

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Purchase and Sale Agreement for Compensatory Mitigation Lands
for the Cross Seminole Trail Connector Project

DEPARTMENT: Public Works **DIVISION:** Engineering

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Lenor Bromberg, P.E. **EXT.** 2094
W. Gary Johnson, P.E., Director Jerry McCollum, P.E., County Engineer ^{umb}

Agenda Date 04/12/05 Regular Consent Work Session Briefing
Public Hearing – 1:30 Public Hearing – 7:00

MOTION/RECOMMENDATION:

Approve and Authorize the Chairman to execute the Purchase and Sale Agreement for the compensatory mitigation lands for the Cross Seminole Trail Connector project.

District 2 – Commissioner Randy Morris
District 4 – Commissioner Carlton Henley

(Jerry McCollum, P.E., County Engineer)

BACKGROUND:

The Cross Seminole Trail Connector project is a 5.5-mile long trail corridor that extends from the Crossings Trail at Green Way Boulevard near Lake Mary to the Layer Elementary School in Winter Springs. The proposed trail project will impact 4.168 acres of wetlands, resulting in a St. Johns River Water Management District determination that compensatory mitigation of 86.34 acres from the River Run, Inc./Bergman Mitigation Tract is needed in conjunction with the District's permitting for this trail project. Additional acreage from the same Tract may be required by the Army Corps of Engineers during review of the necessary federal environmental permit. The execution of this agreement by the Board of County Commissioners will authorize acquisition of the compensatory mitigation lands at \$7,500 per acre and will allow staff to begin the final procedures for obtaining the two environmental permits required for the trail.

Attachments:

- Agreement
- Cross Seminole Trail Connector Project Map

Reviewed by: _____
Co Atty: SLC ^{to agreement only}
DFS: _____
Other: _____
DCM: JK
CM: JK
File No. CPWE02

PURCHASE AND SALE AGREEMENT

RIVER RUN, INC., a Florida corporation, whose address is 2521 SR 415, Sanford, FL 32771, c/o Rolf Bergman ("Seller") and Seminole County, a political subdivision of the State of Florida, whose address is 1101 E. First Street, Sanford, FL 32771 ("Buyer") (collectively "Parties") hereby enter into this Purchase and Sale Agreement ("Agreement") and agree as follows:

RECITALS

WHEREAS, Seller is engaged in the business of providing compensatory mitigation for projects obtaining governmental approvals for development projects; and

WHEREAS, Buyer needs to obtain compensatory mitigation lands to meet regulatory obligations for its Cross Seminole Trail Connector project, St. Johns River Water Management District Permit # 4-117-95247-1 (the "Project"); and

WHEREAS, Seller is the owner of property described in Exhibit "A" hereto attached ("Property"); and

WHEREAS, specific areas of the Property appear to be appropriate as compensatory mitigation and may be authorized by the St. Johns River Water Management District ("SJRWMD") and U.S. Army Corps of Engineers ("ACOE") as such; and

WHEREAS, the Project contains four and thirty five one hundredths (4.35) acres of wetlands that SJRWMD and ACOE will require to be mitigated as a condition of permit issuance; and

WHEREAS, the Buyer agrees to compensate the Seller as set forth herein in order to utilize a portion of the Property for mitigation purposes, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. CONSERVATION EASEMENT. Subject to the conditions specified in this agreement Seller shall convey to Buyer or, at Buyer's option, to SJRWMD or any other party designated by

Buyer, a conservation easement in substantially the form attached hereto as Exhibit "B" covering that portion of the Property required by SJRWMD and ACOE as a condition of issuing a permit to Buyer for construction of the Project (the "Mitigation Parcel"). The conservation easement shall be conveyed free and clear of encumbrances or, in the alternative, appropriate subordinations of liens shall be provided such that the conservation easement shall remain in full force and effect in the event of a foreclosure, a deed in lieu of foreclosure, an arrangement with creditors or any other transfer of the underlying fee interest in the Property. The Parties agree that the legal description of the Mitigation Parcel shall be prepared by a surveyor licensed by the State of Florida at Seller's expense. Preliminary indications are that the Mitigation Parcel must be at least eighty six and thirty four one hundredth (86.34) acres, however, in no event shall the size of the Mitigation Parcel be less than that required by SJRWMD and ACOE as compensatory mitigation lands for purposes of Buyer obtaining government regulatory approvals for the Project. After the closing Seller shall not allow any use of the Mitigation Parcel: (a) contrary to the terms of the conservation easement; or (b) in violation of any condition of the permit(s) issued by the regulatory authorities for the Project, or (c) that would impair the use of the Mitigation Parcel for its intended purpose as compensatory mitigation for the Project. This restriction shall survive the closing.

2. PURCHASE PRICE. The purchase price for the conservation easement over the Mitigation Parcel shall be calculated at the rate of seven thousand five hundred dollars (\$7,500.00) per acre, payable at the closing. No additional payment shall be due from Buyer to Seller on account of any management fee, enhancement cost, vegetative planting cost or, without limitation, any other regulatory requirements regarding use of the Mitigation Parcel as compensatory mitigation for the Project.

