

GULF BREEZE CITY COUNCIL
REGULAR MEETING AGENDA

JANUARY 19, 2016
TUESDAY, 6:30 P.M.
COUNCIL CHAMBERS

1. **ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE**

2. **APPROVAL OF MINUTES**

January 4, 2016, Regular meeting

3. **PROCLAMATIONS AND PRESENTATIONS** None

4. **RESOLUTIONS AND ORDINANCES**

Resolution 01-16 Adopting Resolution 01-16 approving a Plan of Finance for Garden Gate Facilities in Fort Worth and Plano, Texas, and authorizing issuance of not to exceed \$35,000,000 in Capital Trust Agency Bonds and authorizing the Mayor to execute Amendment No. 65 to Interlocal Agreement

Resolution 02-16 Adopting Resolution 02-16 approving a Supplemental Plan of Finance for Silver Creek St. Augustine and authorizing issuance of an additional \$12,000,000 in Capital Trust Agency Bonds and authorizing the Mayor to execute Amendment No. 66 to Interlocal Agreement

Resolution 03-16 Adopting Resolution 03-16 granting the authority to acquire certain property necessary to provide public use and access to and from Shoreline Drive and the shore of Pensacola Bay; declaring the need to exercise eminent domain powers; and authorizing the City Attorney or his designee to commence and prosecute all proceedings necessary for acquiring the subject property for the project. *(The resolution will be provided as soon as Staff receives the final version from special counsel.)*

5. **ACTION AGENDA ITEMS**

A. Approval of Special Event Application from St. Ann's Catholic Church for Annual Palm Sunday Processional on Sunday, March 20, 2016

B. Approval of Special Event Application from St. Ann's Catholic Church for a 5K run/walk on Saturday, May 21, 2016

- C. Approval of Development Review Board Recommendations:
 - 1) Gulf Breeze Treatment Center, 350 Pensacola Beach Road, Gulf Breeze, FL
Request to install an inground pool, paver decking, and landscaping
 - 2) Christine and Stephen Speck, 226 Pine Tree Drive, Gulf Breeze, FL
Request to construct a residential dock with uncovered boat lift
- D. Approval for Police Department to purchase 2011 Toyota Camry from Bob Tyler Toyota in the amount of \$10,000 and, in return, receive another vehicle for the Investigations Division
- E. Authorization for Staff and Sensys America, Inc., to upgrade the software which supports the Red Light Camera Program
- F. Appointment of Retired Army Brigadier General John Adams to the Development Review Board
- G. Private attorney-client session confined to settlement negotiations or strategy sessions related to litigation expenditures in connection with a worker's compensation litigation brought against the City by Michael Gavitt

6. **NEW ITEMS**

7. **INFORMATION ITEMS**

8. **PUBLIC FORUM**

9. **ADJOURNMENT**

If any person decides to appeal any decisions made with respect to any matter considered at this meeting or public hearing, such person may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based. The public is invited to comment on matters before the City Council upon seeking and receiving recognition from the Chair. If you are a person with a disability who needs accommodation in order to participate in a public hearing you are entitled to the provision of certain assistance. Please contact the City Clerk's office at (850) 934-5115 or at 1070 Shoreline Drive, Gulf Breeze at least one (1) week prior to the date of the public hearing.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

The 1,287th Regular Meeting of the Gulf Breeze City Council, Gulf Breeze, Florida, was held at Gulf Breeze City Hall on Monday, January 4, 2016, at 6:30 p.m.

ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE:

Upon call of the roll the following Councilmembers were present: Councilwoman Renee Bookout, Councilwoman Cherry Fitch, Mayor Pro Tem Joseph Henderson, Councilman David G. Landfair, and Mayor Matt Dannheisser.

The City Clerk gave the invocation and led in the Pledge of Allegiance

APPROVAL OF MINUTES:

Councilman Landfair moved for approval of the minutes of the December 21, 2015, Regular Meeting. Councilwoman Fitch seconded. The vote for approval was unanimous.

PRESENTATION AND PROCLAMATIONS:

Fire Chief Craig Carmichael Recognition of Gulf Breeze Volunteer Firefighters Susan Hoffman, Samantha Hoffman, Samuel Buckley, and Thomas Matassa for successfully completing Firefighter I Training

RESOLUTIONS AND ORDINANCES:

Public Hearing:

Ordinance No. 01-16

Amending the City's noise ordinance with regards
to construction and demolition hours
SECOND READING AND PUBLIC HEARING

The City Clerk read the Ordinance by title. The Mayor opened the Public Hearing. Mr. Robert Turpin, 2 Madrid, spoke regarding the Ordinance. Mayor Dannheisser closed the Public Hearing.

Councilwoman Bookout moved for approval of Ordinance No. 01-16. Councilwoman Fitch second. The vote for approval was unanimous.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

ACTION AGENDA ITEMS:

- A. Recommendation regarding street light on Madrid Avenue

Reference: City Manager memo dated December 28, 2015

Recommendation: That the City Council approve the street light installed on Madrid Avenue to remain in place.

The following residents spoke against the street light: Karen Owen at 3 Madrid, Robert Turpin, 2 Madrid Ave. The following residents spoke in favor of the street light: Jane Switzer, 92 Highpoint, Susan Osborn, 88 Highpoint, and Cindy Pablo, 104 Highpoint.

The Council advised staff to continue to study additional options for the street light and report back to the Council by the next set of meetings. No action taken

- B. Approval of holiday gift card purchase in the amount of \$6,700 for staff with cost allocation to each department.

