




Interoffice Memorandum

AGENDA ITEM

May 15, 2017

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director 
Community, Environmental and Development
Services Department

CONTACT PERSON: **Lori Cuniff, CEP, CHMM, Deputy Director
Community, Environmental and Development
Services Department
(407) 836-1405**

SUBJECT: June 6, 2017 – Consent Item
Gary T. Randall, Trustee/Moss Park North Environmental
Land Stewardship Agreement

The Environmental Protection Division is requesting approval of the Gary T. Randall Trustee (Moss Park North) Environmental Land Stewardship Agreement. The Agreement is required as part of the requirements of Chapter 15, Article XVIII, Environmental Land Stewardship Program Ordinance.

This Agreement sets forth the commitment by Gary T. Randall, as Trustee of Moss Park North, the property owner, to preserve Stewardship Lands within the property; the general location of Stewardship Lands within the property; the approximate total acreage of Stewardship Lands within the property; and provides draft sketches of the proposed Stewardship Land boundaries.

The Agreement was reviewed by the County Attorney's Office and approved as to form.

ACTION REQUESTED: Approval and execution of Environmental Land Stewardship Agreement Moss Park North by and between Gary T. Randall and Orange County. District 4

JVW/LC: mg
Attachments

BCC Mtg. Date: June 6, 2017

Prepared by and after recording return to:

Akerman LLP
Attn: Chris Roper
P.O. Box 231
Orlando, FL 32802

ENVIRONMENTAL LAND STEWARDSHIP AGREEMENT

MOSS PARK NORTH

This Environmental Land Stewardship Agreement (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between **Gary T. Randall, as Trustee and not individually** ("Owner"), whose mailing address is 4857 South Orange Blossom Trail, Orlando, Florida 32839, and **Orange County**, a charter county and political subdivision of the State of Florida ("County"), whose mailing address is c/o Orange County Administrator, Post Office Box 1393, Orlando, Florida 32802-1393.

WITNESSETH:

WHEREAS, the Owner is the owner of that certain real property, as shown in the project location map identified as **Exhibit "A"**, and as more particularly described on **Exhibit "B"** (legal description), both of which are attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property is located within the Innovation Way Study Area and is therefore subject to the Article XVIII, Chapter 15 of the Orange County Code, also known as the Environmental Land Stewardship Program ("ELSP") Ordinance; and

WHEREAS, a draft Environmental Land Stewardship Area Determination ("ELSAD") has been performed to generally identify stewardship lands on the Property, and is attached hereto as **Exhibit "C"**; and

WHEREAS, subject to the terms of this Agreement, the Owner is willing to preserve the stewardship lands generally identified on the draft ELSAD ("Stewardship Lands"), consistent with the provisions of the ELSP Ordinance; and

WHEREAS, County and Owner desire to set forth certain terms, conditions, and agreements between the parties as to the preservation of those Stewardship Lands.

NOW, THEREFORE, the Owner and the County (the "Parties") agree as follows:

1. ***Recitals.*** The above recitals are true and correct and are incorporated herein by this reference.

2. ***Preservation of Stewardship Lands by Owner.***

(a) ***Preserved Lands.*** Owner agrees to preserve the Stewardship Lands generally depicted on the draft ELSAD attached hereto as Exhibit "C," subject to the procedures as set forth in Section 2(c) below.

(b) ***Stewardship Lands.*** The Property consists of approximately 107.78 gross acres, inclusive of water bodies and wetlands. The Stewardship Lands constitute approximately 50.55 acres.

