding the property. Buyer agrees to provide Seller with copies of all reports conducted on the Property. If Buyer determines that the Property is unsuitable for any reason, Buyer shall give written notice to Seller advising of such unsuitability and electing to terminate this Agreement on, or prior to, the Inspection Termination Date. Such notice of termination must be given on, or before, the Inspection Termination Date. If such notice is timely given, the Deposit shall be returned to Buyer, and upon such return, this Agreement shall terminate.

11. Termination of Contract. If Buyer for any reason determines that the Property is unsuitable for the Buyer's intended use, or that there are other circumstances that negatively affect the Buyer's intended use, then Buyer shall give written notice to Seller advising of such unsuitability and electing to terminate this Agreement on or prior to the Inspection Termination Date. Such notice is timely given, the Deposit shall be returned to Buyer, and upon such return, this Agreement shall terminate.

12. Default. (a) Default by Seller. If Seller defaults by performance of any of Seller's obligations in this Agreement or breaches any warranty or representation, Buyer may receive an immediate refund of the Deposit, and then at its option either may terminate this Agreement and sue for damages or sue for specific performance. (b) Default by Buyer. If Buyer defaults in the performance of any of Buyer's obligations in this Agreement for any reason, other than the Seller's default or the termination of this Agreement pursuant to the specific provisions hereof, Seller will be entitled to receive the Deposit as Seller's sole and exclusive remedy for any such default, Seller hereby waives any rights it might otherwise have to sue for damages or specific performance, and this Agreement and the rights of the parties hereunder shall immediately and automatically terminate.

13. 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.

14. 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.

15. Modification Must be in Writing. No 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.

16. 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.

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

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

19. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida. The invalidation of one or more of the terms of this Agreement shall not affect the validity of the remaining terms. It is agreed venue for determination of such disputes shall be in St. Johns County.

20. Notices. Any notice hereunder must be in writing and delivered personally or by United States Mail, Registered or Certified, Return Receipt Requested; United States Express Mail; 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: Hidden Creek Estates Home Owners' Association Inc.
c/o Paul J. Linser, President
6713 Hidden Creek Boulevard
St. Augustine, Florida 32086**

**Buyer: St. Johns County, Florida, a political subdivision
Of the State of Florida
4020 Lewis Speedway
St. Augustine, Florida 32084**

Escrow Agent: **Action Title Services
of St. Johns County, Inc.**
3670 US 1 South
Suite 110
St. Augustine, FL 32086

21. 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.

22. 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.

23. Commission Dues. Seller agrees to pay any real estate commissions that may be owed as a result of this transaction.

24. 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.

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

26. Radon Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over a period of time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. (Section 404.056(8), F.S.)

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

WITNESSES: 2

Sandy Schonder
Signature

Sandy Schonder
Print

[Signature]
Signature

SELLER:

By: [Signature] 12/4/07
Paul J. Linser Date
President, Hidden Creek Estates
Home Owners' Association Incorporated

Print

WITNESSES:

Signature

Print

Signature

Print

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

By: _____
Michael D. Wanchick Date
County Administrator

ATTEST: Cheryl Strickland, Clerk
By: _____
Deputy Clerk

EXHIBIT A

TO THE PURCHASE AND SALE AGREEMENT OF EASEMENT

PROPOSED 15 FOOT EASEMENT FOR DRAINAGE

A PART OF HIDDEN CREEK BOULEVARD AS NOW ESTABLISHED AS A 60 FOOT RIGHT OF WAY AND AS SHOWN ON THE REPLAT OF HIDDEN CREEK ESTATES AS RECORDED IN MAP 25, PAGES 71 THROUGH 74 OF THE PUBLIC RECORDS OF ST. JOHNS COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF BEGINNING, COMMENCE AT THE SOUTHEASTERLY CORNER OF LOT 2 OF SAID REPLAT OF HIDDEN CREEK ESTATES; THENCE NORTH 00°29'12" WEST, ALONG THE WESTERLY RIGHT OF WAY LINE OF SAID HIDDEN CREEK BOULEVARD, THE SAME BEING THE EASTERLY LINE OF SAID LOT 2, A DISTANCE OF 15.00 FEET; THENCE NORTH 89°30'48" EAST, DEPARTING FROM SAID RIGHT OF WAY LINE, A DISTANCE OF 4.01 FEET; THENCE NORTH 12°20'00" EAST A DISTANCE OF 173.04 FEET; THENCE NORTH 89°30'48" EAST A DISTANCE OF 17.59 FEET; THENCE SOUTH 00°29'12" EAST, ALONG THE EASTERLY RIGHT OF WAY LINE OF SAID HIDDEN CREEK BOULEVARD, THE SAME BEING THE WESTERLY LINE OF LOT 9 AS SHOWN OF THE PLAT OF THE PINES AS RECORDED IN MAP BOOK 18, PAGES 70 AND 71 OF SAID PUBLIC RECORDS, A DISTANCE OF 20.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 9 OF THE PINES; THENCE SOUTH 89°30'48" WEST, DEPARTING FROM SAID RIGHT OF WAY LINE, A DISTANCE OF 6.76 FEET; THENCE SOUTH 12°20'00" WEST A DISTANCE OF 167.92 FEET, THENCE SOUTH 89°30'48" WEST A DISTANCE OF 15.99 FEET TO THE POINT OF BEGINNING. CONTAINING 2,951 SQUARE FEET OR 0.07 ACRES, MORE OR LESS.



