



## OFFICE OF THE COUNTY ATTORNEY

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### MEMORANDUM

DATE: January 18, 2019

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

THROUGH: Mitchell O. Palmer, County Attorney *MOP 1-22-19*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 1-18-2019*

RE: **14th Street Self Storage – Exchange of Property Agreement for Easements;  
CAO Matter No. 2018-0592**

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#### Issue Presented:

In this Request for Legal Services (RLS) you have requested that the County Attorney's Office (CAO) review and revise as appropriate an Exchange of Property Agreement for Easements (Agreement) and a Utility and Access Easement (Easement), both between Advance Self Storage, LLC, a Florida limited liability company, (Advance) and Manatee County (County). You also asked the CAO to draft a resolution that is legally acceptable to send to the Board of County Commissioners of Manatee County, Florida (Board).

#### Brief Answer:

I have reviewed the Agreement, the Easement, and all the other related documents provided by staff. Because I do not recommend proceeding in the fashion envisioned by staff, I have not revised these documents, nor have I drafted a resolution in furtherance of the proposed transaction. Instead, I have drafted (1) a Permanent Utility and Access Easement and (2) a Notice of Termination of Portion of Easement for staff's use. I have no objection from a legal standpoint to staff using the attached documents and presenting this matter to the Board for consideration consistent with my advice, below.

\* Board Certified in Construction Law

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

Recommendation:

Staff should first ask the County's Survey Division Manager to review the 1988 Easement (defined below) and identify definitively the property described in that instrument which falls within the Advance Property (as defined below). If the Survey Division Manager concludes that Diagram B is an accurate representation of the relevant portion of the 1988 Easement, then staff should proceed in accordance with the advice below.

Discussion:

According to this RLS, the 14th Street Self Storage site plan was approved administratively in September of 2018. The Administrative Permit, Preliminary Site Plan, Final Site Plan, and Construction Plans provided with this RLS report that Advance intends to construct a 78,000 square foot miniature warehouse facility on 5.77 acres of vacant land located at 6424 14th Street West in Bradenton (Advance Property). The final site plan approval letter signed by staff mentions that the site also includes a 2,000 square foot apartment. Advance's approval is conditioned upon certain stipulations and requirements, including, but not limited to (1) vacation of an "existing 20-foot wide utility easement . . . as shown on plan sheet C5.01" and (2) granting of "all public utility easements . . . as shown on plan sheet C5.01." These conditions are in furtherance of the proposed reengineering of the sewer system. The advice, below, assumes that staff has thoroughly reviewed the plans submitted by Advance and that the character, location, nature, and size of the easements proposed to be granted to the County will adequately address the proposed utility facilities and needs of the County relative to same.

Plan sheet C5.01 is the Utility Plan. Based on my review of plan sheet C5.01, it appears that there are six (6) distinct easement areas for access, utilities, or both relative to this project. Attached is a colorized enlargement of a portion of plan sheet C5.01, labeled Diagram A. The area in blue is described as an existing twenty (20) foot utility easement and Official Records Book 1226, Page 660, is referenced. The area in green is described as an additional ten (10) foot utility easement. The area in yellow is described as a twenty (20) foot private utility easement. The area in orange is described as a twelve (12) foot utility access easement. The area in red is described as a twenty (20) foot utility easement and references the same Official Records Book and Page mentioned above. I have circled in pink the label for what is described as a Manatee County public access easement, but I am unable to identify the boundaries.

To begin my review, I examined the document recorded at Official Records Book 1226, Page 660, mentioned above. It is a Utility Easement which was granted by Florida Supply House, Inc., (FSH) to the County in 1988 (1988 Easement). Close review of the legal description revealed that the 1988 Easement covers four (4) distinct areas, only two (2) of which fall within the Advance Property. According to the site plan provided by Advance, the areas in blue and red are where the County has a utility easement pursuant to the 1988 Easement. However, I question whether the

blue area accurately depicts that which is described in the 1988 Easement. Attached is a second colorized enlargement of the same portion of plan sheet C5.01 (labeled Diagram B) where I have outlined in blue what I believe is a portion of the utility easement pursuant to the 1988 Easement based on my review of the legal description and the relevant public records referenced within it. Based on the documents provided by Advance, the County's easement lies partially on the Advance Property and partially on the property directly north, owned today by Bradenton Venture, LLC (BV Property). I do not believe that is the case because when FSH conveyed the 1988 Easement to the County I do not think FSH owned any of what encompasses the BV Property. Therefore, I believe that the shape of that portion of the 1988 Easement is not rectangular—twenty (20) feet wide by three hundred and thirty (330) feet long—but is instead as depicted in blue on Diagram B. Staff should request that the County's Survey Division Manager review the 1988 Easement and identify definitively the property described in that instrument.