(c) ***Procedure.*** Preservation of the Stewardship Lands shall be by dedication or conveyance of a non-exclusive conservation easement or special warranty deed, at Owner's option but in a form mutually agreeable by both the grantor and grantee, to the County. Such dedication or conveyance shall occur prior to or concurrently with the recording of the first plat for the Property. Alternatively, at Owner's option, such dedication or conveyance may occur in phases, concurrent with the platting of the portion of the Property that is contiguous to such Stewardship Lands. If reasonably necessary, Owner shall also grant, or cause to be granted to the County by separate instrument a mutually agreeable temporary easement providing reasonable ingress and egress to and from the Stewardship Lands described in the applicable deed or conservation easement. This temporary easement shall expire on the granting to and acceptance by the County of permanent access to the applicable Stewardship Lands. Any dedication or conveyance of a deed or conservation easement to the County made pursuant to this paragraph shall be subject to the following reservation of rights in favor of the Owner and an owner's association duly created for such Owner's property:

(1) The right and obligation to maintain the Stewardship Lands so preserved for purposes of carrying out the management plan contemplated in Section 2(e) below;

(2) The right to modify the Stewardship Lands areas as depicted in the draft ELSAD without having to modify this Agreement, provided such modification to the boundaries of the Stewardship Lands is approved by the County (which approval may be administrative in nature);

(3) The right to construct and maintain within the Stewardship Lands any improvements approved by the County or District pursuant to a separate permit or approval, including, but not limited to, a boardwalk crossing as depicted on a preliminary subdivision plan or development plan approved by the County for the Property; and

(4) The right to use the upland buffers within the Stewardship Lands for open space credit and for other uses that are approved by the County.

(d) *Conveyance/easement recording costs.* The Owner shall pay all costs of recording the deed of conveyance or conservation easement, as applicable, that includes the Stewardship Lands, including recording fees and documentary stamps, if any.

(e) *Management Plan.* For each deed or conservation easement that is granted to the County as contemplated herein, the Owner shall submit a management plan that meets the requirements of Section 15-827, Orange County Code ("Stewardship Lands Management Plan"), to the Environmental Protection Officer, which must be approved by the Environmental Protection Officer prior to the adoption and recordation of the plat that corresponds to such deed or conservation easement, unless a later date is mutually agreed to in writing by the Owner and the Environmental Protection Officer.

3. **ESLP Credits.** Compliance with the Stewardship Land preservation process as set forth in Section 2(c) above by the Owner or its successor(s)-in-interest shall operate to: (i) satisfy all applicable requirements of the County's ELSP Ordinance, including any amendments or replacements to such Ordinance; and (ii) exempt all owners of the Property from any requirement that may be contained in the County's ELSP Ordinance to obtain Stewardship Land preservation or similar credits as may be contemplated in such Ordinance as a condition to obtaining plat approval or otherwise.

4. **Notice.** Any notice delivered with respect to this Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

As to Owner: Gary T. Randall
4857 South Orange Blossom Trail
Orlando, FL 32839

With copies to: Baker & Hostetler LLP
SunTrust Center
200 South Orange Avenue, Suite 2300
Orlando, FL 32801-3432
Attention: Robert Gebaide, Esq.

As to County: Orange County Administrator
P.O. Box 1393
201 S. Rosalind Ave
Orlando, FL 32802-1393

With copy to: Orange County Community, Environmental,
and Development Services Department
Manager, Environmental Protection Division
3165 McCrory Place, Suite 200
Orlando, Florida 32803

5. ***Covenants Running with the Land.*** This Agreement shall run with the Property and shall be binding upon and shall inure to the benefit and detriment of the heirs, legal representatives, successors, and assigns of the Owner and any person, firm, corporation, or other entity that may become the successor in interest to any portion of the Property; provided, however, no owner of any portion of the Property shall be deemed to be in default of this Agreement solely because another owner of a portion of the Property is in default of this Agreement.

6. Recordation of Agreement. An executed original of this Agreement shall be recorded, at the Owner's expense, in the Public Records of Orange County, Florida within thirty (30) days of the Effective Date.

7. **Applicable Law.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

8. ***Time is of the Essence.*** Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

9. Further Documentation. The Parties agree that at any time following a request therefor by the other party, each shall execute and deliver to the other party such further documents and instruments reasonably necessary to confirm and/or effectuate the obligations of either party hereunder and the consummation of the transactions contemplated hereby.