Reference: City Manager memo dated December 24, 2015

Recommendation: That the City Council ratify the purchase of gift cards for city staff in the amount of \$6,700 with the cost paid from each department budget based on the number of staff allocated to that department.

Councilwoman Fitch made a motion to approve staff's recommendation. Councilwoman Bookout seconded. The vote was 4-1 with Mayor Pro Tem Henderson dissenting

- C. Authorization and approval of Warrington Utility and Excavation to make irrigation repairs to the East Course in the amount of \$13,300 with a 20% (\$2,700) contingency.

Reference: Director of Public Services memo dated December 30, 2015

Recommendation: That the City Council authorize Warrington Utility and Excavation to install two (2) 4" by 60' Directional Drill Pipes on Fairway #13 to relocate the irrigation line and controls underground for \$13,300 with a 20% (\$2,700) contingency.

Councilman Landfair made a motion to remove the item from the agenda until such time as the SSRUS Board brings it to the City Council for approval. Mayor Pro Tem Henderson seconded. The vote to remove the item from the agenda was unanimous.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

- D. Endorsement regarding conversion of a vehicle bay in the Public Services garage to office space

Reference: Director of Public Services memo dated December 23, 2015

Recommendation: That the City Council endorse the conversion of a vehicle bay in the Public Services garage to 576 square feet of office space.

Councilwoman Fitch made a motion to approve staff's recommendation. Councilwoman Bookout seconded. The vote for approval was unanimous.

- E. Authorization and approval for McNorton Mechanical to remove and replace the metal roofing and gutter system over the Public Services office building in the amount of \$9,940

Reference: Director of Public Services memo dated December 23, 2015

Recommendation: That the City Council authorize McNorton Mechanical to remove and replace the metal roofing for a cost of \$9,940.

Councilwoman Bookout made a motion to approve staff's recommendation. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- F. Direction regarding potential sale of Peyton Office building located at 1198 Gulf Breeze Parkway

Reference: Deputy City Manager memo dated December 24, 2015

Recommendation: That the City Council consider the purchase offer by M&W Properties of Florida in the amount of \$400,000 to purchase the property located at 1198 Gulf Breeze Parkway.

The following individuals spoke regarding the purchase offer: Kevin Hoffman with J.G. Buehler & Company, (real estate broker representing the buyers), Dr. William Henghold, 530 Fontaine St (buyer) and Mr. Bob Osbourne, 88 Highpoint (resident and commercial real estate broker).

MINUTES OF THE REGULAR MEETING OF THE
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Mayor Dannheisser stated that the following conditions would need be added to the purchase agreement should the City decide to sell the property: 1. Use of the property be limited to the Class A office building being contemplated; 2.) The building plans be submitted within a specific time frame; construction begin within a specific time frame and construction be completed within a specific time frame. 3.) The City net \$400,000 at closing

Councilman Landfair made a motion to table this item until the next set of meetings and that an updated appraisal be completed on the property. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- G. Approval and authorization to enter into a retainer agreement with Smolker Bartlett Loeb Hinds & Sheppard, P.A., and provide a \$5,000 retainer

Reference: Deputy City Manager Memo dated December 23, 2015

Recommendation: That the City Council approve the retainer agreement with Smolker Bartlett Loeb Hinds & Sheppard, P.A. of Tampa Florida, authorize the City Attorney to execute the agreement on behalf of the City and authorize the payment of the \$5,000 retainer.

Councilman Landfair made a motion to approve staff's recommendation. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- H. Approval of Agreement for Legal Services with Michael J. Stebbins, PL, and authorization for the Mayor to execute the agreement on behalf of the City

Reference: Deputy City Manager memo dated December 22, 2015

Recommendation: That the City Council approve the agreement with Michael J. Stebbins, PL to serve as the City Attorney and authorize the Mayor to execute the agreement on behalf of the City.

Mayor Dannheisser recused himself from the vote due to his professional relationship with Mr. Stebbins. (Form 8B attached)

Councilwoman Bookout requested that language be added to the agreement regarding legal malpractice and case files remaining property of the City.

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CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

Councilman Landfair made a motion to approve staff's recommendation subject to the changes suggested by Councilwoman Bookout. Councilwoman Bookout seconded. The vote to approve the agreement for legal services with Michael J. Stebbins, PL carried unanimously by a vote of 4-0. (Form 8B attached for Mayor Dannheisser)

- I. Approval of payment of invoice in the amount of \$9,004.75 to Galloway Johnson Tompkins Burr and Smith (GJTBS) for legal services rendered in connection with Catawba Street right-of-way

Reference: City Clerk memo dated December 24, 2015

Recommendation: That the City Council approve payment of invoice 322649 in the amount of \$9,004.75 to GJTBS.

Mayor Pro Tem Henderson made a motion to approve staff's recommendation. Councilwoman Bookout seconded. The vote to approve was unanimous.

NEW BUSINESS: None

INFORMATION ITEMS: None

PUBLIC FORUM:

Karen Owen, 3 Madrid Avenue, addressed the Council a second time requesting the street light at 3 Madrid Avenue be removed.

COUNCIL COMMENTS: None

ADJOURNMENT: Mayor Dannheisser adjourned the meeting at 8:06 p.m.

Leslie A. Guyer, City Clerk

Matt E. Dannheisser, Mayor

The Gulf Breeze City Council held an Executive Meeting at Gulf Breeze City Hall on Wednesday, January 13, 2016, at 6:30 p.m.

ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE:

Upon call of the roll the following Councilmembers were present: Councilwoman Renee Bookout, Councilwoman Cherry Fitch, Mayor Pro Tem Joseph Henderson, and Mayor Matt Dannheisser. Councilman David G. Landfair was not in attendance.

PROCLAMATIONS AND PRESENTATIONS

None

RESOLUTIONS AND ORDINANCES

Adopting Resolution 01-16 approving a Plan of Finance for Garden Gate facilities in Fort Worth and Plano, Texas, and authorizing issuance of not to exceed \$35,000,000 in Capital Trust Agency bonds and authorizing the Mayor to execute Amendment No. 65 to Interlocal Agreement

Reference: City Manager memo dated January 8, 2016

Recommendation: That the City Council approve Resolution 01-16 approving a Plan of Finance for the Garden Gate facilities in Fort Worth and Plano Texas, and authorizing issuance of not to exceed \$35,000,000 in Capital Trust Agency bonds.

Mayor Pro Tem Henderson made a motion to place Resolution 01-16 on the January 19, 2016, Regular Meeting agenda for approval. Councilwoman Bookout seconded. The vote for approval was unanimous.

Adopting Resolution 02-16 approving a Supplemental Plan of Finance for Silver Creek, St. Augustine, and authorizing issuance of an additional \$12,000,000 in Capital Trust Agency bonds and authorizing the Mayor to execute Amendment No. 66 to Interlocal Agreement

Reference: City Manager memo dated January 8, 2016

Recommendation: That the City Council adopt Resolution 02-16 approving a supplemental Plan of Finance for Silver Creek, St. Augustine, and issuance of up to an additional \$12,000,000 in Capital Trust Agency bonds and authorizing the Mayor to execute Amendment No. 66 to Interlocal Agreement with Capital Trust Agency.

The Council asked that Ed Gray provide an explanation as to the amount previously issued and advise the Council how many times the borrower can ask for supplemental funds. *No action was taken on this item.*

ACTION AGENDA ITEMS

- A. Approval of Special Event Application from St. Ann's Catholic Church for Annual Palm Sunday Processional on Sunday, March 20, 2016

Reference: Deputy Chief memo dated January 6, 2016

Recommendation: That the City Council approve the St. Ann's Catholic Church Special Event Application for the annual Palm Sunday Processional.

Mayor Pro Tem Henderson made a motion to place staff's recommendation on the January 19, 2016, Regular meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

- B. Approval of Special Event Application from St. Ann's Catholic Church for a 5K run/walk on Saturday, May 21, 2016

Reference: Deputy Chief memo dated January 5, 2016

Recommendation: That the City Council approve St. Ann's Catholic Church Special Event Application for a 5K run/walk on May 21, 2016.

Councilwoman Bookout made a motion to place staff's recommendation on the January 19, 2016, Regular meeting agenda. Mayor Pro Tem Henderson seconded. The vote for approval was unanimous.

- C. Approval of Development Review Board Recommendations:

- 1) Gulf Breeze Treatment Center, 350 Pensacola Beach Road, Gulf Breeze, FL
Request to install an inground pool, paver decking, and landscaping
- 2) Christine and Stephen Speck, 226 Pine Tree Drive, Gulf Breeze, FL
Request to construct a residential dock with uncovered boat lift

Reference: January 5, 2016, Development Review Board Minutes

Mayor Pro Tem Henderson made a motion to place the recommendations on the January 19, 2016, Regular Council meeting agenda. Councilwoman Fitch seconded the motion. The vote for approval was unanimous.

- D. Approval for Police Department to purchase 2011 Toyota Camry from Bob Tyler Toyota in the amount of \$10,000 and, in return, receive another vehicle for the Investigations Division

Reference: Chief of Police memo dated January 7, 2016

Recommendation: That the City Council approve the budgeted \$10,000 to pay for the 2011 Camry and, in return, receive another vehicle to be used by the Investigations Division.

The Council requested staff to write a letter to Bob Tyler thanking him for his support of the Police Department.

Councilwoman Bookout made a motion to place staff's recommendation on the January 19, 2016, Regular meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

- E. Authorization for Staff and Sensys America, Inc., to upgrade the software which supports the Red Light Camera Program

Reference: City Manager memo dated January 8, 2016

Recommendation: That the City Council direct staff and Sensys America, Inc., to upgrade the software which supports the City's Red Light Camera program.

Mayor Pro Tem Henderson made a motion to place staff's recommendation on the January 19, 2016, Regular meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

- F. Appointment of Retired Army Brigadier General John Adams to the Development Review Board

Reference: City Clerk memo dated January 8, 2016

Recommendation: That the City Council appoint Retired Army Brigadier General John Adams to the Development Review Board.

Councilwoman Fitch made a motion to place staff's recommendation on the January 19, 2016, Regular meeting agenda. Councilwoman Bookout seconded. The vote for approval was unanimous.

- G. Authorization to obtain an appraisal of 1198 Gulf Breeze Parkway (Peyton Building) from Fruitticher-Lowery Appraisal Group in the amount of \$3,000 and to meet as the Community Redevelopment Agency on January 19, 2016

Reference: Deputy City Manager memo dated January 7, 2016

Recommendation: That the City Council meet as the Board of Directors of the Community Redevelopment Agency and accept the proposal from Fruitticher-Lowery Appraisal Group for an appraisal of 1198 Gulf Breeze Parkway and authorize the expenditure of \$3,000 for that purpose.

