OFFICE OF THE COUNTY ATTORNEY
MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Chief Assistant County Attorney
Sarah A. Schenck, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Pamela J. D’Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney
Brian A. Ilen, Assistant County Attorney

MEMORANDUM

DATE: January 24, 2019

TO: Joy Leggett Murphy, Property Acquisition Division Manager, Property Management Department

THROUGH: Mitchell O. Palmer, County Attorney

FROM: Pamela J. D’Agostino, Assistant County Attorney


Issue Presented:

In this Request for Legal Services (RLS), you have asked the County Attorney’s Office (CAO) to review and revise, as appropriate, two (2) Temporary Construction Easements (TCEs), three (3) Affidavits of Ownership and Encumbrances, and a redlined Permanent Nonexclusive Utility Easement (UE). In particular, you have asked the CAO to review the proposed signature block in the conveyance documents and determine if any modification is necessary and to revise the affidavits to address the interests of the individual unit owners.

Brief Answer:

I have reviewed and revised, as appropriate, the referenced documents. Attached are revised versions for staff’s use. Enumerated below are my substantive concerns, comments, and advice to staff. I have reviewed the documents for legal sufficiency, but express no opinion as to acceptability of the business terms of any of these documents. Instruments such as these raise a myriad of business, operational, and policy issues all of which should be considered by staff under the guidance of the County Administrator, subject to the final decision-making authority of the Board of County Commissioners of Manatee County, Florida (Board). My expectation is that staff has fully scrutinized the business terms of these instruments and is confident that the County is both willing to and can fully comply with same. Subject to the inclusion of my suggested changes, I have no objection from a legal standpoint to these instruments being presented to the Board for

* Board Certified in Construction Law
** Board Certified in City, County, & Local Government Law

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consideration. Execution and acceptance of these documents are business decisions that the Board has the authority to make.

Recommendation:

Staff should revise the documents further consistent with my advice, below, and obtain updated title work.

Facts:

According to this RLS, in order for the County to proceed forward with the Flamingo Cay Water Main Replacement Project (Project), the County needs to obtain a permanent utility easement from Flamingo Cay Apartments Association, Inc., a Florida not for profit corporation, (Flamingo Cay), and two (2) separate temporary construction easements—one from Townhouses in the Cay Association, Inc., a Florida not for profit corporation, (Townhouses) and one from Flamingo by the Bay Association, Inc., a Florida not for profit corporation (Flamingo Bay).

Discussion:

The UE incorporates changes requested by Flamingo Cay’s attorney. Staff has correctly theorized that these changes effectively convert the original document into an easement agreement, as opposed to an easement deed. My review and comments assume that (1) staff has made the business decision to proceed in this fashion and (2) staff agrees that the document accurately memorializes the agreed upon terms and conditions between the County and Flamingo Cay. In particular, I recommend that staff review the purpose language. I question why the purpose of the easement includes “surface and underground drainage infrastructure” based on staff’s description of the Project. I have substantially revised the language relative to the County’s obligations. Staff should review my revised language as well as the entire document to ensure that the revised terms are acceptable. I have also modified the signature block somewhat. Pursuant to Section 718.111(7)(b) and (10), Florida Statutes, condominium associations, through their Board of Directors and without the joinder of any unit owner, have the power to (1) convey certain portions of condominium property to a condemning authority for the purposes of providing utility easements or for other public purposes and (2) grant any easement over common elements or condominium association property unless prohibited by the condominium declaration. Accordingly, the signature blocks of the conveyance documents do not need to be further revised to include the signatures of the individual unit owners.

I have revised the TCEs as well. Attached is an Affidavit of Ownership and Encumbrances to be executed by the President of the Board of Directors for Flamingo Cay. Further revisions to this document may be needed to paragraphs four (4) and six (6) if any of the units are rented or leased. I question whether all of the entries under paragraph fifteen (15) truly affect the Property, as that term is defined in the affidavit. It would appear that the Notice of Commencement, highlighted in yellow, has expired. I also noticed that the title search report provided by staff is effective from 1914 through July 21, 2017, and is therefore stale. Staff should obtain updated title
work and include any encumbrances which may have been recorded since July 21, 2017. I have also modified the signature block.