Based on my comprehensive review of what has been provided, staff and Advance are proposing that the following occur:

1. The County grant to Advance a portion of the existing 1988 Easement;
2. Advance grant the County two (2) separate permanent utility easements;
3. Advance grant the County a permanent access easement; and
4. Advance donate right-of-way to the FDOT.

The easements would be exchanged in accordance with Section 125.37, Florida Statutes, and would occur before the donation of the right-of-way parcel to the FDOT. See Diagram C for a colorized depiction of the various areas to be conveyed as described above. I do not recommend proceeding in this fashion. Instead, I recommend the following:

1. Advance grant the County one (1) permanent utility and access easement;
2. The County terminate a portion of the existing 1988 Easement; and
3. Advance donate right-of-way to the FDOT.

See Diagram D for a colorized depiction of the what is described above. Diagram D assumes that the boundaries of the 1988 Easement shown on Diagram B are correct. The three (3) various easements which Advance plans to grant to the County have been combined into one (1) single area. Moreover, that area has been extended at the northeast corner to connect with the right-of-way line of 14th Street West. I recommend that this area be extended because if it is not and if the right-of-way parcel is never donated to the FDOT, the County will not have a means to access this easement without first trespassing upon private property, thus exposing the County to potential litigation. If Advance is not willing to extend the easement to the right-of-way line of 14th Street West, then the donation of the right-of-way parcel to the FDOT must occur first.

The 1988 Easement contains the following clause: "At such time as the facilities of the

Grantee are removed or abandoned, this easement shall terminate and all rights shall revert to the Grantor, its heirs, successors or assigns.” If the reengineering of the sewer system that has been proposed by Advance will result in the removal or abandonment of the County’s facilities in a portion of the 1988 Easement Area outlined in green on Diagram D, then the County can record an instrument in the public records that references the 1988 Easement and specifically terminates the easement in that area.

In furtherance of proceeding in the fashion described above, I have drafted the appropriate documents for staff’s use, specifically (1) a Permanent Utility and Access Easement and (2) a Notice of Termination of Portion of Easement. Staff should review the Permanent Utility and Access Easement to ensure that the easement rights to be conveyed are sufficient to address the County’s needs. I assume and trust that staff (1) has determined that Mr. James W. O’Neill has the requisite authority to convey this easement on behalf of Advance, (2) will obtain an affidavit of ownership and encumbrances consistent with the County’s general practice, and (3) will require that Advance provide consents, joinders, and subordinations from any mortgagees if the Advance Property is encumbered by a mortgage.

Conclusion:

Provided staff uses the attached documents and proceeds consistent with my advice, above, I have no objection from a legal standpoint to this matter being presented to the Board for consideration. I express no opinion as to the business judgment of this transaction.

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
- David Branning, Engineering Specialist I, Public Works Department
- Paul Haas, Engineering Specialist II, Public Works Department
- Karen Stewart, County Economic Development Official, Redevelopment and Economic Opportunity Department
- Edward Ference, Utilities Superintendent, Utilities Department
- Todd Boyle, Survey Division Manager, Property Management Department
- Tracy Trahan, Planner I, Building and Development Services Department

**THIS INSTRUMENT PREPARED BY:**  
Pamela J. D'Agostino, Assistant County Attorney  
Manatee County Government  
Office of the County Attorney  
1112 Manatee Avenue West  
Bradenton, Florida 34205

PROJECT NAME: 14th Street Self-Storage  
PID NO: 6482400059

SPACE ABOVE THIS LINE FOR RECORDING DATA

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## **PERMANENT UTILITY AND ACCESS EASEMENT**

**THIS PERMANENT UTILITY AND ACCESS EASEMENT** (Easement) is given this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by **ADVANCE SELF STORAGE, LLC**, a Florida limited liability company, as owner of the following described property, whose mailing address is 5440 Corporate Drive, Suite 250, Troy, Michigan 48098, (**Grantor**) to **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, 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 public utility facilities, and other improvements* 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 (Easement Area)**, attached hereto and incorporated herein by this reference.

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.

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 **Easement Area**. Grantor hereby fully warrants the Easement being granted and will defend the same against the lawful claims of all persons whomsoever.

**SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE.**

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

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

**GRANTOR:**  
**ADVANCE SELF STORAGE, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
First Witness Signature

By: \_\_\_\_\_  
Signature of James W. O'Neill

\_\_\_\_\_  
First Witness Printed Name

As: Authorized Member

\_\_\_\_\_  
Second Witness Signature

\_\_\_\_\_  
Second Witness Printed Name

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by **JAMES W. O'NEILL** as **Authorized Member** of **ADVANCE SELF STORAGE, LLC**, a Florida limited liability company, on behalf of said company, who \_\_\_\_\_ is personally known to me or \_\_\_\_\_ has produced \_\_\_\_\_ as identification.

Affix seal below:

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Commission Number

\_\_\_\_\_  
Expiration Date

**THIS INSTRUMENT PREPARED BY:**  
Pamela J. D'Agostino, Assistant County Attorney  
Manatee County Government  
Office of the County Attorney  
1112 Manatee Avenue West  
Bradenton, Florida 34205

PROJECT NAME: 14th Street Self-Storage  
PID NO: 6482400059

SPACE ABOVE THIS LINE FOR RECORDING DATA

## NOTICE OF TERMINATION OF PORTION OF EASEMENT

This Notice ("Notice") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by **MANATEE COUNTY**, a political subdivision of the State of Florida, ("County"), whose mailing address is Post Office Box 1000, Bradenton, Florida 34206 and whose street address is 1112 Manatee Avenue West, Bradenton, Florida 34205 and is in reference to the following facts:

A. On June 7, 1988, Florida Supply House, Inc., a corporation organized and existing under the laws of the State of Florida, granted to County an easement for ingress, egress, construction, installation, maintenance, and operation of public utility facilities through and across real property located in Manatee County, Florida, and recorded in Official Records Book 1226, Page 660, of the Public Records of Manatee County, Florida (1988 Easement).

B. A portion of the public utility facilities of the County lying within the real property described in the 1988 Easement have been removed or abandoned.

C. Accordingly, County hereby terminates and releases the portion of the 1988 Easement where the public utility facilities of the County described in the 1988 Easement has been removed or abandoned, specifically the following described land lying and being in Manatee County, Florida (Property):

THE EAST 330 FEET OF THE WEST 960 FEET OF THE NORTH 20 FEET AND A 20 FOOT WIDE EASEMENT LYING 10 FEET ON EITHER SIDE OF A LINE RUNNING 190.00 FEET NORTH FROM A POINT ON THE PROPERTY SOUTH LINE, SAID POINT BEING 787.17 FEET EAST OF THE SOUTHWEST PROPERTY CORNER OF THE FOLLOWING DESCRIBED PARCEL:

BEGIN AT THE SOUTHWEST CORNER OF S½ OF SW¼ OF NW¼, NORTH 390.65 FEET FOR A POB; EAST 1,320 FEET, SOUTH 200.65 FEET, WEST 1,320 FEET, THENCE NORTH 200.65 FEET TO POB LESS HIGHWAY RIGHT-OF-WAY ON EAST LESS THAT DESCRIBED IN OR BOOK 562 PAGE 893 SUBJECT TO EASEMENT TO GENERAL TELEPHONE COMPANY DESCRIBED IN OR BOOK 743, PAGE 107, LESS LAND DESCRIBED IN OR BOOK 869 PAGE 403 PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA. DP #006482400006.

D. This Notice serves only that purpose expressly stated in Paragraph C, above. Nothing herein shall be construed or interpreted as a representation of the rights or interests accruing to or existing in the Florida Supply House, Inc., its heirs, successors or assigns or any third party to the Property. This Notice shall have no effect upon any other easement rights granted pursuant to either the 1988 Easement or any other instrument recorded in the Public Records of

Manatee County, Florida.

**IN WITNESS WHEREOF** County has caused this Notice to be executed in its name by its Board of County Commissioners acting by the Chair or Vice Chair of said board, the day and year aforesaid.

**COUNTY:**  
**MANATEE COUNTY, a political**  
**subdivision of the State of Florida**

**By: its Board of County Commissioners**

By: \_\_\_\_\_  
Chairperson

**ATTEST: ANGELINA COLONNESO**  
**CLERK OF THE CIRCUIT COURT AND COMPTROLLER**

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