SCALE: 1" = 40'

REPLAT OF HIDDEN CREEK ESTATES M.B. 25, PGS. 71-74

(2)

(3)

15' DRAINAGE EASEMENT
O.R. 2651, PAGE 249

POINT OF BEGINNING

N00°29'12"W
15.00'

NB89°30'48"E
4.01'

10' F.P.L. EASEMENT

R/W LINE

HIDDEN CREEK BOULEVARD
(60' R/W)

N12°20'00"E
173.04'

NB89°30'48"E
17.59'

S12°20'00"W
167.92'

R/W LINE

S89°30'48"W
15.99'

S00°29'12"E
20.00'

S89°30'48"W
6.76'

15' DRAINAGE EASEMENT
O.R. 2595, PAGE 1335

(8)

(9)

THE PINES M.B. 18, PGS. 70-71

DATE OF SURVEY	DEVELOPER'S NAME	PROJECT NAME
NOV 19 2009	THE PINES	THE PINES
NO. OF ACRES	OWNER'S NAME	OWNER'S ADDRESS
1.00	THE PINES	THE PINES
NO. OF LOTS	OWNER'S PHONE	OWNER'S FAX
1		
NO. OF UNITS	OWNER'S E-MAIL	OWNER'S WEBSITE
1		
NO. OF STORIES	OWNER'S LICENSE NO.	OWNER'S LICENSE EXPIRES
1		
NO. OF GARAGES	OWNER'S LICENSE TYPE	OWNER'S LICENSE CLASS
1		
NO. OF DRIVEWAYS	OWNER'S LICENSE NO.	OWNER'S LICENSE EXPIRES
1		
NO. OF POOLS	OWNER'S LICENSE TYPE	OWNER'S LICENSE CLASS
1		
NO. OF SPAS	OWNER'S LICENSE NO.	OWNER'S LICENSE EXPIRES
1		
NO. OF OTHER STRUCTURES	OWNER'S LICENSE TYPE	OWNER'S LICENSE CLASS
1		

LAND MANAGEMENT SYSTEMS
SURVEYING AND MAPPING DIVISION
4038 KINGS HIGHWAY - P.O. BOX 348
ALBUQUERQUE, NEW MEXICO 87103
PHONE (505) 899-1100

PROPOSED 15' FOOT EASEMENT
SKETCH OF DESCRIPTION

Exhibit "B" to the Resolution

Prepared by:
Cecelia Aldrich
St. Johns County
4020 Lewis Speedway
St. Augustine, Florida 32084

DRAINAGE EASEMENT

THIS INDENTURE, made this 4 day of December, 2007, between **HIDDEN CREEK ESTATES HOME OWNERS' ASSOCIATION INCORPORATED**, a Florida **nonprofit corporation**, whose address is c/o Paul J. Linser, 6713 Hidden Creek Blvd., St. Augustine, FL 32086, 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 hereby acknowledged, has granted, bargained, sold and conveyed to the Grantee, his successors and assigns, a perpetual ingress and egress easement with the right, privilege, and authority to said Grantee, its successors and assigns, to enter and maintain the drainage of surface waters either above or below the surface of the ground, together with the right to install and maintain drainage facilities, on, along, over through, across, or under the following described land situate in St. Johns County, Florida to wit:

(SEE EXHIBIT "A" and EXHIBIT "B" ATTACHED)

TO HAVE AND TO HOLD, unto Grantee, his successors and assigns for the purposes aforesaid.

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:

Sandra Schonder
Signature

Sandra Schonder
Print

[Signature]
Signature

KIMBERLY E. EREY
Print

Grantor:

[Signature]

Paul J. Linser, President
Hidden Creek Estates Home Owners'
Association Incorporated

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 4th day of December, 2007, by PAUL J. LINSER, who is personally known to me or has produced Known for 25 years as identification.