Councilwoman Bookout made a motion to place staff's recommendation on the January 19, 2016, Regular meeting agenda. Councilwoman Fitch seconded. The vote for approval was unanimous.

H. Approval for formation of a Tourist Development Tax Advisory Committee

Reference: Verbal report from City Manager

Mayor Dannheisser explained the history of the Tourist Development Tax. He asked that Council consider forming a Gulf Breeze Tourist Development Advisory Committee consisting of local representatives from two hotels, one restaurant, the Gulf Breeze Area Chamber of Commerce, and Gulf Breeze Sports Association. He would like Staff to develop a formalized process by creating an application and policies/guidelines for distribution of Tourist Development tax funds. The committee would meet periodically and invite Julie Morgan from the Tourist Development Council to attend. Final decision regarding distribution would come before the Council for approval. Mayor Pro Tem Henderson suggested that the Tourist Development Tax be handled like the Community Redevelopment Agency funds.

The Council asked that staff make a recommendation based on the comments from the Council. They also asked to be provided with the memorandum previously furnished regarding the Tourist Development Tax and a copy of the Florida Statutes Section which governs the Tourist Development Tax.

No action was taken on this item.

NEW ITEMS

- A. Private attorney-client session confined to settlement negotiations or strategy sessions related to litigation expenditures in connection with a worker's compensation litigation brought against the City by Michael Gavitt.

Reference: Verbal report from City Attorney

The City Attorney requested to hold a private attorney-client session at the end of the January 19, 2016, Regular meeting. There being no objections, the private attorney-client session will be held at the end of the January 19, 2016, Regular meeting.

- B. Adopting Resolution 03-16 establishing the necessity of taking the quiet title parcels between the Catawba right-of-way and the waters of the State of Florida

Reference: Verbal report from City Manager

Recommendation: That the City Council adopt resolution 03-16 establishing the necessity of taking the quiet title parcels between the Catawba right-of-way and the waters of the State of Florida

There being no objections, this item will be placed on the January 19, 2016, Regular meeting agenda.

INFORMATION ITEMS

The City Manager reminded the City Council about the Optimist Club/Student Take Over breakfast on Friday, January 15, 2016. He also asked the Council to let staff know if they would like to attend the Chamber Gala on Saturday, January 16, 2016.

The Assistant to the City Manager advised the Council that the City's Facebook has been created and encourage them to "Like" the page. He will send the Council a link to the page.

PUBLIC FORUM

None.

COUNCIL COMMENTS:

Councilwoman Bookout provided the Council with an update from the After School Program (ASP) committee meeting that was held earlier in the day. She asked Mr. Ford to provide the Council with the information supplied during the committee meeting. ASP staff would like one more staff member that would be dedicated exclusively to check students in and out of the KidCheck program.

Councilwoman Fitch advised that Council that the Arbor Day celebration will be on Friday, January 15, 2016, at 10:00, at the Community Center. She asked if the local media would mention the Arbor Day celebration as well as trees that were going to be planted in memory of Linda Knowles.

Mayor Pro Tem Henderson said in the future if local delegates would like to meet with a member of the Council that they should meet with all of them so everyone's input is received. They should be invited to attend Council meetings.

Mayor Dannheisser said he would like for staff to prepare certificates of appreciation for City Board members who have come to the end of their term on their respective Board. This would also include the Steering Committee, Traffic Calming, After School Program, Stormwater, etc. He inquired about the Capital Improvement Plan for Tiger Point. The City Manager advised that Integrity is refining the report to incorporate interests of other parties. The

report should be completed in another month. The Mayor encouraged the Council to visit Tiger Point. The City Manager offered to arrange and accompany anyone who wanted to go.

ADJOURNMENT Mayor Dannheisser adjourned the meeting at 7:32 p.m.

RESOLUTION NO. 1-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE IN ORDER TO FINANCE OR REFINANCE, INCLUDING THROUGH REIMBURSEMENT, THE COSTS OF THE ACQUISITION, CONSTRUCTION, RENOVATION, AND EQUIPPING OF THE MULTI-FAMILY RENTAL HOUSING FACILITIES LOCATED IN THE STATE OF TEXAS; APPROVING THE ISSUANCE OF NOT EXCEEDING \$35,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSES OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING SUCH PROJECTS; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida (the "State"), has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendment No. 1 through No. 64 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and public agency of the State, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 duly enacted by the City Council, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively, the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing and refinancing, including through reimbursement, certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on October 28, 2015, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing, including through reimbursement, of the hereinafter described projects, and the issuance by the Agency of revenue bonds in one or more series, either taxable or tax-exempt, or both, from time to time (the "Bonds") for a loan program for the purposes, among other things, of financing or refinancing, including through reimbursement, the acquisition, construction, renovation, and equipping of the multi-family rental housing facilities for persons of low and moderate income, including related facilities, fixtures, furnishings, and equipment, described in Schedule "I" attached hereto, which, by this reference thereto, is incorporated herein (the "Projects"); and

WHEREAS, the City has been advised that the Agency desires to issue the Bonds in an aggregate principal amount of not exceeding \$35,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance the Projects on behalf of AOF Garden Gate FW, LLC, and AOF Garden Gate Plano, LLC, each a Texas limited liability company, or one or more of its affiliates,

whose principal place of business is 4401 Northside Parkway, Suite 711, Atlanta, Georgia 30327 (as applicable, collectively, the "Borrower") to fund a program herein described (the "Plan of Finance"), such Projects are to be managed initially by U.S. Residential Group, LLC, a Texas limited liability company, or its affiliate; and