I have not reviewed nor revised the other affidavits provided by staff as I do not believe it has been the County’s standard practice to obtain an affidavit of ownership and encumbrances when the easement being granted to the County is temporary in nature, as opposed to permanent. When the County is only acquiring a temporary easement, an affidavit of ownership and encumbrances is not required.

**Conclusion:**

Assuming that staff has fully examined and accepts the business terms in these revised documents and provided that staff addresses and resolves the matters discussed above and otherwise incorporates the above and attached recommended changes, I have no objection from a legal standpoint to these matters being scheduled for consideration by the Board. I express no opinion as to the business judgment of entering into this agreement or accepting these easements.

This completes my response to your RLS. Please contact me if you have any questions or if I can be of further assistance.

Copies with attachments to:
- Edwin Hunzeker, County Administrator
- Dan Schlandt, Deputy County Administrator
- Cheri Coryea, Deputy County Administrator
- Charles Bishop, Director, Property Management Department
- Charles Meador, Real Property Specialist, Property Management Department
- Eric Shroyer, P.E., Project Manager, Public Works Department
PERMANENT NONEXCLUSIVE UTILITY EASEMENT AGREEMENT

THIS PERMANENT NONEXCLUSIVE UTILITY EASEMENT AGREEMENT (Agreement) is made this ______ day of ___________, 2019, by and between FLAMINGO CAY APARTMENTS ASSOCIATION, INC., a Florida not for profit corporation, whose mailing address is 4301 32nd Street West, Suite A-20, Bradenton, Florida 34205 (Grantor), and MANATEE COUNTY, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 (Grantee).

As used herein, the term “Grantor” shall include any and all heirs, legal representatives, successors, or assigns of Grantor, and all subsequent owners of the Easement Area as defined below and the term “Grantee” shall include any successor or assignee of Grantee. Grantor and Grantee are sometimes collectively referred to herein as “Parties” and individually, “Party.”

RECITALS

WHEREAS, Grantee desires to undertake the Flamingo Cay Water Main Replacement Project (Project) within real property owned by Grantor; and

WHEREAS, the Project involves the construction and replacement of water mains which cannot occur unless Grantor conveys a permanent utility easement to Grantee over the Easement Area as defined below; and

WHEREAS, the Parties desire to have the Project completed and the improvements pursuant to same installed.

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are true and correct and are hereby incorporated herein.

2. Grantor, for and in consideration of the sum of ONE DOLLAR ($1.00) and other valuable consideration paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and transfer unto Grantee a permanent nonexclusive easement for the purposes of construction and maintenance of surface and underground drainage infrastructure and utility facilities, and ingress and egress related thereto, across, in, over, under, and upon the real property of Grantor situated, lying, and being in the County of Manatee, State of Florida, particularly described in Exhibit A attached hereto and incorporated herein by this reference (Easement Area).
3. Grantor reserves the right to the continued free use and enjoyment of the Easement Area for any purposes which are not inconsistent with the rights granted herein unto Grantee.

4. Grantor covenants with Grantee that Grantor is lawfully seized of said lands, and that Grantor has good, right, and lawful authority to enter into this Agreement and grant this easement and shall take no action to interfere with Grantee’s lawful use of the Easement Area. Grantor hereby fully warrants the easement being granted and will defend the same against the lawful claims of all persons whomsoever.

5. Prior to commencement of construction of the Project within the Easement Area, Grantee shall notify Grantor, in writing, of the expected date that construction within the Easement Area will commence. This notice shall be given by hand delivery in person or by registered or certified mail, postage prepaid, to the mailing address of Grantor provided above.

6. Grantee agrees that during its use of the Easement Area (1) Grantee will exercise due care, (2) Grantee will not knowingly create any unnecessary or permanent dangerous condition, and (3) during construction of the Project, traffic shall be maintained and protected in accordance with (a) the applicable requirements of the current Florida Department of Transportation Manual of Traffic Control and Safe Practices and (b) a Traffic Control Plan prepared by an individual certified to prepare a Traffic Control Plan in the State of Florida.

7. Grantee agrees to repair or replace any landscaping damaged by Grantee during Grantee’s use of the Easement Area.

SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES.
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, by and through their duly authorized representatives, on the day, month, and year written above.

