

TAB 7



## City of Palmetto Agenda Item

**Meeting Date**

9/27/10

**Presenter:** Mayor Bryant/ Michael Hankin,  
Special Counsel to the City

**Department:**

**Title: Dedication Agreement for 23<sup>rd</sup> Street**

### Background

Several years ago, the City began discussions with the School Board related to the construction of a new Palmetto Elementary School. As part of those discussions, a plan evolved which involved seven parties to provide a new elementary school, a new Boys & Girls Club, and ultimately new ball fields.

Phase I of the project involved the City, School Board, the Boys and Girls Club, and Just for Girls at property on 10<sup>th</sup> Street West. Property purchases by the School Board occurred in 2009 and this phase of the project is coming to completion. The new Palmetto Boys and Girls Club has recently opened on property purchased from the City. New Palmetto Elementary School is scheduled to open in January. Just for Girls is located on property which they now own to provide a children oriented complex in the City, also on property purchased from the City.

Phase II was to provide for a ball fields complex with easy access to the residents of Palmetto. A site on 23<sup>rd</sup> Street near a possible extension of 10<sup>th</sup> Avenue was selected. This was addressed in the Phase II Agreements. Because of the location of the ball fields, 23<sup>rd</sup> Street West will need to be relocated and reconstructed and this was addressed in the Dedication Agreement. Although early cost estimates and property needs were significantly off, the City, the County, the School Board and Manatee Fruit Company have been working together to create agreements which address all parties concerns.

Matters necessary for the proposed ball field complex to be accomplished have been begun by the City, County and School Board. The City has initiated a series of requested comprehensive plan amendments, an annexation of 8<sup>th</sup> Avenue, and street vacation preparation. It has also obtained proposals for the design and construction and development of a relocated 23<sup>rd</sup> Avenue, which is needed because of the size and location of the proposed ball field complex.

On September 20, 2010, the City Commission held a Workshop and discussed the Dedication Agreement in detail. The Commission did not raise any particular issues regarding the Dedication Agreement. This Agreement is unchanged from the September 20, 2010 draft previously provided.

### Discussion:

See Attached

<b>Budgeted</b>	\$985,000	<b>Budget Page</b>		<b>Available</b>	\$0.00	<b>Expenditure</b>	\$115,000
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Amount:  No(s):  Amount:  Amount:

**Additional Budgetary Information:**

Total estimated costs for the total Dedication Agreement and Phase II Ball Field Agreement

**Funding Source(s):**

**Sufficient Funds Available:**

☒ Yes  
☐ No

**Budget Amendment Required:**

☐ Yes  
☒ No

**Source:**

**City Attorney Reviewed:**

☒ Yes  
☐ No  
☐ N/A

**Advisory Board Recommendation:**

☐ For  
☐ Against  
☒ N/A

**Consistent With:**

☐ Yes  
☐ No  
☐ N/A

**Potential Motion/ Direction Requested:**

I move to approve and authorize the Mayor to execute the Dedication Agreement, including any non-substantive changes which may be needed to conform the Agreement with those signed by the other parties.

**Staff Contact:**

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**Attachments:**

Redline version

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DEDICATION AGREEMENT BETWEEN MANATEE FRUIT COMPANY, INC. AND CITY OF PALMETTO

DISCUSSION:

Under the Dedication Agreement, Manatee Fruit Co. will dedicate land for the new 23<sup>rd</sup> St. W. right of way to the City in exchange for the City's agreements with respect to development of the surrounding area, including the City's agreement to pursue amendments to the Comprehensive Plan Future Land Use map to redesignate Manatee Fruit Co.'s lands south of the new 23<sup>rd</sup> right of way as GCOM. No new impact fee credits are to be granted to Manatee Fruit Co. other than the credits to which it was already entitled as a result of its dedication of right of way for 23<sup>rd</sup> in 1998. Portions of the existing 23<sup>rd</sup> St. W. and 8<sup>th</sup> Ave. W. rights of way will be vacated as part of this project. At the September 20, 2010 Workshop, the Agreement was discussed in full. No changes were made in the Dedication Agreement after the September 20 Workshop. Manatee Fruit Co. does not wish to incur any expense in connection with the dedication. Issues discussed at the Workshop included the following:

- Sections 4(e) and 13. As a result of the vacation of portions of the existing 23<sup>rd</sup> St. W. and 8<sup>th</sup> Ave. W. rights of way, vacated land will revert to Manatee Fruit Co. This land may be subject to customary utility easements and installations. As a condition to closing, Manatee Fruit requires the City to obtain vacations or releases of the easements or replacement easements with relocation provisions acceptable to Manatee Fruit Company. This could be a problem if the utility providers do not agree, and puts the entire project within the control of a third party utility which is not a party to any of the agreements.
- Sections 7, 9(b), and 16(c)(v). Manatee Fruit Co. is asking that the City make certain warranties of title and provide and pay for title insurance to the vacated portions of 23<sup>rd</sup> and 8<sup>th</sup> which will become the property of Manatee Fruit Co. by operation of law (or quitclaim) following their vacation. 23<sup>rd</sup> was dedicated to the City by Manatee Fruit Co. 8<sup>th</sup> was acquired by the County under Chapter 95, Florida Statutes, and there is uncertainty as to whether all of the statutory required procedures were fully followed as the City was not involved in this historical process by the County. Thus, the property, and, in particular 8<sup>th</sup>, may simply not be title insurable and, at a minimum will require deeds from Manatee Fruit Company to the City.
- Section 12(b). It is customary in transactions of this type for the property owner to be required to provide to the proposed transferee copies of any pertinent information about the property in the owner's possession, such as surveys, appraisals, correspondence with governmental agencies about violations, title insurance policies, and the like. Manatee Fruit Co. is not agreeable to providing this information.
- Section 24(j). Manatee Fruit Co. asks the City to agree that this agreement or a notice of this agreement not be recorded. This presents some risk to the City as its contract rights would not be protected from the claims of third parties.
- Section 24(o). As part of the consideration for this Agreement, Manatee Fruit Co. asks the City to reimburse it for its attorney's fees in connection with this overall project, without limit as to the amount. Under this Section, the City would pay \$63,000 at the time of execution of the Agreement, and an additional \$27,000, **plus** all other attorney's fees incurred in connection with the project, at closing. Manatee Fruit Company would be donating property and believes this is fair consideration.
- Section 24(r). In order to be effective, this agreement must be signed by the City on or before October 7, 2010.
- Exhibits. The various easements required for completion of the project will be developed after the agreement is executed and will be subject to both parties' review. Manatee Fruit Co. wishes that they be acceptable to it in its

“sole and absolute discretion.” We would hope that the exhibits would be finalized during the due diligence period.

This agreement like all agreements has been negotiated between the parties. We believe the agreement is in a position to legally be approved and that the City’s concerns from a business standpoint have been largely addressed.

**DEDICATION AGREEMENT**  
**BETWEEN THE CITY OF PALMETTO AND MANATEE FRUIT COMPANY**

THIS DEDICATION AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by and between Manatee Fruit Company, a Florida corporation ("Manatee Fruit" or "MFC") and the City of Palmetto, a municipal corporation of the State of Florida ("City").

**INTRODUCTION**

A. Manatee Fruit owns certain real property depicted on **Exhibit A** attached hereto (the "Property"); and

B. The City desires to enhance the recreational and educational opportunities within the City of Palmetto and in coordination with Manatee County by expanding Blackstone Park and related recreational facilities; and

C. As a part of that expansion project, the City needs to realign the 23<sup>rd</sup> Street West right of way to improve traffic circulation; and

D. The realignment will benefit the City and County by creating lands available and suitable to build and maintain ball fields for use by little league groups as part of Blackstone Park, a County park; and

E. In order to realign 23<sup>rd</sup> Street West, the City needs to acquire certain lands (as hereinafter specifically defined as the "Property") from Manatee Fruit, which Manatee Fruit is agreeable to dedicating to the City, under the terms and provisions set forth herein, which terms and provisions hereof are intended constitute an irrevocable offer of dedication; and

F. Certain land for use in the existing 23<sup>rd</sup> Street West right of way was originally dedicated to City by Manatee Fruit pursuant to Roadway Agreement between them dated April 20, 1998 (the "1998 Agreement"), under which, among other things, Manatee Fruit donated \$358,000.00 toward costs of construction of 23<sup>rd</sup> Street West in its present location, and which agreement contains certain terms and provisions which still have application to the dedication that is the subject of this Agreement; and

G. City has condemnation powers and has determined that it would condemn, by eminent domain, the Property, if it were not transferred pursuant to this Agreement and such transfer is, therefore, in lieu of condemnation; and

H. City acknowledges that upon completion of the Roadway Project (as hereinafter defined), there will no longer be a public purpose for public right-of-way on segments of the existing

23<sup>rd</sup> Street West and of 8<sup>th</sup> Avenue West as depicted on composite **Exhibits B** attached hereto.

### **PROVISIONS**

NOW, THEREFORE, in consideration of the agreements herein contained, the parties agree as follows:

1. **Definitions and Reference Terms.** In addition to any other terms defined herein, for convenience of reference, the following terms shall have the following meanings:

(a) "Business Day" means any day that national banks in Manatee County, Florida, are open for business, excluding Saturdays and Sundays.

(b) "City's Contractors" means City, and its authorized agents and representatives.

(c) "City's Inspection Obligations" has the meaning set forth in **Section 12(c)** of this Agreement.

(d) "Closing" means the consummation of the transactions contemplated by this Agreement to take place at the time and place prescribed under **Section 5(a)** of this Agreement.

(e) "Effective Date" means the later of (i) the last date on which this Agreement has been fully executed by Manatee Fruit and the City and (ii) the last date on which the Phase II Contract (defined below) has been fully executed by all parties thereto; provided, however, no later than October 7, 2010.

(f) "Environmental Laws" means all applicable present and future (to the extent they relate back to the Closing date or earlier) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, agreements and similar items, of or with any and all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 *et seq*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq*; and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 *et seq*.

(g) "Hazardous Materials" means (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea-formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) any substance, gas,

material or chemical which is or may be defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any Environmental Law; and (iv) any other chemical, material, gas or substance, the exposure to or release of which is or may be prohibited, limited or regulated by any governmental or quasi-governmental entity or authority that asserts or may assert jurisdiction over the real property which is the subject of this Agreement or the operations or activity at the real property, or any chemical, material, gas or substance that does or may pose a hazard to the health and/or safety of the occupants of the real property or the owners and/or occupants of property adjacent to or surrounding the real property.

(h) "Inspection Documents" has the meaning set forth in **Section 12(b)** of this Agreement.

(i) "Inspection Period" means the period of time ending at 5:00 p.m. EST on the date which is thirty (30) days after the Effective Date, or such extended period of time as specifically provided herein.

(j) "Phase II Contract" means that agreement of even effective date herewith between City, Manatee Fruit, Manatee County ("County") and School Board of Manatee County ("School Board") for transfers and dedication of lands and easements to facilitate (i) expansion of Palmetto High School and related educational facilities; (ii) the development and operation of ball fields near Blackstone Park; (iii) the future extension of 10<sup>th</sup> Street West, and (iv) related matters.

(k) "Property" means the land described on **Exhibit A** hereto, which Manatee Fruit has agreed to donate to the City for the realignment of 23<sup>rd</sup> Street West, subject to the terms and conditions in this Agreement.

(l) "Roadway" means the road right of way of realigned 23<sup>rd</sup> Street West following completion of the Roadway Project.

(m) "Roadway Project" means the construction of the realignment of 23<sup>rd</sup> Street West, including construction of the road bed and roadway surface, and installation of any drainage and other utilities along the road right of way.

(n) "Vacated Property" has the meaning set forth in **Section 9(b)** of this Agreement.

## **2. Dedication; Existing Impact Fee Credits.**

(a) **Dedication.** At Closing, Manatee Fruit will donate and dedicate the lands depicted on **Exhibit A** to the City for use as roadway, road right of way, and stormwater detention and retention (the "Property") in fee simple in perpetuity, and City will accept the offer of dedication.



(b) **Existing Impact Fee Credits from 1998 Agreement.** As part of the roadway dedication under the 1998 Agreement, City agreed to grant to Manatee Fruit transportation impact fee credits to the maximum amount permitted by ordinance in consideration for the donation of funds toward the roadway construction (\$358,000.00) and for the dedication of land for use as a roadway (agreed value of \$212,000.00) under that agreement. Those credits in the total amount of \$570,000.00 (the "1998 Credits") have not yet been utilized by Manatee Fruit. The City hereby confirms that Manatee Fruit remains entitled to the 1998 Credits in the amount of \$570,000.00 notwithstanding that some of the existing 23<sup>rd</sup> Street West right of way that was the subject of the 1998 Agreement is being returned to Manatee in exchange for the new 23<sup>rd</sup> Street West right of way to be dedicated hereunder. The 1998 Credits may be utilized by Manatee Fruit and its related companies or transferees for any of their lands located in the City of Palmetto.

(c) **Impact Fee Credits.** The parties recognize that the right of way for the new 23<sup>rd</sup> Street West being donated by Manatee Fruit is greater in acreage than the right of way for existing 23<sup>rd</sup> Street West east of future 10<sup>th</sup> Avenue West (as described in the Phase II Agreement) that will ultimately be owned by Manatee Fruit upon vacation. The City recognizes that the difference in acreage would be eligible for transportation impact fee credits; however, Manatee Fruit is donating the Property and thereby waiving such additional transportation impact fee credits.

3. **Conditions Precedent to Obligations of City to Close.** The obligation of City to accept dedication of the Property, unless otherwise waived in writing by City, is subject to the satisfaction of the following conditions precedent (the "Closing Conditions"):

(a) **Termination hereunder.** A termination under this Agreement by either party, during the Inspection Period or as otherwise allowed herein, terminates the obligations hereunder (including the obligation to close) except those obligations that specifically survive termination.

(b) **Termination under the Phase II Agreement.** In the event the Phase II Agreement is terminated by any party thereto prior to Closing hereunder, whether during the Inspection Period or as otherwise provided in the Phase II Agreement, this Agreement shall also automatically terminate coincident therewith (except for matters hereunder that specifically survive termination).

(c) **Condition of Property at Closing.** City shall be entitled to conduct a walk-through inspection of the Property on the day before Closing to confirm that the Property is in the condition required by this Agreement, that there has been no material adverse change in the condition of the Property, and that the express warranties and representations of Manatee Fruit set forth in this Agreement regarding the condition of the Property are true and correct and have not changed since the end of the Inspection Period. If City is not satisfied, in its reasonable discretion, with the provisions of this subparagraph (c), then City may deliver a notice to Manatee Fruit on or before the Closing Date detailing the default; provided, however, Manatee Fruit shall have ten (10)

days after receipt of such written notice to cure such default and the Closing Date shall be extended to allow for such cure period.

4. **Condition Precedent to Obligations of Manatee Fruit to Close.** The obligation of Manatee Fruit to dedicate the Property, unless otherwise waived in writing by Manatee Fruit, is subject to the satisfaction at or before Closing of the following conditions precedent (also, "Closing Conditions"):

(a) **Vacation and Annexation of Existing 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West Right of Way.** Manatee Fruit's obligation to close is contingent upon the City's annexation of 8<sup>th</sup> Avenue West and the vacation of the applicable portions of existing 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West, all as more particularly described in **Section 9(b)**.

(b) **Adoption of Amendment to City's Comprehensive Plan.** Manatee Fruit's obligation to close is contingent upon the City's having adopted certain amendments to the City's Comprehensive Plan affecting land which adjoins the Property as described in Ordinance No. 2010-05 authorized by the City Commission on May 17, 2010 for transmittal to the State of Florida Land Planning Agency and as more particularly described in **Section 9(a)** below. The term "adopted" as used in this paragraph shall mean final adoption by the City Commission, but shall not be deemed to require nonappealable approval by Closing. (The City's surviving obligations regarding nonappealable approval are addressed in **Section 9(a)**.)

(c) **City Ready to Commence Construction of Roadway Project.** The City shall have obtained a grant or other binding funding commitment (subject only to the acquisition of the new 23<sup>rd</sup> Street right of way from Manatee Fruit) and have provided a copy of same to Manatee Fruit for review at least ten (10) Business Days prior to Closing.

(d) **Easements.** In the event (and to the extent) the easement documents, sketches and legal descriptions referenced on the List of Exhibits attached hereto and discussed in **Section 12(g)** 'Easements and Exhibits' are not timely provided and agreed during the Inspection Period, and if Manatee Fruit does not terminate during the Inspection Period, agreement by Manatee Fruit (in its sole discretion) on the form and content of all such documents and all such sketches and legal descriptions is a condition precedent to Manatee Fruit's obligation to close.

(e) **Replacement Utility Easements.** To the extent required by **Section 13** below, the City shall have obtained all replacement utility easements as described therein.

(f) **Termination hereunder.** A termination under this Agreement by either party, during the Inspection Period or as otherwise allowed herein, terminates the obligations hereunder (including the obligation to close) except those obligations that specifically survive termination.

(g) **Termination under the Phase II Agreement.** In the event the Phase II Agreement is terminated by any party thereto prior to Closing hereunder, whether during the Inspection Period or as otherwise provided in the Phase II Agreement, this Agreement shall also automatically terminate coincident therewith (except for matters hereunder that specifically survive termination hereunder).

Notwithstanding anything herein to the contrary in this Agreement, if any of the conditions in (a), (b), (c), (d) and (e) above have not been satisfied by the Closing Date, Manatee Fruit shall have no obligation to close and deliver the Deed and other closing documents to the City.

5. **Closing; Deed.**

(a) **Closing.** . The Closing shall take place at the office of Kirk-Pinkerton, P.A., counsel for the School Board, in Bradenton, Florida (the "Closing Agent"), at 10:00 a.m., on the earlier of: (i) the date that is thirty (30) days following satisfaction or waiver of all of the Closing Conditions (as evidenced by written notice from City and Manatee Fruit), and (ii) November 1, 2011 (the "Closing Date"). Notwithstanding anything to the contrary in this Agreement, waiver of any of the Closing Conditions in **Sections 4 (a) through (e)**, inclusive, shall not constitute a waiver of such obligation(s) post-Closing. The Closing shall occur by delivery by Manatee Fruit to the City of a properly executed special warranty deed of dedication (the "Deed") conveying the Property in fee simple to City. The Closing Date shall be extended if necessary to provide for the appraisal process described in **Section 12(b)**; and in that event the Closing Date shall be seven (7) days following the parties' receipt of the final appraisal.

(b) **Deed.** The form of the Deed shall conform to the requirements of the Title Company (hereinafter defined). Subject to the foregoing, the Deed shall be the form prepared by the Closing Agent, shall include any provisions required by this Agreement, shall be reasonably acceptable to City, City's counsel, Title Company, and to Manatee Fruit and its counsel, and shall be delivered to the City and Manatee Fruit on or before ten (10) Business Days prior to the Closing Date. At the Closing, the Property will be in as good condition and repair as at the date of signing of this Agreement. The parties agree that the Deed will contain the following provision re: Manatee Fruit's reservation of consumptive use rights:

Excluded from this transfer are consumptive use rights for the Property and Grantor hereby retains same together with any right that may exist to transfer those consumptive use rights to other properties.

6. **Use Restrictions.** The City agrees that the Property shall only be used, maintained and operated as a public roadway and associated stormwater drainage and retention, underground utilities, landscaping and sidewalks consistent with the roadway use, and for no other purposes. The Deed shall contain this restriction and shall provide that Manatee Fruit shall have the right to demand reconveyance of the Property to Manatee Fruit if the Roadway Project has not been commenced within twenty four (24) months following the Closing. If Manatee Fruit demands

reconveyance, the closing of such reconveyance transaction shall occur within thirty (30) days following the date of such election. At such closing, City shall deliver a special warranty deed to the Property to Manatee Fruit subject only to the same encumbrances (Permitted Exceptions) to which City received title from Manatee Fruit. City shall pay all closing costs related to the reconveyance, including but not necessarily limited to, documentary stamps on the deed (if any), recording fees and all costs necessary to satisfy or release any encumbrances on the Property that are not permitted hereunder. City shall provide all documents reasonably requested by Manatee Fruit (including, without limitation, owner's and construction lien affidavits) relating to the title to the Property and its insurability. On the City's commencement of the Roadway Project within the required period, Manatee Fruit will execute and deliver a termination of its reconveyance rights in a form suitable for recording in the public records. Once commenced, the City will diligently proceed with the Roadway Project and will not cease construction for a period longer than three weeks. All of the provisions set forth in this first paragraph of this **Section 6** shall be included in the Deed.

Land comprising part of the current right of way for 23<sup>rd</sup> Street West will be vacated by the City and conveyed to Manatee County for use as ball fields and related improvements (the "Land to be Released"). The Land to be Released was originally dedicated to City by Manatee Fruit pursuant to the 1998 Agreement for use as right of way for 23<sup>rd</sup> Street West and is currently restricted, by the terms of the Roadway Agreement and the deed delivered pursuant to it, to use as road right of way. Upon request of City, at the Closing or thereafter, as part of the vacation of the right of way, Manatee Fruit will release the Land to be Released from those use restrictions, such release to be effective coincident the effective date of the vacation. It is understood that completion of any road vacation as described in this Agreement is subject to the rights of the public in public hearing, so that the City cannot guarantee the final outcome. The provisions of this **Paragraph 6** shall specifically survive the Closing.

7. **Title.** At Closing, Manatee Fruit shall convey title to the Property to City, subject only to the following exceptions (the "Permitted Exceptions"):

- (a) liens for ad valorem taxes not yet due and payable;
- (b) the standard printed exceptions as set forth in the Title Policy (hereinafter defined), excluding those standard printed exceptions that will be removed upon execution and delivery by Manatee Fruit of the Grantor's Affidavit;
- (c) all building, zoning, environmental, and other state, county or federal laws, codes, and regulations (whether existing or proposed), affecting the Property, including any and all special exceptions, conditions, site plan approvals, proffers, and other similar matters, if any, related to the zoning of the Property; and

(d) recorded restrictions common to the subdivision in which the Property is located, so long as they do not impair or interfere with the City's intended use of the Property; and easements of record, so long as they do not interfere with City's intended use of the Property.

Upon the effective date of the right of way vacations described in **Section 9(b)** of this Agreement, title therein to Manatee Fruit as adjacent landowner to the Vacated Property will be subject only to the following exceptions:

- (i) liens for ad valorem taxes not yet due and payable;
- (ii) all building, zoning, environmental, and other state, county or federal laws, codes, and regulations (whether existing or proposed) affecting such lands; provided, however, subject to the provisions of **Section 9(a)** below requiring that such lands carry a Comprehensive Plan Future Land Use Map designation of GCOM;
- (iii) utility easements only to the extent allowed pursuant to **Section 13** below; and
- (iv) any requirement by the Title Company for a quit claim deed from Manatee Fruit Company for any lingering interest that it might have in the Vacated Property or any portion thereof.

8. **Roadway Project; Easements.** Following the Closing, City shall commence and complete the Roadway Project. In connection therewith, City shall undertake the following:

(a) City will be responsible for the design, permitting and construction of the Roadway Project. The plans for design of the roadway, including provisions for stormwater retention and drainage and landscaping, will be subject to Manatee Fruit's reasonable and timely review and comment. Following Manatee Fruit's approval of the plans, any material changes to them shall likewise be subject to reasonable and timely review and comment by Manatee Fruit. The design of the Roadway Project will be in accordance with applicable laws and regulations, City standards and regulations and generally accepted engineering practices. The design shall include the intersection of realigned 23<sup>rd</sup> Street West with 8<sup>th</sup> Avenue West, which also will be subject to Manatee Fruit's reasonable and timely review and comment.

(b) The construction of the roadway shall be in accordance with applicable laws and regulations, City standards, generally accepted engineering and construction practices and the approved plans. The City shall require any contractor entering onto the property of Manatee Fruit in the course of the Roadway Project to access Manatee Fruit's property only over the easement area and pursuant to the terms of the easement granted to the City pursuant to **Section 8(c)** below and require any contractor to carry comprehensive general liability insurance in commercially reasonable amounts, which policy(ies) shall name Manatee Fruit as an additional insured thereunder.

(c) At Closing, Manatee Fruit shall grant to City a temporary construction

easement allowing for access, ingress and egress by City, including, without limitation, construction vehicles, transport and storage of materials, across and along the lands of Manatee Fruit adjoining the proposed realigned right of way for 23<sup>rd</sup> Street West as depicted on **Exhibit C-2** attached hereto (the "Temporary Easement Land"), in compliance with all laws, regulations and permits, until such time as the Roadway Project has been completed. The transportation and storage of Hazardous Materials across the Temporary Easement Land shall be prohibited. On completion of the Roadway Project, City will restore the Temporary Easement Land to the condition that existed prior to its use by the City under the easement. The easement shall be substantially in form attached hereto as **Exhibit C-1**.

(d) City shall design and complete the realignment of 23<sup>rd</sup> Street West, consisting of twenty-four foot (24') wide, two (2) lane roadway and related improvements within the Property and other City-owned property. Construction shall be in accordance with all applicable laws, codes, ordinances and regulations. Once commenced, the City will diligently pursue construction to completion and opening to the public. Permissible temporary delays in construction are those that occur due solely to acts of God. Following completion, City will maintain the Roadway, at its expense.

(e) City agrees that the stormwater drainage and retention system for the Roadway and by way of retention ponds on land owned by Manatee Fruit adjacent to the Roadway shall be non-exclusive, and its design shall be subject to reasonable and timely review and comment by Manatee Fruit. Manatee Fruit shall be entitled to shared use of the drainage and retention system and expansion of the system, at its expense, to serve projects on adjacent land owned by Manatee Fruit, subject to obtaining any required approvals and permits and compliance with them; provided, however, that Manatee Fruit shall be solely responsible for the cost of such approvals and permits and construction associated with any increase in system capacity necessitated by its shared use, and further provided that any expansions shall be subject to cross access and shared use easements to provide for City's use as described in this Agreement. The Roadway, retention areas and road right of way will be available for customary non-exclusive utility easements as may be required for future development of adjacent property; provided, however, that expansion of retention areas to accommodate future development of surrounding areas shall be subject to cross access and use easements for the benefit of City. The City agrees to execute or sign any applications for approvals, permits or modification to permits for the Roadway and retention areas to accommodate Manatee Fruit's use as described herein. The stormwater and utility easements shall be substantially in form attached hereto as **Exhibit D-1**. The sketches and legal descriptions for the locations of any retention ponds to be located on land owned by Manatee Fruit and to be subject to such easements are attached hereto as **Exhibit D-2**.

(f) Following completion of the Roadway Project, City will not remove the pavement on the portion of the Vacated Property extending between the intersection of 23<sup>rd</sup> Street West and 10<sup>th</sup> Avenue West and U.S. Route 41 and the portion of 8<sup>th</sup> Avenue West lying between the foregoing portion and the new right of way for 23<sup>rd</sup> Street West. Manatee Fruit agrees to assume full responsibility for the pavement once the vacation of the Vacated Property becomes effective.

(g) The City agrees to pursue naming the Roadway “Terra Ceia Bay Boulevard” (or such other name that is proposed by Manatee Fruit Company and acceptable to the City), subject to the City’s obtaining approval from applicable reviewing/approval agencies. In the event that the City cannot name the Roadway as provided in this paragraph because the City is required to name the Roadway as a numbered street, then this paragraph shall have no further force and effect.

(h) At the Closing under this Agreement or at such time and to the extent such signage is allowed under the City of Palmetto code, Manatee Fruit shall grant to City a perpetual exclusive easement to maintain a monument sign for a message board sign for City use in the area northeast of the new 23<sup>rd</sup> Street West right of way and northwest of U.S. Route. The easement shall be in substantially the form of **Exhibit E-1** attached hereto. The sketches and legal description for the location of such easement is attached hereto as **Exhibit E-2**. The City design of the sign shall be subject to Manatee Fruit’s reasonable and timely review.

(i) Upon request from Manatee Fruit and to the extent allowed under the City of Palmetto code, City shall grant to Manatee Fruit a perpetual exclusive easement to maintain a monument sign for its Terra Ceia project in a logical agreed upon location within the right-of-way of the new 23<sup>rd</sup> Street West. The form of easement shall be substantially in the form of **Exhibit E-3** attached hereto.

(j) The plans for the Roadway Project will include the general location of reasonable access points/roadway connections from the realigned 23<sup>rd</sup> Street West to adjoining property owned by Manatee Fruit. City agrees to allow median cuts/openings at any of those access points/ roadway connections depicted on the final plans for the Roadway Project. City agrees to support Manatee Fruit’s efforts to obtain access connections or median openings from those roadways and to install utility sub outs, lift stations, force mains or other utilities in the road right of way; provided, however, that all engineering and construction work associated with those connections/openings and utility installations shall be borne by Manatee Fruit.

(k) All provisions of this **Section 8** shall specifically survive the Closing.

9. **City Obligations.**

(a) **Comprehensive Plan Amendments.** The City has initiated, and will diligently process and pursue nonappealable approval of, amendments to the City of Palmetto Comprehensive Plan Future Land Use Map to redesignate the lands owned by Manatee Fruit depicted on **Exhibit F** attached hereto as GCOM, and to pay all filing fees and advertising costs associated therewith. Such designation of Manatee Fruit’s lands between existing 23<sup>rd</sup> Street West and relocated 23<sup>rd</sup> Street West is a logical change as a result of the 23rd Street West relocation. It is understood that the process is subject to public hearing and comment, and the City cannot guarantee that the amendments sought by Manatee Fruit will be approved or achieved. City agrees that use of the land depicted on **Exhibit F** for interim agricultural purposes is permitted, notwithstanding any



annexation or Comprehensive Plan Future Land Use Map amendments affecting that land. For clarification, certain of the properties described on **Exhibit F** hereto as Parcel 4 and Parcel 5 are parcels that were to have previously been designated GCOM and are currently zoned for commercial use. The City is including such parcels in the current proposed Future Land Use Map amendment to clear up any confusion regarding the designation of such parcels. The obligations of the City pursuant to this paragraph shall specifically survive Closing.

Although only adoption of the ordinance that implements the referenced future land use map amendments is a Closing Condition of Manatee Fruit's pursuant to **Section 4** above, the City is obligated to diligently monitor and pursue nonappealable approval after adoption, including but not limited to, addressing issues raised in the Department of Community Affairs's ORC and Notice of Intent and participating in any hearings before the Division of Administrative Hearings in an effort to obtain final nonappealable approval of the requested map amendments to GCOM.

In addition to the future land use map amendments described above, upon the effective date of the vacation of the applicable portions of 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West, such parcels of land shall also carry a Comprehensive Plan Future Land Use Map designation of GCOM. Prior to the effective date of such vacations, City or City's attorney shall provide Manatee Fruit with evidence acceptable to Manatee Fruit that such lands are designated GCOM, including but specifically not limited to, a link to the future land use map on the City's website that clearly shows such designation.

The provisions of this **Section 9(a)** shall specifically survive Closing.

(b) **Vacation and Annexation of Existing 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West Right of Way.** Segments of the existing right of way of 23<sup>rd</sup> Street West (located within the City) and of 8<sup>th</sup> Avenue West depicted on **Exhibit B-2** attached hereto shall have been vacated by the City and/or the County, as appropriate, as provided herein. The vacation of those lands (the "Vacated Property") shall be effective upon and contingent upon the completion of the Roadway Project and opening to traffic of the realigned 23<sup>rd</sup> Street West. Portions of the existing right of way of 8<sup>th</sup> Avenue West are not now within the City's boundaries. Those lands are depicted on **Exhibit B-1** attached hereto. To facilitate the completion of the Roadway Project, City agrees to take all steps required for the annexation of those lands to the City and thereafter take all action necessary on its part to vacate the portion of those lands described on **Exhibit B-2** attached hereto, such vacation to be effective upon and contingent upon the completion of the Roadway Project and opening to traffic of the realigned 23<sup>rd</sup> Street West. City will initiate, and will pursue the vacations expeditiously. Manatee Fruit, at no cost to Manatee Fruit, will cooperate in the proceedings and will sign and deliver such applications and consents as may be required in order to evidence its consent to the vacations. It is understood that the completion of the annexation and vacation is fully subject to the rights of the public in public hearing, so that the final outcome cannot be guaranteed by the City. If the City does not annex the subject property, then, as part of the Phase II Contract, the County has agreed to take all steps necessary to vacate those portions of 8<sup>th</sup> Avenue West that are not now part of the City, to be effective upon and contingent upon the completion of the Roadway Project as



aforesaid, and MFC and City will cooperate in those proceedings, it being further understood that the outcome of the proceeding cannot be guaranteed by the County.

Following completion and the effective date of the vacation, some or all of the Vacated Property may vest in City, in Manatee County and/or in Manatee Fruit, as adjoining landowner. To the extent necessary or appropriate or otherwise upon request by Manatee Fruit, following completion and the effective date of the vacation of 8<sup>th</sup> Avenue West and/or 23<sup>rd</sup> Street West east of 10<sup>th</sup> Avenue West, the City will quitclaim any Vacated Property that vests in the City to Manatee Fruit.

The provisions of this **Section 9(b)** shall specifically survive Closing.