WHEREAS, the proposed Projects are appropriate to the needs and circumstances of the communities in which they will be located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of such local community, (ii) promoting commerce within the State of Texas, (iii) serving a public purpose by providing affordable housing facilities for persons of low and moderate income, and (iv) advancing the economic prosperity and the general welfare of the State of Texas and its people; and

WHEREAS, in order to advance and further the public purposes set forth in the Act, it is necessary and in the public interest to facilitate the financing of the Projects and to facilitate and encourage the planning and development of such Projects without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given in the form required by the Code by publication at least fourteen (14) days prior to such public hearing in the *Gulf Breeze News* on December 24, 2015, and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council of the City of Gulf Breeze, Florida (the "City Council") on January 7, 2016; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the Enabling Agreement, as amended and the Original Resolution in connection with the issuance and sale of the Bonds;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published on December 24, 2015, in the *Gulf Breeze News*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, such interlocal agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing, including through reimbursement, of the Projects through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued, including, without limitation, the Amendment (hereinafter defined) and the Agency Resolution. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT TO THE ENABLING AGREEMENT APPROVED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of Amendment No. 65 to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, his execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance which includes (i) the issuance by the Agency of not exceeding \$35,000,000 aggregate principal amount of revenue bonds for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution and (ii) the issuance by the Agency of either taxable or tax-exempt, or both, bonds in an amount not exceeding \$35,000,000 for all purposes under Section 147(f) of the Code.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 13th day of January, 2016.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Matt E. Dannheisser, Mayor

ATTEST:

By: _____
Stephanie D. Lucas, City Clerk

EXHIBIT "A" TO RESOLUTION
REPORT OF HEARING OFFICER
AOF GARDEN GATE FW, LLC, AND AOF GARDEN GATE PLANO, LLC

[Follows]

**REPORT OF HEARING OFFICER
AOF GARDEN GATE FW, LLC, AND AOF GARDEN GATE PLANO, LLC**

This instrument shall constitute the official report of the undersigned designated official of the City of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, with respect to a public hearing scheduled and held by the City on January 7, 2016, for and on behalf of the Capital Trust Agency (the "Agency"), a legal entity and public agency created and existing under Chapter 163, Part I, and Chapter 617, Florida Statutes, and established and empowered by the provisions of Chapter 159, Part II, Florida Statutes, Chapter 163, Part I, *et seq.*, Chapter 166, Part II, Florida Statutes, Chapter 617, Florida Statutes and other applicable provisions of law, in connection with the proposed issuance of the Agency's not exceeding \$35,000,000 revenue bonds (the "Bonds") on behalf of AOF Garden Gate FW, LLC, and AOF Garden Gate Plano, LLC, each a Texas limited liability company, or one or more of their affiliates (as applicable, collectively, the "Borrower"), and whose principal place of business is 4401 Northside Parkway, Suite 711, Atlanta, Georgia 30327 (as applicable, the "Borrower"). The proceeds of the Bonds will be loaned to the Borrower for financing or refinancing, including through reimbursement, the acquisition, construction, renovation and equipping of multi-family rental housing facilities for persons of low and moderate income, including related facilities, fixtures, furnishings and equipment, described in Exhibit "A" hereto, which by this reference thereto, is incorporated herein (the "Projects").

The public hearing was duly advertised in the *Gulf Breeze News*, a newspaper of general circulation in the jurisdiction of the City, on December 24, 2015. The proof of publication was presented to me at such hearing, and a copy is attached hereto as Exhibit "B" (the "Notice").

The hearing commenced at the time and location stated in the Notice. At such hearing, interested individuals were afforded reasonable opportunity to express their views, both orally and in writing, on all matters pertaining to the plan of finance and the financing of the Projects. Information about the proposed Bonds, the locations of the Projects, and the proposed use of the proceeds were presented. When the information had been presented, opportunity was given for members of the public in attendance to give their input. It was noted that no written communication was received.

No interested party was in attendance at the public hearing. Minutes of the Council Meeting, including the public hearing, will be kept on file with the City Clerk as referenced in Exhibit "C" hereto. The undersigned then concluded the hearing.

Respectfully submitted,

By: 
Edwin Eddy, City Manager
City of Gulf Breeze, Florida

**EXHIBIT "A" TO REPORT OF HEARING OFFICER
AOF GARDEN GATE FW, LLC, AND AOF GARDEN GATE PLANO, LLC**

The Projects consist of the acquisition, construction, renovation, and equipping of each of the following multi-family rental housing facilities for persons of low and moderate income, including related facilities, fixtures, furnishings, and equipment:

BORROWER/PROPERTY NAME/ADDRESS	CITY	COUNTY	STATE	SIZE (UNITS)
AOF Garden Gate FW, LLC Garden Gate Apartments 6901 North Beach Street Fort Worth, Texas 76137	Fort Worth	Tarrant County	Texas	240
AOF Garden Gate Plano, LLC Garden Gate Apartments 1201 Legacy Drive Plano, Texas 75023	Plano	Collin County	Texas	240

**EXHIBIT "B" TO REPORT OF HEARING OFFICER
AOF GARDEN GATE FW, LLC, AND AOF GARDEN GATE PLANO, LLC**

PROOF OF PUBLICATION

[FOLLOWS]