10. Limitation of Remedies. County and Owner expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) *Limitations on County's Remedies.* Upon any failure by Owner to perform its obligations under this Agreement, County shall be limited strictly to only the following remedies:

owner; or

(i) action for specific performance or injunction as to such defaulting

(ii) the withholding of development permits and other approvals or permits in connection with that portion of the Property owned by such defaulting owner; or

- (iii) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops County from exercising its power of eminent domain with respect to the Stewardship Lands or any other portion of the Property as County may lawfully elect.

(b) *Limitations on Owner's Remedies.* Upon any failure by County to perform its obligations under this Agreement, Owner shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction; or
- (ii) action for declaratory judgment regarding the rights and obligations of Owner; or
- (iii) any combination of the foregoing.

Both Parties expressly waive their respective rights to sue for damages of any type for breach of, or default under, this Agreement by the other. Both Parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

11. *Amendment.* This Agreement may be amended only in writing, formally executed in the same manner as this Agreement; provided, however, in the event there is more than one owner of the Property, an owner of any portion of the Property may amend this Agreement as to such owner's property without the consent of the owner (or its lender) of any other portion of the Property (the "Non-Requesting Owner"), so long as (i) the County is a party to any such amendment and (ii) the Non-Requesting Owner's property is not materially and adversely affected by any such amendment.

12. *Sovereign Immunity.* Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of County, including elected officials, officers, and employees beyond any statutory limited waiver of immunity or limits of liability in section 768.28, Florida Statutes, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

13. *Severability.* In the event that any of the terms, covenants, or conditions of this Agreement or their application shall be held invalid as to any person, legal entity, or circumstances by any court of competent jurisdiction, the remainder of this Agreement and the application and effect of its terms, covenants or conditions to such persons, legal entities or circumstances shall not be affected thereby.

14. Counterparts. This Agreement and any amendment(s) may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

15. Entire Agreement. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

BY:

Teresa Jacobs
Teresa Jacobs,
Orange County Mayor

Date:

6.7.17

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By:

Laketa Lewis

for Deputy Clerk

OWNER:

Gary T. Randall, as Trustee and not individually

Gary T. Randall

Date: 5-22-17

WITNESSES:

Scott Maynard

Print Name: Scott Maynard

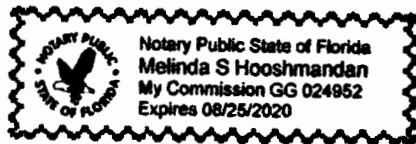
Melinda Nooshmandan

Print Name: 5-22-17

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Gary T. Randall, as Trustee and not individually, who is known to me to be the person described herein and who executed the foregoing this 22 day of May, 2017. He is personally known to me or has produced _____ as identification and did/did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 22 day of May, 2017.



Melinda S. Hooshmandan
Notary Public

Print Name: Melinda S. Hooshmandan

My Commissioner Expires: 8-25-2020

Exhibit "A"

(Project Location Map)



Exhibit "B"

(Legal Description of the Property)

LEGAL DESCRIPTION:

A parcel of land comprising a portion of the Southwest 1/4 of Section 4 and a portion of the Northwest 1/4 of Section 9, Township 24 South, Range 31 East, Orange County, Florida.

Being more particularly described as follows:

Commence at the Southwest corner of the Northwest 1/4 of said Section 9; thence run North 00°29'52" East along the West line of the Northwest 1/4 of said Section 9 for a distance of 50.00 feet to its intersection with the North right-of-way line of Moss Park Road; thence departing said West line, run South 89°49'02" East along said North right-of-way line for a distance of 148.37 feet to its intersection with the Easterly limited access right-of-way of S.R.417 per the OOCEA right of way map for Project 457A; thence continue along said Northerly right-of-way line South 89°49'02" East for a distance of 838.65 feet to a point on the West Boundary line of lands described in Official Records Book 5643, Page 1134 of the Public Records of Orange County, Florida, also being the Easterly line of OASIS AT MOSS PARK according to Plat Book 83 Pages 123 and 124 of the Public Records of Orange County, Florida; thence departing said Northerly right-of-way line of Moss Park Road, run North 00°10'58" East along said West boundary line and said Easterly line a distance of 503.06 feet to the POINT OF BEGINNING; thence departing said West line run the following courses along said Easterly line of OASIS AT MOSS PARK; North 26°41'41" West for a distance of 122.44 feet; thence run North 09°41'18" West a distance of 65.27 feet; thence run North 69°37'07" West a distance of 73.53 feet; thence run North 12°44'02" West a distance of 95.36 feet; thence run North 14°53'47" West a distance of 107.63 feet; thence run North 38° 47' 19" West for a distance of 42.22 feet; thence run North 76° 32' 55" West for a distance of 29.77 feet; thence run North 00° 11' 28" West for a distance of 131.13 feet; thence run North 08° 48' 55" West for a distance of 112.29 feet; thence run North 20° 25' 29" West for a distance of 130.24 feet; thence run North 06° 59' 46" East for a distance of 58.96 feet to the Northeast corner of said OASIS AT MOSS PARK; thence run North 85° 49' 05" West along the North line of said OASIS AT MOSS PARK for a distance of 73.27 feet to the Northwest corner of said OASIS AT MOSS PARK, also being a point on the Easterly limited access right-of-way line of S.R. 417, Central Florida Greenway according to Orlando-Orange County Expressway Authority Project No. 75301-6445-457A; thence run the following two (2) courses along said Easterly limited access right-of-way line; North 86° 35' 24" West for a distance of 295.31 feet to a point on a non tangent curve concave Westerly having a radius of 4600.00 feet with a chord bearing of North 00° 56' 15" West, and a chord distance of 249.24 feet; thence run Northerly along the arc of said curve through a central angle of 03° 06' 17" for an arc distance of 249.27 feet to a point on the North line of the South 1681.90 feet of the Northwest 1/4 of aforesaid Section 9, also being a point on aforesaid Easterly limited access right-of-way line of S.R. 417, Central Florida Greenway according to Official Records Book 4339, Page 3912 of the Public Records of Orange County, Florida; thence run South 89° 49' 02" East along said North line for a distance of 25.96 feet to a point on the Westerly line of a parcel of land described in Official Records Book 4506, Page 1137 of the

Public Records of Orange County Florida; thence departing said North line run the following courses along the Westerly line of said parcel of land: North 25° 10' 49" East for a distance of 252.61 feet; thence run North 43° 09' 58" East for a distance of 139.16 feet; thence run North 58° 37' 58" East for a distance of 219.00 feet; thence run North 20° 11' 10" East for a distance of 211.13 feet; thence run North 01° 33' 51" East for a distance of 48.42 feet; thence run North 33° 52' 34" West for a distance of 82.25 feet; thence run North 60° 40' 03" West for a distance of 197.61 feet; thence run North 61° 45' 00" West for a distance of 137.08 feet; thence run North 38° 26' 37" West for a distance of 109.05 feet; thence run North 45° 58' 25" West for a distance of 208.76 feet to a point on the Easterly limited access right-of-way line of S.R. 417 according to Official Records Book 9732, Page 1806 of aforesaid Public Records of Orange County, Florida; thence run North 11° 46' 14" East along said Easterly limited access right-of-way line for a distance of 96.86 feet to a point on the Northerly line of aforesaid parcel of land described in Official Records Book 4506, Page 1137; thence departing said Easterly limited access right-of-way line run the following courses along said Northerly line: South 89° 58' 13" East for a distance of 621.36 feet; thence run South 23° 17' 57" East for a distance of 278.51 feet; thence run South 18° 58' 52" East for a distance of 66.45 feet to the point of curvature of a curve concave Northeasterly having a radius of 150.00 feet with a chord bearing of South 32° 04' 15" East and a chord distance of 67.94 feet; thence run Southeasterly along the arc of said curve through a central angle of 26° 10' 46" for an arc distance of 68.54 feet to a point of compound curvature of a curve concave Northerly having a radius of 600.00 feet with a chord bearing of South 81° 32' 32" East and a chord distance of 711.79 feet; thence run Southeasterly along the arc of said curve through a central angle of 72° 45' 48" for an arc distance of 761.98 feet to a point of compound curvature of a curve concave Northwesterly having a radius of 238.58 feet with a chord bearing of North 46° 29' 56" East and a chord distance of 128.14 feet; thence run Northeasterly along the arc of said curve through a central angle of 31° 09' 16" for an arc distance of 129.73 feet to a point on a non tangent line; thence run South 89° 49' 02" East for a distance of 577.23 feet to the Northeast corner of aforesaid parcel of land described in Official Records Book 4506, Page 1137; thence run South 34° 57' 15" East along the Easterly line of said parcel of land for a distance of 1467.87 feet to the Southeast corner of said parcel; thence run North 89° 48' 54" West along the Southerly line of said Parcel for a distance of 542.62 feet to a point on the East line of the Northwest 1/4 of aforesaid Section 9; thence run South 01° 27' 45" West along said East line for a distance of 1301.20 feet to a point on the Northerly right-of-way line of Orlando Utilities Commission Railroad right-of-way Parcel 8C according to Official Records Book 3491, Page 539 of the Public Records of Orange County, Florida; thence departing said East line of the Northwest 1/4 of Section 9 run South 57° 16' 26" West along said Northerly right-of-way line for a distance of 70.70 feet to point on the South line of aforesaid Northwest 1/4; thence departing said Northerly right-of-way line run North 89° 49' 02" West along said South Line, for a distance of 77.27 feet; thence departing said South line, run South 00° 10' 57" West for a distance of 50.00 feet to a point on said Northerly right-of-way line of Orlando Utilities Commission Railroad, also being a line 50.00 feet south and parallel to aforesaid South line and the former South right-of-way of Moss Park Road as recorded in Official Records Book 1332, Page 793 of the Public Records of Orange County; thence departing said Northerly right-of-way line, run North 89° 49' 02" West along said parallel line and former South right-of-way line, for a distance of 466.13 feet to a point on the Northerly right-of-way line of Moss Park Road as recorded in Official Records Book 6175, Page 8643 of the Public Records of Orange County, Florida, also being a point on non tangent curve concave Southwesterly having a radius of 2165.00 feet with a chord bearing of North 76° 00' 28" West and a chord distance of 277.25 feet; thence run Northwesterly along the arc of said curve and

said Northerly right-of-way line through a central angle of $7^{\circ} 20' 33''$ for an arc distance of 277.44 feet to a point on the Southerly extension of the East line of aforesaid parcel of land described in Official Records Book 5643, Page 1134 of the Public Records of Orange County, Florida; thence thence run North $00^{\circ} 10' 58''$ East along said Southerly extension and said East line for a distance of 807.86 feet to the Northeast corner of said parcel; thence run North $89^{\circ} 49' 02''$ West along the North line of said Parcel for a distance of 844.13 feet to the Northwest corner of said Parcel; thence run South $00^{\circ} 10' 58''$ West along the West line of said Parcel for a distance of 270.99 feet to the POINT OF BEGINNING.

Contains 59.66 upland acres more or less.
Contains 48.12 wetland acres more or less.
Contains 107.78 total acres more or less.

Exhibit "C"
(Draft Environmental Land Stewardship Area Determination)



Bio-Tech Consulting Inc.
Environmental and Permitting Services
3002 E. Robinson St. Orlando, FL 32803
Ph: 407-894-5969 Fax: 407-894-5870
www.bio-techconsulting.com

Moss Park North
Orange County, Florida
Exhibit C
Stewardship Lands

0 220 440 880 Feet
Project #: 899-01
Produced By: STC
Date: 5/19/2017