10. **Title Commitment/Title Policy.**

(a) **Property to be transferred to City.** Within ten (10) days after the Effective Date, City shall procure, at its own cost and expense (a) a title insurance commitment ("Commitment"), issued by Closing Agent or a title insurance agent selected by the City (the "Title Company"), showing Manatee Fruit as the record title owner of the Property and the terms by which the Title Company agrees to issue to the City an owner's policy of title insurance (the "Title Policy") issued on the standard ALTA Owner's Policy, 1992 form with Florida modifications, insuring City's fee simple title to the Property subject to the terms of Title Policy and the title exceptions therein described; and (b) a photocopy of all documents (the "Title Documents") constituting all the title exceptions shown on the Commitment. City shall immediately provide Manatee Fruit with a copy of the Commitment and Title Documents and shall advise Manatee Fruit of the date of City's receipt of same for purposes of calculating deadlines in this paragraph. As used herein, the term "Title Objection Period" shall mean a period commencing on the first day following the City's receipt of the latest version of the Commitment, the Title Documents or the Survey (but in no event later than twenty (20) days following the Effective Date) and ending ten (10) days thereafter. The term "Permitted Exceptions" means the matters of title listed in subparagraphs (a), (b), (c) and (d) of **Section 7** of this Agreement. The City hereby signifies its approval of the Permitted Exceptions. In the event (i) the Commitment or the Survey reflects; and/or (ii) at any time after the receipt of the Commitment or the Survey and prior to Closing, City receives notice of or otherwise discovers that title to the Property that it is purchasing hereunder is subject to, any matter other than the Permitted Exceptions that could not have been reflected in the initial Title Commitment or Survey (each a "Post Commitment Matter"), the City may object to said matter ("Title Objection") by delivering written notice ("Title Objection Notice") on or before the expiration of the Title Objection Period (except in the event of a Post-Commitment Matter, then within five (5) days of the date City receives notice of such Post-Commitment Matter). If Manatee Fruit is able and willing to cure the objections, Manatee Fruit shall notify City in writing of such fact (said notice hereinafter called "Manatee Fruit's Title Notice") on or before ten (10) days after the delivery of the Title Objection Notice (said period called "Manatee Fruit's Notice Period") and in which case the elimination or curing by Manatee Fruit of the Title Objections shall be completed on or before the date of Closing. In the event Manatee Fruit does not deliver Manatee Fruit's Title Notice to City within Manatee Fruit's Notice

Period, City is deemed to be notified that Manatee Fruit does not intend to cure the Title Objections on or before the date of Closing. In that event, or in the event that Manatee Fruit notifies City that Manatee Fruit would be unable or unwilling to cure any Title Objection, City shall be deemed to have waived the applicable Title Objections unless within five (5) days following the expiration of Manatee Fruit's Notice Period, the City delivers to Manatee Fruit written notice terminating this Agreement. Notwithstanding anything herein to the contrary, in the event that City's right to terminate this Agreement pursuant to any provision of this Section does not expire prior thereto, it shall expire upon expiration of the Inspection Period (except in the event of a Post Commitment Matter). As used in this Agreement, the term "Permitted Exceptions" shall mean (a) the Permitted Exceptions and (b) all matters other than the Permitted Exceptions listed in the Commitment to which the City does not deliver a Title Objection within the Title Objection Period (or within the applicable five (5) days for a Post Commitment Matter), or, having objected, City waives or is deemed to have waived in accordance with the provisions of this Section. Upon the timely delivery of a termination notice pursuant to this Section, City shall deliver the Inspection Documents (hereinafter defined) to Manatee Fruit, neither Manatee Fruit nor City shall have any further rights or obligations pursuant to this Agreement except for the City's Inspection Obligations, the obligations created pursuant to **Section 20** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

(b) **Vacated Property to be Owned by Manatee Fruit.** Within ten (10) days after the Effective Date, City shall procure and provide to Manatee Fruit, at its own cost and expense (a) a title insurance commitment ("Commitment"), issued by Closing Agent or a title insurance agent selected by the Manatee Fruit (the "Title Company"), showing City as the record title owner of the Vacated Property and the terms by which the Title Company agrees to issue to Manatee Fruit an owner's policy of title insurance (the "Title Policy") issued on the standard ALTA Owner's Policy, 1992 form with Florida modifications, insuring Manatee Fruit's fee simple title to the Vacated Property subject to the terms of Title Policy and the title exceptions therein described; and (b) a photocopy of all documents (the "Title Documents") constituting all the title exceptions shown on the Commitment. The Commitment shall specifically contemplate that title will vest in Manatee Fruit upon the effective date of the vacation of the Vacated Property. As adoption of the vacation ordinance is a Closing Condition for Manatee Fruit, the Commitment shall be endorsed or replaced at Closing to reflect the specific adopted ordinance and what additional documentation will be required by the Title Company to evidence the effectiveness of the vacation and to vest title in Manatee Fruit subject only to the Permitted Exceptions (as defined in this paragraph). As used herein, the term "Title Objection Period" shall mean a period commencing on the first day following Manatee Fruit's receipt of the latest of the Commitment, the Title Documents or the Survey (but in no event later than twenty (20) days following the Effective Date) and ending ten (10) days thereafter. The term "Permitted Exceptions" means the matters of title listed in subparagraphs (i), (ii) and (iii) of **Section 7** of this Agreement. Manatee Fruit hereby signifies its approval of the Permitted Exceptions. In the event (i) the Commitment or the Survey reflects; and/or (ii) at any time after the receipt of the Commitment or the Survey and prior to Closing, Manatee Fruit receives notice of or otherwise discovers that title to the Vacated Property that it is purchasing hereunder is subject to, any matter other than the Permitted Exceptions that could not have been reflected in the

initial Title Commitment or Survey (each a "Post Commitment Matter"), the Manatee Fruit may object to said matter ("Title Objection") by delivering written notice ("Title Objection Notice") on or before the expiration of the Title Objection Period (except in the event of a Post-Commitment Matter, then within five (5) days of the date Manatee Fruit receives notice of such Post-Commitment Matter). If City is able and willing to cure the objections, City shall notify Manatee Fruit in writing of such fact (said notice hereinafter called "City's Title Notice") on or before ten (10) days after the delivery of the Title Objection Notice (said period called "City's Notice Period") and in which case the elimination or curing by City of the Title Objections shall be completed on or before the date of Closing. In the event City does not deliver City's Title Notice to Manatee Fruit within City's Notice Period, Manatee Fruit is deemed to be notified that City does not intend to cure the Title Objections on or before the date of Closing. In that event, or in the event that City notifies Manatee Fruit that City would be unable or unwilling to cure any Title Objection, Manatee Fruit shall be deemed to have waived the applicable Title Objections unless within five (5) days following the expiration of City's Notice Period, the Manatee Fruit delivers to City and the Closing Agent written notice terminating this Agreement. Notwithstanding anything herein to the contrary, in the event that Manatee Fruit's right to terminate this Agreement pursuant to any provision of this Section does not expire prior thereto, it shall expire upon expiration of the Inspection Period (except in the event of a Post Commitment Matter). As used in this Agreement, the term "Permitted Exceptions" shall mean (a) the Permitted Exceptions and (b) all matters other than the Permitted Exceptions listed in the Title Commitment to which the Manatee Fruit does not deliver a Title Objection within the Title Objection Period (or within the applicable five (5) days for a Post Commitment Matter), or, having objected, Manatee Fruit waives or is deemed to have waived in accordance with the provisions of this Section. Upon the timely delivery of a termination notice pursuant to this Section, City shall deliver the Inspection Documents (hereinafter defined) to Manatee Fruit, neither Manatee Fruit nor City shall have any further rights or obligations pursuant to this Agreement except for the City's Inspection Obligations, the obligations created pursuant to **Section 20** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

11. **Survey.** Within twenty (20) days after the Effective Date, City shall: (a) procure current ALTA surveys ("Survey") of the Property to be transferred hereunder and the Vacated Property, from a Florida licensed surveyor, certified to City, Manatee Fruit, their respective counsel, Closing Agent and the Title Company designated by the City; and (b) provide a copy of the Survey to each party to whom the survey is certified. The Survey will include and identify all of the Property or Vacated Property, as applicable, will include a legal description of the Property or Vacated Property, as applicable. If the Survey shows any matters which would affect the marketability of title to the Real Property (except for the Permitted Exceptions), each party shall notify the other party, as applicable, in writing of the specific defects (the "Survey Defects") as if it were a Title Objection under **Section 10**. Any Survey Defects shall be treated in the same manner as Title Objections are treated under this Agreement. It is understood that some of the Property is improved with fences. Such fences shall not be Survey Defects. Further, City will relocate the fences following Closing, at City's expense, and in consultation with Manatee Fruit as to placement and timing of relocation of the fences.

12. **Inspection Period.**

(a) **Inspections: Appraisal.** During the Inspection Period and at any other time prior to Closing, unless this Agreement is terminated prior thereto, the City's Contractors shall be entitled to enter upon the Property at all reasonable times during normal business hours to inspect and conduct tests to determine the suitability and feasibility of the Property for the City's intended use, excluding, however, any evaluation of the presence of Hazardous Materials on the Property or the compliance of the Property with Environmental Laws, which have been evaluated prior to the parties entering into this Agreement or are in the process of being evaluated and will be completed by the end of the Inspection Period. The City shall bear the cost of its own inspections and tests. Additionally, City's Contractors may enter on the Property to prepare the Survey of the Property or to update the Survey.

During the Inspection Period, the City shall obtain an appraisal of the fair market value of the Property and of the Vacated Property as provided in **Section 2(b)** hereof from a Florida-licensed appraiser. Within five (5) days of City's receipt and approval of the appraisal, City shall provide a copy of it to Manatee Fruit. If Manatee Fruit does not agree with the fair market value of the Property determined by the appraisal obtained by the City, then it shall have the right to its own appraisal of the Property, obtained at its sole expense. All appraisals shall be performed by disinterested, licensed MAI appraisers. In the event two appraisers are used, the fair market value shall be the average of the figures provided by the two appraisers, unless the difference between the two is greater than fifteen percent (15%). In that event, a third appraiser selected mutually by the parties shall be retained. The two closest appraisals of the three shall be averaged and that value shall be the fair market value. All costs incurred for the third appraisal shall be shared equally by the parties.

(b) **Inspection Documents.** The term "Inspection Documents" means all studies, reports or test results obtained by the City in connection with its inspection of the Property. The City shall deliver all of the Inspection Documents to Manatee Fruit on the first to occur of (i) such time as City determines that it shall not acquire the Property, or (ii) such time as this Agreement shall have terminated for any reason.

(c) **Inspection Obligations.** City's Contractors shall: (a) not unreasonably interfere with the operation and maintenance of the Property; (b) not damage any part of the Property; (c) not injure or otherwise cause bodily harm to Manatee Fruit, its agents, contractors and employees or any tenant of the Property; (d) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (e) restore the surface of the Property to substantially the condition in which the same was found before any permitted inspections or tests were undertaken. The obligations of City created pursuant to this Section are called "City's Inspection Obligations," and shall specifically survive the Closing or any termination of this Agreement.

(d) **Environmental Study.** With respect to the Property that Manatee Fruit will transfer to City pursuant to this Agreement, and as additional consideration for the transaction

contemplated herein, City agrees that, within three (3) business days of the later of (i) the Effective Date, and (ii) the date a copy of the written environmental audit report certified to the City (among others) is delivered to City or City's attorney, it will reimburse Manatee Fruit the actual cost, not to exceed, in the aggregate, together with the cost relative to property which the City proposes to acquire from Manatee Fruit under the Phase II Agreement, \$2,500.00, for Manatee Fruit's procurement of an environmental audit report of the Property certified to City and Manatee Fruit performed by an environmental consultant satisfactory to City. It is the intent that the meeting following Limited Phase II as described in the letter agreement from City to Manatee Fruit attached hereto as **Exhibit G** will occur before the end of the Inspection Period and City and Manatee Fruit will use diligent efforts to facilitate such timing. If such meeting has not occurred before the end of the Inspection Period, City or Manatee Fruit may elect to extend the Inspection Period by a period of time not to exceed ten (10) days to accomplish same.

(e) **General Approvals.** City, School Board and Manatee County shall have until the end of the Inspection Period to receive approval of their respective governing boards of the transactions described in the Phase II Contract to be performed by the respective entity; and City shall have received approval of its governing board on terms satisfactory to City, in its sole discretion that City shall be permitted to accept the dedication of the Property, develop it as intended, and perform its obligations under this Agreement. The sole remedy for failing to obtain such approvals is to terminate this Agreement before the end of the Inspection Period.

(f) **Disclaimer.** City acknowledges that any documents regarding the Property provided by Manatee Fruit are provided for informational purposes only, and that Manatee Fruit makes no representation or warranty, express or implied, as to the accuracy or completeness of any such Documents, except for the representations and warranties expressly set forth herein; and the City further agrees that Manatee Fruit will have no liability to City resulting from the use of any of any such documents. The City agrees that it shall independently inspect and investigate the Property and verify such information with respect to the Property as the City deems necessary or desirable to fully evaluate the proposed transaction contemplated by this Agreement and the physical condition of the Property. City acknowledges and agrees that Manatee Fruit is not making and specifically disclaims any warranties or representations of any kind or character, express or implied (other than as contained in this Agreement), with respect to the Property, except the representations and warranties expressly set forth herein. The City agrees that with respect to the Property, City has not relied upon and will not rely upon, either directly or indirectly, any statement, representation or warranty of Manatee Fruit (except those contained in this Agreement and the Deed) or any agent of Manatee Fruit. City represents that except as set forth herein it is relying solely on its own expertise and that of its Contractors, and that City will conduct such inspections and investigations of the Property, including, but not limited to, the physical and environmental conditions of the Property, as City solely deems necessary or advisable. City acknowledges and agrees that there are no oral agreements collateral to or affecting the Property by Manatee Fruit, any agent of Manatee Fruit or any third party. The terms and conditions of this paragraph shall expressly survive the Closing.

(g) **Easements and Exhibits.** To the extent the easement agreements and sketches/legal descriptions referenced in this Agreement and in the List of Exhibits attached hereto are not attached to this Agreement at the time of execution, City will provide drafts of same to Manatee Fruit no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to Manatee Fruit in its sole discretion. In the event (and to the extent) such documents, sketches and legal descriptions are not timely provided and agreed during the Inspection Period, and if Manatee Fruit does not terminate during the Inspection Period, agreement by Manatee Fruit on the form and content of all such documents and all such sketches and legal descriptions is a condition precedent to Manatee Fruit's obligation to close.

(h) **Right to Terminate.** Either party shall be entitled to terminate this Agreement by giving notice of termination to the other party no later than the last day of the Inspection Period for any reason whatsoever. Upon such termination, the Parties shall thereupon be released of further obligations under this Agreement, except those that specifically survive termination of this Agreement.

13. **Existing Utility Easements and Facilities in or adjacent to Vacated Property.** The only Utility Easement in or adjacent to the Vacated Property that Manatee Fruit agrees to accept is that certain Utility Easement between Manatee Fruit Company and the County of Manatee recorded in O.R. Book 1041, Page 0918, Public Records Manatee County, Florida.

Either by virtue of the Commitment to be issued to Manatee Fruit or by virtue of the Survey to be provided to Manatee Fruit or otherwise within the 20-day time period for the procurement of the Survey, City will advise Manatee Fruit whether any additional utility easements or utility installations existing in the Vacated Property or adjacent to the Vacated Property. For purposes of this Section, references to utility easements and utility installations include, but are not necessarily limited to, utility or drainage easements or facilities owned by the City, County, other governmental entity, FP&L, cable companies, gas companies or the like.

In the event any such easements or facilities exist and do not contain relocation provisions acceptable to Manatee Fruit in its sole discretion, prior to Closing, City will (a) either vacate any such easements or obtain releases of same, and (b) if installations or facilities exist in such areas, obtain a replacement easement from the holder of such easement containing the following provisions in form and content acceptable to Manatee Fruit:

- i) The utility provider's agreement to relocate the facilities to a mutually agreed location in order to accommodate the development of the land by Manatee Fruit within a reasonable time after notice from Manatee Fruit; and
- ii) Such relocation shall be at Manatee Fruit's reasonable expense; and

iii) Upon such relocation, Manatee Fruit shall grant a replacement easement for the new location and the utility provider will release the existing easement in exchange therefor.

14. **Closing Costs and Documentary Stamp Tax Indemnity.**

(a) **Closing Costs.** As the subject transfer involves a dedication, the parties anticipate that there will be no documentary stamp tax due on the recording of the Deed. However, should any documentary stamp tax be due in connection with the transfer, it shall be paid by the City. The City shall pay the cost of the Title Policies; and Manatee Fruit shall pay the cost of recording any corrective title instruments. City shall pay the costs of recording the deed and the costs of recording any easements or agreements described herein.

(b) **Title and Due Diligence Costs.** The City shall pay for the cost of the Surveys. City shall pay all costs of all appraisals (except as otherwise provided in **Section 12(a)**), soil tests, environmental tests, hydrological studies, and other tests associated with its due diligence, zoning and permitting with respect to the Property.

15. **Proration of Taxes and Assessments.** At Closing, Manatee Fruit shall, in accordance with the statutory requirements set forth in Section 196.295, Florida Statutes, deposit in escrow with the County Tax Collector an amount equal to any real, personal and intangible property taxes for the current year for the Property, prorated to the Closing date. This amount shall be based upon the current assessment and millage rate, if any. If the actual taxes vary from the figures used to close this transaction, Manatee Fruit shall pay appropriate adjustments upon demand, which demand shall be made no later than December 31st of the year in which Closing occurs. There shall be no proration of any expenses related to the operation of the Property unless specifically and expressly agreed. Certified liens levied by any governmental authority for which the work has been substantially completed shall be paid by Manatee Fruit. Pending liens and liens for which the work has not been substantially completed shall be paid by City. The provisions of this Section shall specifically survive the Closing.

16. **Representations, Warranties and Covenants of Manatee Fruit and City.**

(a) **Representations and Warranties of Manatee Fruit.** As an inducement to City to enter into this Agreement and to consummate the transactions contemplated herein, Manatee Fruit represents and warrants to and covenants with City that the following are true and correct as of the date hereof, and shall be true and correct as of the Closing:

(i) There is no party in possession of, or that has a right to possess, any portion of the Property as lessee, tenant at sufferance, licensee, or otherwise, except for tenants under an existing cattle and agricultural lease, from which the Property will be released at Closing.

(ii) Manatee Fruit has not received any written notice from any governmental agency that the Property is not in full compliance with all applicable laws, statutes,



ordinances, regulations, codes, covenants, conditions and restrictions of any kind or nature affecting the Property or any part of it.

(iii) All payments required to be made to contractors, subcontractors, mechanics, materialmen and all other persons in connection with work done or services performed with respect to the Property by or at the direction of Manatee Fruit have been made, and, to the best of its knowledge, there is no basis for the filing of any lien against the Property.

(iv) Except as disclosed, Manatee Fruit has received no notice of any private assessments against the Property that remain unpaid, including without limitation those for the construction of utility lines and apparatus, streets, sidewalks and curbs.

(v) Manatee Fruit has no actual knowledge of any subsurface condition which would impair the usability or developability of the Property for City's intended use, which has not already been disclosed to City.

(vi) Except as disclosed to City, or to which City is a party, there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements that presently impact upon the Property by reason of any existing improvements on the Property.

(vii) Manatee Fruit has received no notice from any governmental agency of any pending or threatened litigation or proceedings before any governmental agency in which any person or entity alleges that the Property is in violation or threatened violation of any Environmental Laws or the presence, release, threat of release or placement on or at the Property of any Hazardous Materials, nor has it (i) received any notice that any governmental or quasi-governmental authority or any employee or agent thereof, has determined, threatened to determine or required an investigation to determine that there has been a violation of any Environmental Laws at, on or in connection with the Property or that there exists a presence, release, threat of release or placement of any Hazardous Materials on or at the Property, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation or disposal of any Hazardous Materials at or on the Property; (ii) received any notice under the citizen suit provision of any Environmental Law in connection with the Property or any facilities, operations or activities conducted thereon, or any business conducted in connection therewith; or (iii) received any written request from any governmental or quasi-governmental authority for inspection, request for information, notice, demand, administrative inquiry or any formal or informal complaint or claim with respect to or in connection with the violation or threatened violation of any Environmental Laws or existence of Hazardous Materials relating to the Property or any facilities, operations or activities conducted thereon or any business conducted in connection therewith.

(viii) The execution and delivery by Manatee Fruit of, and Manatee Fruit's performance under, this Agreement are within Manatee Fruit's powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of Manatee Fruit has the authority to do so.



(ix) This Agreement constitutes the legal, valid and binding obligation of Manatee Fruit, enforceable in accordance with its terms.

(x) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Manatee Fruit is a party or by which Manatee Fruit might be bound.

(xi) **Radon.** Florida Statutes requires the following notice be given: "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 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."

(xii) **Property conveyed "as is."** Manatee Fruit acknowledges and agrees that City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied (other than as expressly contained herein), with respect to the Vacated Property, including, but not limited to, warranties or representations as to matters of title (other than City's warranty of title set forth in the deed to be delivered at closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, valuation, governmental approvals, governmental regulations or any other matter or thing relating to or affecting the Vacated Property including, without limitation: (i) the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Vacated Property, and (ii) the manner, quality, state of repair or lack of repair of the Vacated Property. Manatee Fruit agrees that with respect to the Vacated Property which it agrees to acquire under the terms of this Agreement, it has not relied upon and will not rely upon, either directly or indirectly, any statement, representation or warranty of City (other than as expressly contained herein). Manatee Fruit represents that it is a knowledgeable buyer of real estate and that it is relying solely on its own expertise and that of its contractors, and that it will conduct such inspections and investigations of the Vacated Property, including, but not limited to, the physical conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical conditions, may not have been revealed by its inspections and investigations. Manatee Fruit acknowledges and agrees that upon closing, City shall convey and Manatee Fruit shall accept the Vacated Property "as is, where is," with all faults, and further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Vacated Property by City, any agent of the owner or any third party. The terms and conditions of this paragraph shall expressly survive the closing and not merge therein.

(b) **Covenants of Manatee Fruit.** Manatee Fruit covenants to City as follows:

(i) From and after the Effective Date, through and including the Closing Date, Manatee Fruit shall not apply for any change whatsoever of the current zoning of any Property

or otherwise seek to change in any manner whatsoever the nature of the use of the Property or seek any variance of such zoning of the Property except in conjunction with the other parties to this Agreement and as otherwise expressly provided for herein.

(ii) From and after the Effective Date, through the Closing Date, Manatee Fruit shall not transfer, convey, or encumber (unless Manatee Fruit shall remove such encumbrance on or before the Closing Date) in any manner whatsoever any portion of the Property or any rights therein, or enter into any easement, license or agreement (or amend any existing easement, license or agreement) granting to any person or entity any right with respect to the Property or any portion thereof.

(iii) That it shall not direct any person to make, nor shall it consent to any other person making, any material changes to the Property or any portion thereof from the date of this Agreement through the Closing Date without the prior written consent of City.

(iv) It shall provide the City with prompt notice if any of the representations or warranties with respect to the Property set forth in the immediately preceding Paragraph "a" of this Section becomes untrue in any material respect.

(v) It shall not place or release or allow to be placed or released on the Property any Hazardous Materials in violation of any Environmental Laws.

(c) **City's Representations and Warranties and Covenants.** City represents and warrants to Manatee Fruit, its successors and assigns, which representations and warranties are now and on the Closing Date and on an through the effective date of vacation of the Vacated Property shall be true and correct, as follows:

(i) The execution and delivery by City of, and City's performance under, this Agreement are within City's powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of City has the authority to do so.

(ii) This Agreement constitutes the legal, valid and binding obligation of City, enforceable in accordance with its terms.

(iii) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which City is a party or by which City might be bound.

(iv) The Property, together with property owned by City, constitutes all of the real property necessary for completion of the Roadway Project.

(v) The City represents and warrants to and covenants with Manatee Fruit that the following are true and correct as of the date hereof with respect to the Vacated Property, and

shall be true and correct as of the Closing and on and through the effective date of vacation of the Vacated Property:

(1) Except with respect to the rights of the public in the public right of way and the rights of any utility with installations in the right of way, to the best of its knowledge there is no party in possession of, or that has a right to possess, arising subsequent to the City's ownership, any portion of the Vacated Property as lessee, tenant at sufferance, licensee, or otherwise except Manatee Fruit.

(2) City has not received any written notice from any governmental agency that the Vacated Property is not in full compliance with all applicable laws, statutes, ordinances, regulations, codes, covenants, conditions and restrictions of any kind or nature affecting the Vacated Property or any part of it.

(3) All payments required to be made to contractors, subcontractors, mechanics, materialmen and all other persons in connection with work done or services performed with respect to the Vacated Property by or at the direction of the City have been made, and, to the best of its knowledge, there is no basis for the filing of any lien against the Vacated Property.

(4) Except as disclosed, no public or private assessments have been made against the Vacated Property since the City acquired it which remains unpaid, including without limitation those for the construction of utility lines and apparatus, streets, sidewalks and curbs.

(5) Except as disclosed, to the best of its knowledge there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which presently impact upon the Vacated Property by reason of any existing improvements on it.

(6) To the best of City's knowledge, after City obtained title to the Vacated Property: (i) the activities, operations and business conducted at or on the Vacated Property have been at all times in compliance with all Environmental Laws; and (ii) no lien has been imposed on the Vacated Property by any federal, state or local governmental or quasi-governmental entity in connection with any environmental condition, the violation or threatened violation of any Environmental Laws or the presence of any Hazardous Materials on the Vacated Property.

(7) City is not aware of any pending or threatened litigation or proceedings before any administrative agency in which any person or entity alleges the violation or threatened violation of any Environmental Laws or the presence, release, threat of release or placement on or at the Property of any Hazardous Materials, or of any facts which would give rise to any such action, nor has City (i) received any notice that any governmental or quasi-governmental authority or any employee or agent thereof, has determined, threatened to determine or required an investigation to determine that there has been a violation of any Environmental Laws at, on or in

connection with the Property or that there exists a presence, release, threat of release or placement of any Hazardous Materials on or at the Vacated Property, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation or disposal of any Hazardous Materials at or on the Vacated Property; (ii) received any notice under the citizen suit provision of any Environmental Law in connection with the Vacated Property or any facilities, operations or activities conducted thereon, or any business conducted in connection therewith; or (iii) received any written request from any governmental or quasi-governmental authority for inspection, request for information, notice, demand, administrative inquiry or any formal or informal complaint or claim with respect to or in connection with the violation or threatened violation of any Environmental Laws or existence of Hazardous Materials relating to the Vacated Property or any facilities, operations or activities conducted thereon or any business conducted in connection therewith.

(8) **Radon.** Florida Statutes requires the following notice be given: "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 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."

(9) **Property conveyed "as is."** City acknowledges and agrees that Manatee Fruit is not making and specifically disclaims any warranties or representations of any kind or character, express or implied (other than as expressly contained herein), with respect to the Property, including, but not limited to, warranties or representations as to matters of title (other than Manatee Fruit's warranty of title set forth in the deed to be delivered at closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, valuation, governmental approvals, governmental regulations or any other matter or thing relating to or affecting the Property including, without limitation: (i) the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property, and (ii) the manner, quality, state of repair or lack of repair of the Property. City agrees that with respect to the Property which it agrees to acquire under the terms of this Agreement, it has not relied upon and will not rely upon, either directly or indirectly, any statement, representation or warranty of Manatee Fruit (other than as expressly contained herein). City represents that it is a knowledgeable buyer of real estate and that it is relying solely on its own expertise and that of its contractors, and that it will conduct such inspections and investigations of the Property, including, but not limited to, the physical conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical conditions, may not have been revealed by its inspections and investigations. City acknowledges and agrees that upon closing, Manatee Fruit shall convey and City shall accept the Property "as is, where is," with all faults, and further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by Manatee Fruit, any agent of the owner or any third party. The terms and conditions of this paragraph shall expressly survive the closing and not merge therein.

(vi) It shall provide the Manatee Fruit with prompt notice if any of the representations or warranties or covenants set forth in this Paragraph "c" of this Section becomes untrue in any material respect.

17. **Casualty Loss/Condemnation.**

(a) **Casualty Loss.** Prior to Closing, risk of loss with regard to any part of the Property shall be borne by the Manatee Fruit. If any part of the Property should be materially damaged or destroyed prior to Closing making it unusable for the intended use as a roadway, then City may elect to terminate this Agreement by written notice to Manatee Fruit within ten (10) days of receipt by City of Manatee Fruit's written notice to City of any such material damage or destruction to the Property, and neither City nor Manatee Fruit shall have any further obligation to each other hereunder with respect to the Property. Failure of City to give notice of termination shall be deemed a waiver of City's right to terminate, in which event all insurance proceeds shall be paid or assigned to City at Closing.

(b) **Condemnation.** Manatee Fruit agrees to give City written notice of any action or proceeding for condemnation of any part of the Property, which may result in the taking of all or part of a Property. Upon such notification, City shall have the right, to be exercised within ten (10) days after receipt of such notice, to terminate this Agreement. If City does not elect to terminate this Agreement, then this Agreement shall remain in full force and effect, and the description of the Property shall be revised accordingly to remove the portion taken by condemnation. In the event City fails to timely deliver written notice of termination pursuant to this Section, City shall be deemed to have waived its right of termination pursuant to this Section. While this Agreement is in effect, if City shall institute condemnation proceedings against any of the Property described herein, the provisions above in this subsection (b) shall be of no force and effect.

(c) **Termination Pursuant to Paragraphs (a) or (b).** Upon the timely delivery of a termination notice pursuant to either Paragraph (a) or (b) above: (i) City shall deliver the Inspection Documents to Manatee Fruit; and (ii) following (i), no party shall have any further rights or obligations pursuant to this Agreement except for the City's Inspection Obligations, the obligations created pursuant to **Section 20** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

18. **Closing Documents.** At Closing, in addition to any other documents required to be delivered hereunder, the following documents shall be executed and delivered to the Closing Agent:

(a) **Authority of Manatee Fruit.** Manatee Fruit shall deliver to City satisfactory evidence of its due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby.

(b) **Authority of City.** City shall deliver to Manatee Fruit satisfactory evidence of its due and proper authority and power to perform its obligations hereunder and to execute and deliver all documents required hereby.

(c) **Deed.** Manatee Fruit shall execute and deliver to City the Deed conveying the Property to City.

(d) **FIRPTA Affidavit.** Manatee Fruit shall execute and deliver to City a certificate certifying that Manatee Fruit is not a foreign person, corporation or partnership or state within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended.

(e) **Lease Termination.** Terminations of or releases of the Property from all current leases of portions of the Property.

(f) **Other Required Documents.** Manatee Fruit and City shall execute such other documents as may be required by the law of the jurisdiction in which the Property is located, at no expense to Manatee Fruit. In addition, Manatee Fruit will execute and deliver to the Closing Agent the Grantor's Affidavit and such federal income tax reports respecting the sale of the Property as are required by the Internal Revenue Code of 1986, as amended.

(g) **Temporary Construction Easement.** The temporary construction easement described in **Section 8(c)** from Manatee Fruit to City substantially in form attached hereto as **Exhibit C-1**.

(h) **Sign Easement.** The sign easement from Manatee Fruit to the City described in **Section 8(h)** of this Agreement, substantially in form attached hereto as **Exhibit E-1**.

(i) **Stormwater and Utility Easement.** The stormwater and utility easement from City to Manatee Fruit described in **Section 8(e)** substantially in form attached hereto as **Exhibit D-1**.

19. **Assignment.** No party may assign any or all of its rights and obligations pursuant to this Agreement (whether by direct or indirect transfer or assignment) without the other party's prior written consent.

20. **Brokers/Indemnification.** The parties represent and warrant to each other that they have not dealt with any realtor, broker, salesperson, or agent in connection with this Agreement. In the event of any breach of the foregoing representations, the breaching party shall indemnify and hold the others harmless from any cost, expense, or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any realtor, broker, or agent in connection with this Agreement or by reason of any act of such breaching party; provided, however, that the City's agreement to indemnify herein is expressly subject to the limitations of sovereign immunity as provided in Fla. Stat. 768.28, and in no way may be construed as a waiver thereof. The representations, warranties, and indemnities contained in this Section shall specifically survive the recession, cancellation, termination or consummation of this Agreement.

21. **Notices.** Any notice or communication shall be in writing and shall be sent by either: (a) personal delivery service with charges therefor billed to shipper; (b) overnight or expedited delivery service with charges therefor billed to shipper; (c) facsimile transmission provided a confirmation copy is provided; or (d) United States mail, postage prepaid, registered or certified mail, return receipt requested. Any notice or communication sent as above provided shall be deemed given or delivered: (i) upon receipt if personally delivered (provided that such delivery is confirmed by the courier delivery service); (ii) if sent by United States Mail, on the date appearing on the return receipt, or if there is no date on such return receipt, the receipt date shall be presumed to be the postmark appearing on such return receipt; or (iii) on the date of actual delivery by any overnight or expedited delivery service or actual receipt if sent by facsimile transmission (provided receipt is confirmed as provided above). All notices, requests or demands which any party is required or may desire to give to any other party under any provision of this Agreement may be given by the party's attorney. All notices must be delivered to the other parties at the following address:

City: City of Palmetto  
516 8<sup>th</sup> Ave. West  
Palmetto, Florida 34221  
Attn: Shirley Bryant, Mayor  
Fax: (941) 722-8557

With copy to: Mark P. Barnebey and Sue A. Jacobson  
Kirk Pinkerton, P.A.  
1301 6<sup>th</sup> Avenue West, Suite 102  
Bradenton, Florida 34205  
Fax: (941) 744 -9691 and (941) 364-2490

And copy to: David Persson and Michael Hankin  
Hankin, Persson, Davis, McClenathen & Darnell  
1820 Ringling Boulevard  
Sarasota, Florida 34236  
Fax: 941/957-0558

Manatee Fruit: Whiting H. Preston, II, President  
Manatee Fruit Company  
1320 33<sup>rd</sup> Street West  
Palmetto, Florida 34221  
Fax: (941) 721-0805

With copy to: Caleb Grimes and Leslie H. Gladfelter  
Grimes Goebel Grimes Hawkins Gladfelter & Galvano P.L.  
1023 Manatee Avenue West  
Bradenton, Florida 34205  
Fax: (941) 748-0158

or to such other address as any party may designate by written notice to the other party.

22. **Indemnification.** To the extent permitted under Florida Statutes, §768.28 and without in any way limiting the immunity provided by that statute and any other provision of law, City agrees to indemnify and hold Manatee Fruit harmless from and against any and all costs, damages, claims, actions or causes of action arising out of any damage, loss or injury to persons or property on, in, from or relating to this Agreement and the Roadway Project; provided, however, that this agreement to indemnify shall not apply to any damage, loss or injury caused by the negligence or intentional act of Manatee Fruit or its agents.

23. **Remedies.** In the event that any party fails to timely comply with any condition, covenant or obligation it has hereunder, the other parties shall have the right to:

(a) Terminate this Agreement by giving written notice thereof to the other parties, whereupon no party shall have any further rights or obligations hereunder except those that specifically survive termination; provided, however, (i) termination hereunder is only available as a remedy prior to the Closing, and (ii) except for monetary obligations and the obligation to close hereunder, the defaulting party shall have ten (10) days after receipt of written notice to cure such default (unless different time frames are otherwise specifically provided in this Agreement); or

(b) Enforce specific performance of the defaulting party's obligations under this Agreement.

24. **Miscellaneous.**

(a) **Exhibits; 1998 Agreement.** The Exhibits attached hereto (or to be attached hereto as provided herein) are hereby incorporated herein by reference and the List of Exhibits and special provisions therein (if any) are also incorporated herein by reference. For clarification, the surviving provisions of the 1998 Agreement shall otherwise remain in full force and effect to the extent not previously satisfied; provided, however, the provisions of **Section 2(b)** above with respect



to transportation impact fee credits shall supplement and modify the transportation impact credit provisions of the 1998 Agreement, as appropriate.

(b) **No Oral Modifications.** This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of all of the parties.

(c) **Binding Effect.** The provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors.

(d) **Time of Essence.** Time is of the essence with respect to each provision of this Agreement that requires any action to be taken by a party within a stated time period or upon a specified date.

(e) **Delivery of Possession.** Possession of the Property shall be granted to City upon completion of Closing.

(f) **Calculation of Time.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended through the close of business on the next Business Day. Unless otherwise expressly stated, time periods shall be calculated in calendar days.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

(h) **Caption.** Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision hereof.

(i) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

(j) **No Recordation.** This Agreement, any part hereof, or any memorandum hereof shall not be recorded in the public records of any county in the State of Florida; provided, however, that the foregoing shall not prohibit the filing of this Agreement in any court proceeding in which this Agreement is relevant.

(k) **No Waiver.** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof. Nothing contained herein or in the

Introduction to this Agreement shall be construed as a waiver of any party's rights in the event of a condemnation proceeding.

(l) **Construction of Agreement.** The parties acknowledge and agree that they have been represented by counsel and that each of the parties has participated in the drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the responsibilities in connection with the preparation of this Agreement.

(m) **No Third Party Beneficiaries.** The agreements made in this Agreement and the development plan described herein have been determined by the City to be in furtherance of the public interest. However, no member of the public or any person or entity not a party to this Agreement shall have any right to enforce it or any remedy for breach of it.

(n) **Public Disclosure Affidavit.** The parties confirm that, before entering into this Agreement, they have complied with Section 286.23(2), Florida Statutes to the extent applicable to any transaction described in this Agreement.

(o) **Cost Reimbursement.** Coincident with its execution of this Agreement, City will pay to Manatee Fruit the amount of \$63,000.00 US to apply toward Manatee Fruit's costs and expenses (including but not limited to attorneys' fees) incurred in connection with this Agreement, the Phase II Agreement and all matters relevant thereto. At Closing hereunder, City will pay to Manatee Fruit (i) the additional amount of \$27,000.00 US to apply toward Manatee Fruit's costs and expenses (including but not limited to attorneys' fees) together with an amount for Manatee Fruit's additional reasonable attorneys' fees incurred by or on behalf of Manatee Fruit in connection with this Agreement, the Phase II Agreement and all matters relevant thereto in order to complete the transactions contemplated hereby and thereby.

(p) **Attorneys' Fees and Costs.** In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees (including appeal and recovery of judgment costs and fees) from the non-prevailing party.

(q) **Survival.** As required by the context, any provision(s) hereof shall specifically survive the Closing.

(r) **Execution.** In the event this Agreement is not executed by all parties on or before October 7, 2010, it shall be null and void and of no force and effect.

**INTENTIONALLY BLANK \_ SIGNATURES BEGIN ON NEXT PAGE**

**Signed, sealed and delivered  
in the presence of:**

30

	MANATEE FRUIT COMPANY, INC., a Florida corporation
_____ Signature	By: _____ Whiting H. Preston, II, President
_____ Print Name	<b>Date Executed:</b> _____, 2010
_____ Signature	
_____ Print Name	

### **List of Exhibits**

A- Sketch and legal description of Property to be conveyed by Manatee Fruit to City (Introduction and Section 2(a))

B-1 Property to be annexed 8<sup>th</sup> Avenue West (Section 9(b))

B-2 Property to be vacated, both 23<sup>rd</sup> St. W. and 8<sup>th</sup> Ave. W. (Section 9(b))

C-1 Temporary Construction Easement (Section 8(c))

C-2 Sketch of Manatee Fruit land subject to temporary construction easement (Section 8(c))

D-1 Stormwater and Utility Easement (Section 8(e))

D-2 Sketch and legal description of land to be subject to Stormwater and Utility Easement (Section 8(e))

E-1 Sign Easement (Section 8(h))

E-2 Sketch and legal description to be subject to Sign Easement (Section 8(h))

E-3 Sign Easement (Section 8(i))

F Sketch of land to be redesignated as GCOM through amendment to the City of Palmetto Comprehensive Plan: Parcels 1, 2, 3, 4 and 5 shown on aerial, together with specific sketches and legals of Parcels 4 and 5 (Section 9(a))

G Letter Agreement re: Environmental Study from City to MFC (Section 12(d))

### **Special provisions:**

To the extent any of the above-referenced Exhibits are not attached to this Agreement at the time of execution, City will provide drafts of same (documents and sketches & legal descriptions) to Manatee Fruit no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to Manatee Fruit in its sole and absolute discretion.