3. SELLER'S ASSISTANCE. Seller shall assist Buyer during the regulatory approval process by providing a sketch and legal description of the proposed Mitigation Parcel and responding to other matters as may be required by the regulatory agencies for approval of the Mitigation Parcel as compensatory mitigation lands.

4. REGULATORY APPROVAL OF THE MITIGATION PARCEL. The closing of this transaction is contingent upon approval of the Mitigation Parcel for compensatory mitigation lands for the

Project by all regulatory agencies having jurisdiction. Should such approval not be secured in a timely fashion then Buyer may, by written notice to Seller, terminate this Agreement and neither party shall thereafter have any further obligation to the other under this Agreement. Seller represents and warrants that the property intended as compensatory mitigation has been reviewed by the regulatory agencies to a limited extent and verbally determined appropriate as compensatory mitigation.

5. BUYER AND SELLER AUTHORITY. Buyer and Seller warrant that each has the authority to sign this Agreement and bind itself to the terms herein.

6. ENVIRONMENTAL REPRESENTATIONS AND INSPECTIONS. Seller, to the best of its knowledge, hereby represents and warrants to Buyer (the "Representations") as follows: (a) the Property and all uses of the Property have been, and presently are, in compliance with all federal, state, and local environmental laws except as herein disclosed to Buyer; (b) no hazardous substances have been generated, stored, treated, or transferred on the Property, except as herein specifically disclosed to Buyer; (c) Seller has no knowledge of any spill or environmental law violation on any Property continuous to or in the vicinity of the Property except as herein disclosed to Buyer; (d) Seller has not received or otherwise obtained knowledge of any spill or contamination on the Property any existing or threatened environmental lien against the Property, or any lawsuit, proceeding, or investigation regarding the handling of hazardous substances on the Property except as herein disclosed to Buyer. This Agreement contains no disclosures contemplated by this paragraph. Seller's representations contained in this paragraph shall survive the closing and shall not be merged into the conservation easement.

7. ACCESS TO PROPERTY. Buyer shall at all times have the privilege and right of entering the Property with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which Buyer, in its discretion, deems necessary desirable to determine the suitability of the Property for Buyer's intended uses thereof as compensatory mitigation. Said privilege shall include without limitation, the right to make surveys, soils tests, borings, percolations tests, compaction tests, hazardous waste tests, environmental determinations and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Property. Without limiting the generality of the foregoing, Buyer may request that

representatives of the Florida Department of Environmental Protection ("FDEP"), the United States Army Corps of Engineers ("ACOE"), the water management district having jurisdiction over the Property ("WMD"), the United States Environmental Protection Agency ("EPA") and any agency of the City or County in which the Property is located ("Local Municipality") visit the Property to determine the suitability of the Property as a mitigation area. The Seller shall be given notice of any site inspections to be made on the subject property by any governmental agencies, surveyors or anyone else. Buyer agrees to notify Seller of any site visit at least forty-eight (48) hours prior to the visit so that Seller may accompany Buyer on said visit if Seller so elects.

8. TIME IS OF THE ESSENCE. Time is of the essence of this Agreement.

9. AGREEMENT NOT RECORDABLE. This Agreement shall be recorded in the records of the Clerk to the Board of County Commissioners, however, not in the public land records of any county.

10. EFFECTIVE DATE. This Agreement is effective on the date on which the last of the Parties signs this Agreement.

11. CALCULATION OF TIME. Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays. Any time period ending on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. the next business day.

12. COUNTERPARTS. This Agreement maybe executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

13. CLOSING/ACOE OPTION. (a) The closing of this transaction shall take place within thirty (30) days after SJRWMD's approval of the Mitigation Parcel as compensatory mitigation for the Project. At that closing Seller shall convey a conservation easement covering the amount of property required by SJRWMD as a condition of permit approval and Seller shall pay for same at the per acre rate specified in paragraph 2 above.

(b) The parties understand and agree that ACOE may require more mitigation than that required by SJRWMD and that the amount of ACOE mitigation, if any, may not be known at the

time of the closing provided for in subparagraph (a) above. Seller agrees that Buyer shall have the option of acquiring an additional conservation easement over additional acreage should ACOE require same for permit approval. Buyer shall pay Seller for the additional acreage at the same per acre rate specified in paragraph 2 above. The closing on the additional conservation easement shall be held within thirty (30) days after ACOE approval.

(c) If SJRWMD approval is not received within one (1) year after the effective date of this Agreement then Seller, at its option, may, by written notice to Buyer, terminate this Agreement. In the event of such a termination neither party shall have any further obligation to the other under this Agreement. If SJRWMD approval is received before the expiration of one (1) year after the effective date of this Agreement then this subparagraph 13.(c) shall lapse and be of no further force or effect.

