

TAB 12



City of Palmetto Agenda Item

Meeting Date

10/18/10

Presenter: Mark P. Barnebey and
Allen Tusing

Department: City Attorney/Public Works

Title: Access License Agreement with 600 Palmetto, L.C.

Background:

Using only City property, there is only a driveway for vehicular access connection from City Hall to 5th Street West. There is no corresponding connection for vehicular traffic from 5th Street West to City Hall.

Discussion:

The attached Agreement provides for a temporary license to allow vehicular traffic through the parking lot east of City Hall from 5th Street West to City Hall. This property is owned by 600 Palmetto, L.C. The Agreement provides for the City to keep the license area maintained but there will be an equal sharing of costs of maintenance. The license can be terminated by 600 Palmetto, L.C. on thirty days notice.

Budgeted Amount: \$0.00 **Budget Page No(s):** **Available Amount:** \$0.00 **Expenditure Amount:** \$0.00

Additional Budgetary Information:

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 the Access License Agreement between 600 Palmetto, L.C. and the City of Palmetto, and authorize the Mayor to execute the same.

Staff Contact: Allen Tusing

Attachments: Agreement

This Instrument Prepared By:
Mark P. Barnebey, Esq.
Kirk-Pinkerton, PA
1301 Sixth Avenue West, Suite 102
Bradenton FL 34205

ACCESS LICENSE AGREEMENT

THIS ACCESS LICENSE AGREEMENT is made on this 17th day of JUNE, 2010, by and between **THE CITY OF PALMETTO**, a municipal corporation of the State of Florida (the "City"), and **600 PALMETTO, L.C.**, a Florida limited liability company ("600 Palmetto").

INTRODUCTION

1. City is the owner of the real property described in Exhibit "A" attached hereto and made a part hereof (the "City Property");
2. 600 Palmetto is the owner of the real property described in Exhibit "B" attached hereto and made a part hereof (the "600 Palmetto Property");
3. The City Property and the 600 Palmetto Property are adjoining parcels of real property located in Manatee County, Florida; and
4. The City desires to enhance the means of access to the City Property for the public at large; and
5. As part of accommodating the City's desire to enhance the access to the City Property, 600 Palmetto has agreed to grant a license to the City over and across a portion of the 600 Palmetto Property under the terms and conditions set forth herein.

NOW, THEREFORE, 600 Palmetto, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration paid by City to 600 Palmetto, the receipt of which 600 Palmetto hereby acknowledges, does hereby grant to City and City's heirs, successors, and assigns, the following:

1. A license for ingress and egress over, across, and upon the property described on Exhibit "C" attached hereto and made a part hereof (the "Access Drive") for the purposes of ingress and egress to the City Property from 5th Street West (the "Access License"). City and 600 Palmetto agree that the Access License is granted to accommodate the City so that vehicles and pedestrians visiting the City Property, may travel to the City Property by way of the access point on 5th Street West; and for access over, across and upon the property surrounding that area for installation, removal, maintenance, repair and alteration of the Access Drive and related

improvements. Included within the grant of the Access License is a license for the purpose of erecting, maintaining and replacing, if necessary, a freestanding sign within the Access Drive, indicating the permitted access across the 600 Palmetto Property to City Hall, as located on the City Property. All changes in existing signage shall require the prior written approval of 600 Palmetto, which shall not be unreasonably withheld, conditioned, or delayed.

2. In connection with the Access License, City and 600 Palmetto agree to the following:

- a. The foregoing recitals are true and correct and are hereby incorporated by reference.
- b. The Access License granted and the uses permitted herein shall not impair 600 Palmetto's use of the remainder of the 600 Palmetto Property.
- c. City shall be solely responsible for making any improvements necessary to make the Access Drive useful for the purposes stated herein. In the event any improvements exist within the Access Drive, including but not limited to any curbs and/or currently paved parking spaces, 600 Palmetto hereby authorizes the City to modify such improvements to permit the unrestricted means of access necessary for the City's purposes and place signage within the Access Drive as necessary for proper traffic circulation. City shall restore the surface of any portion of the 600 Palmetto Property located outside of the Access Drive, which may be disturbed by the City's necessary improvements in preparing the Access Drive for the City's purposes. The driveway, signage, and any improvements so constructed by the City shall be constructed in good, workmanlike manner, and in compliance with all applicable codes and municipal requirements. Any improvements shall require the prior written consent of 600 Palmetto, which shall not be unreasonably withheld, conditioned, or delayed.
- d. City shall be responsible for the ongoing maintenance and repair of the Access Drive, which maintenance shall include keeping the Access Drive free of potholes. Notwithstanding the foregoing, City and 600 Palmetto shall share equally in the costs of such ongoing maintenance and repair, but all such costs shall be reasonable. Any maintenance and repair in excess of \$1,000.00 shall require the written consent of 600 Palmetto and the City, by and through its Mayor, which approval shall not be unreasonably withheld. Within thirty (30) days of any necessary maintenance and/or repair, the City shall invoice 600 Palmetto for its share in the costs,

and 600 Palmetto shall pay the City within thirty (30) days of receipt of such invoice.