YOUR COMMUNITY NEWSPAPER

The Gulf Breeze News

Published Weekly
Established in 2001

STATE OF FLORIDA
County of Santa Rosa

NOTICE OF PUBLIC HEARING

Legal #4033
GULF BREEZE NEWS
12/24/2015

Before the undersigned authority personally appeared Bidy Gilchrist who is personally known to me and who on oath says that she is Office Manager of the Gulf Breeze News, a weekly newspaper published at Gulf Breeze in Santa Rosa County, Florida; that the attached copy of advertisement, being a:

NOTICE OF PUBLIC HEARING

Received from Bryant Miller Olive and was published in said newspaper in the issue of:

12/24/2015

Affiant further says that the said Gulf Breeze News published in Gulf Breeze in said Santa Rosa County, Florida, and that said newspaper has heretofore been continuously published in said county each week and has been entered as second class mail matter at the post office in Gulf Breeze, in said Santa Rosa County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

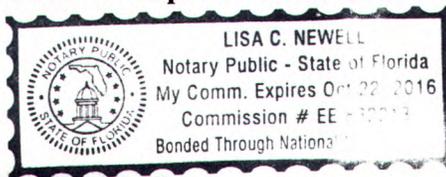

Office Manager Bidy Gilchrist

Sworn to and subscribed before me this 24th Day of December, A.D. 2015



Name: Lisa C. Newell Notary Public

My Commission Expires: 10-22-2016



314-5838

**REAL ESTATE FOR
RENT - APARTMENTS**

Majestic Jet, Inc.
d/b/a Nash Air
Operations, LLC.
Timed On-line
Auction Starts: Dec
29 10am Ends:
Jan 5 10am JLG
Electric Scissor Lift,
Golf Cart, Tronair
Hydraulic Pwr Unit,

Wind Meadow Apts.
Under New Mgmt!
Rental assistance may
be available. HUD
vouchers accepted. 1
& 2 BR handicapped
& non-handicapped
accessible apts.
Water,sewer/garbage

**Viagra!!52 Pills for Only
\$99.00 Your #1 trusted
provider for 10 years.**
Insured and
Guaranteed
Delivery. Call Now
1-800-224-0305
DISH TV Starting

LEGAL NOTICE

**NOTICE OF PUBLIC HEARING
CITY OF GULF BREEZE, FLORIDA**

For the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, notice is hereby given that the City of Gulf Breeze, Florida (the "City") will hold a public hearing at 10:00 a.m. on January 7, 2016, in the City Council Chambers located at 1070 Shoreline Drive, Gulf Breeze, Florida, 32561. The purpose of the public hearing is to consider a plan of finance for the purpose, among other things, of providing funds to be loaned by the Capital Trust Agency (the "Issuer") to AOF Garden Gate FW, LLC, and AOF Garden Gate Plano, LLC, each a Texas limited liability company, or one or more of their affiliates (as applicable, collectively, the "Borrower"), in order to finance the cost of financing or refinancing, including through reimbursement, the acquisition, construction, renovation and equipping of each of the following multi-family rental housing facilities to provide housing for persons of low and moderate income, including related facilities, fixtures, furnishings, and equipment (collectively, the "Projects"). The Projects consist of two multi-family rental housing facilities known as (i) Garden Gate Apartments, consisting of 240 rental units and located at 6901 North Beach Street, Fort Worth, Texas 76137, and (ii) Garden Gate Apartments, consisting of 240 rental units and located at 1201 Legacy Drive, Plano, Texas 75023.

The plan of finance contemplates that the Issuer will issue, in respect to such Projects, not exceeding \$35,000,000 in aggregate principal amount of its revenue bonds (the "Bonds"), in one or more installments or series, either taxable or tax-exempt, or both, and loan the proceeds of such Bonds to the Borrower to provide funds for the Projects. The Projects will be owned by the Borrower. The initial manager of the Projects will be U.S. Residential Group, LLC, a Texas limited liability company (the "Manager").

The Bonds, when issued, will be special, limited obligations payable solely out of the revenues, income and receipts pledged to the payment thereof and derived from financing agreements with the Borrower, and neither the Issuer, the City, the City of Plano, Texas ("City of Plano"), the County of Tarrant County, Texas ("Tarrant County"), the City of Fort Worth, Texas ("City of Fort Worth"), nor the County of Collin County, Texas ("Collin County"), will be obligated to pay the principal of, premium, if any, or interest on the Bonds except from the payments of the Borrower. The Bonds and interest thereon shall never (i) pledge the taxing power of the City, the City of Plano, Tarrant County, the City of Fort Worth, Collin County, the State of Texas, the State of Florida or any other political subdivision, public agency or municipality thereof within the meaning of any constitutional or statutory provision, (ii) constitute the debt or indebtedness of the Issuer, the City, the City of Plano, Tarrant County, the City of Fort Worth, Collin County, the State of Texas, the State of Florida, or any other political subdivision, public agency or municipality thereof within the meaning of any constitutional or statutory prohibition, (iii) or pledge the full faith and credit of the Issuer, the City, the City of Plano, Tarrant County, the City of Fort Worth, Collin County, the State of Texas, the State of Florida, or any political subdivision, public agency or municipality thereof. The Issuer has no taxing power.

