

From: William Clague

Sent: Tuesday, January 30, 2018 2:09 PM

To: Amy Pilson <amy.pilson@mymanatee.org>

Cc: Mitchell Palmer <mitchell.palmer@mymanatee.org>; Alex Nicodemi <alex.nicodemi@mymanatee.org>; Ed Hunzeker <ed.hunzeker@mymanatee.org>; Dan Schlandt <dan.schlandt@mymanatee.org>; Cheri Coryea <cheri.coryea@mymanatee.org>; Mike Gore <mike.gore@mymanatee.org>; Juliet Shepard <juliet.shepard@mymanatee.org>

Subject: Treymore Community Association Utility Transfer Agreement; RLS-2018-0018

Amy:

Pursuant to the above Request for Legal Services you have asked this office to review a proposed utility transfer agreement (Agreement) between the County and a private homeowners association (HOA) for Treymore at the Villages of Palm Aire. I provide the following comments in response:

1. Attached are marked pages of the Agreement, Utility Easement and agenda item. Because the documents follow a form accepted by this office in past transactions, my comments are minimal.
2. As always, I advise that staff should undertake its customary analysis for the acceptance of an existing utility regarding, among other things: (i) the sufficiency of utility easements, (ii) potential deferred maintenance issues, (iii) satisfaction of County engineering standards, and (iv) potential liabilities for environmental conditions. Specifically, staff should verify the sufficiency of the proposed utility easements, and the ownership of the described "private roads" by the HOA. Staff should not submit the Agreement for Board approval if it reaches an unfavorable conclusion on any such matters.

Subject to the inclusion of my suggested changes, and the resolution of the issues identified above and any additional business concerns raised by staff, I have no objection from a legal standpoint to the Agreement being scheduled for consideration by the Board. I express no opinion as to the business judgment of entering into the Agreement.

This concludes my response to the RLS. Please let me know if you have any questions or concerns.

Bill Clague

Assistant County Attorney

Manatee County, Florida

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(c) Operation and Maintenance. The County shall operate and maintain the Facilities in accordance with its general standards for its potable water distribution system and its wastewater collection system. The Association acknowledges that minor settlement may occur with respect to the County's repair work to roads and driveways and that the Association shall hold the County harmless from any liability due to any such minor settlement. The Association acknowledges and agrees that (1) the County shall not be liable or responsible in any manner for removal or replacement of concrete patches or pavers in order to match decorative pavements and driveways, and (2) the County shall not be liable or responsible for replacement or repair of improvements (including without limitation walls, signs, landscaping, fountains, sheds or fences) located within rights-of-way or utility easements.

Staff should supply date

2.5 Closing. The sale and transfer provided for in this Agreement (the "Closing") will take place at the County Administration Center, 1112 Manatee Avenue West, Bradenton, Florida, commencing at 10:00 a.m. (local time) on or before _____, _____, unless the County and the Association otherwise agree in writing executed by the County's Director of Utilities and an authorized representative of the Association. Subject to the provisions of Section 8.1, failure to consummate the sale and transfer provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.5 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement. In such a situation, the Closing will occur as soon as practicable, subject to Section 8.1.

2.6 Closing Obligations. In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) The Association shall deliver to the County:

- (i) A bill of sale for all of the Facilities in the form to be agreed upon by the parties prior to Closing (the "Bill of Sale") executed by the Association;
- (ii) for each utility easement to be dedicated to the County pursuant to Section 2.2, such appropriate document or instrument of transfer, as the case may require;
- (iii) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by the County, each in form and substance agreed upon by the parties prior to Closing, executed by the Association or third parties;
- (iv) assignment of any construction work on the Facilities in progress in a form reasonably acceptable to the County which have not yet been placed in service as of the date of the Closing (such capital improvements which have been placed in service being part of the Facilities which are otherwise conveyed by the Association hereunder);
- (v) a certificate executed by the Association as to the accuracy of its representations and warranties as of the date of this Agreement and as of the

UTILITY EASEMENT

THIS UTILITY EASEMENT (hereinafter the Easement) is made this 26th day of October, 2017, between **TREYMORE COMMUNITY ASSOCIATION, INC.**, a Florida not-for-profit corporation, as owner of the following described property, whose mailing address is 3053 51st Street, Sarasota, Florida 34234 (hereinafter the **Grantor**), and **MANATEE COUNTY**, a political subdivision of the State of Florida, whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 (hereinafter the **Grantee**).

As used herein, the term "Grantor" shall include any and all heirs, legal representatives, successors or assigns of the Grantor, and all subsequent owners of the "Easement Area" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH THAT 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 *nonexclusive, permanent easement for the purposes of ingress and egress, construction and maintenance of surface and underground drainage infrastructure and utility facilities, and other improvements* across, in, over, under and upon the real property of the 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 (hereinafter the **Easement Area**).

THAT said 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 the Grantee.

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

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and its corporate seal to be hereunto affixed, by its proper officer thereunto duly authorized, the day and year first above written.

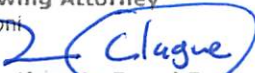
Have we verified that HOA owns here?

Assistant County Attorney Kate Zamboni assisted with document preparation.

Final packet was reviewed by _____.

Reviewing Attorney

Zamboni



Instructions to Board Records

Accept and record Utility Easements

Return two original executed copies to Mike Gore, Utilities Director

Cost and Funds Source Account Number and Name

Rates - Cost Account: 401 Water and Wastewater

Amount and Frequency of Recurring Costs

O&M Costs

Attachments: (list)

No Supporting Documents

Amy Pilson - ()
Role : Item Author

[Change Role](#) | [log out](#)

Version: 1.2.1.3 - 1.2.7.5

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