- e. Subject to the limitations of sovereign immunity, as provided in Fla. Stat. 768.28 (2009), the City shall indemnify and otherwise hold 600 Palmetto harmless from any and all liability, arising from the use of the Access Drive by the City, its guests and invitees.
- f. The Access License and the herein described covenants shall continue and will bind and inure to the benefit of City and City's grantees, successors and assigns and will bind and inure to the benefit of 600 Palmetto's grantees, successors, and assigns unless and until the earlier of either (i) termination by mutual agreement by the then owners of the fee simple of both the City Property and the 600 Palmetto Property by an instrument in writing and recorded in the Official Records of Manatee County, Florida, or (ii) the Access License is revoked by 600 Palmetto. In the event 600 Palmetto chooses to revoke the Access License, 600 Palmetto hereby agrees to provide the City with thirty (30) days advance notice of its intent to revoke such license. Any obligation of a party arising under this Access License prior to the termination including, but not limited to, the indemnity provisions of Section 2.e., shall survive the termination.
- g. In the event of any litigation arising out of this instrument, and subject to any limitation, in Section 2, the prevailing party shall recover its reasonable attorney's fees and costs from the non-prevailing party for all matters, including, but not limited to, appeals. Proper venue for any litigation arising out of this instrument will be in Manatee County, Florida, and nowhere else. Each party expressly waives jury trial in all actions, proceedings, or counterclaims brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this instrument.
- h. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent of the law.

- i. Each term of this Agreement may be enforced in equity by injunction and specific performance.
- j. This Easement Agreement may be executed in counterparts and as counterparts, may be treated as an original.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

[Signature]
Signature
John Patterson
Print Name

[Signature]
Signature
Virginia T. Pitts
Print Name

600 Palmetto, L.C., a Florida limited liability
company

By: *[Signature]*
Print Name: James U. Wade

As its: Managing Member

Date Executed: JUNE 17, 2010

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 17th day of JUNE 2010, by James U. Wade, as Managing Member of 600 Palmetto, L.C. a Florida limited liability company, on behalf of the company. He is personally known to me or has produced N/A as identification and did not take an oath.

(NOT ARIAL SEAL)

[Signature]
*
*(Print Name of Notary Public)
Notary Public - State of Florida
My commission expires
Commission Number Virginia T. Pitts

Commission # DD005758
Expires October 24, 2010
STATE OF FLORIDA
Bonded Title Firm Insurance, Inc. 800-385-7019

Signed, sealed and delivered
in the presence of:

ATTEST:

James R. Freeman, City Clerk

Date Executed: _____, 2010

CITY OF PALMETTO, FLORIDA
BY AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO

By: _____
Shirley G. Bryant, Mayor

**STATE OF FLORIDA
COUNTY OF MANATEE**

The foregoing instrument was acknowledged before me this _____ day of _____, 2010 by Shirley G. Bryant, Mayor of the City of Palmetto, a municipal corporation of the State of Florida, who is personally known to me or has produced _____ as identification.

(NOT ARIAL SEAL)

*

*(Print Name of Notary Public)
Notary Public - State of Florida
My commission expires _____
Commission Number _____

- Exhibit A - City Property
- Exhibit B - 600 Palmetto Property
- Exhibit C - Access Drive

EXHIBIT "A"
City Property

Beginning 210 Yards (630 feet) North of the SW Corner of the SE ¼ in Section 14, Township 34 South, Range 17 East, thence North 70 Yards (210 feet), Thence East 70 yards (210 feet), thence South 70 Yards (210 feet), thence West 70 Yards (210 feet) to the Point of Beginning, less the West 30 feet thereof for 8th Avenue West, all lying in Section 14, Township 34 South, Range 17 East, Manatee County, Florida.