Signed, sealed and delivered in the presence of two (2) witnesses as required by law.

__________________________
First Witness Signature

__________________________
First Witness Printed Name

__________________________
Second Witness Signature

__________________________
Second Witness Printed Name

STATE OF ______________________
COUNTY OF ____________________

The foregoing instrument was acknowledged before me this ______ day of __________, 2019, by Joe Perpiglia as President of the Board of Directors of FLAMINGO CAY APARTMENTS ASSOCIATION, INC., a Florida not for profit corporation, on behalf of said corporation, who _____ is personally known to me or ______ has produced __________________ as identification.

Affix seal below:

__________________________
Notary Public Signature

__________________________
Printed Name

__________________________
Commission Number

__________________________
Expiration Date

GRANTOR:
FLAMINGO CAY APARTMENTS ASSOCIATION, INC.,
a Florida not for profit corporation

By: its Board of Directors

By: ____________________________
Signature of Joe Perpiglia

As: President

Attest: ____________________________
Secretary Signature

Page 3 of 4
GRANTEE:
MANATEE COUNTY, a political subdivision of the State of Florida

By: its Board of County Commissioners

By: ____________________________
   Chairperson

Date: ____________________________

ATTEST: ANGELINA COLONNESO
        CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: ____________________________
    Deputy Clerk
TEMPORARY NONEXCLUSIVE CONSTRUCTION EASEMENT

THIS TEMPORARY NONEXCLUSIVE CONSTRUCTION EASEMENT (Easement) is made this ________ day of ____________________ , 2019, (Effective Date) by FLAMINGO BY THE BAY ASSOCIATION, INC., a Florida not for profit corporation, as owner of the following described property, whose mailing address is 1877 Northgate Boulevard #4, Sarasota, Florida 34243, (Grantor) and MANATEE COUNTY, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206, (Grantee). As used herein, the term “Grantor” shall include any and all heirs, legal representatives, successors, or assigns of Grantor, and all subsequent owners of the Property as hereinafter below and the term “Grantee” shall include any successor or assignee of Grantee.

Grantor, for and in consideration of the sum of ONE DOLLAR ($1.00) and other valuable consideration paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and transfer unto Grantee a temporary nonexclusive construction easement across, in, over, under, and upon the real property of the Grantor situated, lying and being in the County of Manatee, State of Florida (Property), particularly described as:

See legal description identified in Exhibit A attached hereto.

This Easement shall be for the purpose of constructing a potable water main to serve the Property and for all other construction purposes reasonably related to the construction to be undertaken by Grantee. This Easement is granted upon the condition that the sloping and/or grading upon the Property shall not extend beyond the limits outlined above and that all grading and/or sloping shall conform to all existing improvements on the Property and all work shall be performed in such a manner that existing improvements will be left in same or like condition.

Grantor reserves the right to the continued free use and enjoyment of the Property for any purposes which are not inconsistent with the rights granted herein unto Grantee provided that Grantor does not obstruct, or permit others to obstruct, the Property at any time without first obtaining express written consent of Grantee.

Grantor covenants with Grantee that Grantor is lawfully seized of said lands, and that Grantor has good, right, and lawful authority to grant this Easement and shall take no action to interfere with Grantee’s lawful use of the Property. Grantor hereby fully warrants the Easement being granted and will defend the same against the lawful claims of all persons whomsoever.

This Easement shall be for a term of THREE (3) YEARS from the Effective Date, as defined above.
IN WITNESS WHEREOF Grantor has caused this Easement to be executed in its name, by its Board of Directors acting by the Vice President of said Board, on the day, month, and year written above.

Signed, sealed and delivered in the presence of two (2) witnesses as required by law.

First Witness Signature

______________________________
First Witness Printed Name

Second Witness Signature

______________________________
Second Witness Printed Name

STATE OF ______________________________
COUNTY OF ______________________________

GRANTOR:
FLAMINGO BY THE BAY ASSOCIATION, INC.,
a Florida not for profit corporation

By: its Board of Directors

By: ________________________________
Signature of Craig Foley

As: Vice President

Attest: ________________________________
Secretary Signature

The foregoing instrument was acknowledged before me this _____ day of __________, 2019, by Craig Foley as Vice President of the Board of Directors of FLAMINGO BY THE BAY ASSOCIATION, INC., a Florida not for profit corporation, on behalf of said corporation, who _____ is personally known to me or _____ has produced ______________________ as identification.

Affix seal below:

______________________________
Notary Public Signature

______________________________
Printed Name

______________________________
Commission Number

______________________________
Expiration Date
TEMPORARY NONEXCLUSIVE CONSTRUCTION EASEMENT

THIS TEMPORARY NONEXCLUSIVE CONSTRUCTION EASEMENT (Easement) is made this _______ day of ________________, 2019, (Effective Date) by TOWNHOUSES IN THE CAY ASSOCIATION, INC., a Florida not for profit corporation, as owner of the following described property, whose mailing address is 6108 26th Street West #4, Bradenton, Florida 34207, (Grantor) and MANATEE COUNTY, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206, (Grantee). As used herein, the term “Grantor” shall include any and all heirs, legal representatives, successors, or assignors of Grantor, and all subsequent owners of the Property as hereinafter below and the term “Grantee” shall include any successor or assignee of Grantee.

Grantor, for and in consideration of the sum of ONE DOLLAR ($1.00) and other valuable consideration paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, and transfer unto Grantee a temporary nonexclusive construction easement across, in, over, under, and upon the real property of the Grantor situated, lying and being in the County of Manatee, State of Florida (Property), particularly described as:

See legal description identified in Exhibit A attached hereto.

This Easement shall be for the purpose of constructing a potable water main to serve the Property and for all other construction purposes reasonably related to the construction to be undertaken by Grantee. This Easement is granted upon the condition that the sloping and/or grading upon the Property shall not extend beyond the limits outlined above and that all grading and/or sloping shall conform to all existing improvements on the Property and all work shall be performed in such a manner that existing improvements will be left in same or like condition.

Grantor reserves the right to the continued free use and enjoyment of the Property for any purposes which are not inconsistent with the rights granted herein unto Grantee provided that Grantor does not obstruct, or permit others to obstruct, the Property at any time without first obtaining express written consent of Grantee.

Grantor covenants with Grantee that Grantor is lawfully seized of said lands, and that Grantor has good, right, and lawful authority to grant this Easement and shall take no action to interfere with Grantee’s lawful use of the Property. Grantor hereby fully warrants the Easement being granted and will defend the same against the lawful claims of all persons whomsoever.

This Easement shall be for a term of THREE (3) YEARS from the Effective Date, as defined above.
IN WITNESS WHEREOF Grantor has caused this Easement to be executed in its name, by its Board of Directors acting by the President of said Board, on the day, month, and year written above.

Signed, sealed and delivered in the presence of two (2) witnesses as required by law.

________________________
First Witness Signature

________________________
First Witness Printed Name

________________________
Second Witness Signature

________________________
Second Witness Printed Name

STATE OF __________________
COUNTY OF __________________

The foregoing instrument was acknowledged before me this _______ day of __________, 2019, by Mark Claire as President of the Board of Directors of TOWNHOUSES IN THE CAY ASSOCIATION, INC., a Florida not for profit corporation, on behalf of said corporation, who ______ is personally known to me or ______ has produced ___________________________ as identification.

Affix seal below:

________________________
Notary Public Signature

________________________
Printed Name

________________________
Commission Number

________________________
Expiration Date
AFFIDAVIT OF OWNERSHIP AND ENCUMBRANCES

STATE OF ________________
COUNTY OF ________________

BEFORE ME, the undersigned notary public, personally appeared Joe Perpiglia, who being first duly sworn, deposes and says that, to the best of his knowledge and belief:

1. I have personal knowledge of all matters set forth in this affidavit.

2. Flamingo Cay Apartments Association, Inc., a Florida not for profit corporation, (Association) and the individual unit owners of the Association (Owners), (collectively Grantor) is the owner of the fee simple title to certain real property (Property) situated in Manatee County, Florida, more particularly described in Exhibit A attached to this affidavit and by this reference made a part of this affidavit, and has full authority to sell or encumber the Property.

3. I am the President of the Board of Directors of the Association and I make this affidavit with the authority of and on behalf of the Board of Directors, the Association and the Owners.