At the time and place fixed for said public hearing all who appear will be given an opportunity to express their views for or against the proposal to approve said Bonds and the plan of finance. Prior to said public hearing, written comments may be delivered to the City Manager of the City of Gulf Breeze, Florida, at 1070 Shoreline Drive, Gulf Breeze, Florida, 32561. All persons are advised that, if they decide to appeal any decision made by the City with respect to any matter considered at this meeting, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. All interested persons are invited to present their comments at the time and place set forth above.

Following the hearing, a report concerning this public hearing will be submitted to the applicable elected representative responsible for approving the issuance of the Bonds.

In accordance with the Americans with Disabilities Act, persons in need of a special accommodation to participate in the proceedings shall contact the telephoné operator at City Hall, 1070 Shoreline Drive, Gulf Breeze, Florida 32561, 850-934-5115, at least 48 hours in advance of the meeting, excluding Saturday and Sunday.

LEGAL 4033

Gulf Breeze News

12/24/15

Plaintiffs,

vs.

LINDA C. CONNOR & JAMES E.
LEONARD,

Defendants.

Case No.: 2014 CA 1149

**SECOND AMENDED NOTICE
OF FORECLOSURE SALE**

Notice is hereby given that on **January 19, 2016**, at **11:00 a.m.** CST/12:00 p.m. EST, at www.santarosa-realforeclose.com, Donald C. Spencer, Clerk of the Santa Rosa Circuit Court, will offer for sale and sell at public outcry, one by one, to the highest bidder for cash, the property located in Santa Rosa County, Florida, as follows:

Commence at a PK nail and disc (#1748) at the Northeast corner of The NW 1/4 of Section 17, Township 1 North, Range 28 West, Santa Rosa County, Florida, thence S 00 degrees 35 minutes 50 seconds along the E line of said NW 1/4 of Section 17 a distance of 1016.77 feet to the Point of Beginning; thence continue S 00 degrees 35 minutes 50 seconds E along said E line of the NW 1/4 a distance of 210.00 feet; thence S 89 degrees 25 minutes 21 seconds W a distance of 420.83 feet, thence N 00 degrees 41 minutes 38 seconds W a distance of 210.00 feet, thence North 89 degrees 25 minutes 21 seconds E a distance of 421.18 feet to the Point of Beginning. Said parcel being in area 2.03 acres, more or less subject to a 12 feet wide ingress/egress easement along the E line of said parcel along and together with a 12 feet wide strip of land to be used for ingress/egress purposes, being more particularly described as follows: Commence at a PK nail and disc (#1748) at the NE corner of the NW 1/4 of Section 17, Township 1 North, Range 28 West, Santa Rosa County, Florida, thence S 00 degrees 35 minutes 50 seconds E along the E line of said NW 1/4 of Section 17 a distance of 1016.77 feet to the Point of Beginning; thence continue S 00 degrees 35 seconds 50 minutes E along E line of the NW 1/4 a distance of 1820.00 feet to the SE corner of said NW 1/4 of Section 17; thence S 89 degrees 25 minutes 21 seconds W along the S line of said NW 1/4 of Section 17 a distance of 12.00 feet; thence run N 00 degrees 35 minutes 50 seconds W a distance of 1620 feet; thence N 89 degrees 25 minutes 21 seconds E a distance of 12.00 feet to the Point of Beginning. Subject to the right-of-way limits of a paved county road along the South line thereof.

pursuant to the Final Judgment of Foreclosure entered on August 4, 2015, in the above-styled cause, pending in said Court.

Any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the sale, must file a claim within 60 days after the sale.

If you are a person with a disability who needs any accommodation in order to participate in a court proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Court Administration, ADA Liaison Santa Rosa County 6865 Caroline Street Milton, FL 32570 Phone (850)623-3159 Fax (850)983-0602 ADA.SantaRosa@fcourts1.gov at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

MICHAEL D. TIDWELL, ESQUIRE

Michael D. Tidwell, P.A.
Florida Bar No.: 0899887
mtidwell@emeraldcoasttitle.com
DOUGLAS D. TIDWELL, ESQUIRE
Michael D. Tidwell, P.A.
Florida Bar No.: 115624
dtidwell@emeraldcoasttitle.com
811 N. Spring Street
Pensacola, Florida 32501
(850) 434-3223 - Phone
(850) 434-3822 - Fax
Attorney for Plaintiffs

LEGAL 40002

Gulf Breeze News

2x 12/17/15

**EXHIBIT "C" TO REPORT OF HEARING OFFICER
AOF GARDEN GATE FW, LLC, AND AOF GARDEN GATE PLANO, LLC**

**MINUTES OF COUNCIL MEETING INCLUDING
PUBLIC HEARING ON FILE WITH CITY CLERK**

EXHIBIT "B" TO RESOLUTION

AMENDMENT NO. 65 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 65 TO INTERLOCAL AGREEMENT** (this "Amendment No. 65") is made and entered into as of the 13th day of January, 2016, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, pursuant to an Interlocal Agreement dated as of August 2, 1999, as amended by Amendments No. 1 through No. 64 (collectively, the "Enabling Agreement"), the Parties hereto have heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, AOF Garden Gate FW, LLC, and AOF Garden Gate Plano, LLC, each a Texas limited liability company, or one or more of its affiliates (as applicable, collectively, the "Borrower"), has represented to the Agency that, acting for themselves or through their affiliates, they are engaged in, among other things, the acquiring, constructing, renovating, and equipping of multi-family rental housing facilities; and

WHEREAS, on October 28, 2015, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount not to exceed \$35,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series, either taxable or tax-exempt, or both, from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of financing or refinancing, including through reimbursement, the acquisition, construction, renovation, and equipping of the Projects, including related facilities, fixtures, furnishings, and equipment, described in Schedule I attached hereto, which, by this reference thereto, is incorporated herein (the "Projects"); and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an

amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 65 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing, including through reimbursement, for the Projects;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. AMENDMENT OF ENABLING AGREEMENT APPROVED.

This Amendment No. 65 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Projects.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of Bonds from time to time, in one or more series, either taxable or taxable-exempt, or both, in an aggregate principal amount not to exceed \$35,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing, including through reimbursement, of the Projects). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing, including through reimbursement, of the Projects through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform the purposes stated in the Articles of Incorporation of the Agency to authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of the programs or projects, payments by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or of Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule II attached hereto, which, by this reference thereto, is incorporated herein.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 65 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 65, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify and defend Century and hold Century harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 65, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorneys' fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and of Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 65 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Matt E. Dannheisser, Mayor

ATTEST:

By: _____
Stephanie D. Lucas, City Clerk

[Signature Page to Amendment No. 65 to Interlocal Agreement]

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

[Signature Page to Amendment No. 65 to Interlocal Agreement]

SCHEDULE I TO EXHIBIT B OF RESOLUTION

Project Description

The Projects consist of the acquisition, construction, renovation, and equipping of each of the following multi-family rental housing facilities for persons of low and moderate income, including related facilities, fixtures, furnishings, and equipment:

BORROWER/PROPERTY NAME/ADDRESS	CITY	COUNTY	STATE	SIZE (UNITS)
AOF Garden Gate FW, LLC Garden Gate Apartments 6901 North Beach Street Fort Worth, Texas 76137	Fort Worth	Tarrant County	Texas	240
AOF Garden Gate Plano, LLC Garden Gate Apartments 1201 Legacy Drive Plano, Texas 75023	Plano	Collin County	Texas	240

SCHEDULE II TO EXHIBIT B OF RESOLUTION

Payment to Century

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE I

PROJECT DESCRIPTION

The Projects consist of the acquisition, construction, renovation, and equipping of each of the following multi-family rental housing facilities for persons of low and moderate income, including related facilities, fixtures, furnishings, and equipment:

BORROWER/PROPERTY NAME/ADDRESS	CITY	COUNTY	STATE	SIZE (UNITS)
AOF Garden Gate FW, LLC Garden Gate Apartments 6901 North Beach Street Fort Worth, Texas 76137	Fort Worth	Tarrant County	Texas	240
AOF Garden Gate Plano, LLC Garden Gate Apartments 1201 Legacy Drive Plano, Texas 75023	Plano	Collin County	Texas	240



City of Gulf Breeze

MEMORANDUM

To : Mayor and City Council

From :  Edwin A. Eddy, City Manager

Date : January 15, 2016

Subject: Resolution 02-16, Supplemental Financing for Silver Creek, St. Augustine

In order to obtain additional information on this project to answer the questions raised at the Executive Session, we contacted Ed Gray, Executive Director of Capital Trust Agency. Mr. Gray advises that the request for supplemental financing for Silver Creek, St. Augustine, is due to increased costs to complete the project. The developers and current bond holders as investors in the project have tabulated all remaining costs and have asked for an increase in the original financing by an amount not to exceed \$12,000,000 to address unforeseen costs that were only estimated in the original financing.

This is an unusual request in Capital Trust Agency financings. It is analogous to a bank making a loan for a home or business that ends up being short of what is needed to complete project. More money is needed for completion. Capital Trust Agency has been asked to issue more bonds to finance the added cost.

The preliminary plan of finance for the supplemental issuance was approved by the Capital Trust Agency Board. The supplemental issuance will not occur unless the Capital Trust Agency Board gives final approval of the financing plan subsequent to Council approval.

RECOMMENDATION:

THAT THE CITY COUNCIL ADOPT RESOLUTION 02-16 APPROVING A SUPPLEMENTAL ISSUANCE OF CAPITAL TRUST AGENCY BONDS NOT TO EXCEED \$12,000,000 FOR SILVER CREEK, ST. AUGUSTINE, AND AUTHORIZE THE MAYOR TO SIGN AMENDMENT NO. 66 TO INTERLOCAL AGREEMENT.

RESOLUTION NO. 2-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A SUPPLEMENTAL PLAN OF FINANCE IN ORDER TO FINANCE OR REFINANCE, INCLUDING THROUGH REIMBURSEMENT, THE COSTS OF THE COMPLETION OF THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE HEREIN DESCRIBED SENIOR LIVING FACILITY AND TO PROVIDE FOR CERTAIN WORKING CAPITAL FOR THE STARTUP THEREOF; APPROVING THE ISSUANCE OF NOT EXCEEDING \$12,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM IN CONNECTION THEREWITH; APPROVAL OF A HEREIN DESCRIBED AMENDMENT TO INTERLOCAL AGREEMENT CREATING THE CAPITAL TRUST AGENCY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida (the "State"), has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendment No. 1 through No. 65 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and public agency of the State, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 duly enacted by the City Council, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing and refinancing, including through reimbursement, certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, on November 4, 2013, the City Council adopted Resolution No. 27-13 (the "City Authorizing Resolution"), approving (i) a plan of finance (the "Plan of Finance") for the costs of the acquisition, construction, installation and equipping of a Senior Living Facility (as herein defined) by Silver Creek St. