

**TAB 4**

## **POINT PAPER**

### **CONSIDERATION OF GRANTING A UTILITY EASEMENT AND A TEMPORARY EMERGENCY ACCESS EASEMENT FROM THE PALMETTO COMMUNITY REDEVELOPMENT AGENCY TO THE CITY OF PALMETTO**

**BACKGROUND:** Upon vacation of a portion of the right-of-way of 9<sup>th</sup> Avenue West, the Community Redevelopment Agency shall obtain the eastern half of the property vacated. There exists utility lines within the existing right-of-way.

**ISSUES:** The attached Non-Exclusive Public Utility Easement would allow the existing utilities to remain within the vacated right-of-way. The Temporary Emergency Access Easement would allow the City to traverse the former 9<sup>th</sup> Street West right-of-way until the property is redeveloped.

**MOTION:** I move to approve and authorize execution of:

1. A Utility Easement to the City of Palmetto substantially consistent with the form attached hereto; and
2. A Temporary Emergency Access Easement to the City of Palmetto substantially consistent with the form attached hereto

**PREPARED BY AND AFTER RECORDING**

**RETURN TO:**

Jerilyn Hattendorf, Esquire  
Kirk-Pinkerton, P.A.  
1301 6<sup>th</sup> Avenue West, Suite 401  
Bradenton, Florida 34205  
(941) 364-2400

\_\_\_\_\_ [Space Above This Line for Recording Data] \_\_\_\_\_

**TEMPORARY EMERGENCY ACCESS EASEMENT**

**THIS EASEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and among **The Palmetto Community Redevelopment Agency, a public body corporate and politic** ("CRA" or "Grantor") for the benefit of **The City of Palmetto, a Florida municipal corporation** ("City" or "Grantee")

**INTRODUCTON**

The CRA owns multiple parcels of real property located between 10<sup>th</sup> Avenue West and 9<sup>th</sup> Avenue West in the City of Palmetto, Manatee County, Florida (the "CRA Land"); and

The City has initiate the vacation process for portions of the right of way for 8<sup>th</sup> Street West and 9<sup>th</sup> Avenue West; and

The CRA is agreeable to conveying a temporary emergency access easement across the vacated right of ways to the City.

**PROVISIONS**

For and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor hereby grants to Grantee a temporary easement and right-of-way for emergency access upon, over, across Grantor's right, title and interest in the property vacated pursuant to City of Palmetto Ordinance 09-\_\_\_\_, as situated in Manatee County, Florida, and further described in Exhibit "A" attached hereto

It is understood and agreed that at such time as the School Expansion Site and Existing School Site are developed with a school, the easement granted herein shall automatically terminate and become of no further force or effect. The Grantee agrees to execute whatever ancillary documents that the Grantor shall reasonably request to evidence the termination hereof.

This is a non-exclusive Easement and to the extent that other uses do not interfere with the use of said easement by Grantee as permitted herein, Grantor, its successors and assigns, shall be permitted to use the same for any purpose they may desire.

The covenants and agreements herein contained shall inure to the benefit of and shall be binding upon the executors, administrators, heirs, successors and assigns of the parties and shall be, and are, covenants running with the land binding upon said property of Grantor and for the benefit of Grantee.

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed as of the day and year first above written.

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

<p>_____</p> <p>Signature</p> <p>_____</p> <p>Print Name</p> <p>_____</p> <p>Signature</p> <p>_____</p> <p>Print Name</p>	<p>PALMETTO COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic</p> <p>By: _____</p> <p>_____</p> <p>Chairman</p> <p>ATTEST:</p> <p>_____</p> <p><b>Date Executed:</b> _____, 2009</p>
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STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, as \_\_\_\_\_ of The Palmetto Community Redevelopment Agency, a public body corporate and politic. He/She is personally known to me or has provided \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida  
My Commission Expires: \_\_\_\_\_  
My Commission Number: \_\_\_\_\_

EXHIBIT "A"  
CITY OF PALMETTO ORDINANCE No. 09-994

**CITY OF PALMETTO  
ORDINANCE NO. 09-994**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, VACATING THE 9<sup>th</sup> AVENUE WEST RIGHT-OF-WAY FROM THE SOUTHERN RIGHT-OF-WAY LINE OF 9<sup>TH</sup> STREET WEST TO A LINE 153 FEET SOUTH OF THE 9<sup>TH</sup> STREET WEST RIGHT OF LINE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BE IT ORDAINED** by the City Commission of the City of Palmetto, Florida as follows:

**WHEREAS**, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions, and render municipal services; and

**WHEREAS**, Chapter 166, Florida Statutes, the “Municipal Home Rule Powers Act,” implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and

**WHEREAS**, the City Commission of the City of Palmetto, Florida was duly convened at its regular meeting place in the City Hall of the City of Palmetto, Florida on May 18, 2009 and continued to June 1, 2009; and

**WHEREAS**, pursuant to the Notice of Hearing for the vacation having been duly made by advertisement in the Bradenton Herald on \_\_\_\_\_, 2009; and

**WHEREAS**, all things necessary and required by law for the vacation of the right-of-way for 8<sup>th</sup> Street West beginning 217.5 feet East of the Eastern right-of-way line for 10<sup>th</sup> Avenue West to the Eastern right-of-way line of 9<sup>th</sup> Avenue West and for the

vacation of 9<sup>th</sup> Avenue West from the Southern right-of-way line for 9<sup>th</sup> Street West to the Southern right-of-way line for 8<sup>th</sup> Street West; and

**WHEREAS**, the City Commission has determined that it is necessary, desirable and in the best interest of the citizens of the City in order to protect the public health, safety, and welfare, to adopt this Ordinance.

**NOW, THEREFORE, BE IT FURTHER ORDAINED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, AS FOLLOWS:**

**Section 1. Findings of Fact.** The forgoing “whereas” clauses are adopted herein as findings of fact, and are accepted as a basis for adoption of this Ordinance.

**Section 2. Vacated Right-Of-Way and Reservation of Utility Easement.** The City Commission of the City of Palmetto, Florida, pursuant to due and proper petition and application and other procedures as required by law and the rules and regulations of this Commission for vacating the following described right-of-way having been accomplished, the City Commission of the City of Palmetto, does hereby vacate, close and abandon that right-of-way, which is described on Exhibit “A” attached hereto and incorporated herein by reference; provided, however, that the City shall reserve public drainage and utility easement over the entire right-of-way vacated. The vacation of the right-of-way described in Exhibit “A” is contingent upon the School Board of Manatee County obtaining the fee simple title in Lots 2, 3, and 4 of Robinson & Brunjes Subdivision and utility easements to be granted for the property being vacated.

**Section 3. Severability.** It is the intent of this Ordinance to comply with the requirements of all applicable law and constitutional requirements. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional or unenforceable, then such provisions or portions shall be deemed null

and void but all remaining provisions and portions of this Ordinance shall remain in full force and effect.

**Section 4. Effective Date.** This Ordinance shall take effect as provided by law and Section 14 of the City Charter upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

**PASSED AND DULY ADOPTED,** by the City Commission, in open session, with a quorum present and voting, this \_\_\_ day of \_\_\_\_\_, 2009.

First Reading: May 4, 2009

Publication: May \_\_\_, 2009

Second Reading and

Public Hearing: May 18, 2009 and continued to June 1, 2009

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

By: \_\_\_\_\_  
SHIRLEY GROOVER BRYANT,  
MAYOR

ATTEST: James R. Freeman  
City Clerk

By: \_\_\_\_\_  
City Clerk/Deputy Clerk.



**EXHIBIT "A"**

**9<sup>th</sup> AVENUE WEST RIGHT-OF-WAY FROM THE SOUTHERN RIGHT-OF-WAY LINE OF 9<sup>TH</sup> STREET WEST TO A LINE 153 FEET SOUTH OF THE 9<sup>TH</sup> STREET WEST RIGHT OF LINE, LOCATED IN THE CITY OF PALMETTO, FLORIDA**

Prepared by and return to:  
Jerilyn Hattendorf, Esquire  
Kirk Pinkerton, P.A.  
1301 6<sup>th</sup> Avenue West, Suite 401  
Bradenton, Florida 34205

## NON-EXCLUSIVE UTILITY EASEMENT

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2009, from **The Palmetto Community Redevelopment Agency, a public body corporate and politic** ("CRA" or "Grantor") for the benefit of **The City of Palmetto, a Florida municipal corporation** ("City" or "Grantee")

WITNESSES, that the said Grantor for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration by Grantee to Grantor duly paid, the receipt whereof is hereby acknowledged has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey to Grantee and its successors and assigns forever, a perpetual non-exclusive public utility easement under, over, and across Grantor's right, title and interest in the property vacated pursuant to City of Palmetto Ordinance 09-\_\_\_\_, as situated in Manatee County, Florida, and further described in Exhibit "A" attached hereto and made a part hereof for the purpose of installing, maintaining, repairing, and replacing utility lines, facilities and equipment for the benefit and use of the public. Grantor and Grantee agree that the exact location of the non-exclusive public utility easement shall be subject to modification and/or termination upon relocation of any utilities from the vacated right-of-way as described in Exhibit "A".

Reserving unto the Grantor, however, all rights, title, interest and privilege and the full enjoyment of said lands or the use thereof for all purposes not inconsistent with the uses hereinabove specified.

This Easement is granted by Grantor and accepted by Grantee subject to the following conditions which Grantee covenants and agrees to perform:

1. To exercise due care in the use of said easement areas.
2. To limit the use of said easement for the aforementioned purposes, it being specifically understood and agreed that in no event shall this Easement be construed to permit use except for the specific purposes herein intended.
3. To use care and diligence in the construction, installation and maintenance of the aforementioned underground utilities, facilities and equipment so as to cause the least amount of inconvenience and impediment of the use of said property. Upon completion of the installation of such facilities and equipment or repair or replacement of same, whichever is applicable, that party agrees to restore the easement area to its former condition.

4. To use the aforementioned easement so as to prevent the creation of any obstruction or condition which is or may become dangerous to Grantor, its guests, members, employees, invitees, licensees or the public in general.

Grantee understands that this Easement is a non-exclusive easement and agrees to use the same with due consideration for the rights of other easement holders.

This Agreement, including all easements, agreements and covenants herein, shall run with the land and shall inure to the benefit of and shall be binding upon the parties, their successors and assigns.

This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue for any action hereunder shall be in the appropriate court of Manatee County, Florida.

In the event any party files a suit in connection with this Agreement, any provisions contained herein or any documents now or hereinafter executed pursuant to or in furtherance of this Agreement, then the party which prevails in such action shall be entitled to recover, in addition to all other remedies for damages, reasonable attorney's fees (including appellate and bankruptcy proceedings) and court costs incurred in such suite.

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed as of the day and year first above written.

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

_____	PALMETTO COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic
Signature	By: _____
_____	_____
Print Name	As its: _____
_____	ATTEST:
Signature	_____
_____	
Print Name	<b>Date Executed:</b> _____, 2009
_____	

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2009, by \_\_\_\_\_, as \_\_\_\_\_ of The Palmetto  
Community Redevelopment Agency, a public body corporate and politic. He/She is personally  
known to me or has provided \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public – State of Florida  
My Commission Expires: \_\_\_\_\_  
My Commission Number: \_\_\_\_\_

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BY AND THROUGH THE CITY  
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SHIRLEY GROOVER BRYANT,  
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ATTEST:     James R. Freeman  
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