TOGETHER WITH:

Lot 3, Less the East 5 feet and Less the West 15 feet, Springstead Subdivision in Section 14, Township 34 South, Range 17 East, as per Plat thereof recorded in Plat Book 1, Page 249, of the Public Records of Manatee County, Florida

Also known as Parcel No. 27829.0000/1

EXHIBIT "B"

Lot 1, SPRINGSTEAD Subdivision as recorded in Plat Book 1, Page 249, of the Public Records of Manatee County, Florida. Together with the following described lands: Begin at the Northeast corner of said Lot 1; thence North, along the West right-of-way line of 7th Avenue, a distance of 347.00 feet; thence North 89°47'17" West, 189.00 feet; thence North 52.85 feet; thence North 89°47'17" West, 180.00 feet to a point on the East right-of-way line of 8th Avenue; thence South along said East right-of-way line, a distance of 210.00 feet; thence South 89°48'41" East, 180.00 feet; thence South 190.00 feet to a point on the Westerly extension of the North line of said Lot 1; thence South 89°48'41" East, along said extension and said North line, a distance of 189.00 feet to the Point of Beginning.

LESS AND EXCEPT any portion of the above described parcels lying within the right-of-way of U.S. 41 as it presently exists.



Leo Mills & Associates, Inc.

LICENSED BUSINESS NO. 618 • SURVEYING • LAND PLANNING


620 8th AVENUE WEST, PALMETTO, FL 34221
PHONE: (941)722-2460 FAX: (941)722-8840

22 NORTH POLK AVENUE, ARCADIA, FL 34266
PHONE: (883)993-4141 FAX: (883)993-2646

LEO MILLS - PSM 1735
LEO MILLS, JR. - PSM 3513
MEMBER: FLORIDA SURVEYING
AND MAPPING SOCIETY &
MANASOTA CHAPTER SURVEYING
AND MAPPING SOCIETY

SECTION 14, TOWNSHIP 34 SOUTH, RANGE EAST, MANATEE COUNTY, FLORIDA
FOR THE EXCLUSIVE USE OF: CITY OF PALMETTO, BOO, PALMETTO, LLC
ADDRESS: N/A

SURVEYOR'S CERTIFICATE:

BY: 
LEO MILLS, JR.
REGISTERED STATE OF FLORIDA PROFESSIONAL
SURVEYOR & MAPPER NO. 3513
DATE OF SURVEY: 01/04/10
*NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR
AND MAPPER.
THIS SURVEY/REPORT IS PROVIDED IN HARD COPY
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DESCRIPTION FOR INGRESS/EGRESS LICENSE AREA:

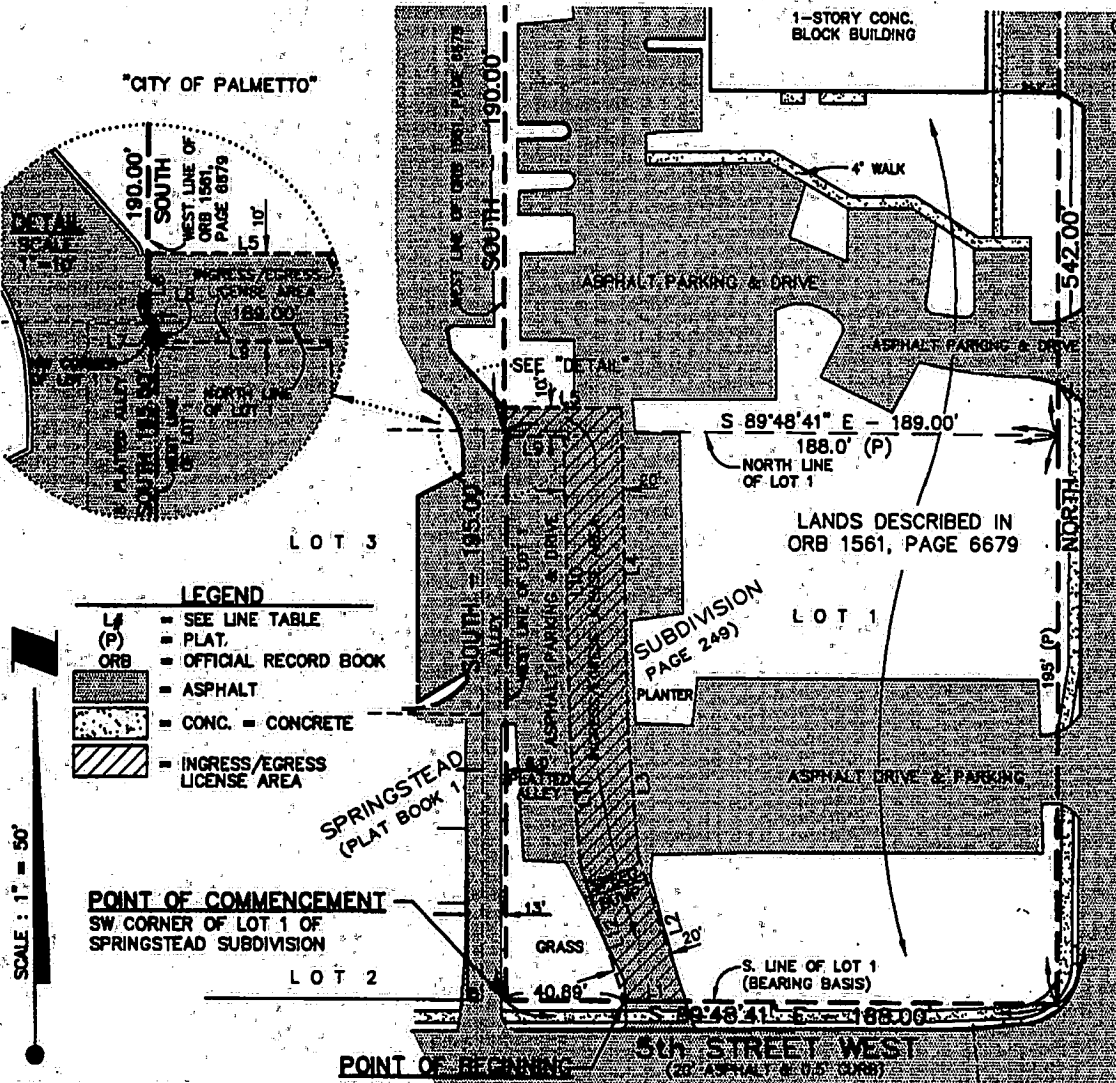
A PORTION OF THAT CERTAIN LAND AS DESCRIBED AND RECORDED IN OFFICIAL RECORD BOOK 1561, PAGE 6679, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHWEST CORNER OF LOT 1, SPRINGSTEAD SUBDIVISION AS PER PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 249, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; THENCE S89°48'41"E, ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 40.89 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE S89°48'41"E, ALONG SAID SOUTH LINE, A DISTANCE OF 21.00 FEET; THENCE N17°32'40"W, 53.78 FEET; THENCE N04°53'18"W, 43.74 FEET; THENCE N01°17'02"W, 108.41 FEET; THENCE S89°47'04"W, 40.52 FEET TO A POINT ON THE WEST LINE OF AFOREMENTIONED PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 1561, PAGE 6679; THENCE SOUTH, 7.88 FEET TO A POINT ON THE WESTERLY EXTENSION OF THE NORTH LINE OF SAID LOT 1; THENCE S89°48'41"E, ALONG SAID WESTERLY EXTENSION, A DISTANCE OF 1.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 2.11 FEET; THENCE N89°47'04"E, 19.74 FEET; THENCE S01°17'02"E, 99.41 FEET; THENCE S04°53'18"E, 46.59 FEET; THENCE S17°32'40"E, 49.60 FEET TO THE POINT OF BEGINNING. CONTAINING 4,319 SQUARE FEET, MORE OR LESS.

SKETCH OF DESCRIPTION ONLY

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 89°48'41" E	21.00'
L2	N 17°32'40" W	53.78'
L3	N 04°53'18" W	43.74'
L4	N 01°17'02" W	108.41'
L5	S 89°47'04" W	40.52'
L6	SOUTH	7.88'
L7	S 89°48'41" E	1.00'
L8	SOUTH	2.11'
L9	N 89°47'04" E	19.74'
L10	S 01°17'02" E	99.41'
L11	S 04°53'18" E	46.59'
L12	S 17°32'40" E	49.60'

NOTES:

- BEARINGS SHOWN HEREON REFER TO THE SOUTH LINE OF LOT 1, SPRINGSTEAD SUBDIVISION BEING ASSUMED AS S89°48'41"E.
- THIS PLAT IS A SKETCH OF DESCRIPTION ONLY AND IS NOT INTENDED TO BE USED AS A BOUNDARY SURVEY AS SUCH.
- SUBJECT TO EASEMENTS, DEDICATIONS AND RESTRICTIONS OF RECORD.



JOB NO. C.7129

SCALE: 1" = 50' FILE INDEX NO.