4. Grantor has sole and exclusive possession of the Property.

5. Neither Grantor’s title to nor possession of the Property has ever been disputed or questioned and I am not aware of any facts by reason of which the title to or possession of the Property or any part of it or any personal property located on it might be disputed or questioned or by reason of which any claim to the Property or any portion of it or any personal property located on it might be adversely asserted.

6. No person or entity other than Grantor claims or is presently entitled to the right to possess or is in possession of the Property and there are no tenancies, leases, or other occupancies that affect the Property.

7. There are no disputes concerning the location of the boundary lines of the Property.

8. Grantor has not violated any of the restrictions, declarations, or covenants in connection with the Property, nor know of any prior owner violating said restrictions, declarations, or covenants.

9. There are no outstanding or unpaid taxes or assessments (pending or certified) due
to any governmental agency for improvements to or for the benefit of the Property for which the Grantor is responsible or any unpaid or unsatisfied mortgages, claims of lien, or other matters that constitute or could constitute a lien or encumbrance against the Property or any improvements on it or any part of it or against any personal property located on it. Should any bill be found which relates to the period of the Grantor’s possession, the Grantor shall pay such bill upon demand. No notice has been received regarding future pending zoning by any government instrumentality.

10. There are no security agreements, financing statements, title retention contracts, or personal property leases affecting any materials, fixtures, appliances, furnishings, or equipment placed on or installed in or on the Property or the improvements located on it.

11. There are no actions, proceedings, judgments, bankruptcies, liens, or executions recorded among the Public Records of Manatee County, Florida, or any other county in Florida or pending against the Grantor in the courts of Manatee County, Florida, or any other courts.

12. There are no matters pending against the Grantor that could give rise to a lien that would attach to the Property or cause a loss of title or impair the title between the effective date of the title insurance commitment and the recording of the interest to be insured by the title insurance company, and the Grantor has not and will not execute any instrument that would adversely affect the title or interest to be insured in the Property, including but not limited to mortgaging or conveying the Property or any interest in it or causing any liens to be recorded against the Property or the Grantor.

13. There has been no labor performed or materials furnished on or to the Property during the past NINETY (90) days, or, if labor has been performed or materials furnished during such NINETY (90) days, all persons performing or furnishing the same have been fully paid and there are no unpaid bills for labor or materials for which valid liens could be filed.

14. No notice of commencement concerning the Property has been filed in the past NINETY (90) days, nor are there any unsatisfied construction liens of record concerning such Property, nor have any notices to owner been received by the Grantor during the past NINETY (90) days.

15. There are no outstanding, unrecorded deeds, unsatisfied liens, leases, contracts for sale, judgments, easements or rights-of-way for users, conveyances, mortgages or adverse interests affecting title to the Property, except the following:


Matters as set forth on the Flamingo Cay Condominium Apartments plat, recorded
February 18, 1969, in Condominium Plat Book 1, Page 75; as amended by the Flamingo Cay Condominium Apartments Amended plat, recorded in Condominium Plat Book 2, Page 43, and by the Flamingo Cay Condominium Apartments Re-Amended plat, recorded in Condominium Plat Book 12, Page 138, all in the Public Records of Manatee County, Florida.


16. The Grantor’s Taxpayer Identification Number is 65-0023277.

17. The representations embraced herein are made to induce Manatee County, a political subdivision of the State of Florida, to enter into a Permanent Nonexclusive Utility Easement Agreement to facilitate the construction and replacement of water mains on the Property.

18. This affidavit is made and given by affiant with full knowledge of applicable Florida laws regarding sworn affidavits and the penalties and liabilities resulting from false statements and misrepresentations therein.

SIGNATURE AND ACKNOWLEDGMENT APPEAR ON FOLLOWING PAGE.
AFFIANT:
Joe Perpiglia

Signature

Sworn to (or affirmed), acknowledged, and subscribed before me this ____________
day of ______________, 2019, by Joe Perpiglia, who ______________ is personally known
to me or ______________ has produced __________________________________
____________ as identification.

Affix seal below:

______________________________
Notary Public Signature

______________________________
Printed Name

______________________________
Commission Number

______________________________
Expiration Date