14. TYPEWRITTEN OR HANDWRITTEN PROVISIONS.

Typewritten or handwritten provisions inserted in this Agreement shall control all printed provisions in conflict therewith, provided that the Board of County Commissioners (BCC) approved such insertions and authorized the Chairman of the BCC to fix his or her initials next to same.

15. OTHER AGREEMENTS. This Agreement represents the entire Agreement of the Parties with respect to the subject matter hereto. No agreements or representations, unless incorporated in this Agreement, shall be binding upon any of the Parties.

16. NO MODIFICATIONS. Modifications to this Agreement shall not be valid or binding unless in writing and executed by the party to be bound.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the dates shown below.

Signed, sealed and delivered
in the presence of:

RIVER RUN, INC.

WITNESSES:

By:

Date: _____

(Print Name)

(Print Name)

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, the _____ of RIVER RUN, INC., who is duly authorized to execute the foregoing on behalf of the corporation and who is personally known to me or who produced his Florida Driver's License as identification and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____ A. D. 2005.

Notary Public
State of Florida

(Affix Notarial Seal)

Printed Name

BUYER:

SEMINOLE COUNTY, FLORIDA

ATTEST:

By: _____
Carlton D. Henley, Chairman

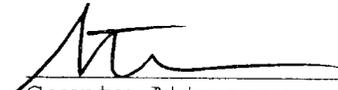
Date: _____

MARYANNE MORSE, Clerk to the
Board of County Commissioners
of Seminole County.

For the use and reliance of
Seminole County only.

As authorized for execution by
the Board of County Commissioners
at their regular meeting on _____,
2005.

Approved as to form and legal
sufficiency.



County Attorney

SPL
3/15/05

Exhibits A Legal Description
B Conservation Easement

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EXHIBIT "B"

Prepared by:
Stephen P. Lee, Esq.
Deputy County Attorney
1101 East First Street
Sanford, Florida 32771

Return recorded copy to:
Office of General Counsel
St. Johns River Water Management District
P.O. Box 1429
Palatka, Florida 32178-1429

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this _____ day of _____, 2005, by RIVER RUN, INC., a Florida corporation, whose address is 2521 SR 415, Sanford, FL 32771, c/o Rolf Bergman ("**Grantor**"), in favor of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, a public body existing under *Chapter 373, Florida Statutes*, having a mailing address at P. O. Box 1429, Palatka, Florida 32178-1429 ("**Grantee**").

W I T N E S S E T H:

WHEREAS, Grantor owns in fee simple certain real property in Seminole County, Florida, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "**Property**"); and

WHEREAS, Grantor grants this conservation easement as a condition of District Permit No. 4-117-95247-1 ("**Permit**") issued by Grantee, solely to off-set adverse impacts to natural resources, fish and wildlife, and wetland functions; and

WHEREAS, Grantor desires to preserve the Property in its natural condition in perpetuity, except for the limited purposes provided herein;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the provisions of Section 704.06, *Florida Statutes*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "**Conservation Easement**"). Grantor fully warrants title to said Property and will warrant and defend the same against the lawful claims of all persons whomsoever.

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained in its existing natural condition to the maximum extent possible, and to allow certain improvements to be performed by Grantor.

2. Prohibited Uses. Except as may be authorized by the Permit, any activity on or use of the property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited by an individual or entity (except as same may be authorized by the Permit):

- A. Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- B. Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
- C. Removing or destroying trees, shrubs, or other vegetation.
- D. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- E. Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- F. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- G. Acts or uses detrimental to such retention of land or water areas.
- H. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

4. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

A. To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

B. To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement,

Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

6. Grantee's Liability. To the extent and subject to the limits, procedures and requirements of law, specifically including *Section 768.28, Florida Statutes (2002)*, or any successor statute, Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantor, nor any person or entity claiming by or through Grantor, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property except those caused by the negligent or intentional acts of Grantee or Grantee's agents and employees .

7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to

or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.

8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Seminole County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records.

9. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property. This Conservation Easement may not be amended without Grantee's written permission, which permission shall not be unreasonably withheld. Grantee will hold this Conservation Easement exclusively for conservation purposes.

10. Liability of Grantor. Upon Grantor's conveyance of the Property to any third party, Grantor shall be released from liability for all acts and obligations arising after the date

of such conveyance.

IN WITNESS WHEREOF the Grantor has caused these presents to be executed by its duly authorized representative, the day and year aforesaid.

Signed, sealed and delivered in the presence of:

RIVER RUN, INC.

WITNESSES:

By: _____

(Print Name)

(Print Name)

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared _____, the _____ of RIVER RUN, INC., [] who is personally known to me or [] who produced his Florida Driver's License as identification and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____ A. D. 2005.

(Affix Notarial Seal)

Notary Public State of Florida

Printed Name

EXHIBIT "A"
LEGAL DESCRIPTION

[TO BE PROVIDED]

CROSS SEMINOLE TRAIL CONNECTOR PROJECT LOCATION MAP