23rd Street West

EXHIBIT

A

DESCRIPTION: A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

COMMENCE at the Northwest corner of the Southeast 1/4 of said Section 11, thence run South along the West line of the Southeast 1/4 of said Section 11, S.00°31'10"W., 94.41 feet to a point on a curve also known as the POINT OF BEGINNING; thence Easterly, 364.59 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 14°24'23" (chord bearing S.82°05'13"E., 363.63 feet) to a point of tangency; thence S.89°17'24"E., 214.15 feet to a point of curvature; thence Easterly, 450.44 feet along the arc of a curve to the right having a radius of 650.00 feet and a central angle of 39°42'19" (chord bearing S.69°26'15"E., 441.48 feet) to a point on the Northerly Right-of-Way line of U.S. BUSINESS HIGHWAY No. 41; thence along said Northerly Right-of-Way line of U.S. BUSINESS HIGHWAY No. 41, S.57°53'20"W., 105.80 feet to a point on a curve; thence continue Westerly, 349.36 feet along the arc of said curve to the left having a radius of 550.00 feet and a central angle of 36°23'39" (chord bearing N.71°05'35"W., 343.51 feet) to a point of tangency; thence N.89°17'24"W., 214.15 feet to a point of curvature; thence Westerly, 469.07 feet along the arc of a curve to the right having a radius of 1550.00 feet and a central angle of 17°20'21" (chord bearing N.80°37'14"W., 467.28 feet) to a point of reverse curvature; thence Westerly, 448.70 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 17°43'48" (chord bearing N.80°48'57"W., 446.91 feet) to a point of tangency; thence N.89°40'51"W., 523.03 feet to a point of curvature; thence Westerly, 514.22 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 20°19'09" (chord bearing S.80°09'35"W., 511.53 feet) to a point of tangency; thence continue S.70°00'00"W., 314.96 feet to a point on the North Right-of-Way line of 23rd STREET WEST Parcel "A", O.R. 1581, Page 6246; thence N.89°33'41"W., 547.77 feet along the said North Right-of-Way line of 23rd STREET WEST Parcel "A", O.R. 1581, Page 6246 to a point of cusp; thence Easterly, 517.25 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 20°26'19" (chord bearing N.80°13'10"E., 514.51 feet) to a point of tangency; thence N.70°00'00"E., 321.90 feet to a point of curvature; thence Easterly, 549.69 feet along the arc of a curve to the right having a radius of 1550.00 feet and a central angle of 20°19'09" (chord bearing N.80°09'35"E., 546.81 feet) to a point of tangency, also being the North boundary of the Northeast 1/4 of the Southwest 1/4 and the South boundary of the Southeast 1/4 of the Northwest 1/4 of said Section 1, Township 34 South, Range 17 East; thence S.89°40'51"E., 523.03 feet along the said North boundary of the Northeast 1/4 of the Southwest 1/4 and the South boundary of the Southeast 1/4 of the Northwest 1/4 of said Section 1, Township 34 South, Range 17 East to a point of curvature; thence Easterly, 479.64 feet along the arc of a curve to the right having a radius of 1550.00 feet and a central angle of 17°43'48" (chord bearing S.80°48'57"E., 477.73 feet) to a point of reverse curvature; thence Easterly, 74.22 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 02°55'58" (chord bearing S.73°25'02"E., 74.21 feet) to the POINT OF BEGINNING.

Containing 7.063 acres, more or less.

**23rd STREET WEST  
CITY OF PALMETTO**

Prepared For: **CITY OF PALMETTO**

**DESCRIPTION  
SKETCH  
(Not a Survey)**

David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. **6423**

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

**GeoPoint**  
Surveying, Inc.

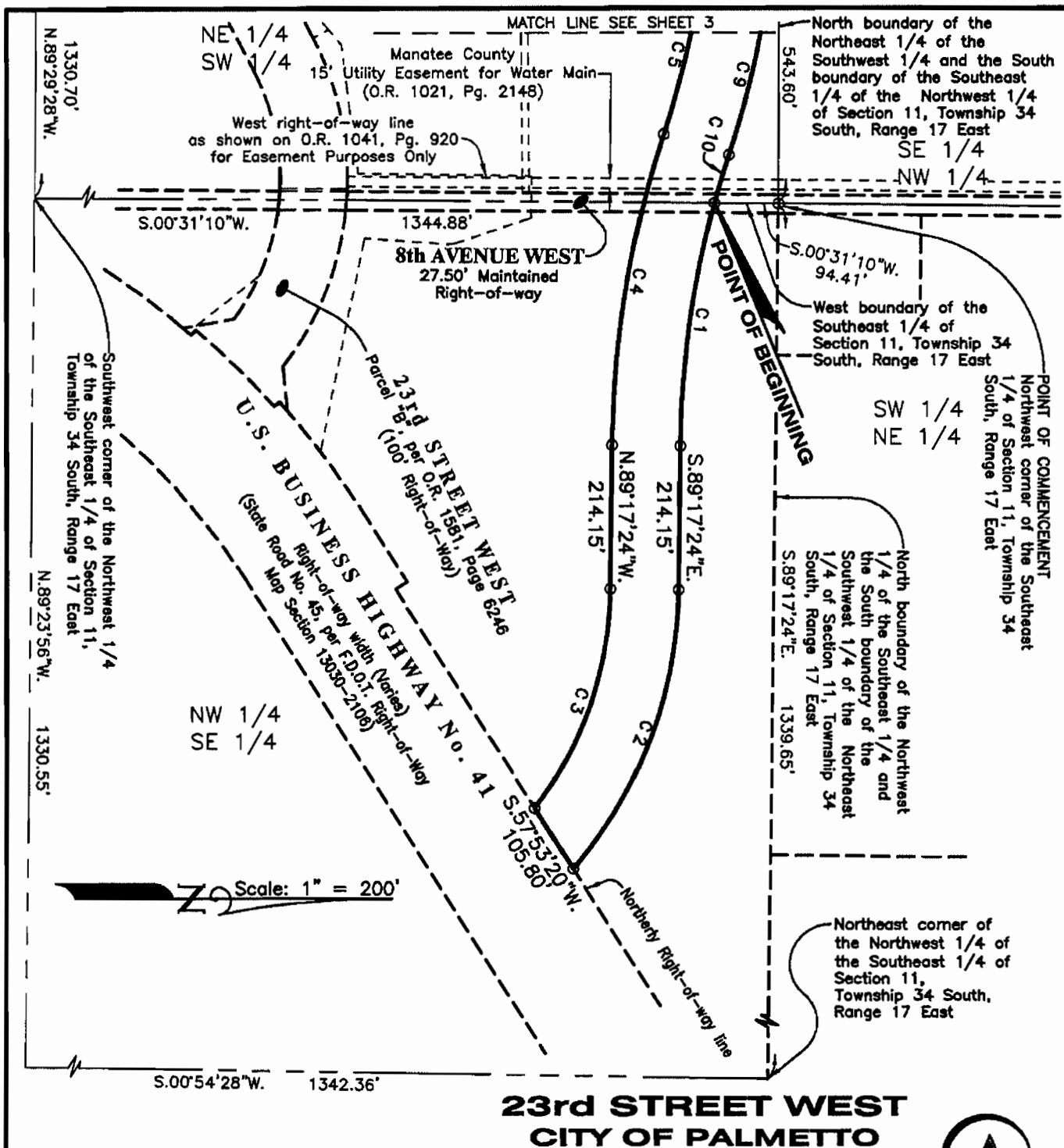
1403 E. 5th Avenue Phone: (813) 248-8888  
Tampa, Florida 33605 Fax: (813) 248-2266  
www.geopointsurvey.com Licensed Business Number LB 7768

Drawn: SEC Checked: JOB P.C.: N/A Data File: N/A

Date: 12/18/09 Dwg: 23RD-SHT1-05 Order No.: 000000

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 1 OF 4 SHEETS			



Prepared For: **CITY OF PALMETTO**

## DESCRIPTION SKETCH (Not a Survey)

David A. Williams

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO.

6423

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

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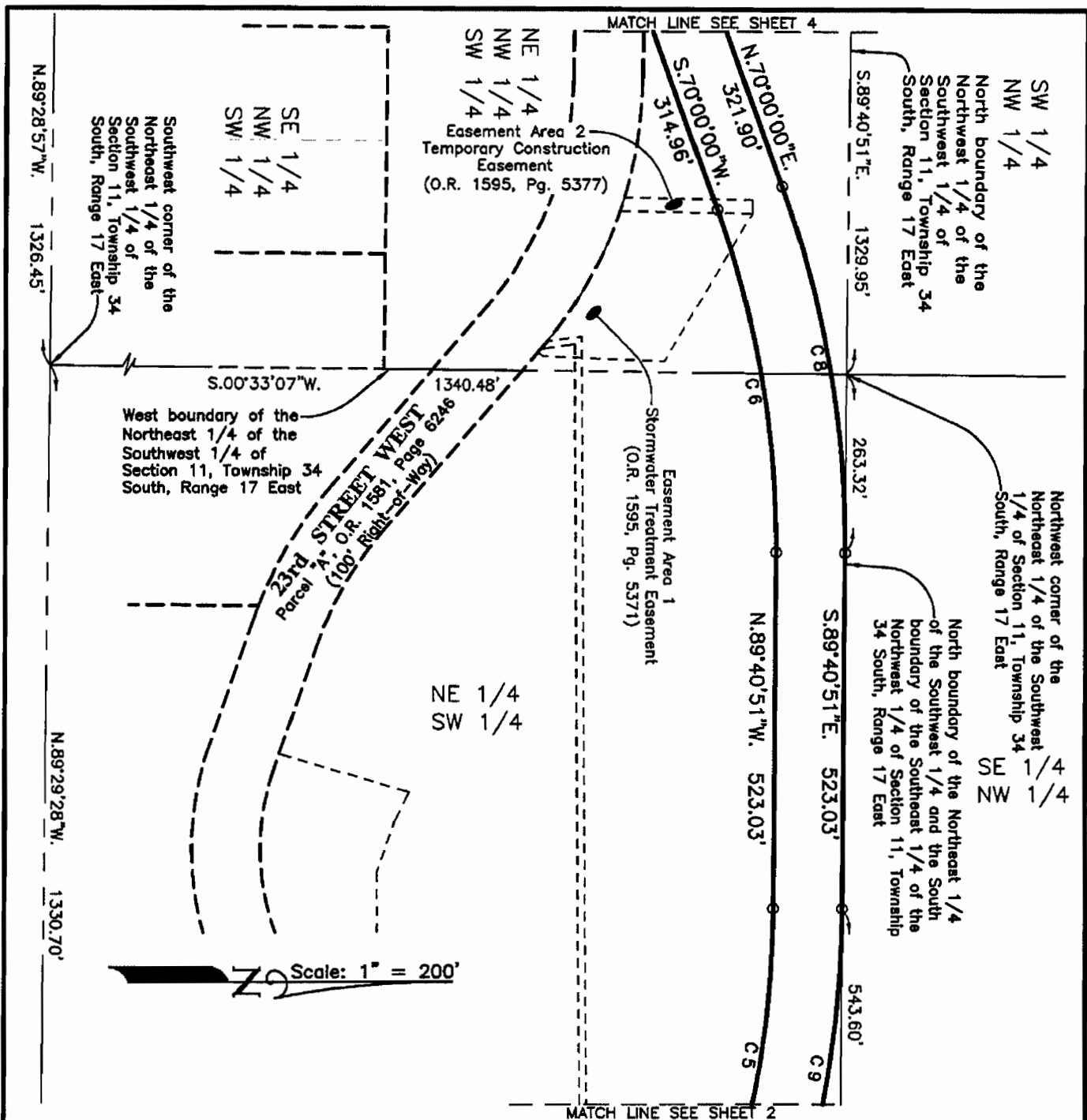
Drawn: SEC Checked: JOB P.C.: N/A Date Filed: N/A

Date: 12/18/09 Dwg: 23RD-SHT2-DS Order No.: 000000

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Dwn.
REVISIONS			

SHEET NO. 2 OF 4 SHEETS



## 23rd STREET WEST CITY OF PALMETTO

Prepared For: **CITY OF PALMETTO**

### DESCRIPTION SKETCH (Not a Survey)

David A. Williams

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue  
Tampa, Florida 33605  
www.geopointsurvey.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7766

Drawn: SEC Checked: JOB P.C.: N/A Date File: N/A

Date: 12/18/09 Dwg: 23RD-SHT3-DS Order No.: 000000

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Dwn.
REVISIONS			

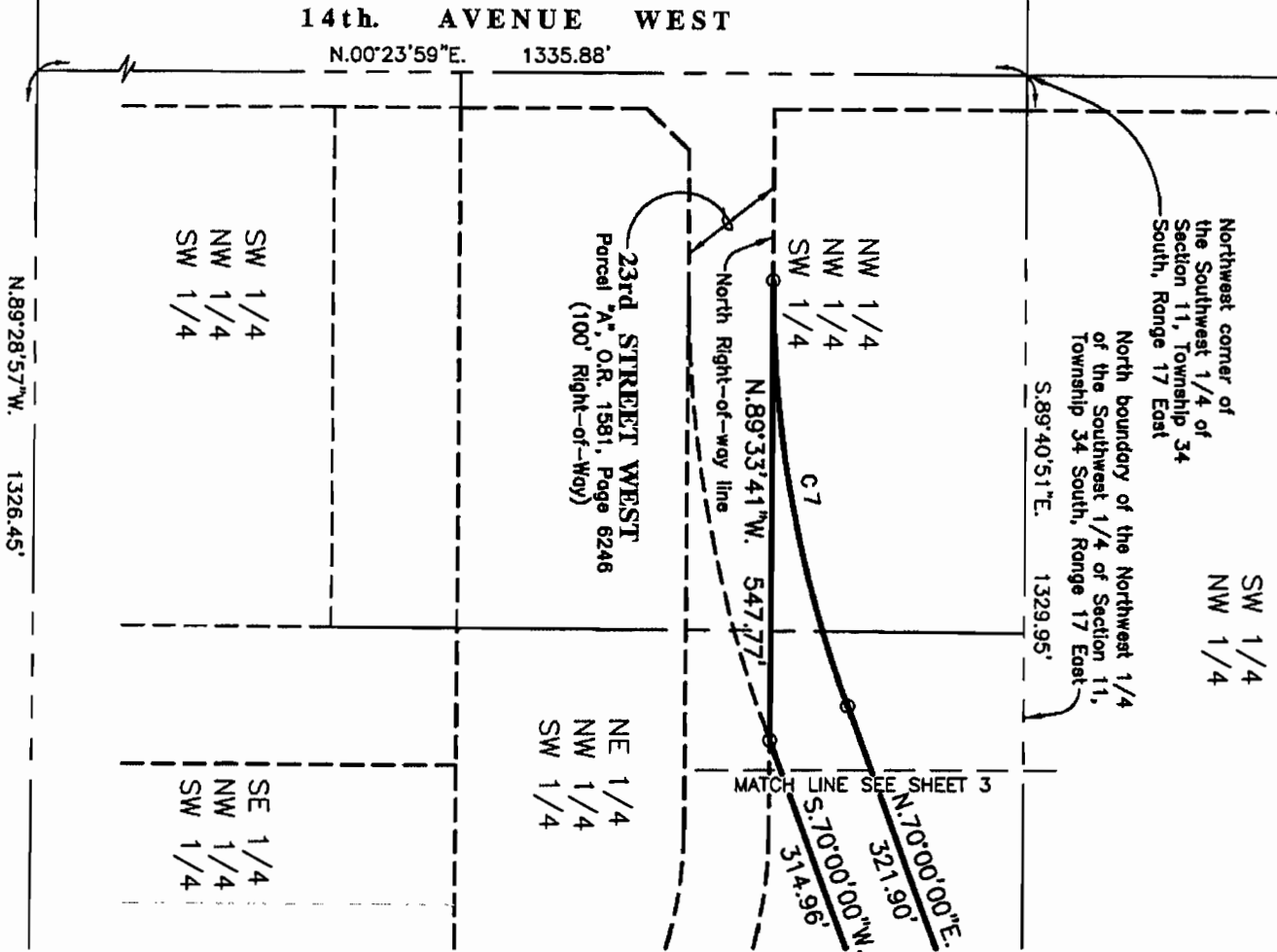
SHEET NO. 3 OF 4 SHEETS



CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	1450.00	14°24'23"	364.59	183.26	363.63	S.82°05'13"E.
2	650.00	39°42'19"	450.44	234.69	441.48	S.69°26'15"E.
3	550.00	36°23'39"	349.36	180.80	343.51	N.71°05'35"W.
4	1550.00	17°20'21"	469.07	236.34	467.28	N.80°37'14"W.
5	1450.00	17°43'48"	448.70	226.16	446.91	N.80°48'57"W.
6	1450.00	20°19'09"	514.22	259.84	511.53	S.80°09'35"W.
7	1450.00	20°26'19"	517.25	261.40	514.51	N.80°13'10"E.
8	1550.00	20°19'09"	549.69	277.76	546.81	N.80°09'35"E.
9	1550.00	17°43'48"	479.64	241.75	477.73	S.80°48'57"E.
10	1450.00	02°55'58"	74.22	37.12	74.21	S.73°25'02"E.

Scale: 1" = 200'



23rd STREET WEST  
CITY OF PALMETTO

Prepared For: CITY OF PALMETTO

DESCRIPTION  
SKETCH  
(Not a Survey)

David A. Williams

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO.

6423

**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue  
Tampa, Florida 33605  
www.geopointsurvey.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

No. Date Description Dwn.

REVISIONS

SHEET NO. 4 OF 4 SHEETS

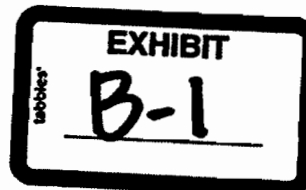
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC Checked: JOB P.C.: N/A Data File: N/A

Date: 12/18/09 Dwg: 23RD-SHT4-DS

Order No.: N/A

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST



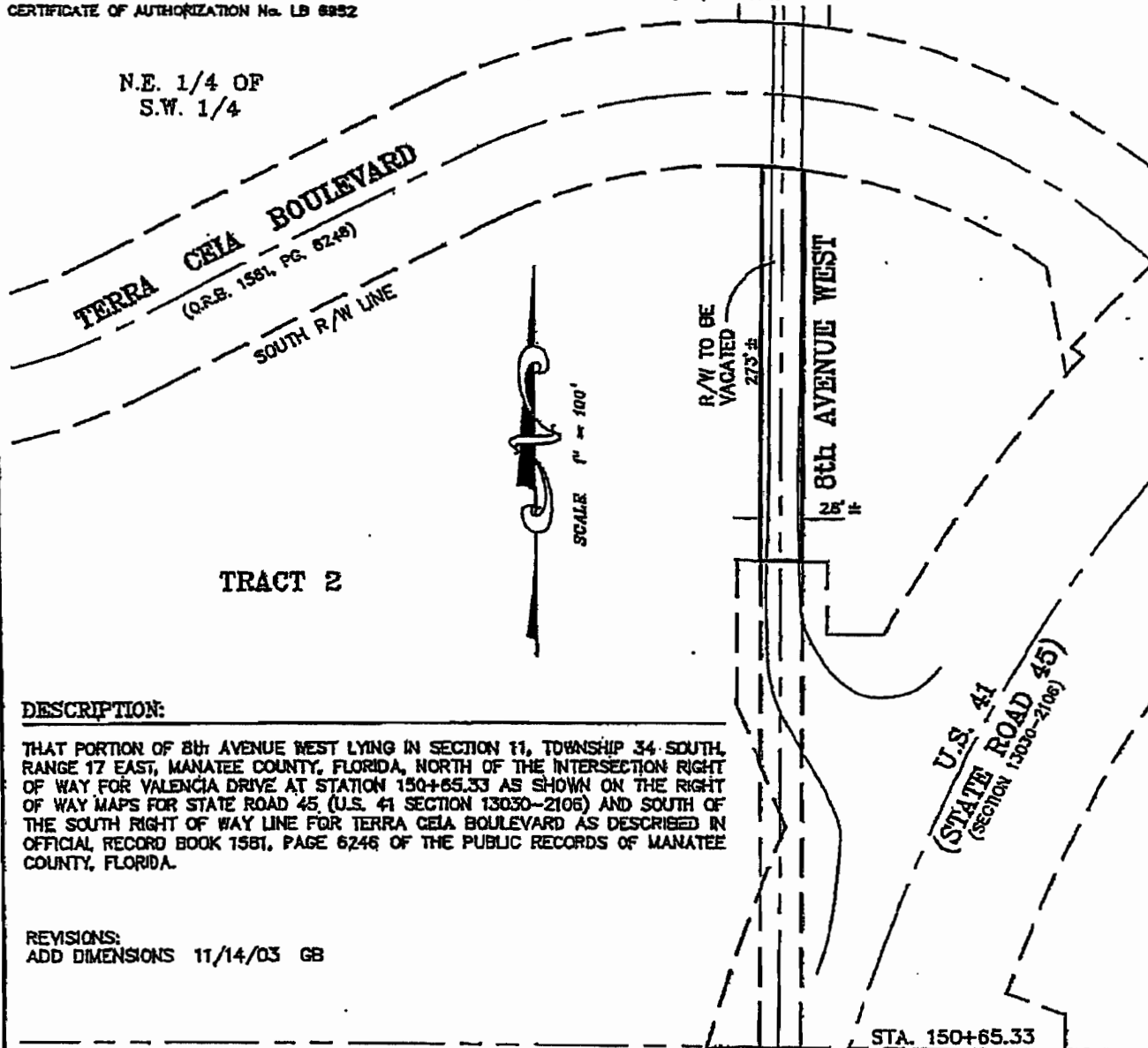
JUL 14 2004 2:22PM GRIMES GUEBEL

NO. 2546 P. 3

*Zoller, Naffar, & Shroyer, L.C.*

ZNS PROJ. No. 00-14349  
04-10-03 GB

ENGINEERS, PLANNERS, SURVEYORS, LANDSCAPE ARCHITECTS & ENVIRONMENTAL CONSULTANTS  
201 5th AVENUE DRIVE EAST, BRADENTON, FLORIDA 34206, (841)748-8000, FAX: (841)748-3747  
CERTIFICATE OF AUTHORIZATION No. LB 6852



**DESCRIPTION:**

THAT PORTION OF 8th AVENUE WEST LYING IN SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST, MANATEE COUNTY, FLORIDA, NORTH OF THE INTERSECTION RIGHT OF WAY FOR VALENCIA DRIVE AT STATION 150+65.33 AS SHOWN ON THE RIGHT OF WAY MAPS FOR STATE ROAD 45 (U.S. 41 SECTION 13030-2106) AND SOUTH OF THE SOUTH RIGHT OF WAY LINE FOR TERRA CELIA BOULEVARD AS DESCRIBED IN OFFICIAL RECORD BOOK 1581, PAGE 6246 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.

**REVISIONS:**

ADD DIMENSIONS 11/14/03 GB

**NOT A BOUNDARY SURVEY**

S.E. 1/4 OF  
S.W. 1/4

STA. 150+65.33

VALENCIA DRIVE

NOTE: THIS DESCRIPTION SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL BASED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

I HEREBY CERTIFY THAT THIS SKETCH AND DESCRIPTION HAVE BEEN PREPARED UNDER MY DIRECT SUPERVISION, THAT THEY ARE A TRUE REPRESENTATION OF THE LAND AS SHOWN AND DESCRIBED HEREON, THAT THEY ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THEY MEET THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA, CHAPTER 61617, FLORIDA ADMINISTRATIVE CODE.

BY: *James N. Gatch, Jr.*  
JAMES N. GATCH, JR., P.S.M.  
FLORIDA CERTIFICATE NO. LS 4295  
DATE OF CERTIFICATION: 11/14/03

**DESCRIPTION SKETCH**  
OF  
8th AVENUE WEST R/W VACATION  
LOCATED IN  
SECTIONS 11, TOWNSHIP 34 S., RANGE 17 E.  
MANATEE COUNTY, FLORIDA

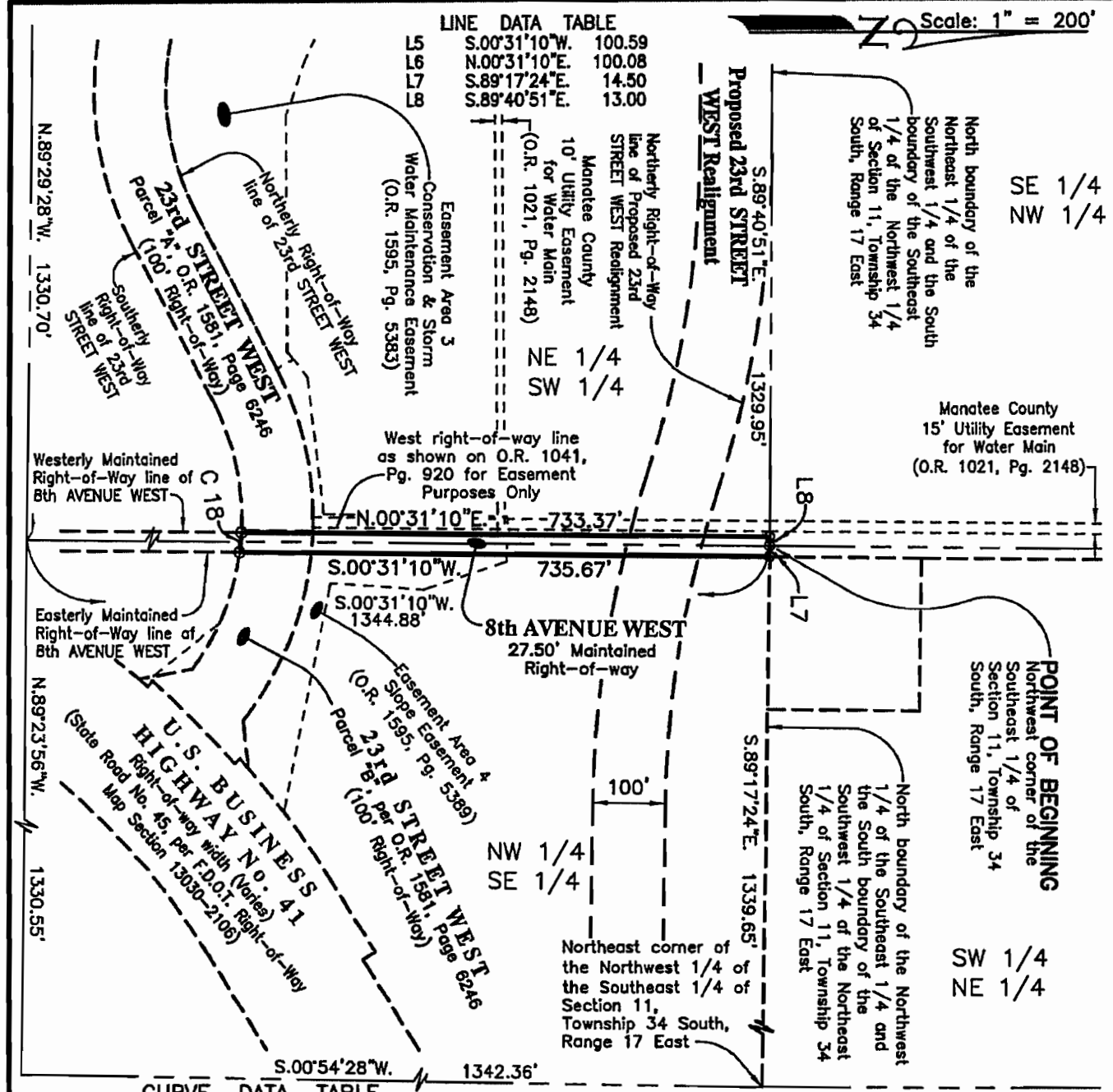
E:\MANFRUIT\PALMETTO\VACAT03.dwg

SHEET 1 OF 1

Scale: 1" = 200'

LINE DATA TABLE

5	S.00°31'10"W.	100.59
6	N.00°31'10"E.	100.08
7	S.89°17'24"E.	14.50
8	S.89°40'51"E.	13.00



CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
18	350.00	04°31'07"	27.60	13.81	27.60	N.84°41'57"W.

# 8th AVENUE WEST ANNEX CITY OF PALMETTO

Prepared For: CITY OF PALMETTO

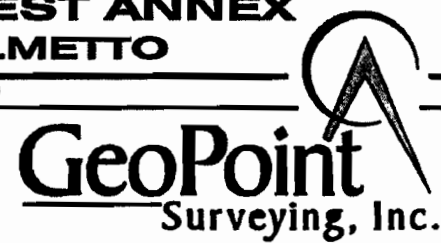
## DESCRIPTION SKETCH

(Not a Survey)

David A. Williams

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER



1403 E. 5th Avenue  
Tampa, Florida 33605  
www.geopointsurveying.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

Drawn: SEC Checked: DAW P.C.: N/A Data File: N/A

Date: 03/24/10 Dwg: 8TH-AVENUE-ANNEX-DS Order No.: 111-11-111

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Drawn
-----	------	-------------	-------

### REVISIONS

SHEET NO. 2 OF 2 SHEETS

## 8th Avenue West Annex

DESCRIPTION: A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Northwest corner of the Southeast 1/4 of said Section 11, for the **POINT OF BEGINNING**, run thence along the North boundary of the Northwest 1/4 of the Southeast 1/4 of said Section 11, S.89°17'24"E., 14.50 feet to a point on the Easterly Maintained Right-of-Way line of 8th AVENUE WEST; thence along said Easterly Maintained Right-of-Way line of 8th AVENUE WEST, S.00°31'10"W., 735.67 feet to a point on a curve on the Southerly Right-of-Way line of 23rd STREET WEST; thence along said Southerly Right-of-Way line of 23rd STREET WEST, Westerly, 27.60 feet along the arc of a curve to the left having a radius of 350.00 feet and a central angle of 04°31'07" (chord bearing N.84°41'57"W., 27.60 feet) to a point on the Westerly Maintained Right-of-Way line of aforesaid 8th AVENUE WEST; thence along said Westerly Maintained Right-of-Way line of 8th AVENUE WEST, N.00°31'10"E., 733.37 feet to a point on the North boundary of the Northeast 1/4 of the Southwest 1/4 of said Section 11; thence along said North boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, S.89°40'51"E., 13.00 feet to the **POINT OF BEGINNING**.

Containing 0.464 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the North boundary of the Northeast 1/4 of the Southwest 1/4 and the South boundary of the Southeast 1/4 of the Northwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°40'51"E.

## 8th AVENUE WEST ANNEX CITY OF PALMETTO

Prepared For: CITY OF PALMETTO

### DESCRIPTION SKETCH

(Not a Survey)

David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

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Fax: (813) 248-2266  
License Number LB 7768

Drawn: SEC Checked: DAW P.C.: N/A Date Filed: N/A  
Date: 03/24/10 Dwg: 8TH-AVENUE-ANNEX-05 Order No.: 111-11-111  
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 1 OF 2 SHEETS			

## **EXHIBIT B-2**

This Exhibit includes by reference:

- (a) the existing right of way for 23<sup>rd</sup> Street West from the westerly right of way of U.S. 41 westerly to the points where it intersects with proposed new 23<sup>rd</sup> Street West; and
- (b) the portion of 8<sup>th</sup> Avenue West described on the attached sketch and legal description.

## 8th Avenue West Partial Vacating

DESCRIPTION: A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Northwest corner of the Southeast 1/4 of said Section 11, run thence along the West boundary of the Southeast 1/4 of said Section 11, S.00°31'10"W., 94.41 feet to a point on a curve on the Proposed Northerly Right-of-Way line of 23rd STREET WEST Realignment, said point also being the **POINT OF BEGINNING**; thence along said Proposed Northerly Right-of-Way line of 23rd STREET WEST Realignment, Easterly, 14.96 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 00°35'29" (chord bearing S.75°10'46"E., 14.96 feet) to a point on the Easterly Maintained Right-of-Way line of 8th AVENUE WEST; thence along said Easterly Maintained Right-of-Way line of 8th AVENUE WEST, S.00°31'10"W., 637.61 feet to a point on a curve on the Southerly Right-of-Way line of 23rd STREET WEST; thence along said Southerly Right-of-Way line of 23rd STREET WEST, Westerly, 27.60 feet along the arc of a curve to the left having a radius of 350.00 feet and a central angle of 04°31'07" (chord bearing N.84°41'57"W., 27.60 feet) to a point on the Westerly Maintained Right-of-Way line of aforesaid 8th AVENUE WEST; thence along said Westerly Maintained Right-of-Way line of 8th AVENUE WEST, N.00°31'10"E., 642.46 feet to a point on a curve on aforesaid Proposed Northerly Right-of-Way line of 23rd STREET WEST Realignment; thence along said Proposed Northerly Right-of-Way line of 23rd STREET WEST Realignment, Easterly, 13.45 feet along the arc of a curve to the left having a radius of 1450.00 feet and a central angle of 00°31'53" (chord bearing S.74°37'05"E., 13.45 feet) to the **POINT OF BEGINNING**.

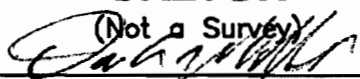
Containing 0.404 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the North boundary of the Northeast 1/4 of the Southwest 1/4 and the South boundary of the Southeast 1/4 of the Northwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°40'51"E.