Shirley J. Metts
Notary Public

My Commission Expires: _____

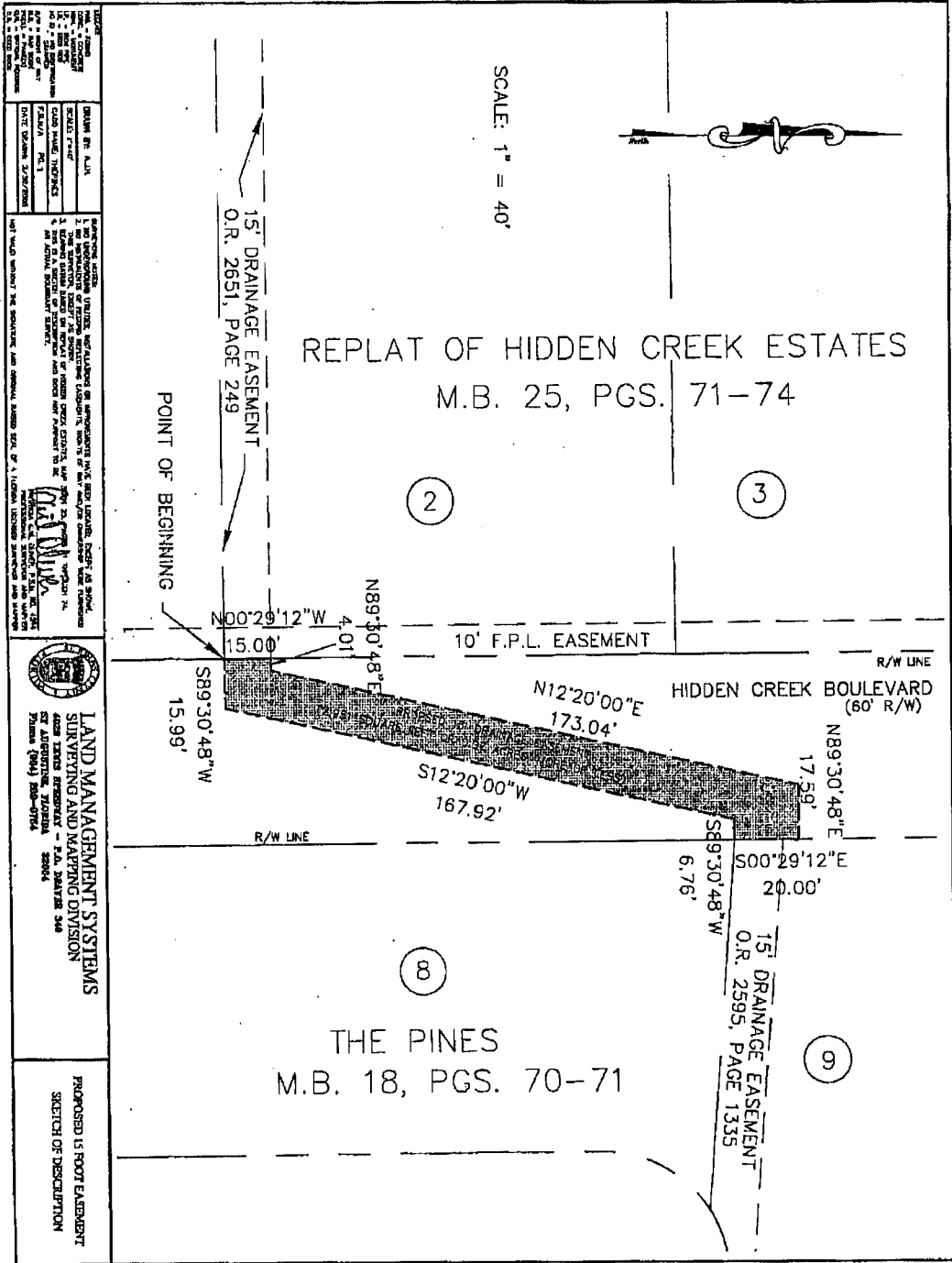


EXHIBIT A

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EXHIBIT B



TITLE	REPLAT OF HIDDEN CREEK ESTATES
DATE	10/1/2004
SCALE	1" = 40'
PROJECT	15' DRAINAGE EASEMENT
CLIENT	LAND MANAGEMENT SYSTEMS
DATE	10/1/2004
BY	[Signature]
CHECKED	[Signature]
DATE	10/1/2004