## 8th AVENUE WEST PARTIAL VACATING CITY OF PALMETTO

Prepared For: CITY OF PALMETTO

### DESCRIPTION SKETCH

(Not a Survey)  
  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

**GeoPoint**  
Surveying, Inc.

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Fax: (813) 248-2206  
License Number LB 7768

Drawn: SEC Checked: DAW P.C.: N/A Data File: N/A

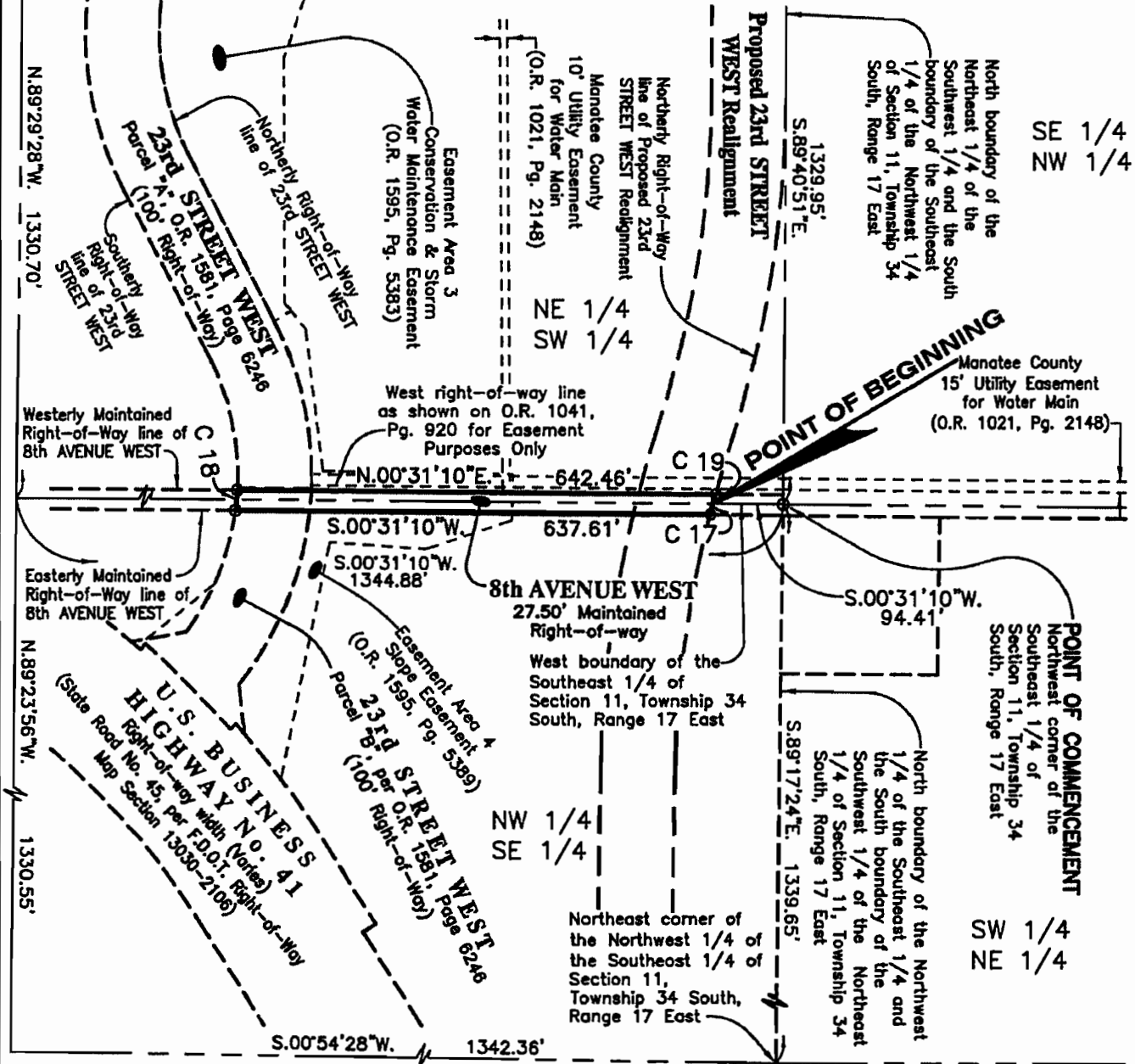
Date: 01/05/10 Desc: 8TH-AVENUE-VAC-DS Order No.: MOL-23-001

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

1	03/24/10	REVISE PARCEL	SEC
No.	Date	Description	Drawn
REVISIONS			
SHEET NO. 1 OF 2 SHEETS			

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Scale: 1" = 200'



CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
17	1450.00	00°35'29"	14.96	7.48	14.96	S.75°10'46"E.
18	350.00	04°31'07"	27.60	13.81	27.60	N.84°41'57"W.
19	1450.00	00°31'53"	13.45	6.73	13.45	S.74°37'05"E.

## 8th AVENUE WEST PARTIAL VACATING CITY OF PALMETTO

Prepared For: CITY OF PALMETTO

### DESCRIPTION SKETCH

(Not a Survey)  
*[Signature]*  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

**GeoPoint**  
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Fax: (813) 246-2266  
Licensed Business Number LB 7768

No.	Date	Description	Dwn.
1	03/24/10	REVISE PARCEL	SEC
REVISIONS			
SHEET NO. 2 OF 2 SHEETS			

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RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC	Checked: DAW	P.C.: N/A	Date File: N/A
Date: 01/05/10	Proj: 8TH-AVENUE-VAC-05	Order No.: HOL-23-001	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

# PROPOSED LAND USE AMENDMENT - 2030

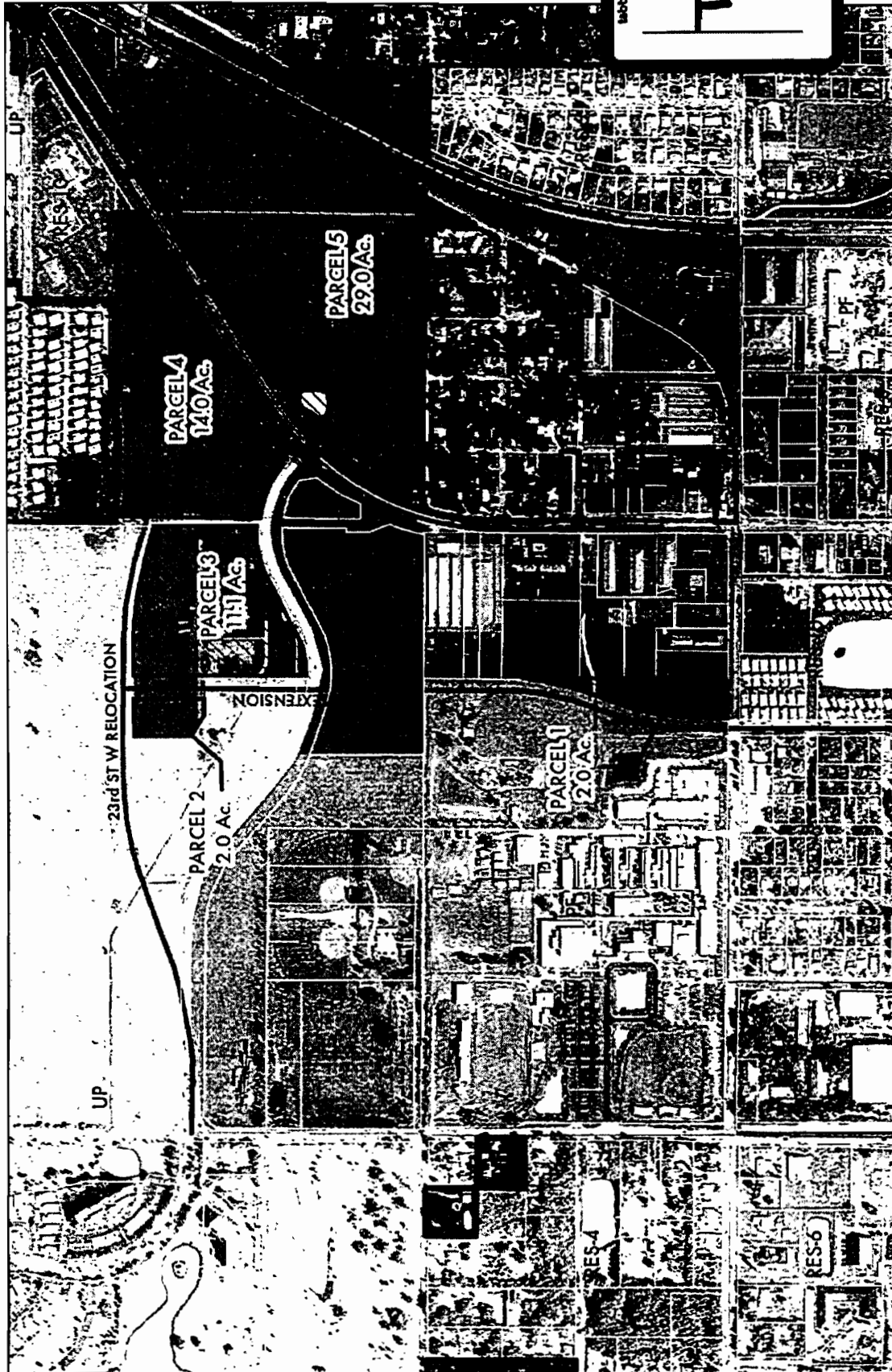


EXHIBIT  
**F**



CITY OF PALMETTO

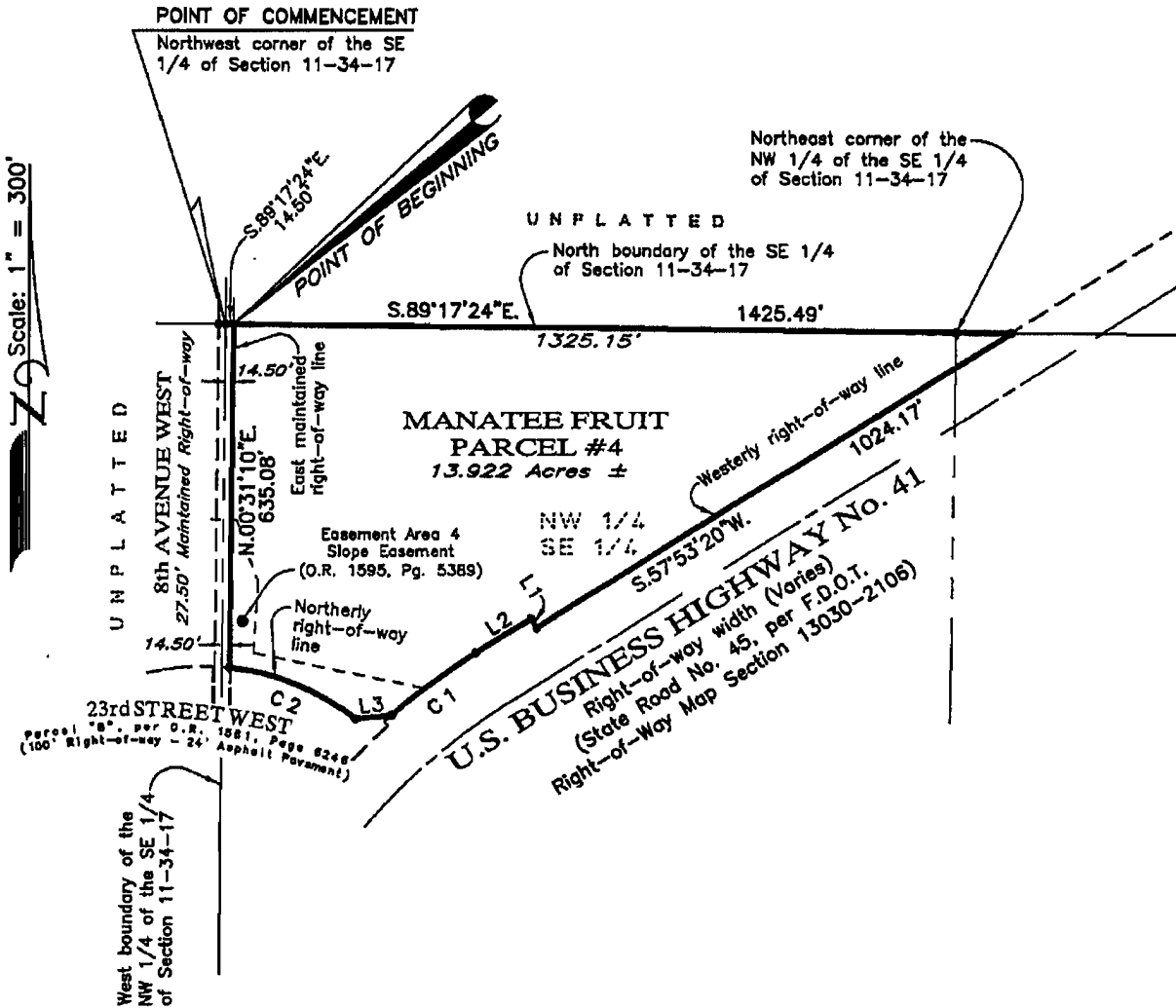
SCALE: 1"=400'  
SOURCE: MARSHALL COUNTY

**ZNSIENGINEERING**  
2015 AVENUE EAST, SUITE 100, PALMETTO, GA 30459  
PH: 404.388.1111 FAX: 404.388.1112

THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT A LEGAL DOCUMENT. THE CITY OF PALMETTO DOES NOT WARRANT THE ACCURACY OF THIS MAP. THE CITY OF PALMETTO IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE CITY OF PALMETTO IS NOT RESPONSIBLE FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, ARISING FROM THE USE OF THIS MAP.



Scale: 1" = 300'



CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	1255.92	08°48'06"	192.93	96.66	192.74	S.53°29'17"W.
2	450.00	32°19'20"	253.86	130.41	250.51	N.67°50'56"W.

LINE DATA TABLE

L1	N.32°06'40"W.	20.00
L2	S.57°53'20"W.	117.95
L3	S.83°58'06"W.	66.54

**MANATEE FRUIT PARCEL #4**

Prepared For: **City of Palmetto**

**DESCRIPTION SKETCH**

(Not a Survey)  
David Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER No. 6423

**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue  
Tampa, Florida 33605  
www.geopointsurvey.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 2 OF 2 SHEETS			

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RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC	Checked: DAW	P.C.: mm	Date File: mm
Date: 03/22/10	Dwg: MANATEE_FRUIT-PARCEL-4	Order No.: HDL 23 002	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

**MANATEE FRUIT PARCEL #5**

DESCRIPTION: A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

COMMENCE at the Northwest corner of the Southeast 1/4 of said Section 11, run thence along the North boundary of said Southeast 1/4 of Section 11 the following two (2) courses: 1) S.89°17'24"E., 14.50 feet to the East maintained right-of-way line of 8th AVENUE WEST for a POINT OF BEGINNING; 2) continue S.89°17'24"E., 1425.49 feet to the Westerly right-of-way line of U.S. BUSINESS HIGHWAY NO. 41 (State Road No. 45, per Florida Department of Transportation Right-of-Way Map Section 13030-2106); thence along said Westerly right-of-way line of U.S. BUSINESS HIGHWAY NO. 41 the following four (4) courses: 1) S.57°53'20"W., 1024.17 feet; 2) N.32°06'40"W., 20.00 feet; 3) S.57°53'20"W., 117.95 feet to a point of curvature; 4) Southwesterly, 192.93 feet along the arc of a curve to the left having a radius of 1255.92 feet and a central angle of 08°48'06" (chord bearing S.53°29'17"W., 192.74 feet) to the Northerly right-of-way line of 23rd STREET WEST, as recorded in Official Records Book 1581, Page 6246, of the Public Records of Manatee County, Florida; thence along said Northerly right-of-way line of 23rd STREET WEST the following two (2) courses: 1) S.83°58'06"W., 66.54 feet to a point on a curve; 2) Westerly, 253.86 feet along the arc of a curve to the left having a radius of 450.00 feet and a central angle of 32°19'20" (chord bearing N.67°50'56"W., 250.51 feet) to aforesaid East maintained right-of-way line of 8th AVENUE WEST; thence along said East maintained right-of-way line, lying 14.50 feet East of and parallel with the West boundary of the Northwest 1/4 of said Southeast 1/4 of Section 11, N.00°31'10"E., 635.08 feet to the POINT OF BEGINNING.

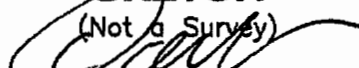
Containing 13.922 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the North boundary of the Southeast 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°17'24"E.

**MANATEE FRUIT PARCEL #4**

Prepared For: **City of Palmetto**

**DESCRIPTION  
SKETCH**

(Not a Survey)  
  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

**GeoPoint**  
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Fax: (813) 248-2266  
Licensed Business Number LB 7768

No.	Date	Description	Dwn.
REVISIONS			

SHEET NO. 1 OF 2 SHEETS

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RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC	Checked: DAW	P.C.: mm	Date File: mm
Date: 03/22/10	Dwg: MANATEE FRUIT-PARCEL-4	Order No.: HDL 23 002	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

## MANATEE FRUIT PARCEL #5

DESCRIPTION: A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

COMMENCE at the Northwest corner of the Southeast 1/4 of said Section 11, run thence along the North boundary of said Southeast 1/4 of Section 11 the following two (2) courses: 1) S.89°17'24"E., 1772.08 feet to the Easterly right-of-way line of U.S. BUSINESS HIGHWAY NO. 41 (State Road No. 45, per Florida Department of Transportation Right-of-Way Map Section 13030-2106) for a POINT OF BEGINNING; 2) continue S.89°17'24"E., 202.22 feet to the Northwest corner of ACADEMY HEIGHTS, according to the map or plat thereof recorded in Plat Book 2, Page 141, of the Public Records of Manatee County, Florida; thence along the West boundary of said ACADEMY HEIGHTS, S.00°35'31"W., 311.83 feet to the Westerly maintained right-of-way line of BAYSHORE ROAD (66' Maintained Right-of-Way), as found monumented and occupied; thence along said Westerly maintained right-of-way line, S.28°42'37"W., 1167.20 feet to South boundary of the Northeast 1/4 of said Southeast 1/4 of Section 11, also being the North right-of-way line of 21ST STREET WEST (VALENCIA DRIVE, per map or plat of ORANGE PARK recorded in Plat Book 2, Page 137, of the Public Records of Manatee County, Florida); thence along said North right-of-way line of 21ST STREET WEST the following two (2) courses: 1) along said South boundary of the Northeast 1/4 of the Southeast 1/4 of Section 11, N.89°15'26"W., 91.96 feet to the Southeast corner of the Northwest 1/4 of said Southeast 1/4 of Section 11; 2) along the South boundary of said Northwest 1/4 of the Southeast 1/4 of Section 11, N.89°23'56"W., 1139.34 feet to aforesaid Easterly right-of-way line of U.S. BUSINESS HIGHWAY NO. 41; thence along said Easterly right-of-way line of U.S. BUSINESS HIGHWAY NO. 41 the following four (4) courses: 1) N.00°36'30"E., 24.94 feet; 2) N.69°47'00"W., 43.37 feet to a point on a curve; 3) Northeasterly, 694.27 feet along the arc of a curve to the right having a radius of 1055.92 feet and a central angle of 37°40'20" (chord bearing N.39°03'10"E., 681.83 feet) to a point of tangency; 4) N.57°53'20"E., 1421.21 feet to the POINT OF BEGINNING.

Containing 29.564 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the South boundary of the Northwest 1/4 of the Southeast 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°23'56"E.

## MANATEE FRUIT PARCEL #5

Prepared For: **City of Palmetto**

### DESCRIPTION SKETCH

(Not a Survey)

David A. Williams

6423

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

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Licensed Business Number LB 7768

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 1 OF 2 SHEETS			

Drawn: SEC	Checked: DAW	P.C.: mm	Date File: mm
Date: 04/21/10	Dwg: MANATEE_FRUIT-PARCEL-5	Order No.: HDL 23 002	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

# POINT OF COMMENCEMENT

Northwest corner of the Southeast 1/4 of  
Section 11, Township 34 South, Range 17 East

Northeast corner of the NW 1/4  
of the SE 1/4 of Section 11-34-17

S.89°17'24"E

1772.08'

1339.65'

North boundary of the SE 1/4  
of Section 11-34-17

Scale: 1" = 300'

**U.S. BUSINESS HIGHWAY No. 41**  
Right-of-way width (Varies)  
(State Road No. 45, per F.D.O.T.)  
Right-of-Way Map Section 13030-2106

N.57°53'20"E  
(Easterly right-of-way line)

**MANATEE FRUIT  
PARCEL #5**  
29.564 Acres ±

NW 1/4  
SE 1/4

South boundary of the NW 1/4 of  
the SE 1/4 of Section 11-34-17,  
and the North right-of-way line of  
21ST STREET WEST

N.89°23'56"W. 1139.34'

**21ST STREET WEST**  
(VALENCIA DRIVE, 25' Right-of-Way per ORANGE PARK)

**ORANGE PARK**  
Plat Book 2, Page 137

Southeast corner of the  
NW 1/4 of the SE 1/4  
of Section 11-34-17

West boundary of  
ACADEMY HEIGHTS

West boundary of  
ACADEMY HEIGHTS  
Westerly maintained right-of-way line  
**BAYSHORE ROAD**  
**CSX TRANSPORTATION INC. RAILROAD**  
(Formerly Atlantic Coast Line Railroad)  
(130' Railroad Right-of-Way)

Northwest corner of  
ACADEMY HEIGHTS

S.00°35'31"W.  
311.83'

NE 1/4  
SE 1/4

ACADEMY  
HEIGHTS  
Plat Book 2, Page 141

## CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	1055.92	37°40'20"	694.27	360.21	661.83	N.39°03'10"E

## LINE DATA TABLE

L1	S.89°15'28"E	91.96
L2	S.00°36'30"W	24.94
L3	S.89°47'00"E	43.37

## MANATEE FRUIT PARCEL #5

Prepared For: City of Palmetto

## DESCRIPTION SKETCH

(Not a Survey)  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue  
Tampa, Florida 33605  
www.geopointsurvey.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

No.	Date	Description	Dwn.
REVISIONS			

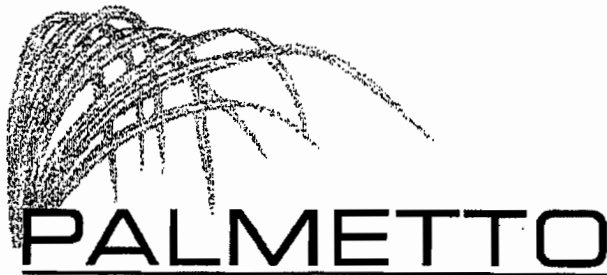
SHEET NO. 2 OF 2 SHEETS

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC	Checked: DAW	P.C.: mm	Data File: mm
Date: 04/21/10	Dwg: MANATEE_FRUIT-PARCEL-5	Order No.: HDL 23 002	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

**EXHIBIT G**  
**LETTER AGREEMENT**

Attached hereto and incorporated herein by reference.



516 8th Avenue West  
P.O. Box 1209  
Palmetto, Florida 34220-1209  
Phone (941) 723-4570  
Fax: (941) 723-4576  
Suncom: 516-0829  
E-mail: [chgeneral@palmettofl.org](mailto:chgeneral@palmettofl.org)  
Web: [www.palmettofl.org](http://www.palmettofl.org)

August 30, 2010

Whiting H. Preston, II, President  
Manatee Fruit Company, Inc.  
1320 33<sup>rd</sup> Street West  
Palmetto, Florida 34221

Re: Transfers of Land from Manatee Fruit Company, Inc. ("Manatee Fruit Company") to City of Palmetto ("City") and School Board of Manatee County ("School Board")- Environmental Investigation

Dear Mr. Preston:

This letter supersedes and replaces my letter dated June 24, 2010 regarding this subject matter. This letter will confirm, revise and update our informal agreement, set forth in that June 24<sup>th</sup> letter, pursuant to which the City has agreed and agrees to reimburse Manatee Fruit Company for costs of investigation for compliance with environmental laws and contamination by hazardous materials (referred to for convenient reference as "environmental investigation") of certain real property which Manatee Fruit Company proposes to transfer to the City or to the School Board and other property owned by Manatee Fruit Company, all of which is located near Blackstone Park and 23<sup>rd</sup> Street West in the City and which is described on Exhibit A attached to this letter (the "Property"), in accordance with and subject to the following terms and conditions:

1. The costs of the environmental investigation will be shared equally by the City and the School Board. The City's reimbursement obligation for a Phase I and "Limited Phase II" (as hereinafter defined) investigations shall not exceed \$2,500 without further prior approval of the undersigned or her designee. The environmental investigations will consist of the following: (a) a Phase I investigation, which as of this date been completed; and (b) a Phase II investigation which will address the three items which have been agreed upon by the City and Manatee Fruit Company, and which we understand comprise all of the items with respect to which further study was recommended by the Phase I investigation (the "Limited Phase II"). If the Phase I or Limited Phase II investigation recommends further investigation for matters beyond the scope of the Limited Phase II as described in the preceding sentence, then such further investigation shall not be undertaken absent the further agreement of Manatee Fruit Company, the School Board, and the Mayor or her designee on behalf of the City, with respect to responsibility for the cost of such further investigation and any other issues which they may wish to address. Manatee Fruit Company can, of course, undertake whatever testing it desires of its own land at its own expense at any time.

Mr. Whiting Preston  
August 27, 2010  
Page 2

2. Reimbursement for the Phase I and Limited Phase II studies shall be made at the time of execution of a contract for the transfer of some of the Property to the City, it being understood that if for any reason Manatee Fruit Company and the City do not enter into one or more contracts for the transfer of a portion of the Property to the City, the City will not reimburse Manatee Fruit Company for the costs of the environmental investigation. Reimbursement for any broader Phase II which the parties may authorize in accordance with the preceding paragraph shall be made as agreed upon by Manatee Fruit Company, the City, and the School Board.

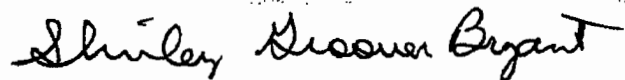
3. The environmental consultant engaged by Manatee Fruit Company will be Universal Engineering Sciences, Inc. of Sarasota.

4. All agreements for services between Manatee Fruit Company and the consultant regarding these matters are subject to the review and reasonable approval of the Mayor or her designee. The agreement for the Phase I has, and all further written agreements will, be made available to us for review at the offices of Manatee Fruit Company's attorneys. As of this date, we confirm having reviewed and approved the agreement for the Phase I investigation, and understand that no supplemental written agreement for the Limited Phase II investigation is anticipated. Any further written agreements will be subject to the review and reasonable approval of the Mayor or her designee as previously stated.

We confirm that the agreement for the Phase I investigation includes, and require that any additional agreements which may cover the Limited Phase II investigation or additional matters shall include, among other things, an agreement by the consultant to meet with representatives of the City and Manatee Fruit Company before the consultant issues a written report, and an agreement by the consultant to certify the written report that it issues with respect to the portion of the Property being acquired by the City to the City if the parties proceed to enter into one or more contracts for the transfer of the Property or part of it.

If you do not believe that this letter accurately confirms the terms of our agreement, please contact me. Otherwise, please proceed accordingly. We look forward to working with you on this matter.

Sincerely yours,



Shirley Groover Bryant  
Mayor

cc: Mark P. Barnebey  
Michael T. Hankin

Attachment- Exhibit A- Land Exchange Exhibit marked to show lands to be conveyed to School Board and City by Manatee Fruit Company and 2.0+/- acre parcel to be retained b Manatee Fruit Company for which City agrees to reimburse cost of environmental investigation







## **SCHOOL BOARD**

**Jane R. Pfeilsticker**  
*Chair*

**Robert C. Gause**  
*Vice Chair*

**Walter E. Miller**

**Barbara A. Harvey**

**Harry G. Kinnan**

## **SUPERINTENDENT**

**Tim McGonegal**

P.O. Box 9069  
Bradenton, Florida  
34208-9069  
215 Manatee Ave. W.  
Bradenton, FL  
34205  
PH. (941) 708-8770  
FAX. (941) 708-8686  
[www.manateeschools.net](http://www.manateeschools.net)

**EdVantage**  
*Inspiring Our Students to Learn, Dream and Achieve.*

## **SCHOOL DISTRICT OF MANATEE COUNTY**

August 25, 2010

Whiting H. Preston, II, President  
Manatee Fruit Company, Inc.  
1320 33<sup>rd</sup> Street West  
Palmetto, Florida 34221

Re: Transfers of Land from Manatee Fruit Company, Inc. ("Manatee Fruit Company") to School Board of Manatee County ("School Board")— Environmental Investigation

Dear Mr. Preston:

This letter supersedes and replaces my letter dated June 28, 2010 regarding this subject matter. This letter will confirm, revise and update our informal agreement, set forth in the June 28th letter, pursuant to which the School Board has agreed and agrees to reimburse Manatee Fruit Company for costs of investigation for compliance with environmental laws and contamination by hazardous materials (referred to for convenient reference as "environmental investigation") of certain real property which Manatee Fruit Company proposes to transfer to the School Board or to the City of Palmetto (the "City") and other property owned by Manatee Fruit Company, all of which is located near Blackstone Park and 23<sup>rd</sup> Street West in the City and which is described on Exhibit A attached to this letter (the "Property"), in accordance with and subject to the following terms and conditions:

1. The costs of the environmental investigation will be shared equally by the School Board and the City. The School Board's reimbursement obligation for a Phase I and "Limited Phase II" (as hereinafter defined) investigations shall not exceed \$2,500 without further prior approval of the undersigned. The environmental investigation will consist of the following: (a) a Phase I investigation, which has as of this date been completed; and (b) a Phase II investigation which will address the three items which have been agreed upon by the School Board and Manatee Fruit Company, and which we understand comprise all of the items with respect to which further study was recommended by the Phase I investigation (the "Limited Phase II"). If the Phase I or Limited Phase II investigation recommends further investigation for matters beyond the scope of the Limited Phase II as described in the preceding sentence, then such further investigation shall not be undertaken without the further agreement of Manatee Fruit Company, the City, and the Superintendent or his designee on behalf of the School Board, with respect to responsibility for the cost of such further investigation and any other issues which they may wish to address. Manatee Fruit Company can, of course, undertake whatever testing it desires of its own land at its own expense at any time.

2. Reimbursement for the Phase I and Limited Phase II studies shall be made at the time of execution of a contract for the transfer of some of the Property to the School Board, it being understood that if for any reason Manatee Fruit Company and the School Board do not enter into one or more contracts for the

transfer of a portion of the Property to the School Board, the School Board will not reimburse Manatee Fruit Company for the costs of the environmental investigation. Reimbursement for any broader Phase II which the parties may authorize in accordance with the preceding paragraph shall be made as agreed upon by Manatee Fruit Company, the City, and the School Board.

3. The environmental consultant engaged by Manatee Fruit Company will be Universal Engineering Sciences, Inc. of Sarasota.

4. All agreements for services between Manatee Fruit Company and the consultant regarding these matters are subject to the review and reasonable approval of the Superintendent or his designee. The agreement for the Phase I has been, and all further written agreements will, be made available to us for review at the offices of Manatee Fruit Company's attorneys. As of this date, we confirm having reviewed and approved the agreement for the Phase I investigation, and understand that no supplemental written agreement for the Limited Phase II investigation is anticipated. Any further written agreements will be subject to the review and reasonable approval of the Superintendent or his designee as previously stated.

We confirm that the agreement for the Phase I investigation includes, and require that any additional agreements which may cover the Limited Phase II investigation or additional matters shall include, among other things, an agreement by the consultant to meet with representatives of the School Board and Manatee Fruit Company before the consultant issues a written report, and an agreement by the consultant to certify the written report that it issues with respect to the portion of the Property being acquired by the School Board to the School Board if the parties proceed to enter into one or more contracts for the transfer of the Property or part of it.

If you do not believe that this letter accurately confirms the terms of our agreement, please contact me. Otherwise, please proceed accordingly. We look forward to working with you on this matter.

Sincerely yours,

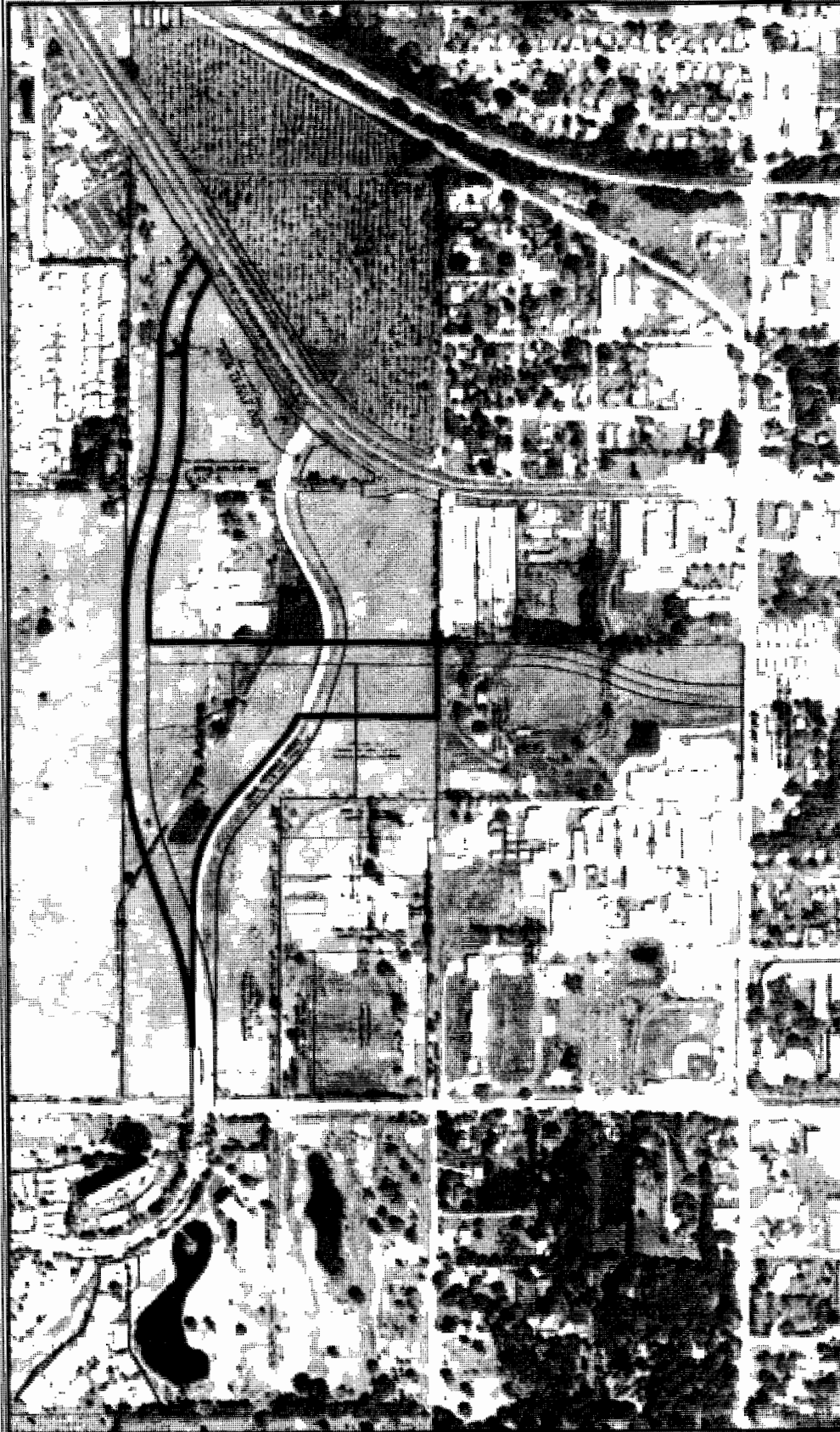


Michael Pendley  
Executive Planner

cc: Tim McGonegal, Superintendent  
Sue A. Jacobson, Kirk-Pinkerton

Attachment- Exhibit A- Land Exchange Exhibit marked to show lands to be conveyed to School Board and City by Manatee Fruit Company and 2.0+/- acre parcel to be retained b Manatee Fruit Company for which City agrees to reimburse cost of environmental investigation

EXHIBIT A



The Groves

Manatee Fruit Company  
Palmetto, Florida





# City of Palmetto Agenda Item

**Meeting Date**

9/27/10

**Presenter:**

**Mayor Bryant/ Michael Hankin,  
Special Counsel to the City**

**Department:**

**Title: Phase II Ball Field Agreement**

## **Background**

Several years ago, the City began discussions with the School Board related to the construction of a new Palmetto Elementary School. As part of those discussions, a plan evolved which involved seven parties to provide a new elementary school, a new Boys & Girls Club, and ultimately new ball fields.

Phase I of the project involved the City, School Board, the Boys and Girls Club, and Just for Girls at property on 10<sup>th</sup> Street West. Property purchases by the School Board occurred in 2009 and this phase of the project is coming to completion. The new Palmetto Boys and Girls Club has recently opened on property purchased from the City. New Palmetto Elementary School is scheduled to open in January. Just for Girls is located on property which they now own to provide a children oriented complex in the City, also on property purchased from the City.

Phase II was to provide for a ball fields complex with easy access to the residents of Palmetto. A site on 23<sup>rd</sup> Street near a possible extension of 10<sup>th</sup> Avenue was selected. This was addressed in the Phase II Agreements. Because of the location of the ball fields, 23<sup>rd</sup> Street West will need to be relocated and reconstructed and this was addressed in the Dedication Agreement. Although early cost estimates and property needs were significantly off, the City, the County, the School Board and Manatee Fruit Company have been working together to create agreements which address all parties concerns.

Matters necessary for the proposed ball field complex to be accomplished have been begun by the City, County and School Board. The City has initiated a series of requested comprehensive plan amendments, an annexation of 8<sup>th</sup> Avenue, and street vacation preparation. It has also obtained proposals for the design and construction and development of a relocated 23<sup>rd</sup> Avenue, which is needed because of the size and location of the proposed ball field complex.

On September 20, 2010, the City Commission held a Workshop to discuss the Phase II Agreement. Two issues were highlighted by some Commissioners in those discussions. First, there was a concern about the commitment by the City to reimburse Manatee Fruit Co. if it constructs 10<sup>th</sup> Avenue W from 23<sup>rd</sup> Street W to 17<sup>th</sup> Street W and impact fee credits are not available. Second, there was a concern raised regarding the conditional commitment by the County to maintain the ball fields. Since the Workshop, representatives of Manatee Fruit Co. and the County independently discussed the issues with representatives of the City and these two matters are discussed in more detail in bold below. A redline from the last draft presented to the City on September 20, 2010 is attached.

**Discussion:**

See Attached

<b>Budgeted Amount:</b>	\$985,000	<b>Budget Page No(s):</b>		<b>Available Amount:</b>	\$0.00	<b>Expenditure Amount:</b>	\$115,000
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**Additional Budgetary Information:**

Total estimated costs for the total Dedication Agreement and Phase II Ball Field Agreement

<b>Funding Source(s):</b>		<b>Sufficient Funds Available:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Budget Amendment Required:</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Source:</b>	
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<b>City Attorney Reviewed:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<b>Advisory Board Recommendation:</b>	<input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> N/A	<b>Consistent With:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
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**Potential Motion/ Direction Requested:**

I move to approve and authorize the Mayor to execute the Phase II Ball Field Agreement, including any non-substantive changes which may be needed to conform the Agreement with those signed by the other parties.

<b>Staff Contact:</b>			
-----------------------	--	--	--

<b>Attachments:</b>	Redline version
---------------------	-----------------

AGREEMENT REGARDING THE TRANSFER OF LANDS AND CONSTRUCTION AND OPERATION OF PARK FACILITIES AMONG MANATEE FRUIT COMPANY, INC., MANATEE COUNTY, THE CITY OF PALMETTO, THE AND SCHOOL BOARD OF MANATEE COUNTY

DISCUSSION:

This Agreement documents “Phase II” of the overall project described above (and is referred to for convenience as the “Phase II Agreement”). Under this Agreement, Manatee Fruit Co. is dedicating to the City land for the new ball field complex adjacent to Blackstone Park and for the proposed 10<sup>th</sup> Ave. W. extension south of new 23<sup>rd</sup>, the School Board is conveying land to the City for the 10<sup>th</sup> Ave. W. extension, the School Board is acquiring land north of Palmetto High School from the County and from Manatee Fruit Co. for the expansion of the High School, and in exchange the School Board is transferring to Manatee Fruit Co. vacant land east of the proposed 10 Ave. W. extension south of the new 23<sup>rd</sup> St. W. right of way. These transfers are all by way of dedication or exchanges, with no cash consideration. Manatee Fruit Co. will be entitled to parks and recreation mitigation or allocation credits for future developments. Part of the consideration consists of the City’s agreement to adopt amendments to its Comprehensive Plan relating to property owned by Manatee Fruit Co. (as also required under the Dedication Agreement, and as authorized by the City Commission on May 17, 2010). The consideration also includes easements for parking and stormwater retention and agreements addressing the construction of the 10<sup>th</sup> Ave. W. extension, all for the benefit of the parcel at the southwest corner of new 23<sup>rd</sup> and the 10<sup>th</sup> Ave. extension, which is proposed for use as a “community center”. As with the Dedication Agreement, Manatee Fruit Co. does not wish to incur any expense in connection with this agreement. **Two areas were reviewed in light of comments at the Commission Workshop of September 20, 2010. First, Section 5(c) was amended to clarify that if 10<sup>th</sup> Avenue West was constructed by Manatee Fruit Co. and its construction was not entitled to impact fee credits, then Manatee Fruit Co. could be reimbursed for those costs but only if reimbursement is approved by the City Commission and all such costs have been authorized by the Commission and allocated to the project. Second, in regard to the County, the Agreement provides for County’s operation and maintenance of the ball field complex in a similar manner as similar County facilities. However, all such maintenance is subject to availability and allocations of funds by the County Commission, which is a standard requirement.** Issues discussed at the Workshop in detail include:

- Section 4(d). Manatee Fruit Co. requires that the City have begun construction of the new 23<sup>rd</sup> St. W. right of way before closing under this Agreement. There is a deed restriction for the new 23<sup>rd</sup> St. W. right of way dedication which allows Manatee Fruit Company to demand that the property be returned to it if construction on the new right of way hasn’t started within 2 years of the transfer.
- Section 5(c). If the land targeted for use as a community center is ready to be developed and the City hasn’t already constructed the 10<sup>th</sup> Ave. W. extension, Manatee Fruit Co. can build all or part of the extension. The City is agreeable to providing Manatee Fruit Co. with transportation impact fee credits for this construction to the extent that it is eligible for them. In the event that transportation impact fee credits are not available, Manatee Fruit, if it desires the road to be built, could build the road and then may be entitled to reimbursement from the City as discussed above.
- Section 6(c). The deed to the City for the ball fields will require that the City begin construction of the ball fields within 4 years of the Closing Date and complete at least two ball fields within 5 ½ years of the Closing Date. This is a concern for the City until funding is completely assured. In the event that above time frames are not met, Manatee Fruit can demand reconveyance of the land. This places a risk on public funds which may have been spent on the project, if the project has been begun but has not yet been completed.
- Section 10(b). It is customary in transactions of this type for the property owner to be required to provide to the proposed transferee copies of any pertinent information about the property in the owner’s possession, such as surveys, appraisals, correspondence with governmental agencies about violations, title insurance policies, and the like. Manatee Fruit Co. is not agreeable to providing this information.

- Section 11(e). As part of the consideration for this Agreement, Manatee Fruit Co. requires the City to reimburse it for its attorney's fees in connection with this overall project, without limit as to the amount. Under this Section, the City would pay all attorneys fees incurred in connection with the project at closing. Manatee Fruit Co. would be donating the property and believes that this is fair consideration.
- Section 19(j). Manatee Fruit Co. asks the City to agree that this agreement or a notice of this agreement not be recorded. This presents some risk to the City as its contract rights would not be protected from the claims of third parties.
- Section 19(r). In order to be effective, this Agreement must be signed by all parties on or before October 7, 2010.
- Exhibits. The various easements required for completion of the project will be developed after the Agreement is executed and will be subject to both parties' review. Manatee Fruit Co. wishes that they be acceptable to it in its "sole and absolute discretion." We would hope that the exhibits would be finalized during the due diligence period.

This agreement like all agreements has been negotiated between the parties. We believe the agreement is in a position to legally be approved and that the City's concerns from a business standpoint have been largely addressed with the recent changes.

**AGREEMENT REGARDING THE TRANSFER OF LANDS AND  
CONSTRUCTION AND OPERATION OF PARK FACILITIES AMONG  
MANATEE FRUIT COMPANY, INC., MANATEE COUNTY, THE CITY  
OF PALMETTO, AND THE SCHOOL BOARD OF MANATEE COUNTY**

THIS AGREEMENT REGARDING THE TRANSFER OF LANDS AND CONSTRUCTION AND OPERATION OF PARK FACILITIES (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by and among Manatee Fruit Company, Inc., a Florida corporation ("MFC" or "Manatee Fruit"), Manatee County, a subdivision of The State of Florida ("County"), The City of Palmetto, a municipal corporation of the State of Florida ("City") and The School Board of Manatee County, a public body corporate ("School Board").

**INTRODUCTION**

1. MFC owns parcels of real property on or near 23<sup>rd</sup> Street West in the City of Palmetto, Manatee County, Florida, which are depicted on **Exhibits A-3, A-3a, A-4, A-6, A-6a** attached hereto; and

2. School Board owns parcels of real property on or near 17<sup>th</sup> Street West and the proposed extension of 10<sup>th</sup> Avenue West; and

3. County owns parcels of real property located near the lands owned by MFC and School Board referred to in the previous paragraphs, which is used as parkland, known as "Blackstone Park;" and

4. As part of the expansion of Palmetto Elementary School, School Board acquired from the City land on 10<sup>th</sup> Street West in the City of Palmetto, on which were located ball fields used by little league groups (although there were no agreements with the City as to the use of the ball fields by any organized baseball leagues);

5. In the Agreement of Purchase and Sale among City, School Board, County, Boys and Girls Club of Manatee County, Inc. and Manatee County Girls Club, Inc. which resulted in among other things, the expansion of Palmetto Elementary School (the "Phase I Contract"), the parties agreed to pursue related transactions, referred to in the Phase I Contract as "Phase II" which, among other things, provided for transfers of land among the parties to this Agreement to provide for the following development projects:

- a. The extension of 10<sup>th</sup> Avenue West from 17<sup>th</sup> Street West to 23<sup>rd</sup> Street West;
- b. Realignment of a portion of 23<sup>rd</sup> Street West north of its current location in a mutually advantageous location;
- c. Expansion of Blackstone Park;



d. Installation on City-owned land near Blackstone Park and on County-owned land in Blackstone Park of four (4) new ball fields, consisting of three little league regulation fields and one full-sized baseball field to replace those removed from the City property at 10<sup>th</sup> Street West due to the relocation and expansion of Palmetto Elementary School; and

e. School Board's expansion of Palmetto High School and related educational facilities.

6. School Board and City have condemnation powers and have determined that they would condemn, by eminent domain, the lands described herein to be transferred to them, if they were not transferred pursuant to this Agreement and such transfers are, therefore, in lieu of condemnation.

### **PROVISIONS**

NOW, THEREFORE, in consideration of the agreements herein contained, the parties agree as follows:

1. **Definitions and Reference Terms.** In addition to any other terms defined herein, for convenience of reference, the following terms shall have the following meanings:

(a) "Ball Field Project" has the meaning set forth in **Section 5(a)** below.

(b) "Business Day" means any day that national banks in Manatee County, Florida, are open for business, excluding Saturdays and Sundays.

(c) "City Property" means, collectively, the Property which the City will own at the conclusion of the transfers described herein, to be improved by roadway, drainage and related improvements, and ball fields, which property is depicted as owned by the City on the "Proposed Ownership" portion on the right side of the Land Exchange Exhibit attached hereto as **Exhibit A-7**, including the Property being transferred to the City pursuant to this Agreement and described in **Exhibits A-1, A-3, A-3a, A-6 and A-6a** attached to and hereby made a part of this Agreement.

(d) "Community Center Site" has the meaning set forth in **Section 5(d)** below.

(e) "County Property" means, collectively, the Property which the County will own at the conclusion of the transfers described herein, improved and to be improved by parkland and related improvements, which property is depicted as owned by the County on the "Proposed Ownership" portion on the right side of the Land Exchange Exhibit attached hereto as **Exhibit A-7**; provided, however that the dimensions and acreage of the County Property as shown on **Exhibit A-7** are schematic relative approximations only. No Property is being transferred to County pursuant to this Agreement.

(f) "Dedication Agreement" has the meaning set forth in **Section 2(g)** below. Although County and School Board are not parties to such Agreement, by execution of this Agreement, County and School Board acknowledge receipt of a copy of the Dedication Agreement.

(g) "Effective Date" means the later of (i) the last date on which this Agreement has been fully executed by Manatee Fruit, County, School Board and the City and (ii) the last date on which the Dedication Agreement (defined in 2 (g) below) has been fully executed by all parties thereto; provided, however, no later than October 7, 2010.

(h) "Environmental Laws" means all applicable present and future (to the extent they relate back to the Closing date or prior) statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, agreements and similar items, of or with any and all governmental agencies, departments, commissions, boards, bureaus of instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061 *et seq*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, *et seq*; and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 *et seq*.

(i) "Hazardous Materials" shall mean any of the following, at levels in excess of federal, state or local safety guidelines, whichever are more stringent: (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; (iii) any substance, gas, material or chemical which is or may be defined as or included in the definition of "hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any Environmental Law and (iv) any other chemical, material, gas or substance, the exposure to or release of which is or may be prohibited, limited or regulated by any governmental or quasi-governmental entity or authority that asserts or may assert jurisdiction over the Property which is the subject of this Agreement or the operations or activity at the Property, or any chemical, material, gas or substance that does or may pose a hazard to the health and/or safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property.

(j) "Inspection Obligations" has the meaning set forth in **Section 10(c)** of this Agreement.

(k) "Inspection Period" means the period of time ending at 5:00 PM EST on the day which is thirty (30) days after the Effective Date, or such extended period of time as specifically provided herein.

(l) "MFC Property" means, collectively, the Property which MFC will own at the conclusion of the transfers described herein, consisting of vacant, unimproved land, which property is depicted as owned by MFC on the "Proposed Ownership" portion on the right side of the Land Exchange Exhibit attached hereto as **Exhibit A-7**; and including the Property to be transferred to MFC pursuant to this Agreement and more particularly described in **Exhibit A-2** attached to and hereby made a part of this Agreement.

(m) "Land Exchange Exhibit" means the marked-up aerial depiction of all of the land which is the subject of this Agreement, entitled "Land Exchange Exhibit" prepared by Heidt Design dated 01/25/2010 (last updated 3/10/10), a copy of which is attached hereto as **Exhibit A-7**, it being understood that the dimensions and acreage of various parcels of Property shown on **Exhibit A-7** are schematic relative approximations only, with the actual acreage and dimensions as shown on the legal descriptions and sketches attached hereto as **Exhibits A-1, A-2, A-3, A-3a, A-4, A-5, A-6 and A-6a** attached to this Agreement.

(n) "Property" shall mean as appropriate to the context, the land in question, together with any improvements (the "Improvements") situated on the land.

(o) "School Board Property" means, collectively, the Property which the School Board will own at the conclusion of the transfers described herein, for the expansion of Palmetto High School and related improvements, which property is depicted as owned by the School Board on the "Proposed Ownership" portion on the right side of the Land Exchange Exhibit; including the Property being transferred to School Board pursuant to this Agreement and described in **Exhibits A-4 and A-5**.

(p) "10<sup>th</sup> Avenue West Extension Area" has the meaning set forth in **Section 5(c)** of this Agreement. "10<sup>th</sup> Avenue West Extension" is sometimes used herein for general reference to the roadway to be constructed thereon in the future.

2. **Conveyance.** The respective parties agree to make and accept the following transfers of Property, respectively:

(a) School Board will transfer 2.754 +/- acres to City for the extension of 10<sup>th</sup> Avenue West, a public City road, from the School Board's northernmost property line through which 10<sup>th</sup> Avenue West would be located to 17<sup>th</sup> Street West, as described and depicted on **Exhibit A-1**.

(b) School Board will transfer to MFC 2.055 +/- acres east of the future 10<sup>th</sup> Avenue West Extension Area, as described and depicted on **Exhibit A-2**.

(c) MFC will transfer to City two parcels of 7.299 +/- acres and 0.521 +/- acres, respectively, as depicted on **Exhibits A-3 and A-3a**, respectively, for the new ball field complex adjacent to Blackstone Park.

(d) MFC will transfer to School Board 1.820+/- acres as depicted on **Exhibit A-4**, for the expansion of Palmetto High School and related improvements.

(e) County will transfer to School Board 2.833+/- acres, as depicted on **Exhibit A-5**, for the expansion of Palmetto High School and related improvements.

(f) MFC will transfer to City two parcels consisting of 1.528 +/- and 0.841 +/- acres, respectively as depicted on **Exhibits A-6 and A-6a**, respectively, for the extension of 10<sup>th</sup> Avenue West from the realigned 23<sup>rd</sup> Street West to the portion of the 10<sup>th</sup> Avenue West extension being transferred by School Board to City pursuant to **Section 2 (a)** herein.

(g) Under a separate Dedication Agreement between MFC and City, executed by those parties before or at the same time as this Agreement (the "Dedication Agreement"), MFC is agreeing to dedicate land to City for the realignment of 23<sup>rd</sup> Street West; and City is agreeing to take the steps necessary to vacate, effective on completion of the 23<sup>rd</sup> Street West realignment, portions of the existing 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West rights of way. After the vacation of those portions of the existing 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West rights of way, ownership of the vacated property will vest in MFC and in the County, as the adjoining landowners. Therefore, following the effective date of the vacation, on the City's request, County will transfer, without warranty, newly acquired lands resulting from the vacation of 23<sup>rd</sup> Street West to City, and MFC will dedicate its newly acquired lands resulting from the vacation of the portion of 23<sup>rd</sup> Street West located westerly of the 10<sup>th</sup> Avenue Extension Area to the City, for inclusion in the new ball field complex, subject to the terms and conditions set forth in this Agreement.

Each of the foregoing transfers shall include all right, title and interest of the transferor in and to all rights, privileges, easements, hereditaments and appurtenances to the Property, and (except with respect to the dedication of property for road use or the vacation of road rights of way) the right, title and interest of the transferor in and to the land lying in the bed of any street, road, avenue or alley, open or proposed, public or private, in front of or adjoining the Property to the center line thereof. Notwithstanding the foregoing, MFC shall retain all consumptive use rights for the Property transferred by MFC, and all deeds from MFC shall contain the following provision:

Excluded from this transfer are consumptive use rights for the Property [meaning the lands transferred by MFC] and Grantor hereby retains same together with any right that may exist to transfer those consumptive use rights to other properties.

3. **Consideration.** The consideration for the transfers of Property ("Consideration") is as follows:

(a) **MFC to City.**

(i) For the Property being conveyed to the City by MFC for the Ball Field Project (as depicted on **Exhibits A-3 and A-3a**),

if City requires public or private park and recreation mitigation or allocation under current or future ordinances in connection with any future development of lands owned by MFC, any person or entity under common ownership or control with MFC, or any transferee of MFC, then the City will give credit to MFC for such Property to apply against any applicable future parks and/or recreation requirements, as the case may be.

Except as and to the extent expressly provided herein, MFC acknowledges that MFC is not relying on any representations or statement of intent (including statements in **Section 3(c)** below) regarding the City or School Board's future use or development of any of the Property transferred to the City or School Board by MFC; provided, however, this acknowledgment shall not affect the validity of any use restriction contained in any Deed.

(b) The transfer by School Board to MFC of the land depicted on **Exhibit A-2** is in consideration of the transfer by MFC to School Board of the land depicted on **Exhibit A-4**.

(c) Except as otherwise specifically provided herein, all other transfers shall be made either by way of dedication to public authority or by deed, as applicable, and all other obligations hereunder are each in consideration of the School Board's and City's respective agreement to develop the Property transferred to it under the terms and conditions set forth in this Agreement for the mutual benefit of all of the parties and their respective properties.

4. **Conditions Precedent to Closing.** The obligations of the respective parties set forth in this Agreement to close the transfers described herein, unless otherwise waived in writing by the party that is the beneficiary of any such obligation, are subject to the satisfaction at or before Closing of the following conditions precedent (also, "Closing Conditions"):

(a) **Closing under Dedication Agreement.** City and MFC shall have entered into the Dedication Agreement, and each shall have fulfilled all conditions on its respective part required to be performed prior to closing under that agreement (including, without limitation, the adoption of certain amendments to the City's Comprehensive Plan affecting the Community Center Site (hereinafter defined) and other land contiguous to the Property described in this Agreement as more fully set forth in the Dedication Agreement) and Closing shall have occurred under the Dedication Agreement.

(b) **Comprehensive Plan Amendments.** Manatee Fruit's obligation to close is contingent upon: (i) the City's having adopted certain amendments to the City's Comprehensive Plan affecting land, including some of the Property including but not limited to the Community Center Site and the land School Board is required to deed to MFC, as described in Ordinance No. 2010-05 authorized by the City Commission on May 17, 2010 for transmittal to the State of Florida Land Planning Agency and as more particularly described in the Dedication Agreement; and (ii) such amendments must be final and nonappealable, all available appeal periods having expired.

(c) **Vacated Roadways – Future Land Use Map Designation.** As a condition of Manatee Fruit's obligation to close hereunder, the City shall have adopted (and all

appeal periods expired) its EAR amendments to its Comprehensive Plan or otherwise that provide conclusively that, upon the effective date of vacation of the rights of way of 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West, such vacated lands that will then be owned by MFC will carry a City of Palmetto Future Land Use Map designation of GCOM (general commercial) under the City's Comprehensive Plan.

(d) **Construction of new 23<sup>rd</sup> Street West.** As a condition of MFC's obligation to close, construction of realigned 23<sup>rd</sup> Street West shall have commenced and be ongoing.

(e) **Condition of Property at Closing.** The transferee of Property shall be entitled to conduct a walk-through inspection of the Property to be transferred to it on the day before Closing to confirm that the Property is in the condition required by this Agreement, and that the express warranties and representations of the transferor regarding the condition of the Property are true and correct and have not changed since the end of the Inspection Period. If transferee is not satisfied, in its reasonable discretion, with the provisions of this subparagraph (e), then transferee may deliver a notice to transferor on or before the Closing Date detailing the default; provided, however, transferor shall have ten (10) days after receipt of such written notice to cure such default and the Closing Date shall be extended to allow for such cure period.

(f) **Termination hereunder.** A termination under this Agreement by either party, during the Inspection Period or as otherwise allowed herein, terminates the obligations hereunder (including the obligation to close) except those obligations that specifically survive termination.

(g) **Termination under the Dedication Agreement.** In the event the Dedication Agreement is terminated by any party thereto prior to Closing hereunder, whether during the Inspection Period or as otherwise provided in the Dedication Agreement, this Agreement shall also automatically terminate coincident therewith (except for matters hereunder that specifically survive termination hereunder).

(h) **Related Transactions.** The obligations of any one party to this Agreement to transfer its Property under the terms agreed to herein is conditioned on the fulfillment on the part of all other parties to this Agreement of their respective obligations described and within the time periods prescribed herein and in the Dedication Agreement, it being understood that each transfer under this Agreement and the Dedication Agreement is part of an integrated development plan, with all components of the plan contemplated herein being dependent upon each other. Accordingly, the termination of this Agreement with respect to any one transfer shall have the effect of terminating this Agreement entirely as to all parties (except for matters hereunder that specifically survive termination).

Notwithstanding anything herein to the contrary in this Agreement, if any of the conditions in (a), (b), (c), (d) and (e) above have not been satisfied by the Closing Date, Manatee Fruit shall have no obligation to close and deliver the Deed and other closing documents to the City and School Board.

5. **Additional Consideration, Construction and Easements.** In addition to the Consideration, in consideration of the various transfers described herein, the parties agree as follows:

(a) **Ball Fields.** The City, with input from the County, shall design, and the City will construct four (4) new ball fields and related facilities (the “Ball Field Project”) at Blackstone Park in part on land owned by the County and in part on land owned by the City subject to adequate funding being committed by the City or other entities to complete such design and construction. The design and construction may be done in one or more phases, as determined in the reasonable discretion of the City. County shall grant to City a temporary construction easement substantially in form attached hereto as **Exhibit C** to permit access and construction on County land. Following completion of the new ball fields and related facilities, the County agrees to operate and maintain them in a similar manner as provided by the County for other similar facilities in Manatee County, subject at any given time to the availability and allocation of adequate funds. Following the Closing, at the County’s request, the City shall move the light poles originally located at the City property transferred to the School Board under the Phase I Contract to the new facility adjoining Blackstone Park. If the County does not request the City to move to light poles within six (6) months of Closing, the light poles shall be deemed to be the City’s property, and City may relocate or dispose of them as it sees fit in its sole discretion. Lighting installed at the ball field shall not exceed one (1) foot candle at the property line.

(b) **23<sup>rd</sup> Street West Realignment.** City will fulfill its construction obligations set forth in the Dedication Agreement with respect to the realignment of 23<sup>rd</sup> Street West. At City’s request, the County will grant to the City temporary construction easements on County lands adjoining the realigned roadway as reasonably deemed necessary by the City for storage of equipment and materials and to facilitate construction of the realigned roadway, substantially in form attached hereto as **Exhibit C**. As City is obligated to have commenced construction of 23<sup>rd</sup> Street West as a Closing Condition hereunder, County acknowledges and agrees that it may need to grant such easement prior to Closing.

(c) **10<sup>th</sup> Avenue West Extension.** The land described in Exhibits **A-1, A-6 and A-6a** transferred to City by MFC and by School Board, as applicable, (the “10<sup>th</sup> Avenue West Extension Area”) shall be restricted by deed for use as a right of way. City may design and construct the extension of 10<sup>th</sup> Avenue West, when funding becomes available. City will grant School Board a temporary use easement over the 10<sup>th</sup> Avenue West Extension Area (substantially in form attached hereto as **Exhibit D**) for educational and agricultural uses until such time as the City begins to prepare the area for construction of a public roadway. The temporary easement will provide that at least one hundred and twenty (120) days before the termination of the School Board’s temporary use easement, City will give School Board written notice that City intends to terminate the easement so that the 10<sup>th</sup> Avenue West Extension Area can be prepared for construction. The temporary easement shall include agreement in customary form by School Board to comply with Environmental Laws during the term of the easement, liability of the School Board for the easement area, and such other terms and

conditions as are acceptable to School Board and City and their respective counsel. If the City has not designed and completed the extension roadway within ninety (90) days after notice to City from the School Board informing the City the roadway is necessary for school purposes, then School Board may design and complete the roadway, with such design and construction plans subject to the reasonable and timely review and approval of the City.

If at any time MFC desires to develop the Community Center Site or its lands to the north or the east and City has not yet constructed the 10th Avenue West Extension roadway, MFC may design and construct the roadway or any portion thereof that it desires, with such design and construction plans subject to the reasonable and timely review and approval of the City. If the 10th Avenue West extension (or any portion thereof) is constructed by MFC, then, to the extent available under the City Land Development Code and subject to the terms and provisions of that Code then in effect, MFC shall receive, to the extent allowed by law, transportation impact fee credits equal to the cost of construction, which shall include all costs of design, permitting and engineering, construction and the value of any additional land required for stormwater or drainage facilities for the road and the construction of such facilities (collectively in this Section, "Construction Costs"). The City makes no representation or warranty that such impact fee credits are now or will be in the future available for road construction to local road standards. If transportation impact fee credits are not available, and the City has allocated funds for Construction Costs and such funds are available, the City will timely reimburse MFC (or a successor developer or builder, as the case may be) for Construction Costs it has so allocated and which are available. In the event reimbursement is approved by the City Commission, MFC shall engage in a competitive, sealed bid process in determining its primary construction contractor (with award to the low responsive, responsible bidder).~~If at any time MFC desires to develop the Community Center Site or its lands to the north or the east and City has not yet constructed the 10<sup>th</sup> Avenue West Extension roadway, MFC may design and construct the roadway or any portion thereof that it desires, with such design and construction plans subject to the reasonable and timely review and approval of the City. If the 10<sup>th</sup> Avenue West extension (or any portion thereof) is constructed by MFC, then, to the extent available under the City Land Development Code and subject to the terms and provisions of that Code then in effect, MFC shall be eligible, to the extent allowed by law, for transportation impact fee credits equal to the cost of construction, which shall include all costs of design, permitting and engineering, construction and the value of any additional land required for stormwater or drainage facilities for the road and the construction of such facilities (collectively in this Section, "Construction Costs"). The City makes no representation or warranty that such impact fee credits are now or will in the future be available for road construction to local road standards. If transportation impact fee credits are not available, or if the parties otherwise so choose, the City will timely reimburse MFC (or a successor developer or builder, as the case may be) for Construction Costs. In the event reimbursement is expected, MFC shall engage in a competitive, sealed bid process in determining its primary construction contractor (with award to the low responsive, responsible bidder).~~

(d) **Community Center Site Parking and Easements.**

- (i) The 2.0 +/- acres of land located at the southwest corner of the



intersection of 23<sup>rd</sup> Street West, as it will be realigned, and 10<sup>th</sup> Avenue West Extension, and described on **Exhibit E** attached hereto (the "Community Center Site"), is intended for general commercial use ("GCOM") designation in a certain Future Land Use Map Amendment pending with the City (Ord. No. 2010-05). Until such time as the Community Center Site is developed for use, it may be used for overflow parking for the Blackstone Park and ball field complex and for access, pursuant to one or more temporary easements and/or use agreements substantially in form attached hereto as **Exhibit E-2**. Should the land be used for a community center such as a Boys & Girls Club, YMCA, YWCA or similar recreation facility for the benefit of the surrounding community ("Community Center") (subject to the City's approval in accordance with the City Code of Ordinances), City will allow use of the parking areas on its adjoining lands adjacent to and as a part of the Ball Field Project for the Community Center, via permanent easement in the form attached hereto as **Exhibit E-6**. If the Community Center is to be developed before the Ball Field Project is completed, parking for the Community Center Site will be made available under the same form of easement agreement, however, such agreement may contain a provision for the relocation of such parking upon development of the Ball Field Project, subject to reasonable agreement by MFC of location, access and language of such provision. If, at the time MFC has need for such parking, the City has not yet built such parking facilities to serve the Ball Fields, MFC may construct a portion of the parking area needed for the Community Center Site on City-owned land. City and MFC shall work together to develop and establish the design of the parking areas to accommodate the intended use of the Community Center Site project and the Ball Field Project.

(ii) Until the 10<sup>th</sup> Avenue West extension is completed, the owner of the Community Center Site will grant a temporary ingress/egress connector easement to connect the parking areas so that legal access to and from a public right of way is available to the entire parking area on and serving the Community Center Site and the Blackstone Park ball field complex, the location of such easement as approximately depicted on **Exhibit E-3** attached hereto (to be replaced with sketch and legal description of the exact location agreed upon between MFC and the City during the Inspection Period, which sketch and legal description will be provided by the City at its expense). This connector easement shall be substantially in form attached hereto as **Exhibit E-4**, and shall terminate on completion of the 10<sup>th</sup> Avenue West extension (or a portion thereof) sufficient to provide public access to the parking area. If MFC (or its transferee or ground lessee) develops the Community Center Site, this access may be terminated by MFC upon completion of the 10<sup>th</sup> Avenue West extension (or a portion thereof) providing such public access. MFC will provide City with at least one hundred and eighty (180) days prior notice of MFC's intention to terminate the temporary easement and construct the 10<sup>th</sup> Avenue West extension. The design of the 10<sup>th</sup> Avenue West extension, if constructed by MFC, shall be subject to City's reasonable and timely approval. If the 10<sup>th</sup> Avenue West extension (or any portion thereof) is constructed by MFC, then, to the extent available under the City Land Development Code and subject to the terms and provisions of that Code then in effect, MFC shall receive transportation impact fee credits equal to the cost of construction. However, the City makes no representation or warranty that such impact fee credits are now or will in the future be available for road construction to local road standards.

(iii) If MFC develops the Community Center Site, then at MFC's

request, City will grant an easement over its adjoining property for stormwater retention to benefit the Community Center Site, and shall enter into a shared use agreement, all subject to the conditions provided herein. The stormwater retention area will be of sufficient size and capacity, or there shall be reserved the right of the City to add sufficient size and capacity, to meet the needs of the City's nearby lands. The easement and retention area shall be designed and constructed so as not to interfere with the operation, construction and use of any ball fields or other improvements on the City's adjoining lands. If, at the time MFC has need for the stormwater retention area, the City has already constructed the stormwater retention facilities, then MFC may use and expand the facilities built by the City. If, at the time MFC has need for the stormwater retention area, the City has not yet built stormwater retention facilities to serve City's property, MFC shall construct the facilities, allowing for expansion to accommodate the City's future needs. City and MFC shall work together to develop and establish the design of the parking and retention areas and shall size both on-site and off-site retention infrastructure, facilities and lines to accommodate the intended use of the Property; provided, however, if either party desires to upsize such retention facilities and lines to accommodate its remaining property in the area, such lines shall be upsized and the parties shall work together with each other and each party's engineers on the design, and the cost will be prorated accordingly. Following completion, the stormwater facilities shall be maintained by the City and MFC shall share in the cost of maintenance on an equitable or usage basis to be set forth in the easement and shared use agreement. The easement and shared use agreement shall be substantially in form attached hereto as **Exhibit E-5**.

(e) **Grant Funding.** The parties agree to cooperate with each other in applying for grant funding and supporting each other's applications for grant funding for any part of the development of the improvements planned as described in this Agreement. Such application, however, shall be at the sole cost and expense of the party initiating such application.

(f) **Relocation of Fences and other Improvements on School Board Property.** The transferor of any Property conveyed to School Board or the City shall, within sixty (60) days following the closing of the transfer, move fences on the Property to separate adjacent uses. School Board and/or City, as the case may be shall reimburse MFC up to \$5,000.00 (in the aggregate) for the reasonable cost to relocate or replace, at its discretion, any fences on Property to be transferred to the respective party by MFC, so that, after the closing of the transfer, MFC's and the transferee's lands and activities shall be separated from each other by fencing.

(g) **Vacation of 23<sup>rd</sup> Street West and 8<sup>th</sup> Avenue West.** Under the Dedication Agreement, prior to closing under that agreement, City has agreed to take all action necessary on its part to vacate a portion of the existing right of way of 23<sup>rd</sup> Street West and a portion of the existing right of way of 8<sup>th</sup> Avenue West, to be effective upon and contingent upon the completion of the "Roadway Project" (as defined in the Dedication Agreement) and opening to traffic of the realigned 23<sup>rd</sup> Street West. To the extent that any portion of the existing right of way of 8<sup>th</sup> Avenue West being vacated may vest in County, for any reason, the County, on request of MFC, agrees to quitclaim its interest in those lands to MFC. To the extent that any

portion of the portions of the existing right of way of 23<sup>rd</sup> Street West being vacated may vest in County as the adjoining landowner as a result of the vacation, the County, on request of the City, agrees to quitclaim its interest in those lands to City for use in the ball field complex. These agreements shall specifically survive the Closing under this Agreement. The transferee of vacated property agrees to accept title to that property subject to existing easements and easements necessary to accommodate existing utility installations, except as otherwise provided in the Dedication Agreement relative to MFC (which provision is incorporated herein by reference).

(h) **Annexation and Vacation of 8<sup>th</sup> Avenue West.** A condition of MFC's obligation to close under the Dedication Agreement is that the City has annexed a portion of 8<sup>th</sup> Avenue West into the City. County agrees to cooperate in such annexation. If the City's efforts to annex the subject property are not successful, then County agrees to take all steps necessary to vacate those portions of 8<sup>th</sup> Avenue West that are not now part of the City, to be effective upon and contingent upon the completion of the Roadway Project as described in the Dedication Agreement, and MFC and City will cooperate (at no cost to MFC) in those proceedings, it being further understood that the outcome of the proceeding cannot be guaranteed by the County.

(i) **Fill.** Before or after the Closing, at School Board's request, City, at its sole expense, will remove City-owned fill located on the land to be transferred by MFC to the School Board and, if applicable, on other adjacent land owned by MFC.

(j) **Survival.** The agreements, rights and obligations set forth in this **Section 5** shall survive the Closing.

## **6. Closing; Deeds.**

(a) **Closing.** The consummation of each of the transactions contemplated by this Agreement (the "Closing") shall occur by delivery by the transferor to the transferee of a properly executed special warranty deed (the "Deed") conveying the Property to the transferee, in exchange for the Consideration to be provided by the transferee to the transferor as described in **Section 3** of this Agreement. The Closing shall take place at the office of Kirk-Pinkerton, P.A., counsel for the School Board, in Bradenton, Florida (the "Closing Agent"), at 10:00 a.m., on the earlier of: (i) the date that is thirty (30) days following satisfaction or waiver of all of the Closing Conditions (as evidenced by written notice from all parties), and (ii) May 1, 2012 (the "Closing Date"). Notwithstanding anything to the contrary in this Agreement, waiver of any of the Closing Conditions in **Sections 4 (a) through (d)**, inclusive, shall not constitute a waiver of such obligation(s) post-Closing.

(b) **Deed.** The form of the Deed shall conform to the requirements of the Title Company (as hereinafter defined), shall be prepared by the Title Company (hereinafter defined), shall include any provisions required by this Agreement, shall be reasonably acceptable to the transferee, the transferor and their respective counsel, and shall be delivered to counsel for the parties on or before ten (10) Business Days prior to the Closing Date. At the Closing, the Property will be in as good condition and repair as at the date of signing of this Agreement.

(c) **Use Restrictions for Ball Fields.** The parties agree that the deed from MFC to City of the land to be used for ball fields and described in **Exhibits A-3 and A-3a** shall contain a provision that such Property shall be used for ball fields and related uses and no other purposes. The Deed shall contain a provision allowing MFC to demand reconveyance of that Property if (i) City has not commenced the construction of the Ball Field Project within four (4) years from the Closing Date ("Commencement Deadline") and (ii) if at least two (2) ball fields and associated parking have not been completed within five (5) years and six (6) months from the Closing Date ("Completion Deadline"). If Manatee Fruit demands reconveyance, the closing of such reconveyance transaction shall occur within thirty (30) days following the date of such election. At such closing, City shall deliver a special warranty deed to the Property to Manatee Fruit subject only to the same encumbrances (Permitted Exceptions) to which City received title from Manatee Fruit. City shall pay all closing costs related to the reconveyance, including but not necessarily limited to, documentary stamps on the deed (if any), recording fees and all costs necessary to satisfy or release any encumbrances on the Property that are not permitted hereunder. City shall provide all documents reasonably requested by Manatee Fruit (including, without limitation, owner's and construction lien affidavits) relating to the title to the Property and its insurability. In the event MFC waives or otherwise does not demand reconveyance if construction is not commenced by the Commencement Deadline, such waiver shall not affect MFC's right to demand reconveyance if at least two (2) ball fields and associated parking have not been completed by the Completion Deadline. Further, if a portion of the Property described in **Exhibits A-3 and A-3a** has been developed for fewer than two (2) ball fields and associated parking, MFC will be entitled to reconveyance of only the portion of the Property not so developed. On City's completion of the Ball Field Project within the required time periods, MFC will execute and deliver a termination of its reconveyance rights in a form suitable for recording in the Public Records. All of the reconveyance conditions set forth in this Paragraph(c) shall be included in the Deed.

7. **Title.** At Closing, the Property shall be conveyed, subject to the following exceptions (all, "Approved Exceptions"):

- (a) liens for ad valorem taxes not yet due and payable;
- (b) all building, zoning, environmental, and other state, county or federal laws, codes, and regulations (whether existing or proposed), affecting the Property, including any and all special exceptions, conditions, and other similar matters, if any, related to the zoning of the Property; and
- (c) As to property which will be acquired by way of vacation of public roadways, whether as a result of the vacation or by transfer, existing easements and easements needed to accommodate existing utility installations in and along the former right of way.

8. **Title Commitment/Title Policy.** Within twenty (20) days after the Effective Date, each transferee of Property (including, without limitation, any party in whom Property may

vest as a result of vacation of a roadway with respect to which the party is an adjoining landowner) may procure, at its own cost and expense (a) a title insurance commitment ("Commitment"), issued by a title insurance agent selected by it (the "Title Company"), showing the transferor of the Property identified in **Section 2** of this Agreement as the record title owner of the Property and the terms by which the Title Company agrees to issue an owner's policy of title insurance (the "Title Policy") issued on the standard ALTA Owner's Policy, 1992 form with Florida modifications, in the amount of the appraised value, insuring fee simple title to the Property subject to the terms of Title Policy and the title exceptions therein described; and (b) a photocopy of all documents (the "Title Documents") constituting all the title exceptions shown on the Commitment. The transferee shall immediately provide the transferor with a copy of the Commitment and Title Documents and shall advise transferor of the date of transferee's receipt of same for purposes of calculating deadlines in this paragraph. As used herein, the term "Title Objection Period" shall mean a period commencing on the first day following the requesting party's receipt of the latest version of the Commitment, the Title Documents or the Survey (but in no event later than twenty (20) days following the Effective Date) and ending ten (10) days thereafter. If the Commitment or the Survey reflects that title to the Property is subject to any matter other than the Approved Exceptions, the party requesting the Title Commitment may object to the matter ("Title Objection") by delivering written notice ("Title Objection Notice") to the party who owns the Property in question on or before the expiration of the Title Objection Period. In addition, if at any time after the receipt of the Commitment or the Survey and before Closing, the party who will be the transferee of that Property discovers or receives notice that title to the Property is subject to any new matter arising after the date of the Title Commitment other than the Approved Exceptions that could not have been reflected in the initial Title Commitment or Survey (a "Post Commitment Matter"), that party may object to the matter ("Title Objection") by delivering written notice ("Title Objection Notice") to the party who owns the Property in question within five (5) days of the date the party requesting the Title Commitment received notice of such Post-Commitment Matter. Upon receiving any Title Objection, the party who owns the Property may, but shall not be required to, use reasonable efforts to cure such Title Objection. If it is willing and able to try to cure the Title Objection, the party in title shall notify the proposed transferee of that fact on or before ten (10) days after the delivery of the Title Objection Notice (such period called "Owner's Notice Period"), and then the party in title will eliminate or cure the Title Objection(s) on or before the Closing. If the owner of the Property does not deliver that notice to its proposed transferee within that period, the owner is deemed notify its proposed transferee that the owner does not intend to cure the Title Objections on or before Closing. If the owner of the Property notifies its proposed transferee that it is not willing or able to cure any Title Objection, then the transferee shall, within five (5) days following the expiration of Owner's Notice Period, deliver to all of the parties written notice terminating this Agreement, and on failure to do so the transferee shall be deemed to have waived the applicable Title Objections. Notwithstanding anything herein to the contrary, in the event that the proposed transferee's right to terminate this Agreement pursuant to any provision of this Section does not expire earlier, it shall expire upon expiration of the Inspection Period (except in the event of a Post Commitment Matter). As used in this Agreement, the term "Permitted Exceptions" shall mean (a) the Approved Exceptions and (b) all matters other than the Approved Exceptions listed in the Commitment to which the proposed transferee does not deliver a Title Objection within the Title Objection Period (or within the

applicable five (5) days for a Post Commitment Matter), or, having objected, waives or is deemed to have waived in accordance with the provisions of this Section. Upon the timely delivery of a termination notice pursuant to this Section, the proposed transferees shall deliver the Inspection Documents (hereinafter defined) to the owner of the Property, this Agreement shall be terminated as to all parties, and no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations (described in **Section 10[c]** of this Agreement) and the obligations created pursuant to **Section 16** (regarding brokerage) and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

9. **Survey.** Within twenty (20) days after the Effective Date, any proposed transferee may, if it wishes: (a) procure a current ALTA survey ("Survey") of the Property from a Florida licensed surveyor, certified to it, the current owner of the Property, their counsel and the proposed transferee's Title Company in accordance with a surveyor's certificate reasonably acceptable to the parties to whom the certification runs; and (b) provide a copy of the Survey to the owner of the Property and its counsel. If the Survey shows any matters which would affect marketability of title to the Property (except for the Permitted Exceptions), the proposed transferee shall notify the owner of the Property in writing of the specific defects (the "Survey Defects") pursuant to **Section 8**. Any Survey Defects shall be treated in the same manner as Title Objections are treated under **Section 8**. Fences shall not constitute Survey Defects.

10. **Inspection Period.**

(a) **Inspections.** During the Inspection Period and at any other time prior to Closing, unless this Agreement is terminated prior thereto, and subject to the terms and conditions of this Agreement, the contractors working on behalf of the proposed transferee shall be entitled to enter upon the Property at all reasonable times during normal business hours to inspect and conduct tests to determine the suitability and feasibility of the Property for that transferee's intended use, with each respective proposed transferee bearing the cost of its own inspections and tests. It is understood that as of the date of execution of this Agreement, and as further provided in **Section 10(d) (i)** of this Agreement, Property now owned by MFC that will be transferred hereunder has been evaluated or is in the process of being evaluated for the presence of Hazardous Materials, which evaluation will be completed by the end of the Inspection Period. Thus, no further environmental study of that Property shall be conducted before Closing.

(b) **Inspection Documents; Disclaimer.** The term "Inspection Documents" means the Documents and all appraisals, studies, reports or test results obtained by the proposed transferee in connection with its inspection of the Property. The proposed transferee shall deliver all of the Inspection Documents to the Property owner on the termination of this Agreement for any reason.

Each transferee of Property acknowledges and agrees that any documents provided by an owner of Property are provided for informational purposes only, and that neither the owner, nor the person or company which prepared any document (collectively, the "Author")

has made or makes any representation or warranty, express or implied, as to the accuracy or completeness of any such documents. The transferee of the Property who receives any such documents agrees that neither owner of the Property nor any Author will have any liability to the transferee resulting from the use of any of such documents. Each proposed transferee of the Property further agrees that it shall independently inspect and investigate the Property and verify such information with respect to the Property as it deems necessary or desirable to fully evaluate the proposed transactions contemplated by this Agreement and the physical condition of the Property.

(c) **Inspection Obligations.** All contractors engaged by any proposed transferee for purposes of any inspection under this Section shall: (a) not unreasonably interfere with the operation and maintenance of the Property; (b) not damage any part of the Property; (c) not injure or otherwise cause bodily harm to the Property owner, its agents, contractors and employees or any tenant of the Property; (d) not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (e) restore the surface of the Property to substantially the condition in which the same was found before any permitted inspections or tests were undertaken. The obligations created pursuant to this Section are called "Inspection Obligations," and shall specifically survive the Closing or any termination of this Agreement.

(d) **Environmental Studies.**

(i) With respect to the Property which MFC will transfer to School Board and City pursuant to this Agreement, as additional consideration for the transfer, MFC shall be reimbursed by City and School Board the actual cost, shared equally, not to exceed \$2,500.00, by the City (in the aggregate, for the property being conveyed to City under this Agreement and under the Dedication Agreement) and \$2,500.00 by the School Board, for MFC's procurement of an environmental audit report of that Property, certified to City or School Board, respectively and to MFC, performed by an environmental consultant satisfactory to both City and School Board. Such reimbursement shall occur within three (3) business days of the later of (i) the Effective Date, and (ii) the date a copy of the written environmental audit report certified to the City (among others) is delivered to City or City's attorney. It is the intent that the meeting following Limited Phase II as described in the letter agreements attached hereto as **Exhibit F** will occur before the end of the Inspection Period and City, School Board and Manatee Fruit will use diligent efforts to facilitate such timing. If such meeting has not occurred before the end of the Inspection Period, City, School Board or Manatee Fruit may elect to extend the Inspection Period by a period of time not to exceed ten (10) days to accomplish same.

(ii) With respect to the other Property to be transferred pursuant to this Agreement, as additional consideration for the transfer(s) contemplated herein, each proposed transferee agrees that it will provide to the Property owner immediately following the receipt of same by that proposed transferee copies of any and all reports, tests or studies involving Hazardous Materials on, under or at the Property which reports, tests or studies shall be addressed to both the owner and the proposed transferee at no cost to the owner; provided, however, the proposed transferee shall have no obligation to cause any such tests or studies to be performed on the Property. With respect to Property other than the Property to be transferred by

MFC to School Board and City, if such reports, tests or studies indicate the existence or reasonable potential existence of any Hazardous Materials on, under or at the Property, the proposed transferee may terminate this Agreement by giving written notice to all parties prior to the expiration of the Inspection Period; and no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to **Section 16** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

(e) **Appraisal.** Except for MFC, which shall have no obligation to obtain an appraisal, the proposed transferee of Property shall obtain any appraisal of the Property which it desires or requires during the Inspection Period.

During the Inspection Period, the City shall obtain, at its expense, an appraisal of the fair market value of the Property to be transferred by MFC to City hereunder. Within five (5) days of City's receipt and approval of the appraisal, City shall provide a copy of it to MFC. If MFC does not agree with the fair market value of the Property determined by the appraisal obtained by the City, then it shall have the right to its own appraisal of the Property, obtained at its sole expense. All appraisals shall be performed by disinterested, licensed MAI appraisers. In the event two appraisers are used, the fair market value shall be the average of the figures provided by the two appraisers, unless the difference between the two is greater than fifteen percent (15%). In that event, a third appraiser selected mutually by the parties shall be retained. The two closest appraisals of the three shall be averaged and that value shall be the fair market value. All costs incurred for the third appraisal shall be shared equally by City and MFC.

In the event any other party hereto obtain an appraisal on lands that it will acquire and there is a dispute with the transferor regarding the appraised value, the procedure set forth in the immediately-preceding paragraph will apply. Otherwise, the parties hereto agree that, for purposes of title insurance or otherwise, the appraised value per acre of the Property determined pursuant to the above paragraph will apply.

(f) **The Jessica Lunsford Act and other laws.** All parties understand that any persons present on Property owned by the School Board will be subject to the law commonly known as The Jessica Lunsford Act (Florida Statutes, Sect. 1012.32); and any party whose personnel or independent contractors working on the party's behalf will be or are present on Property owned by the School Board when students are present will notify School Board and require the party's personnel and/or independent contractor, as the case may be, to comply with requirements imposed by the School Board to comply with The Jessica Lunsford Act, at the expense of that party. The parties also understand that obtaining screening and clearances required under The Jessica Lunsford Act may take time and that any time period reasonably necessary for those clearances will not extend the Inspection Period or any other operative deadline under this Agreement.

(g) **General Approvals.** City, School Board and Manatee County shall have until the end of the Inspection Period to receive approval of their respective governing boards of the transactions described in the Phase II Contract to be performed by the respective entity; and



City shall have received approval of its governing board on terms satisfactory to City, in its sole discretion that City shall be permitted to accept the dedication of the Property, develop it as intended, and perform its obligations under this Agreement. The sole remedy for failing to obtain such approvals is to terminate this Agreement before the end of the Inspection Period.

(h) **School Board Comprehensive Plan Determination.** The School Board shall have received a preliminary determination from the City of the consistency of the Property being transferred to the School Board for the expansion of the existing high school and other educational facilities under the City's Comprehensive Plan. The School Board shall diligently pursue such approval. The School Board shall have until the end of the Inspection Period to secure the approval. In the event the approval is not received by the end of the Inspection Period, the School Board may elect to terminate this Agreement as provided herein.

(i) **Easements and Exhibits.** To the extent the easement agreements and sketches/legal descriptions referenced in this Agreement and in the List of Exhibits attached hereto are not attached to this Agreement at the time of execution, City will provide drafts of same to the other parties hereto no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to the parties affected by such agreements, in their sole discretion. In the event (and to the extent) such documents, sketches and legal descriptions are not timely provided and agreed during the Inspection Period, and if this agreement is not terminated during the Inspection Period, agreement by the affected parties on the form and content of all such documents and all such sketches and legal descriptions is a continuing obligation and survives Closing.

(j) **Right to Terminate.** The proposed transferee of any Property shall be entitled to terminate this Agreement by giving notice of termination to the other parties no later than the last day of the Inspection Period if such proposed transferee determines in its sole discretion that for any reason whatsoever the Property that it will receive is not satisfactory. Upon such termination, the Parties shall thereupon be released of further obligations under this Agreement, except those that specifically survive termination of this Agreement.

#### 11. **Closing Costs and Documentary Stamp Tax**

(a) For each Property, the proposed transferee shall pay the cost of any Title Policy which the transferee may elect to obtain to insure its ownership interest.

(b) In each transfer the transferor shall pay the cost of recording any corrective title instruments.

(c) Costs of recording the deed for each transfer shall be paid by School Board for transfers between MFC and the School Board, by School Board for the transfer from County to School Board, and one half each by City and by School Board for the transfers from School Board to City.

(d) Costs of preparing and recording easements and agreements provided for herein shall be paid as follows:

(i) City and School Board shall share equally the cost of recording the School Board's temporary easement over the future 10<sup>th</sup> Avenue West extension (described in Section 5(c) of this Agreement), if needed and School Board shall pay the cost of preparation of that easement.

(ii) City shall pay the cost of preparation and recording of temporary construction easements from County (described in **Sections 5(a) and 5(b)** of this Agreement); and of preparing and recording one or more easements and/or agreements regarding ingress and egress and parking for the Community Center Site and the easement over City land for stormwater retention for the Community Center Site (all as described in **Section 5(d)** of this Agreement).

(e) City will pay to MFC its costs and expenses and reasonable attorneys' fees incurred by or on behalf of MFC in connection with this Agreement, the Dedication Agreement (to the extent not previously paid by City) and the closing of the transactions contemplated hereby and thereby; and each of the other parties shall be responsible for its own attorneys' fees.

(f) Except as otherwise expressly provided herein, each proposed transferee of Property shall pay for the cost of its Survey and all costs associated with its due diligence, and with zoning and permitting of its Property.

(g) **Documentary Stamp Tax Liability.** It is anticipated that no documentary stamp tax will be owed on the transfers described herein. However, if the Department of Revenue, its agents or employees, notifies any party that any of the transactions which are the subject of this Agreement is subject to payment of documentary stamp tax, or any other such tax, then, in such event, the documentary stamp tax shall be paid by the School Board in transfers between (to or from) the School Board and MFC, by the City in transfers to it by MFC, by the School Board in transfers to it by the County, and in all other cases by the transferor in the transaction. The party paying the tax may contest any liability for such tax payment; however, any such contest shall be taken solely at the election, cost, and expense of that party.

(h) The parties agree that neither County nor MFC should bear the closing or recording costs of the transactions described in this Agreement except as otherwise expressly agreed herein. City and School Board have determined it to be in the public interest to bear certain transaction costs, such as recording costs and any documentary stamp tax liability, which might customarily be borne by the County or MFC and/or from which School Board or City may be otherwise exempt in these transactions.

12. **Proration of Taxes and Assessments.** At closing, the transferor of the Property shall, in accordance with the statutory requirements set forth in Section 196.295, Florida Statutes, deposit in escrow with the County Tax Collector an amount equal to any real, personal and intangible property taxes for current year for the Property being transferred, prorated to the

date of closing. This amount shall be based upon the current assessment and millage rate. If the actual taxes vary from the figures used to close this transaction, the transferor shall pay appropriate adjustments upon demand, which demand shall be made no later than December 31st of the year in which Closing occurs. There shall be no proration of any expenses related to the operation of the Property unless specifically and expressly agreed. Certified liens levied by any governmental authority for which the work has been substantially completed shall be paid by transferor. Any pending liens and certified liens for which the work has not been substantially completed shall be assumed by transferee of the Property. The provisions of this Section shall survive the Closing.

13. **Representations, Warranties and Covenants of Transferor and Transferee.**

(a) **Representations and Warranties of Transferors.** As an inducement to each transferee of Property to enter into this Agreement and to consummate the transactions contemplated herein, each owner of Property represents and warrants to and covenants with each transferee with respect to the Property to be transferred by the respective owner to the respective transferee that, to the best of its knowledge, the following are true and correct as of the date hereof, and shall be true and correct as of the Closing:

(i) That, except with respect to Property now owned by MFC, which is subject to agricultural lease(s) which will be terminated or released at Closing, there is no party in possession of, or that has a right to possess, any portion of the Property as lessee, tenant at sufferance, licensee, or otherwise.

(ii) That it has not received a written notice from a governmental agency that the Property is in violation of any applicable laws, statutes, ordinances, regulations, codes, covenants, conditions or restrictions of any kind or nature affecting the Property or any part of it.

(iii) That it has made all payments required to be made by it to contractors, subcontractors, mechanics, materialmen and all other persons in connection with work done or services performed at its direction with respect to the Property, and there is no basis for the filing of any lien against the Property.

(iv) That it has received no written notice of public or private assessments against the Property that remain unpaid, including without limitation those for the construction of utility lines and apparatus, streets, sidewalks and curbs;

(v) That it has no actual knowledge of any subsurface condition which would impair the usability or developability of the Property for the transferee's intended use as stated herein, which has not already been disclosed to the transferee;

(vi) That except as disclosed to a transferee, there are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which presently impact upon the Property by reason of any existing improvements on the Property.

Further, a transferee who imposed any such obligation or assessment shall not be entitled to rely on this representation.

(vii) That it has received no written notice from any governmental agency of any pending or threatened litigation or proceedings before any governmental agency in which any person or entity alleges that the Property is in violation or threatened violation of any Environmental Laws or the presence, release, threat of release or placement on or at the Property of any Hazardous Materials, nor has it (i) received any written notice that any governmental or quasi-governmental authority or any employee or agent thereof, has determined, threatened to determine or required an investigation to determine that there has been a violation of any Environmental Laws at, on or in connection with the Property or that there exists a presence, release, threat of release or placement of any Hazardous Materials on or at the Property, or the use, handling, manufacturing, generation, production, storage, treatment, processing, transportation or disposal of any Hazardous Materials at or on the Property; (ii) received any notice under the citizen suit provision of any Environmental Law in connection with the Property or any facilities, operations or activities conducted thereon, or any business conducted in connection therewith; or (iii) received any written request from any governmental or quasi-governmental authority for inspection, request for information, notice, demand, administrative inquiry or any formal or informal complaint or claim with respect to or in connection with the violation or threatened violation of any Environmental Laws or existence of Hazardous Materials relating to the Property or any facilities, operations or activities conducted thereon or any business conducted in connection therewith.

(viii) That the execution and delivery by the transferor of, and its performance under, this Agreement are within its powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on behalf of the transferor has the authority to do so.

(ix) That this Agreement constitutes the legal, valid and binding obligation of the transferor, enforceable in accordance with its terms.

(x) That performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the transferor is a party or by which it is bound.

(xi) **Radon**. Florida Statutes requires the following notice be given: "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 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."

(xii) **Property conveyed "as is"**. Each proposed transferee of Property acknowledges and agrees that the owner thereof is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, other than as expressly

contained herein, with respect to the Property, including, but not limited to, warranties or representations as to matters of title (other than transferor's warranty of title set forth in the deed to be delivered at closing), zoning, tax consequences, physical or environmental conditions, availability of access, ingress or egress, valuation, governmental approvals, governmental regulations or any other matter or thing relating to or affecting the Property including, without limitation: (i) the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property, and (ii) the manner, quality, state of repair or lack of repair of the Property. Each proposed transferee agrees that with respect to the Property which it agrees to acquire under the terms of this Agreement, it has not relied upon and will not rely upon, either directly or indirectly, any statement, representation or warranty of the transferor, other than as expressly contained herein. Each proposed transferee represents that it is a knowledgeable buyer of real estate and that it is relying solely on its own expertise and that of its contractors, and that it will conduct such inspections and investigations of the Property, including, but not limited to, the physical conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk that adverse matters, including, but not limited to, adverse physical conditions, may not have been revealed by its inspections and investigations. Each proposed transferee acknowledges and agrees that upon closing, the owner of the Property being conveyed to the transferee shall convey and it shall accept the Property "as is, where is," with all faults, and further acknowledges and agrees that there are no oral agreements, warranties or representations, collateral to or affecting the Property by the owner, any agent of the owner or any third party. The terms and conditions of this paragraph shall expressly survive the closing and not merge therein.

(b) **Covenants of Owner.** Each owner of Property covenants with each transferee with respect to the Property to be transferred by the respective owner to the respective transferee that from and after the Effective Date, through and including the Closing Date:

(i) Except pursuant to the obligations set forth hereunder and under the Dedication Agreement, it shall not apply for any change whatsoever of the current zoning of any Property or otherwise seek to change in any manner whatsoever the nature of the use of the Property or seek any variance of such zoning of the Property except in conjunction with the other parties to this Agreement and as otherwise expressly provided herein.

(ii) It shall not transfer, convey, or encumber (unless it shall remove such encumbrance on or before the Closing Date) in any manner whatsoever any portion of the Property or any rights therein, or enter into any easement, license or agreement (or amend any existing easement, license or agreement) granting to any person or entity any right with respect to the Property or any portion thereof.

(iii) It shall not direct any person to make, nor shall it consent to any other person making, any material changes to the Property or any portion thereof without the prior written consent of the proposed transferee.

(vi) It shall provide the proposed transferee with prompt notice if any of the representations or warranties with respect to the Property set forth in the immediately preceding Paragraph (a) of this Section becomes untrue in any material respect.

(v) It shall not place or release or allow to be placed or released on the Property any Hazardous Materials in violation of any Environmental Laws.

(c) **Transferee's Representations and Warranties.** Each proposed transferee represents and warrants to the owner of Property to be transferred to the transferee under this Agreement, its successors and assigns, which representations and warranties are now and on the Closing Date shall be true and correct, as follows:

(i) The execution and delivery by the transferee of, and its performance under, this Agreement are within its powers and have been duly authorized by all requisite parties, and that the person executing this Agreement on its behalf has the authority to do so.

(ii) This Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

(iii) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which it is a party or by which it is bound.

14. **Casualty Loss/Condemnation.**

(a) **Casualty Loss.** Prior to Closing, risk of loss with regard to any Property shall be borne by the owner of the Property. If any Property should be materially damaged or destroyed prior to Closing making such property unusable for the intended use, then the proposed transferee may elect to terminate this Agreement by written notice to the other parties within ten (10) days of receipt by the proposed transferee from the owner of written notice of any such material damage or destruction to the Property, and no party shall have any further obligation to any other party hereunder. Failure of the proposed transferee to give notice of termination shall be deemed a waiver of the party's right to terminate, in which event any insurance proceeds shall be paid or assigned to the applicable transferee at Closing.

(b) **Condemnation.** The owner of Property agrees to give the proposed transferee of that Property written notice of any action or proceeding for condemnation of any part of the Property by any governmental entity except those which are party to this Agreement, which may result in the taking of all or part of a Property. Upon such notification, the proposed transferee shall have the right, to be exercised within ten (10) days after receipt of such notice, to terminate this Agreement. If the proposed transferee does not elect to terminate this Agreement, then this Agreement shall remain in full force and effect, and the proposed transferee shall have the right to participate in the negotiation of any condemnation awards or other compensation from taking and the transferee shall be entitled to receive all of the compensation allocable to the

Property to be transferred to it. Any monies or other compensation received by owner before closing will be delivered to the transferee and the owner will assign to the transferee the right to any condemnation awards or proceeds received after such date relating to the Property and the owner shall convey the portion of the Property, if any, which remains after the taking. In the event the transferee fails to timely deliver written notice of termination pursuant to this Section, it shall be deemed to have waived its right of termination pursuant to this Section.

While this Agreement is in effect, if a governmental entity that is a party to this Agreement shall institute condemnation proceedings against any of the Property described herein that it is entitled to receive as a transferee hereunder, the provisions above in this subsection (b) shall be of no force and effect.

(c) **Termination Pursuant to Paragraphs (a) or (b).** Upon the timely delivery of a termination notice pursuant to either Paragraph (a) or (b) above the proposed transferees shall deliver the Inspection Documents to the owners of the respective Property; and thereafter no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to **Section 16** and any other obligations hereunder that specifically survive Closing, all of which shall continue until fully performed.

15. **Assignment.** No party may assign any or all of its rights and obligations pursuant to this Agreement (whether by direct or indirect transfer or assignment) without the other parties' prior written consent; provided, however, this provision shall not prohibit MFC from transferring or ground-leasing the Community Center Site to another entity as long as such transferee or lessee agrees in writing to take subject to this Agreement.

16. **Brokers/Indemnification.** The parties represent and warrant to each other that they have not dealt with any realtor, broker, salesperson, or agent in connection with this Agreement. In the event of any breach of the foregoing representations, the breaching party shall indemnify and hold the others harmless from any cost, expense, or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any realtor, broker, or agent in connection with this Agreement or by reason of any act of such breaching party. The representations, warranties, and indemnities contained in this Section shall specifically survive the rescission, cancellation, termination or consummation of this Agreement.

17. **Notices.** Any notice or communication shall be in writing and shall be sent by either: (a) personal delivery service with charges billed to shipper; (b) overnight or expedited delivery service with charges billed to shipper; (c) facsimile transmission provided a confirmation copy is provided; or (d) United States mail, postage prepaid, registered or certified mail, return receipt requested. Any notice or communication sent as above provided shall be deemed given or delivered: (i) upon receipt if personally delivered (provided that such delivery is confirmed by the courier delivery service); (ii) if sent by United States Mail, on the date appearing on the return receipt, or if there is no date on such return receipt, the receipt date shall be presumed to be the postmark appearing on such return receipt; or (iii) on the date of actual delivery by any overnight or expedited delivery service or facsimile transmission (provided receipt is confirmed as provided above). All notices, requests or demands which any party is

required or may desire to give to any other party under any provision of this Agreement must be delivered to the other parties at the following address:

School Board: Manatee County School Board  
215 Manatee Avenue West  
Bradenton, Florida 34205  
Attn: Tim McGonegal, Superintendent  
Fax: 941/708-8686

With copy to: Mark P. Barnebey and Sue Jacobson  
Kirk Pinkerton, P.A.  
1301 6<sup>th</sup> Avenue West, Suite 102  
Bradenton, Florida 34205  
Fax: 941- 744 -9691 and 941-364-2490

City: City of Palmetto  
516 8<sup>th</sup> Avenue West  
Palmetto, Florida 34221  
Attn: Jim Freeman, City Clerk  
Fax: 941/723-4576

With copy to: David Persson and Michael Hankin  
Hankin, Persson, Davis, McClenathen & Darnell  
1820 Ringling Boulevard  
Sarasota, Florida 34236  
Fax: 941/957-0558

MFC: Manatee Fruit Company, Inc.  
1320 33<sup>rd</sup> Street West  
Palmetto, Florida 34221  
Attn: Whiting H. Preston, II, President  
Fax: 941/721-0805

With a copy to: Caleb Grimes and Leslie Gladfelter  
Grimes Goebel Grimes Hawkins Gladfelter & Galvano, PL  
1023 Manatee Avenue West  
Bradenton, Florida 34205  
Fax: 941/748-0158

County: Manatee County  
1112 Manatee Avenue West, 9<sup>th</sup> Floor  
Bradenton, Florida 34205  
Attn: County Administrator  
Fax: 941/745-3790



With a copy to: Tedd Williams, County Attorney and William E. Clague  
Office of the County Attorney  
Manatee County  
1112 Manatee Avenue West, 9<sup>th</sup> Floor  
Bradenton, Florida 34205  
Fax: (941) 745-3089

or to such other address as any party may designate by written notice to the other party.

18. **No Third Party Beneficiaries, Remedies.** The agreements made in this Agreement and the development plan described herein have been determined by the parties which are governmental entities to be in furtherance of the public interest. However, no member of the public or any person or entity not a party to this agreement shall have any right to enforce it or any remedy for breach of it. Further, the rights and remedies are only for the benefit of parties in privity with each other with respect to a transfer of Property, and no party has a right to enforce this agreement against a party unless the allegedly defaulting party has an agreement for the transfer of Property to or from the party seeking enforcement or some other obligation exists between the parties. Subject to that limitation, if any party fails to timely comply with any material condition, covenant or obligation it has hereunder, the other parties shall have the right to:

(a) Terminate this Agreement by giving written notice thereof to the other parties, whereupon no party shall have any further rights or obligations hereunder except those that specifically survive termination; provided, however, (i) termination hereunder is only available as a remedy prior to the Closing, and (ii) except for monetary obligations and the obligation to close hereunder, the defaulting party shall have ten (10) days after receipt of written notice to cure such default (unless different time frames are otherwise specifically provided in this Agreement); or

(b) Enforce specific performance of the defaulting party's obligations under this Agreement.

19. **Miscellaneous.**

(a) **Exhibits.** The Exhibits attached hereto (or to be attached hereto as provided herein) are hereby incorporated herein by reference and the List of Exhibits and special provisions therein (if any) are also incorporated herein by reference.

(b) **No Oral Modifications.** This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of all of the parties.

(c) **Binding Effect.** The provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors.

(d) **Time of Essence.**

Time is of the essence with respect to each provision of this Agreement that requires any action to be taken by a party within a stated time period or upon a specified date.

(e) **Delivery of Possession.** Possession of the Property shall be granted upon completion of Closing and the transferee's performance of those of its obligations required to be performed before or at Closing.

(f) **Calculation of Time.** If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended through the close of business on the next Business Day. Unless otherwise expressly stated, time periods shall be calculated in calendar days.

(g) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

(h) **Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision hereof.

(i) **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida.

(j) **No Recordation.** This Agreement, any part hereof, or any memorandum hereof shall not be recorded in the public records of any county in the State of Florida; provided, however, that the foregoing shall not prohibit the filing of this Agreement in any court proceeding in which this Agreement is relevant.

(k) **No Waiver.** No failure of any party to exercise any power given such party hereunder or to insist upon strict compliance by any other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof. Nothing contained herein or in the Introduction to this Agreement shall be construed as a waiver of any party's rights in the event of a condemnation proceeding.

(l) **Construction of Agreement.** The parties acknowledge and agree that they have been represented by counsel and that each of the parties has participated in the drafting of this Agreement. Accordingly, it is the intention and agreement of the parties that the language, terms and conditions of this Agreement are not to be construed in any way against or in favor of any party hereto by reason of the responsibilities in connection with the preparation of this Agreement.

(m) **Public Disclosure Affidavit.** The parties confirm that, before entering

into this Agreement, they have complied with Section 286.23(2), *Florida Statutes* to the extent applicable to any transaction described in this Agreement.

(n) **Attorneys' Fees and Costs.** In the event of any litigation arising out of this Agreement, and subject to the limitations set forth in **Section 18** of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees (including appeal and recovery of judgment costs and fees) from the non-prevailing party.

(o) **Effect of Termination of Agreement.** Unless the parties agree otherwise, the termination of this Agreement with respect to one party shall terminate this Agreement entirely as to all parties, and no party shall have any further rights or obligations pursuant to this Agreement except for the Inspection Obligations and the obligations created pursuant to **Section 16** and any other obligations hereunder that specifically survive Closing, which shall continue until fully performed.

(p) **Delegation of Authority.** After execution of this Agreement by the parties, the duties and responsibilities under this Agreement of the School Board may be performed by the Superintendent of Schools or the Superintendent's designee, the duties and responsibilities of the City may be performed by the Mayor or her designee, and the duties and responsibilities of the County may be performed by the County Administrator or his designee.

(q) **Survival.** As required by the context, any provision(s) hereof shall specifically survive the Closing.

(r) **Execution.** In the event this Agreement is not executed by all parties on or before October 7, 2010, it shall be null and void and of no force and effect.

IN WITNESS WHEREOF, the parties hereto set their respective hands and affixed their seals on the day and year indicated below.

**Signatures on following pages**

**Signed, sealed and delivered  
in the presence of:**

<p><b>ATTEST:</b></p> <p>_____</p> <p>Tim McGonegal, Superintendent</p> <p>Approved to Form and Legal Sufficiency</p> <p>By: _____</p>	<p><b>SCHOOL BOARD OF MANATEE COUNTY, FLORIDA, a public body corporate</b></p> <p>By: _____</p> <p>Jane Pfeilsticker Chairman</p> <p><b>Date Executed:</b> _____, 2010</p>
---	---

<p>ATTEST:</p> <p>_____</p> <p>Jim Freeman, City Clerk</p>	<p>CITY OF PALMETTO, a municipal corporation of the State of Florida</p> <p>By: _____</p> <p>Shirley Bryant As its: Mayor</p> <p><b>Date Executed:</b> _____, 2010</p>
--	--

**Signed, sealed and delivered  
in the presence of:**

Attest:

R.B. Shore, Clerk of the Circuit Court

By: \_\_\_\_\_  
Deputy Clerk

MANATEE COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Donna Hayes, Chairman of the Board of  
County Commissioners

**Date Executed:** \_\_\_\_\_, 2010

**Signed, sealed and delivered  
in the presence of:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

MANATEE FRUIT COMPANY, INC., a  
Florida corporation

By: \_\_\_\_\_  
Whiting H. Preston, II, President

**Date Executed:** \_\_\_\_\_, 2010

### **List of Exhibits**

Legal Descriptions of Property to be transferred under this Agreement (Section 2):

Exhibit A-1, from School Board to City (2.754 +/- acres) (for 10<sup>th</sup> Avenue West Extension)

Exhibit A-2, from School Board to MFC (2.055 +/- acres)

Exhibit A-3, from MFC to City (7.229 +/- acres)

Exhibit A-3a, from MFC to City (0.521 +/- acres)

Exhibit A-4, from MFC to School Board (1.820 +/- acres)

Exhibit A-5, from County to School Board (2.833 +/- acres)

Exhibit A-6, from MFC to City (1.528 +/- acres) (for 10<sup>th</sup> Avenue West Extension)

Exhibit A-6a, from MFC to City (0.841 +/- acres) (for 10<sup>th</sup> Avenue West Extension)

Exhibit A-7 - Land Exchange Exhibit (aerial photograph)

Exhibit B- (Intentionally deleted.)

Exhibit B-1 - (Intentionally deleted.)

Exhibit C – Temporary Construction Easement from County to City

Exhibit D – Temporary Use Easement over 10<sup>th</sup> Avenue West Extension Area from City to School Board

Exhibit E- Community Center Site (Section 5(d)(i))

Exhibit E-2 - Temporary Easement from MFC to County/City of Community Center Site for Access and Parking (Section 5(d)(i))

Exhibit E-3 – sketch of access and drainage easements affecting Community Center Site (Section 5(d)(ii))

Exhibit E-4 – Temporary Connector Easement across Community Center Site (Section 5(d)(ii))

Exhibit E-5 – Stormwater Retention Easement and Shared Use Agreement (Section 5(d)(iii))

Exhibit E-6 – Parking Easement from City and County to MFC (Section 5(d)(i))

Exhibit F Letter Agreements re: Environmental Study, from City and School Board to MFC (Section 10(d)(i))

### **Special provisions:**

To the extent any of the above-referenced Exhibits are not attached to this Agreement at the time of execution, City will provide drafts of same (documents and sketches & legal descriptions) to the other parties hereunder no later than five (5) business days after the Effective Date, with the goal of reaching agreement on same by the end of the Inspection Period. Such Exhibits shall be in form and content acceptable to the other parties, each in its sole and absolute discretion.

~~L:\RealEstate\Manatee Fruit-Palmetto-Sch Bd\Phase II Agreement\Phase II Contract 9.23.10.docx~~  
~~L:\RealEstate\Manatee Fruit-Palmetto-Sch Bd\Phase II Agreement\Phase II Contract 9.16.10 FINAL.docx~~



### **List of Exhibits**

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# 10th Avenue West Parcel #1



DESCRIPTION: Part of School Board of Manatee County parcel recorded in Official Records Book 1521, Pg. 5224, of the Public Records of Manatee County, Florida, lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 11, run thence along the South boundary line of said Southwest 1/4 of the Southwest 1/4 of Section 11, S.89°18'57"E., 1327.00 feet to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 11; thence along the West boundary of said Southeast 1/4 of the Southwest 1/4 of Section 11, N.00°22'28"E., 37.13 feet to a point on the Northerly right-of-way line of 17th STREET WEST, said point being the Southwest corner of aforesaid School Board of Manatee County parcel; thence along said Northerly right-of-way line of 17th STREET WEST, also being the South boundary of said School Board of Manatee County parcel, S.89°19'48"E., 377.56 feet to the **POINT OF BEGINNING**; thence N.45°33'59"E., 35.29 feet; thence N.00°27'47"E., 73.40 feet to a point of curvature; thence Northerly, 462.61 feet along the arc of a curve to the right having a radius of 1195.00 feet and a central angle of 22°10'49" (chord bearing N.11°33'11"E., 459.72 feet) to a point of reverse curvature; thence Northerly, 427.76 feet along the arc of a curve to the left having a radius of 1105.00 feet and a central angle of 22°10'49" (chord bearing N.11°33'11"E., 425.10 feet) to a point of tangency; thence N.00°27'47"E., 337.13 feet to a point on the North boundary of the Northwest 1/4 of aforesaid Southeast 1/4 of the Southwest 1/4 of Section 11, also being the North boundary of said School Board of Manatee County parcel; thence along said North boundary of the Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11, also being the North boundary of said School Board of Manatee County parcel, S.89°29'28"E., 90.00 feet to the Northeast corner of said Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11, also being the Northeast corner of said School Board of Manatee County parcel; thence along the East boundary of said Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of the Section 11, also being the East S.00°27'47"W., 337.06 feet to a point of curvature; thence Southerly, 462.61 feet along the arc of said curve to the right having a radius of 1195.00 feet and a central angle of 22°10'49" (chord bearing S.11°33'11"W., 459.72 feet) to a point of reverse curvature; thence Southerly, 427.76 feet along the arc of a curve to the left having a radius of 1105.00 feet and a central angle of 22°10'49" (chord bearing S.11°33'11"W., 425.10 feet) to a point of tangency; thence S.00°27'47"W., 73.73 feet; thence S.44°26'01"E., 35.42 feet to a point on aforesaid Northerly right-of-way line of 17th STREET WEST, also being aforesaid South boundary of School Board of Manatee County parcel; thence along said Northerly right-of-way line of 17th STREET WEST, also being aid South boundary of School Board of Manatee County parcel, N.89°19'48"W., 140.00 feet to the **POINT OF BEGINNING**.

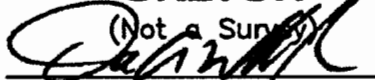
Containing 2.754 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the South boundary of the Southwest 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°18'57"E.

## 10th AVENUE WEST PARCEL #1

Prepared For: **City of Palmetto**

### DESCRIPTION SKETCH

(Not a Survey)  
  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue Phone: (813) 248-8888  
Tampa, Florida 33605 Fax: (813) 248-2266  
www.geopointsurvey.com Licensed Business Number LB 7768

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 1 OF 2 SHEETS			

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC	Checked: DAW	P.C.: mm	Data File: mmmm
Date: 03/22/10	Dwg: 10ST-PARCEL1-DS	Order No.: HDL 23 002	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

Scale: 1" = 200'

MANATEE COUNTY PARCEL  
(O.R. 1595, Pg. 6608)  
(12.135± Ac)

COMMERCIAL  
PARCEL "D"

Northeast corner of the Northwest  
1/4 of the Southeast 1/4 of the  
Southwest 1/4 of Section 11-34-17

North boundary of the Northwest 1/4 of the Southeast  
1/4 of the Southwest 1/4 of Section 11-34-17, and the  
North boundary of School Board of Manatee County parcel

### CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
1	1195.00	22°10'49"	462.61	234.24	459.72	N.11°33'11"E.
2	1105.00	22°10'49"	427.76	216.59	425.10	N.11°33'11"E.
3	1195.00	22°10'49"	462.61	234.24	459.72	S.11°33'11"W.
4	1105.00	22°10'49"	427.76	216.59	425.10	S.11°33'11"W.

Northeast corner of  
School Board of  
Manatee County Parcel

Investment Properties of  
Sarasota, LLC  
PARCELS 1 & 2  
(O.R. 1614, Pg. 6931)

East boundary of the Northeast 1/4 of  
the Southwest 1/4 of the Southwest  
1/4 of Section 11-34-17, and the  
East boundary of School Board of  
Manatee County parcel

PATHAK PARCEL  
(O.R. 2039, Pg. 4995)

NE 1/4  
SE 1/4  
SW 1/4

SCHOOL BOARD OF  
MANATEE COUNTY  
(Prop Appraiser)

SW 1/4  
SW 1/4

SCHOOL BOARD OF  
MANATEE COUNTY  
(O.R. 1521, Pg. 5224)

SW 1/4  
SE 1/4  
SW 1/4

SE 1/4  
SE 1/4  
SW 1/4

### LINE DATA TABLE

L1	N.45°33'59"E.	35.29
L2	N.00°27'47"E.	73.40
L3	S.89°29'28"E.	90.00
L4	S.00°27'47"W.	73.73
L5	S.44°26'01"E.	35.42
L6	N.89°19'48"W.	140.00

POINT OF COMMENCEMENT  
Southwest corner of the Southwest 1/4  
of the Southwest 1/4 of Section 11,  
Township 34 South, Range 17 East

South boundary of the Southwest 1/4  
of the Southwest 1/4 of Section 11,  
Township 34 South, Range 17 East

West boundary of the Southeast 1/4  
of the Southwest 1/4 of Section 11,  
Township 34 South, Range 17 East

POINT OF BEGINNING  
10th AVENUE WEST  
PARCEL #1  
(2.754± Ac.)

Southwest corner of  
School Board of  
Manatee County Parcel

S.89°19'48"E. 377.56'

17th STREET WEST  
Right-of-way Width Varies

MAIN STREET SUBDIVISION  
(Plot Book 2, Pg. 152)

Northerly right-of-way line  
and South boundary of  
School Board of  
Manatee County Parcel

## 10th AVENUE WEST PARCEL #1

Prepared For: City of Palmetto

### DESCRIPTION SKETCH

(Not a Survey)

David A. Williams

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

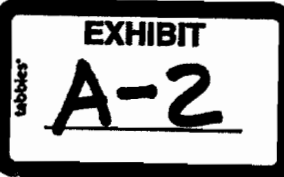
**GeoPoint**  
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1403 E. 5th Avenue  
Tampa, Florida 33605  
www.geopointsurvey.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

Drawn: SEC Checked: DAW P.C.: mm Date Filed: mm  
Date: 03/22/10 Dwg: 10\_AVE\_PARCEL-1-08 Order No.: HDL 23 002  
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No. Date Description Dwn.  
REVISIONS  
SHEET NO. 2 OF 2 SHEETS

**MANATEE FRUIT PARCEL #1**

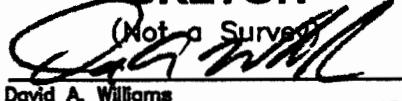
DESCRIPTION: Part of School Board of Manatee County parcel recorded in Official Records Book 1521, Pg. 5224, of the Public Records of Manatee County, Florida, lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 11, run thence along the South boundary of said Southwest 1/4 of the Southwest 1/4 of Section 11, S.89°18'57"E., 1327.00 feet to the Southwest corner of the Southwest 1/4 of the Southeast 1/4 of said Southwest 1/4 of Section 11; thence along the South boundary line of said Southwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11, S.89°17'07"E., 662.93 feet to the Southeast corner thereof; thence along the East boundary of said Southwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11, N.00°26'37"E., 37.65 feet to a point on the Northerly right-of-way line of 17th STREET WEST, said point also being the Southeast corner of aforesaid School Board of Manatee County parcel, and the **POINT OF BEGINNING**; thence along said Northerly right-of-way line of 17th STREET WEST, also being the South boundary of said School Board of Manatee County parcel, N.89°19'48"W., 145.41 feet; thence N.44°26'01"W., 35.42 feet; thence N.00°27'47"E., 73.73 feet to a point of curvature; thence Northerly, 427.76 feet along the arc of a curve to the right having a radius of 1105.00 feet and a central angle of 22°10'49" (chord bearing N.11°33'11"E., 425.10 feet) to a point of reverse curvature; thence Northerly, 462.61 feet along the arc of a curve to the left having a radius of 1195.00 feet and a central angle of 22°10'49" (chord bearing N.11°33'11"E., 459.72 feet) to a point on the East boundary of the Northwest 1/4 of said Southeast 1/4 of the Southwest 1/4 of Section 11, also being the East boundary of aforesaid School Board of Manatee County parcel; thence along the East boundary of said Northwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11, S.00°27'47"W., 333.74 feet to the Northeast corner of aforesaid Southwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11; thence along said East boundary of the Southwest 1/4 of the Southeast 1/4 of the Southwest 1/4 of Section 11, also being said East boundary of School Board of Manatee County parcel, S.00°26'37"W., 633.90 feet to the **POINT OF BEGINNING**.

Containing 2.055 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the South boundary of the Southwest 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°18'57"E.

**MANATEE FRUIT PARCEL #1**Prepared For: **City of Palmetto****DESCRIPTION  
SKETCH**

*(Not a Survey)*  
  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

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Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 1 OF 2 SHEETS			

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Drawn: SEC	Checked: DAW	P.C.: ---	Date File: ---
Date: 03/22/10	Dwg: MANATEE FRUIT-PARCEL-1	Order No.: HDL 23 002	
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

Scale: 1" = 200'

MANATEE COUNTY PARCEL  
(O.R. 1595, Pg. 6608)  
(12.135± Ac)

COMMERCIAL  
PARCEL "D"

### CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
5	1105.00	22°10'49"	427.76	216.59	425.10	N.11°33'11"E
6	1195.00	22°10'49"	462.61	234.24	459.72	N.11°33'11"E

### LINE DATA TABLE

L7	N.00°26'37"E	37.65
L8	N.89°19'48"W	145.41
L9	N.44°26'01"W	35.42
L10	N.00°27'47"E	73.73
L11	S.00°27'47"W	333.74

NW 1/4  
SE 1/4  
SW 1/4

SCHOOL BOARD OF  
MANATEE COUNTY  
(O.R. 1521, Pg. 5224)

SCHOOL BOARD OF  
MANATEE COUNTY  
(Prop Appraiser)

SW 1/4  
SW 1/4

MANATEE FRUIT  
PARCEL #1  
(2.055± Ac.)

SW 1/4  
SE 1/4  
SW 1/4

17th STREET WEST  
Right-of-way Width Varies

Northerly right-of-way line and  
South boundary of School  
Board of Manatee County Parcel

South boundary of the Southwest 1/4  
of the Southeast 1/4 of the Southwest  
1/4 of Section 11-34-17

MAIN STREET SUBDIVISION  
(Plat Book 2, Pg. 152)

Westerly boundary of the  
Northeast 1/4 of the Southeast  
1/4 of the Southwest 1/4 of  
Section 11-34-17, and East  
boundary of School Board of  
Manatee County parcel

Investment Properties  
of Sarasota, LLC  
PARCELS 1 & 2  
(O.R. 1614, Pg. 6931)

PATHAK PARCEL  
(O.R. 2039, Pg. 4995)

NE 1/4  
SE 1/4  
SW 1/4

Northeast corner of the  
Southwest 1/4 of the Southeast  
1/4 of the Southwest 1/4 of  
Section 11-34-17,

SE 1/4  
SE 1/4  
SW 1/4

East boundary of the Southwest 1/4 of  
the Southeast 1/4 of the Southwest 1/4  
of Section 11-34-17, and East  
boundary of School Board of Manatee  
County parcel

POINT OF BEGINNING  
Southeast corner of School  
Board of Manatee County Parcel

Southeast corner of the  
Southwest 1/4 of the  
Southeast 1/4 of the  
Southwest 1/4 of  
Section 11-34-17

### MANATEE FRUIT PARCEL #1

Prepared For: City of Palmetto

### DESCRIPTION SKETCH

(Not a Survey)  
*David A. Williams*  
David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue  
Tampa, Florida 33605  
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Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

Drawn: SEC Checked: DAW P.C.: Date Filed: 03/22/10  
Date: 03/22/10 Dwg: MANATEE-FRUIT-PARCEL-1 Order No.: HDL 23 002  
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

### REVISIONS

SHEET NO. 2 OF 2 SHEETS

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

EXHIBIT

A-3

**CITY OF PALMETTO PARCEL #2**

**DESCRIPTION:** A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Northeast corner of the Northeast 1/4 of the Southwest 1/4 of said Section 11, run thence along the North boundary of said Northeast 1/4 of the Southwest 1/4 of Section 11, N.89°40'51"W., 543.60 feet; thence S.00°19'09"W., 100.00 feet to a point on the PROPOSED Southerly right-of way line of 23rd STREET WEST; thence along said PROPOSED Southerly right-of way line of 23rd STREET WEST, N.89°40'51"W., 491.60 feet to the **POINT OF BEGINNING**; thence SOUTH, 62.82 feet; thence S.19°47'50"E., 34.82 feet; thence S.00°42'36"W., 117.38 feet to a point on a curve; thence Southeasterly, 173.55 feet along the arc of a curve to the right having a radius of 220.00 feet and a central angle of 45°11'54" (chord bearing S.26°53'43"E., 169.08 feet); thence EAST, 187.93 feet; thence S.00°27'47"W., 357.74 feet to a point on the Northerly right-of way line of 23rd STREET WEST, as recorded in Official Records Book 1581, Pg. 6246, of the Public Records of Manatee County, Florida; thence along said Northerly right-of way line of 23rd STREET WEST, the following five (5) courses: 1) N.71°07'06"W., 175.09 feet to a point of curvature; 2) Northwesterly, 197.53 feet along the arc of a curve to the right having a radius of 525.00 feet and a central angle of 21°33'25" (chord bearing N.60°20'23"W., 196.36 feet) to a point of tangency; 3) N.49°33'41"W., 343.14 feet to a point of curvature; 4) Westerly, 436.33 feet along the arc of a curve to the left having a radius of 625.00 feet and a central angle of 40°00'00" (chord bearing N.69°33'41"W., 427.53 feet) to a point of tangency; 5) N.89°33'41"W., 105.19 feet to a point on the aforesaid PROPOSED Southerly right-of way line of 23rd STREET WEST; thence along said PROPOSED Southerly right-of way line of 23rd STREET WEST, the following three (3) courses: 1) N.70°00'00"E., 314.96 feet to a point of curvature; 2) Easterly, 514.22 feet along the arc of a curve to the right having a radius of 1450.00 feet and a central angle of 20°19'09" (chord bearing N.80°09'35"E., 511.53 feet) to a point of tangency; 3) S.89°40'51"E., 31.43 feet to the **POINT OF BEGINNING**.

Containing 7.229 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the North boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of N.89°40'51"W.

**CITY OF PALMETTO PARCEL #2**Prepared For: **City of Palmetto**

DESCRIPTION  
SKETCH  
(Not a Survey)

*David A. Williams*  
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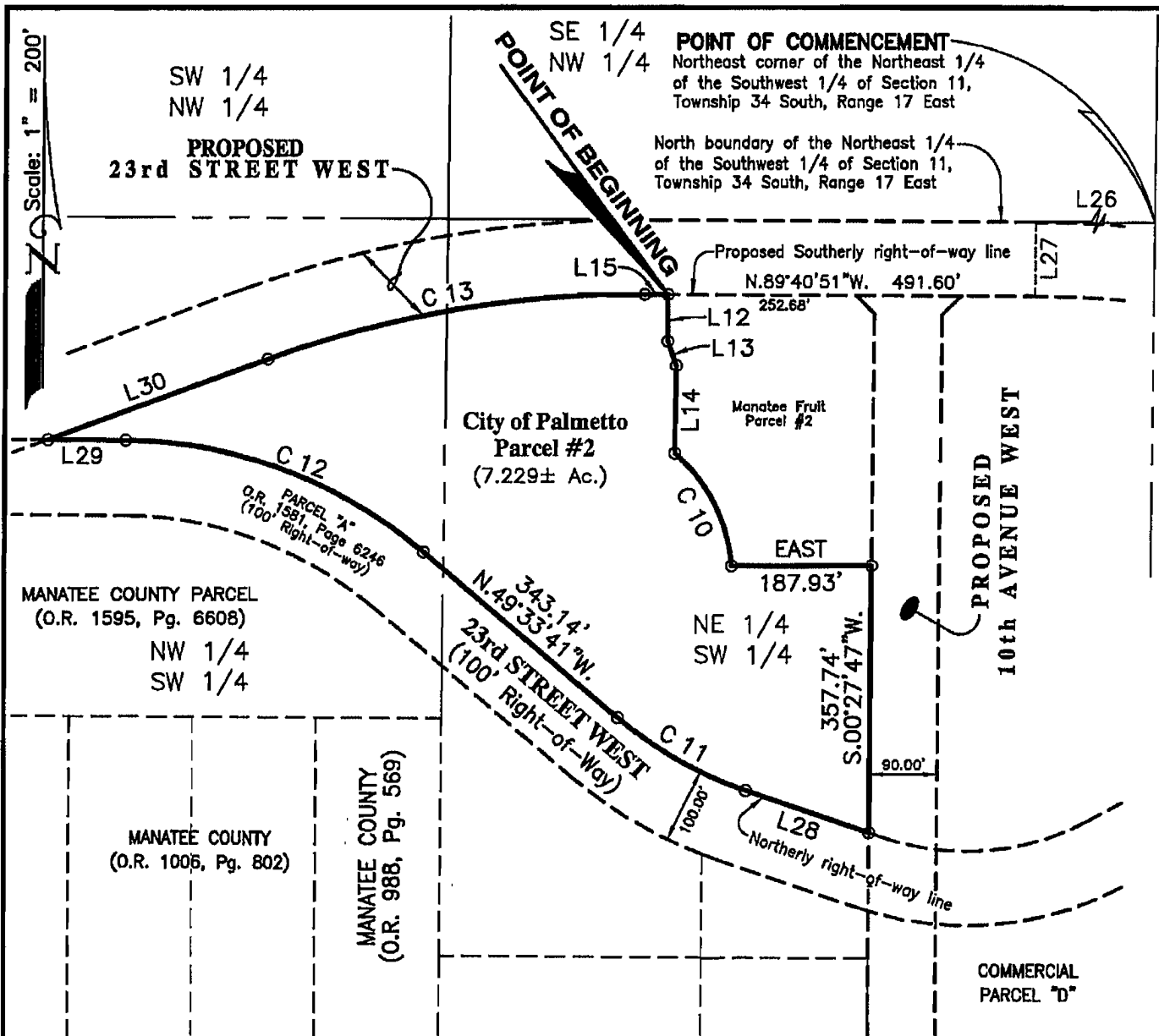
No.	Date	Description	Dwn.
REVISIONS			

**SHEET NO. 1 OF 2 SHEETS**

Drawn: SEC	Checked: DAW	P.C.: mm	Date File: mm
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Date: 03/23/10	Dwg: 10ST-PARCEL7-DS	Order No.: HDL 23 002
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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST



CURVE DATA TABLE

NO.	RADIUS	DELTA	ARC	TANGENT	CHORD	BEARING
10	220.00	45°11'54"	173.55	91.57	169.08	S.26°53'43"E.
11	525.00	21°33'25"	197.53	99.94	196.36	N.60°20'23"W.
12	625.00	40°00'00"	436.33	227.48	427.53	N.69°33'41"W.
13	1450.00	20°19'09"	514.22	259.84	511.53	N.80°09'35"E.

LINE DATA TABLE

L12	SOUTH	62.82	L27	S.00°19'09"W.	100.00
L13	S.19°47'50"E.	34.82	L28	N.71°07'06"W.	175.09
L14	S.00°42'36"W.	117.38	L29	N.89°33'41"W.	105.19
L15	S.89°40'51"E.	31.43	L30	N.70°00'00"E.	314.96
L26	N.89°40'51"W.	543.60			

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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

EXHIBIT

tabler  
**A-3a****CITY OF PALMETTO PARCEL #1**

DESCRIPTION: A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 11, run thence along the South boundary line of said Southwest 1/4 of the Southwest 1/4 of Section 11, S.89°18'57"E., 1327.00 feet to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 11; thence along the West boundary line of the said Southeast 1/4 of the Southwest 1/4 of Section 11, N.00°22'28"E., 1339.97 feet to the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 11, also being the Southwest corner of Manatee County Parcel recorded in Official Records Book 1595, Page 6608, of the Public Records of Manatee County, Florida; thence along the South boundary of said Northeast 1/4 of the Southwest 1/4 of Section 11, also being in part the South boundary of said Manatee County Parcel, S.89°29'28"E., 574.77 feet; thence N.00°27'47"E., 353.29 feet to the **POINT OF BEGINNING**; thence N.89°35'47"W., 224.22 feet to the East boundary of aforesaid Manatee County Parcel; thence along said East boundary of Manatee County Parcel, also being a line lying 350.00 feet East of and parallel with the West boundary of aforesaid Northeast 1/4 of the Southwest 1/4 of Section 11, N.00°33'07"E., 139.21 feet to a point on a curve on the Southerly right-of-way line of 23rd STREET WEST, as recorded in Official Records Book 1581, Page 6246, of the Public Records of Manatee County, Florida; thence along said Southerly right-of-way line of 23rd STREET WEST, the following three (3) courses: 1) Easterly, 27.92 feet along the arc of a curve to the left having a radius of 625.00 feet and a central angle of 02°33'35" (chord bearing S.69°50'18"E., 27.92 feet) to a point of tangency; 2) S.71°07'06"E., 193.79 feet to a point of curvature; 3) Easterly, 14.53 feet along the arc of a curve to the left having a radius of 450.00 feet and a central angle of 01°50'58" (chord bearing S.72°02'35"E., 14.53 feet); thence S.00°27'47"W., 63.97 feet to the **POINT OF BEGINNING**.

Containing 0.521 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the South boundary of the Southwest 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°18'57"E.

**CITY OF PALMETTO PARCEL #1**Prepared For: **City of Palmetto**

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No.	Date	Description	Dwn.
<b>REVISIONS</b>			
<b>SHEET NO. 1 OF 2 SHEETS</b>			
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Drawn: SEC		Checked: DAW	P.C.: <i>DAW</i>
Date: 03/23/10		Dwg: 10ST-PARCELS-DS	Order No.: HDL 23 002
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			







**MANATEE COUNTY SCHOOL PARCEL #2**

**DESCRIPTION:** Part of Manatee Fruit Commercial Parcel "D", lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 11, run thence along the South boundary line of said Southwest 1/4 of the Southwest 1/4 of Section 11, S.89°18'57"E., 1327.00 feet to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 11; thence along the West boundary line of the said Southeast 1/4 of the Southwest 1/4 of Section 11, N.00°22'28"E., 1339.97 feet to the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 11; thence along the Northerly boundary of the aforesaid Southeast 1/4 of the Southwest 1/4 of Section 11, S.89°29'28"E., 350.00 feet to the Southeast corner of Manatee County Parcel recorded in Official Records Book 1595, Page 6608, of the Public Records of Manatee County, Florida, said point also being the **POINT OF BEGINNING**; thence along the East boundary of said Manatee County Parcel, N.00°33'07"E., 352.88 feet; thence S.89°35'47"E., 224.22 feet; thence S.00°27'47"W., 353.29 feet to a point on the aforesaid Northerly boundary of the Southeast 1/4 of the Southwest 1/4 of Section 11; thence along said Northerly boundary of the Southeast 1/4 of the Southwest 1/4 of Section 11, N.89°29'28"W., 224.77 feet to the **POINT OF BEGINNING**.

Containing 1.820 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the South boundary of the Southwest 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°18'57"E.

**MANATEE COUNTY SCHOOL PARCEL #2**

Prepared For: **City of Palmetto**

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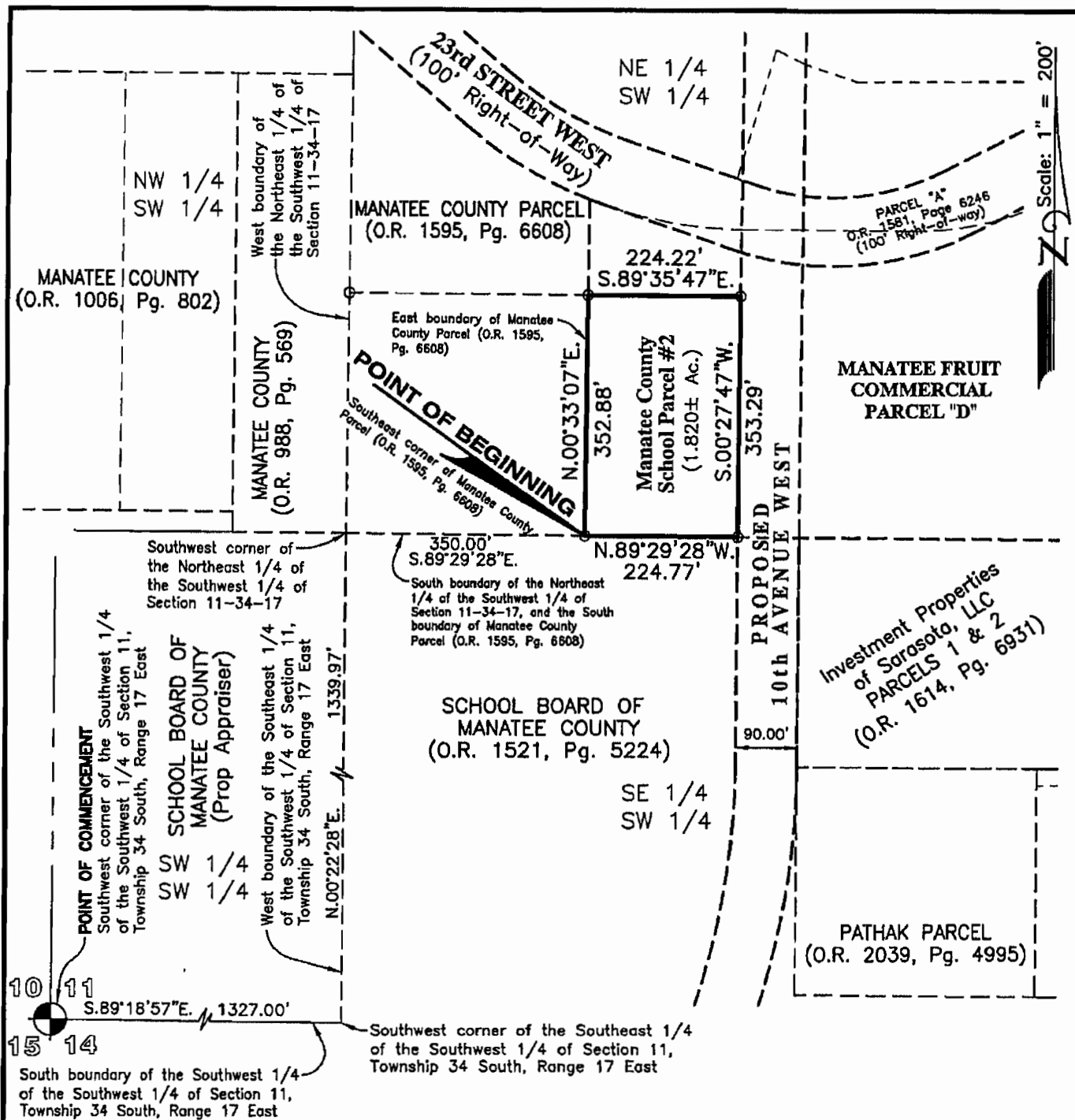
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No.	Date	Description	Drawn
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Drawn: SEC | Checked: DAW | P.C.: mm | Date Filed: mm  
Date: 03/22/10 | Dwg: 10ST-PARCEL4-DS | Order No.: XXX-XX-XXX  
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST



## MANATEE COUNTY SCHOOL PARCEL #2

Prepared For: City of Palmetto

DESCRIPTION  
SKETCH

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Drawn: SEC Checked: DAW P.C.: mm Date File: mm

Date: 03/22/10 Dwg: 105T-PARCEL4-D5 Order No.: XXX-XX-XXX

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Dwn.
REVISIONS			

SHEET NO. 2 OF 2 SHEETS



# MANATEE COUNTY SCHOOL PARCEL #1

DESCRIPTION: Part of Manatee County parcel recorded in Official Records Book 1595, Pg. 6608, of the Public Records of Manatee County, Florida, lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 11, run thence along the South boundary of said Southwest 1/4 of the Southwest 1/4 of Section 11, S.89°18'57"E., 1327.00 feet to the Southwest corner of the Southeast 1/4 of said Southwest 1/4 of Section 11; thence along the West boundary of the said Southeast 1/4 of the Southwest 1/4 of Section 11, N.00°22'28"E., 1339.97 feet to the Southwest corner of the Northeast 1/4 of said Southwest 1/4 of Section 11, said point also being the Southeast corner of aforesaid Manatee County Parcel recorded in Official Records Book 1595, Pg. 6608, and the **POINT OF BEGINNING**; thence along the West boundary of the said Northeast 1/4 of the Southwest 1/4 of Section 11, also being the West boundary of said Manatee County Parcel recorded in Official Records Book 1595, Pg. 6608, N.00°33'07"E., 352.24 feet; thence S.89°35'47"E., 350.00 feet; thence along a line lying 350.00 feet East of and parallel with aforesaid West boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, also being aforesaid West boundary of Manatee County Parcel recorded in Official Records Book 1595, Pg. 6608, S.00°33'07"W., 352.88 feet to a point on the South boundary of the aforesaid Northeast 1/4 of the Southwest 1/4 of Section 11, said point also being the Southeast corner of said Manatee County Parcel recorded in Official Records Book 1595, Pg. 6608; thence along the North boundary of said Northeast 1/4 of the Southwest 1/4 of Section 11, also being the South boundary of said Manatee County Parcel recorded in Official Records Book 1595, Pg. 6608, N.89°29'28"W., 350.00 feet to the **POINT OF BEGINNING**.

Containing 2.833 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the South boundary of the Southwest 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of S.89°18'57"E.

## MANATEE COUNTY SCHOOL PARCEL #1

Prepared For: **City of Palmetto**

### DESCRIPTION SKETCH

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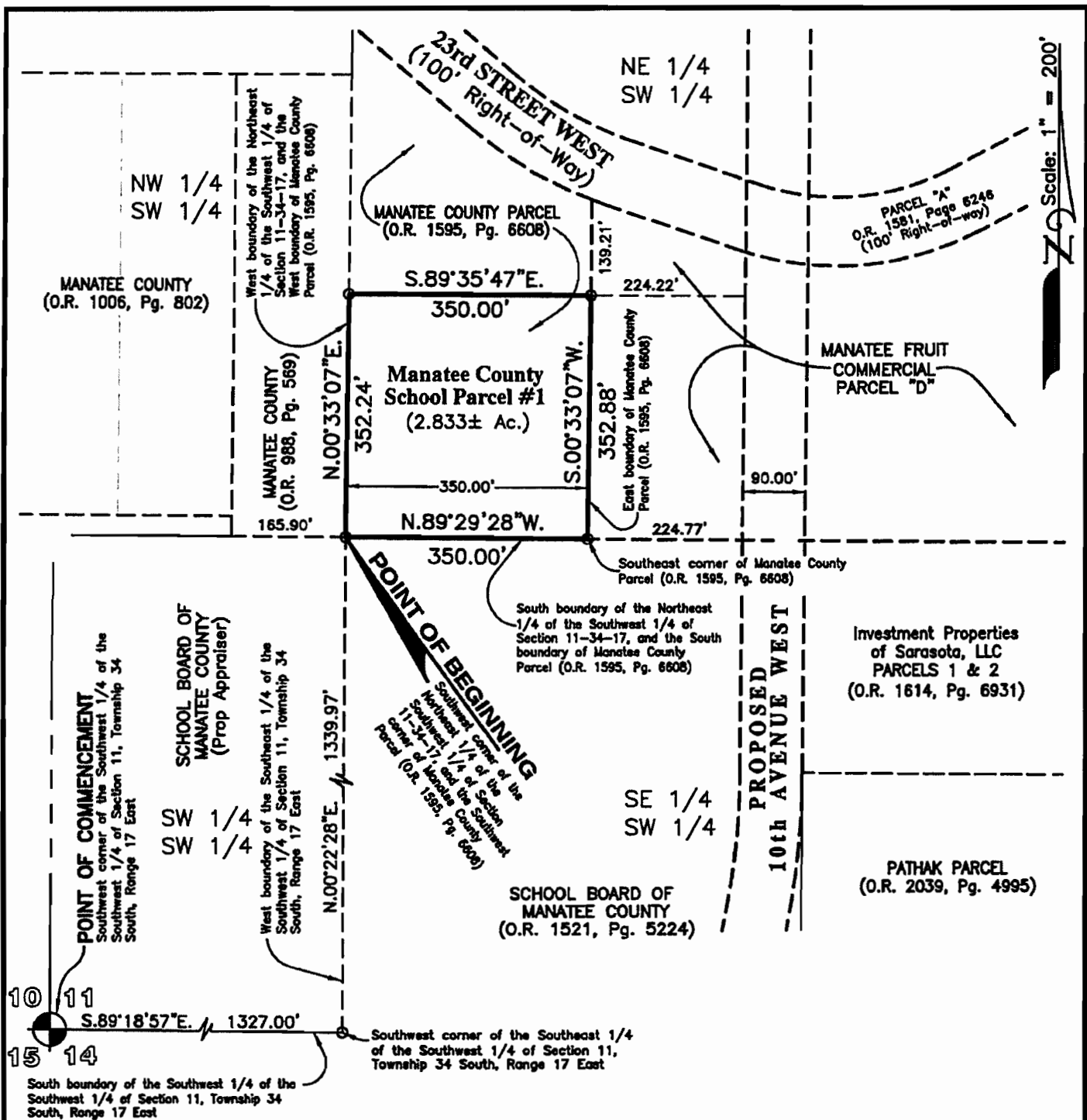
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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			



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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			

EXHIBIT

**A-6****10TH AVENUE WEST PARCEL 3**

**DESCRIPTION:** A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Northeast corner of the Northeast 1/4 of the Southwest 1/4 of said Section 11, run thence along the North boundary of said Northeast 1/4 of the Southwest 1/4 of Section 11, N.89°40'51"W., 543.60 feet; thence S.00°19'09"W., 100.00 feet to a point on the PROPOSED Southerly right-of way line of 23rd STREET WEST; thence along said PROPOSED Southerly right-of way line of 23rd STREET WEST, N.89°40'51"W., 98.92 feet to the **POINT OF BEGINNING**; thence S.45°23'28"W., 35.40 feet; thence S.00°27'47"W., 716.91 feet to a point on a curve on the Northerly right-of way line of 23rd STREET WEST; thence along said Northerly right-of way line of 23rd STREET WEST, the following two (2) courses: 1) Westerly, 74.11 feet along the arc of a curve to the right having a radius of 350.00 feet and a central angle of 12°07'54" (chord bearing N.77°11'03"W., 73.97 feet) to a point of tangency; 2) N.71°07'06"W., 18.70 feet; thence N.00°27'47"E., 694.95 feet; thence N.44°36'32"W., 35.31 feet to a point on the aforesaid PROPOSED Southerly right-of way line of 23rd STREET WEST; thence along said PROPOSED Southerly right-of way line of 23rd STREET WEST, S.89°40'51"E., 140.00 feet to the **POINT OF BEGINNING**.

Containing 1.528 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the North boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of N.89°40'51"W.

**10TH AVENUE WEST PARCEL #3**Prepared For: **City of Palmetto****DESCRIPTION  
SKETCH**

(Not a Survey)

David A. Williams

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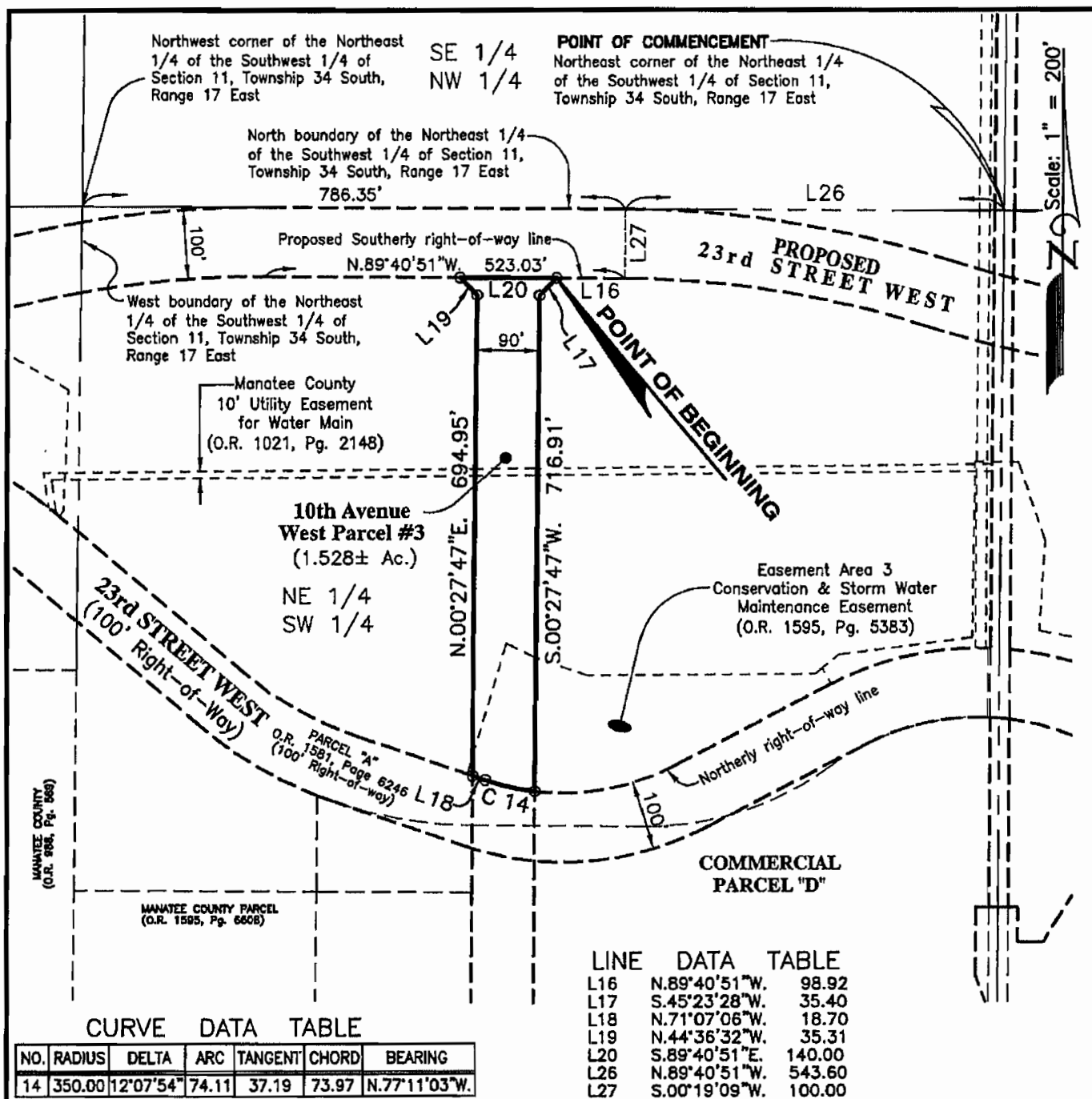
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**SHEET NO. 1 OF 2 SHEETS**

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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST			



### 10TH AVENUE WEST PARCEL #3

Prepared For: City of Palmetto

#### DESCRIPTION SKETCH

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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

SHEET NO. 2 OF 2 SHEETS



10TH AVENUE WEST PARCEL #2


DESCRIPTION: Part of Manatee Fruit Commercial Parcel "D", lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 11, run thence along the South boundary line of said Southwest 1/4 of the Southwest 1/4 of Section 11, S.89°18'57"E., 1327.00 feet to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 11; thence along the West boundary line of the said Southeast 1/4 of the Southwest 1/4 of Section 11, N.00°22'28"E., 1339.97 feet to the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 11; thence along the Southerly boundary of the aforesaid Northeast 1/4 of the Southwest 1/4 of Section 11, S.89°29'28"E., 574.77 feet to the POINT OF BEGINNING; thence N.00°27'47"E., 417.27 feet to a point on a curve on the Southerly right-of-way line of 23rd STREET WEST; thence along said Southerly right-of-way line of 23rd STREET WEST, Easterly, 91.76 feet along the arc of a curve to the left having a radius of 450.00 feet and a central angle of 11°41'00" (chord bearing S.78°48'34"E., 91.60 feet); thence S.00°27'47"W., 400.29 feet to a point on the aforesaid Southerly boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, also being the Northeast corner of School Board of Manatee County parcel as recorded in official Records Book 1521, Page 5224, of the Public Records of Manatee County, Florida; thence along said Southerly boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, N.89°29'28"W., 90.00 feet to the POINT OF BEGINNING.

Containing 0.841 acres, more or less.

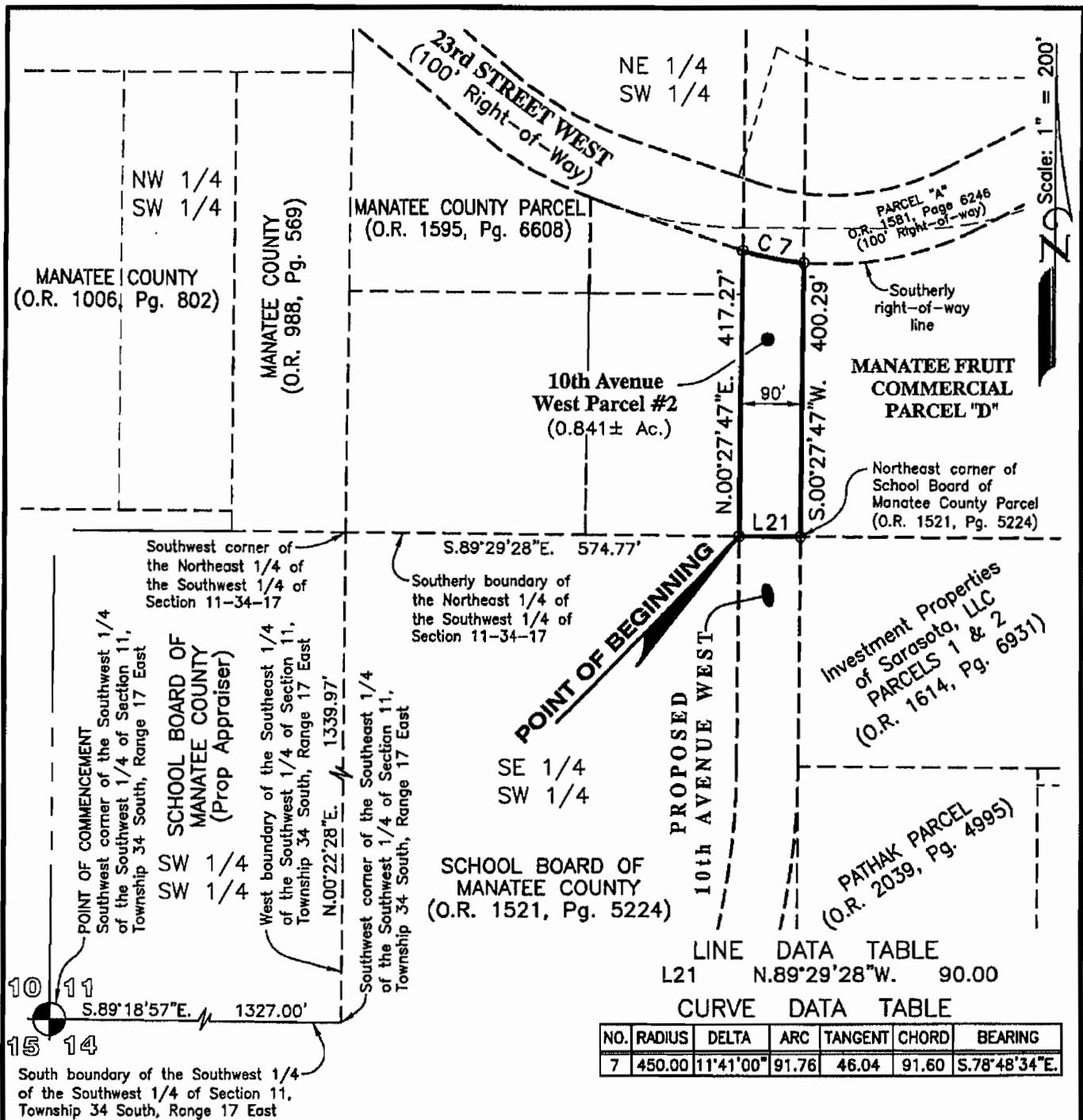
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10TH AVENUE WEST PARCEL #2

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DESCRIPTION SKETCH (Not a Survey) 		<b>GeoPoint</b> Surveying, Inc. 1403 E. 5th Avenue Tampa, Florida 33605 www.geopointsurvey.com Phone: (813) 248-8888 Fax: (813) 248-2266 Licensed Business Number LB 7768	
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REVISIONS		Drawn: SEC    Checked: DAW    P.C.: none    Date: 03/23/10	
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### 10TH AVENUE WEST PARCEL #2

Prepared For: City of Palmetto

#### DESCRIPTION SKETCH

(Not a Survey)

David A. Williams  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 6423

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

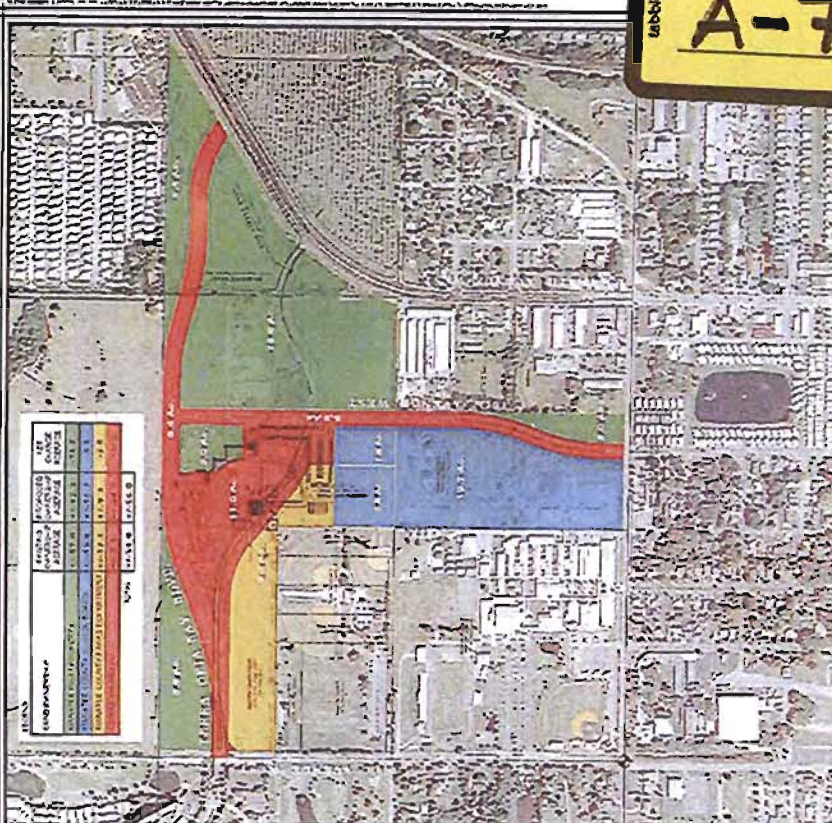
**GeoPoint**  
Surveying, Inc.

1403 E. 5th Avenue Phone: (813) 248-8888  
Tampa, Florida 33605 Fax: (813) 248-2286  
www.geopointsurvey.com Licensed Business Number LB 7786

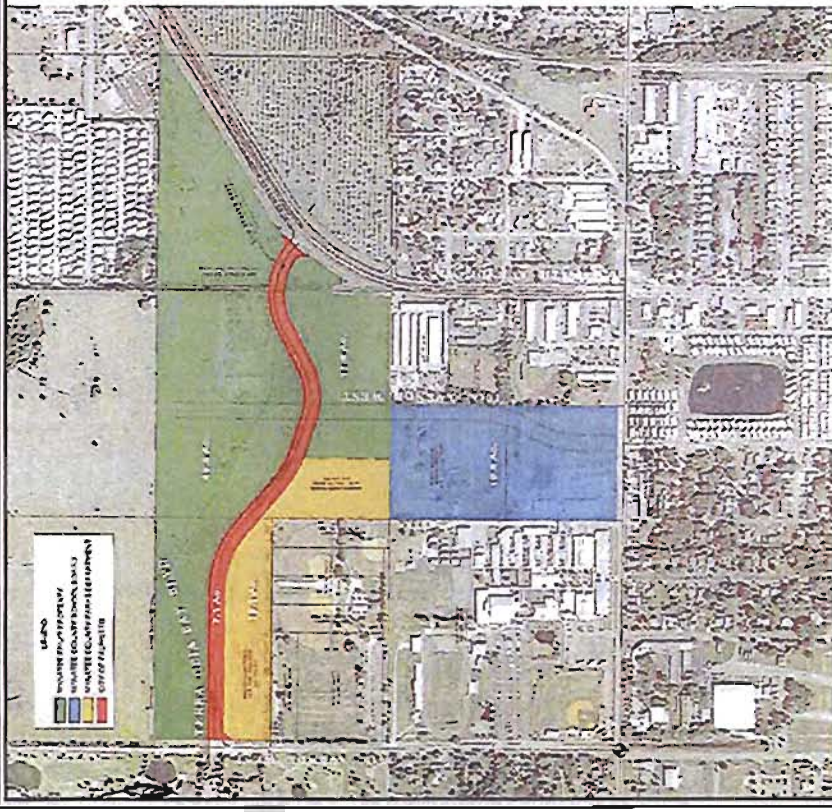
Drawn: SEC Checked: DAW P.C.: mm Data File: mm  
Date: 03/23/10 Dwg: 10ST-PARCELS-DS Order No.: XXX-XX-XXX  
SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

No.	Date	Description	Dwn.
REVISIONS			
SHEET NO. 2 OF 2 SHEETS			

EXHIBIT  
A-7



Proposed Ownership



Existing Ownership

The Groves - 90' Tenth Avenue ROW

Land Exchange Exhibit

Manatee Fruit Company

Palmato, Florida

HEED T  
HALL

EXHIBIT

E

**MANATEE FRUIT PARCEL #2**

**DESCRIPTION:** A parcel of land lying in Section 11, Township 34 South, Range 17 East, Manatee County, Florida, being more particularly described as follows:

**COMMENCE** at the Northeast corner of the Northeast 1/4 of the Southwest 1/4 of said Section 11, run thence along the North boundary of said Northeast 1/4 of the Southwest 1/4 of Section 11, N.89°40'51"W., 543.60 feet; thence S.00°19'09"W., 100.00 feet to a point on the PROPOSED Southerly right-of way line of 23rd STREET WEST; thence along said PROPOSED Southerly right-of way line of 23rd STREET WEST, N.89°40'51"W., 238.92 feet to the **POINT OF BEGINNING**; thence S.44°36'32"E., 35.31 feet; thence S.00°27'47"W., 337.21 feet; thence WEST, 187.93 feet to a point on a curve; thence Northwesterly, 173.55 feet along the arc of a curve to the left having a radius of 220.00 feet and a central angle of 45°11'54" (chord bearing N.26°53'43"W., 169.08 feet); thence N.00°42'36"E., 117.38 feet; thence N.19°47'50"W., 34.82 feet; thence NORTH, 62.82 feet to a point on the aforesaid PROPOSED Southerly right-of way line of 23rd STREET WEST; thence along said PROPOSED Southerly right-of way line of 23rd STREET WEST, S.89°40'51"E., 252.68 feet to the **POINT OF BEGINNING**.

Containing 2.048 acres, more or less.

Bearings shown hereon are Grid Bearings referenced to the State Plane Coordinate System, North American Horizontal Datum of 1983 (NAD 83 - 1990 ADJUSTMENT), as established from Manatee County GPS Control Monuments "M 003" and "M 008", and are based on the North boundary of the Northeast 1/4 of the Southwest 1/4 of Section 11, Township 34 South, Range 17 East, having a grid bearing of N.89°40'51"W.

**MANATEE FRUIT PARCEL #2**Prepared For: **City of Palmetto**

DESCRIPTION  
SKETCH  
(Not a Survey)

David A. Williams

6423

FLORIDA PROFESSIONAL SURVEYOR &amp; MAPPER NO.

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Tampa, Florida 33605  
www.geopointsurvey.com

Phone: (813) 248-8888  
Fax: (813) 248-2266  
Licensed Business Number LB 7768

No.	Date	Description	Den.
REVISIONS			

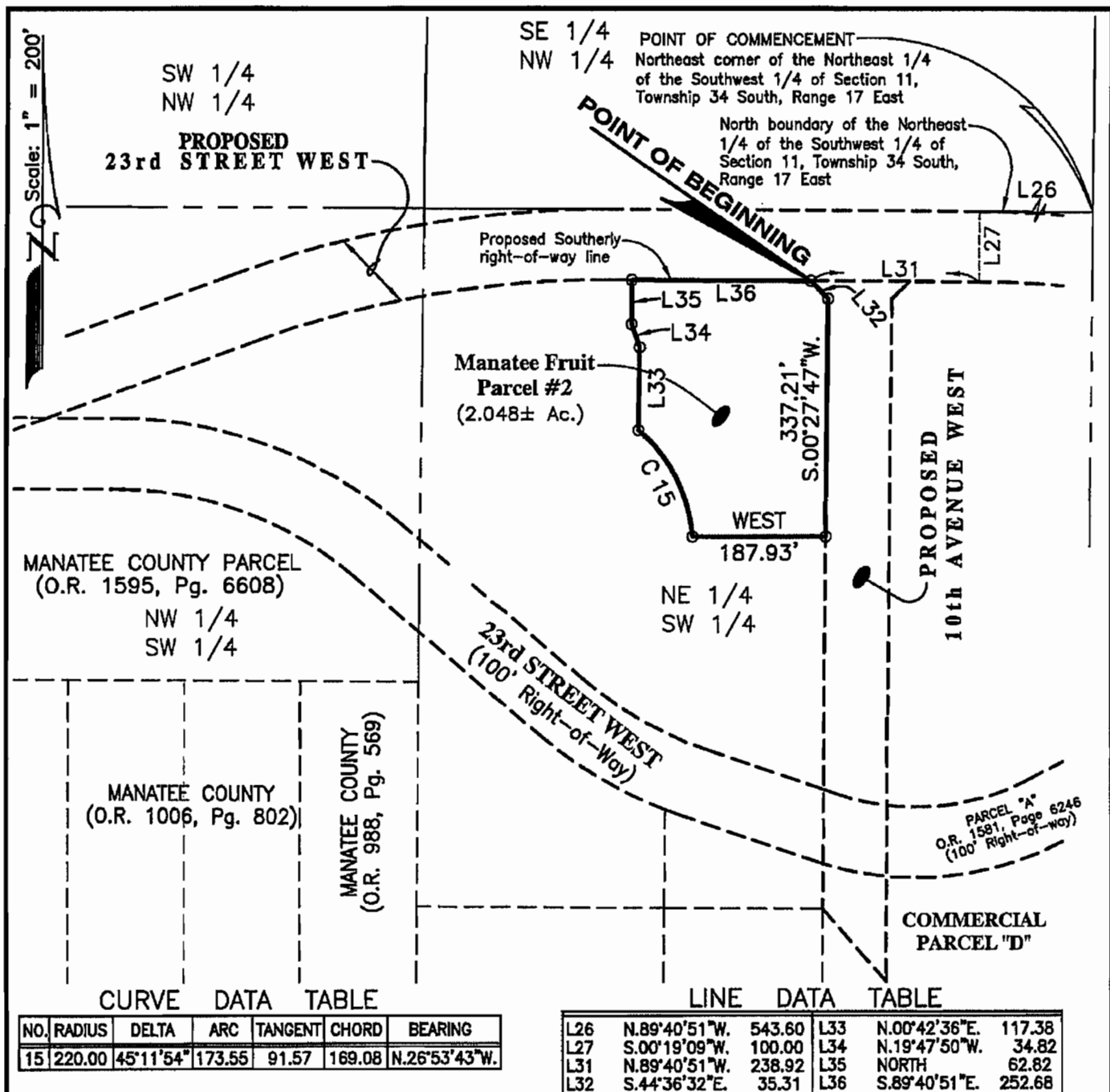
SHEET NO. 1 OF 2 SHEETS

Drawn: SEC	Checked: DAW	P.C.: mm	Date File: mm
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Date: 03/23/10	Dwg: 10ST-PARCELS-DS	Order No.: HDL 23 002
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SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST





### MANATEE FRUIT PARCEL #2

Prepared For: **City of Palmetto**

DESCRIPTION  
SKETCH

(Not a Survey)

*David A. Williams*

David A. Williams

FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. **6423**

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Licensed Business Number LB 7788

Drawn: SEC Checked: DAW P.C.: DATE Data File: PERRY

Date: 03/23/10 Dwg: 10ST-PARCELS-DS Order No.: HDL 23 002

SECTION 11, TOWNSHIP 34 SOUTH, RANGE 17 EAST

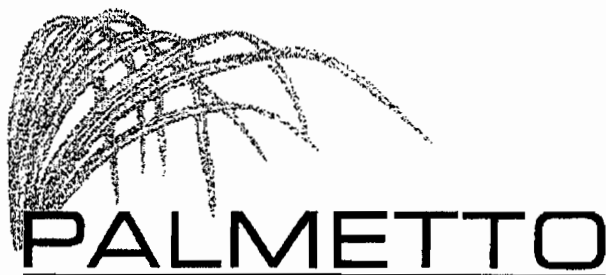
No. Date Description Dwn.

REVISIONS

SHEET NO. 2 OF 2 SHEETS

**EXHIBIT F**  
**LETTER AGREEMENTS**

Attached hereto and incorporated herein by reference.



516 8th Avenue West  
P.O. Box 1209  
Palmetto, Florida 34220-1209  
Phone (941) 723-4570  
Fax: (941) 723-4576  
Suncom: 516-0829  
E-mail: [chgeneral@palmettofl.org](mailto:chgeneral@palmettofl.org)  
Web: [www.palmettofl.org](http://www.palmettofl.org)

August 30, 2010

Whiting H. Preston, II, President  
Manatee Fruit Company, Inc.  
1320 33<sup>rd</sup> Street West  
Palmetto, Florida 34221

Re: Transfers of Land from Manatee Fruit Company, Inc. ("Manatee Fruit Company") to City of Palmetto ("City") and School Board of Manatee County ("School Board")—Environmental Investigation

Dear Mr. Preston:

This letter supersedes and replaces my letter dated June 24, 2010 regarding this subject matter. This letter will confirm, revise and update our informal agreement, set forth in that June 24<sup>th</sup> letter, pursuant to which the City has agreed and agrees to reimburse Manatee Fruit Company for costs of investigation for compliance with environmental laws and contamination by hazardous materials (referred to for convenient reference as "environmental investigation") of certain real property which Manatee Fruit Company proposes to transfer to the City or to the School Board and other property owned by Manatee Fruit Company, all of which is located near Blackstone Park and 23<sup>rd</sup> Street West in the City and which is described on Exhibit A attached to this letter (the "Property"), in accordance with and subject to the following terms and conditions:

1. The costs of the environmental investigation will be shared equally by the City and the School Board. The City's reimbursement obligation for a Phase I and "Limited Phase II" (as hereinafter defined) investigations shall not exceed \$2,500 without further prior approval of the undersigned or her designee. The environmental investigations will consist of the following: (a) a Phase I investigation, which as of this date been completed; and (b) a Phase II investigation which will address the three items which have been agreed upon by the City and Manatee Fruit Company, and which we understand comprise all of the items with respect to which further study was recommended by the Phase I investigation (the "Limited Phase II"). If the Phase I or Limited Phase II investigation recommends further investigation for matters beyond the scope of the Limited Phase II as described in the preceding sentence, then such further investigation shall not be undertaken absent the further agreement of Manatee Fruit Company, the School Board, and the Mayor or her designee on behalf of the City, with respect to responsibility for the cost of such further investigation and any other issues which they may wish to address. Manatee Fruit Company can, of course, undertake whatever testing it desires of its own land at its own expense at any time.

Mr. Whiting Preston  
August 27, 2010  
Page 2

2. Reimbursement for the Phase I and Limited Phase II studies shall be made at the time of execution of a contract for the transfer of some of the Property to the City, it being understood that if for any reason Manatee Fruit Company and the City do not enter into one or more contracts for the transfer of a portion of the Property to the City, the City will not reimburse Manatee Fruit Company for the costs of the environmental investigation. Reimbursement for any broader Phase II which the parties may authorize in accordance with the preceding paragraph shall be made as agreed upon by Manatee Fruit Company, the City, and the School Board.

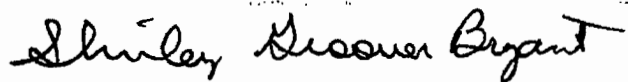
3. The environmental consultant engaged by Manatee Fruit Company will be Universal Engineering Sciences, Inc. of Sarasota.

4. All agreements for services between Manatee Fruit Company and the consultant regarding these matters are subject to the review and reasonable approval of the Mayor or her designee. The agreement for the Phase I has, and all further written agreements will, be made available to us for review at the offices of Manatee Fruit Company's attorneys. As of this date, we confirm having reviewed and approved the agreement for the Phase I investigation, and understand that no supplemental written agreement for the Limited Phase II investigation is anticipated. Any further written agreements will be subject to the review and reasonable approval of the Mayor or her designee as previously stated.

We confirm that the agreement for the Phase I investigation includes, and require that any additional agreements which may cover the Limited Phase II investigation or additional matters shall include, among other things, an agreement by the consultant to meet with representatives of the City and Manatee Fruit Company before the consultant issues a written report, and an agreement by the consultant to certify the written report that it issues with respect to the portion of the Property being acquired by the City to the City if the parties proceed to enter into one or more contracts for the transfer of the Property or part of it.

If you do not believe that this letter accurately confirms the terms of our agreement, please contact me. Otherwise, please proceed accordingly. We look forward to working with you on this matter.

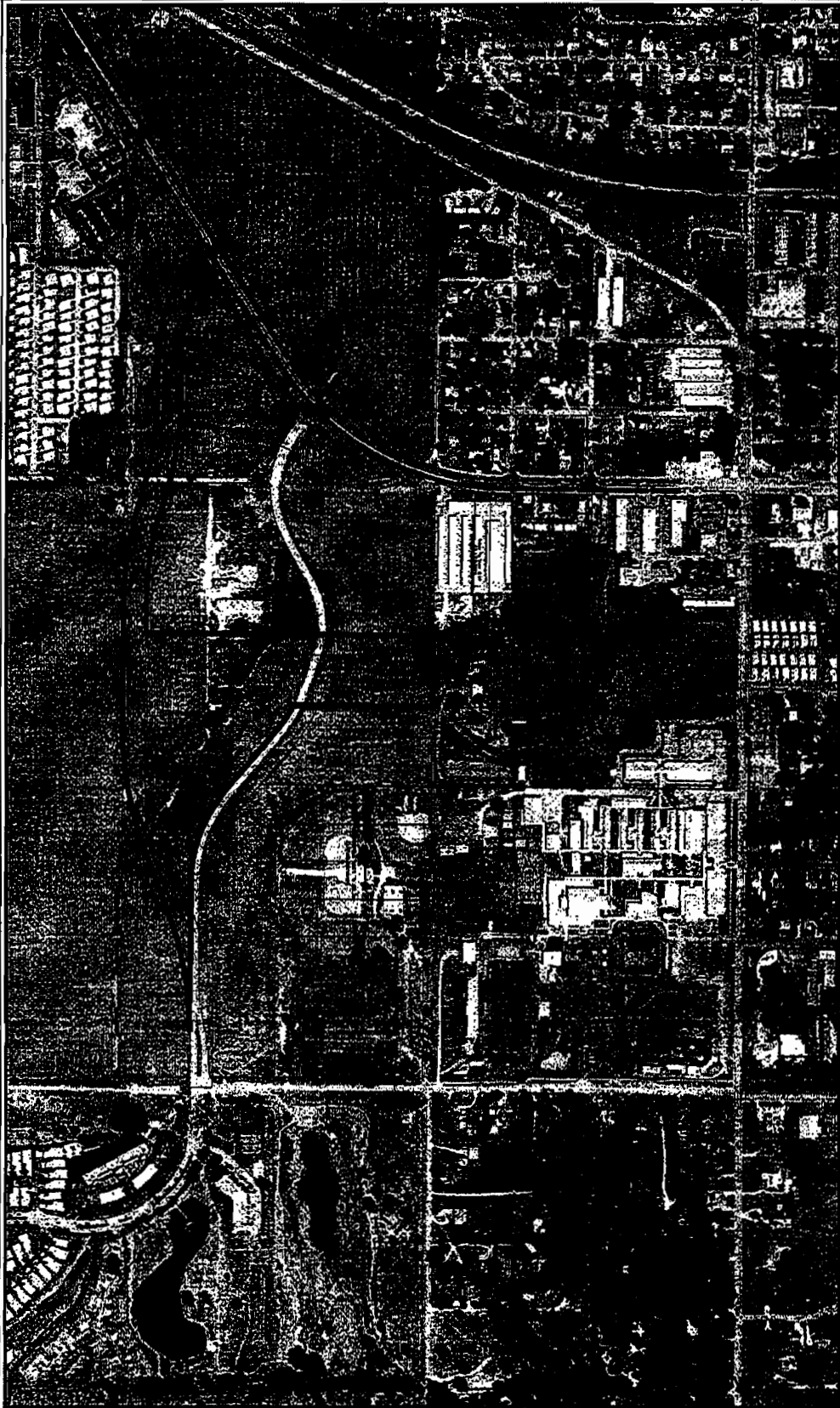
Sincerely yours,



Shirley Groover Bryant  
Mayor

cc: Mark P. Barnebey  
Michael T. Hankin

Attachment- Exhibit A- Land Exchange Exhibit marked to show lands to be conveyed to School Board and City by Manatee Fruit Company and 2.0+/- acre parcel to be retained b Manatee Fruit Company for which City agrees to reimburse cost of environmental investigation



DATE: 11/11/01	
PROJECT: 11/11/01	
DRAWN BY: 11/11/01	
CHECKED BY: 11/11/01	
APPROVED BY: 11/11/01	
SCALE: 11/11/01	
SHEET: 11/11/01	

**Manatee Fruit Company**  
Palmetto, Florida

**The Groves**







#### **SCHOOL BOARD**

**Jane R. Pfeilsticker**  
*Chair*

**Robert C. Gause**  
*Vice Chair*

**Walter E. Miller**

**Barbara A. Harvey**

**Harry G. Kinnan**

#### **SUPERINTENDENT**

**Tim McGonegal**

P.O. Box 9069  
Bradenton, Florida  
34208-9069  
215 Manatee Ave. W.  
Bradenton, FL  
34205

PH. (941) 708-8770

FAX. (941) 708-8686

[www.manateeschools.net](http://www.manateeschools.net)

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## **SCHOOL DISTRICT OF MANATEE COUNTY**

August 25, 2010

Whiting H. Preston, II, President  
Manatee Fruit Company, Inc.  
1320 33<sup>rd</sup> Street West  
Palmetto, Florida 34221

Re: Transfers of Land from Manatee Fruit Company, Inc. ("Manatee Fruit Company") to School Board of Manatee County ("School Board")— Environmental Investigation

Dear Mr. Preston:

This letter supersedes and replaces my letter dated June 28, 2010 regarding this subject matter. This letter will confirm, revise and update our informal agreement, set forth in the June 28th letter, pursuant to which the School Board has agreed and agrees to reimburse Manatee Fruit Company for costs of investigation for compliance with environmental laws and contamination by hazardous materials (referred to for convenient reference as "environmental investigation") of certain real property which Manatee Fruit Company proposes to transfer to the School Board or to the City of Palmetto (the "City") and other property owned by Manatee Fruit Company, all of which is located near Blackstone Park and 23<sup>rd</sup> Street West in the City and which is described on Exhibit A attached to this letter (the "Property"), in accordance with and subject to the following terms and conditions:

1. The costs of the environmental investigation will be shared equally by the School Board and the City. The School Board's reimbursement obligation for a Phase I and "Limited Phase II" (as hereinafter defined) investigations shall not exceed \$2,500 without further prior approval of the undersigned. The environmental investigation will consist of the following: (a) a Phase I investigation, which has as of this date been completed; and (b) a Phase II investigation which will address the three items which have been agreed upon by the School Board and Manatee Fruit Company, and which we understand comprise all of the items with respect to which further study was recommended by the Phase I investigation (the "Limited Phase II"). If the Phase I or Limited Phase II investigation recommends further investigation for matters beyond the scope of the Limited Phase II as described in the preceding sentence, then such further investigation shall not be undertaken without the further agreement of Manatee Fruit Company, the City, and the Superintendent or his designee on behalf of the School Board, with respect to responsibility for the cost of such further investigation and any other issues which they may wish to address. Manatee Fruit Company can, of course, undertake whatever testing it desires of its own land at its own expense at any time.

2. Reimbursement for the Phase I and Limited Phase II studies shall be made at the time of execution of a contract for the transfer of some of the Property to the School Board, it being understood that if for any reason Manatee Fruit Company and the School Board do not enter into one or more contracts for the

transfer of a portion of the Property to the School Board, the School Board will not reimburse Manatee Fruit Company for the costs of the environmental investigation. Reimbursement for any broader Phase II which the parties may authorize in accordance with the preceding paragraph shall be made as agreed upon by Manatee Fruit Company, the City, and the School Board.

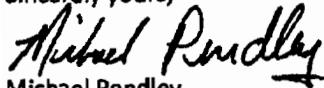
3. The environmental consultant engaged by Manatee Fruit Company will be Universal Engineering Sciences, Inc. of Sarasota.

4. All agreements for services between Manatee Fruit Company and the consultant regarding these matters are subject to the review and reasonable approval of the Superintendent or his designee. The agreement for the Phase I has been, and all further written agreements will, be made available to us for review at the offices of Manatee Fruit Company's attorneys. As of this date, we confirm having reviewed and approved the agreement for the Phase I investigation, and understand that no supplemental written agreement for the Limited Phase II investigation is anticipated. Any further written agreements will be subject to the review and reasonable approval of the Superintendent or his designee as previously stated.

We confirm that the agreement for the Phase I investigation includes, and require that any additional agreements which may cover the Limited Phase II investigation or additional matters shall include, among other things, an agreement by the consultant to meet with representatives of the School Board and Manatee Fruit Company before the consultant issues a written report, and an agreement by the consultant to certify the written report that it issues with respect to the portion of the Property being acquired by the School Board to the School Board if the parties proceed to enter into one or more contracts for the transfer of the Property or part of it.

If you do not believe that this letter accurately confirms the terms of our agreement, please contact me. Otherwise, please proceed accordingly. We look forward to working with you on this matter.

Sincerely yours,



Michael Pendley  
Executive Planner

cc: Tim McGonegal, Superintendent  
Sue A. Jacobson, Kirk-Pinkerton

Attachment- Exhibit A- Land Exchange Exhibit marked to show lands to be conveyed to School Board and City by Manatee Fruit Company and 2.0+/- acre parcel to be retained b Manatee Fruit Company for which City agrees to reimburse cost of environmental investigation

[illegible]

**Manatee Fruit Company**  
**Palmetto, Florida**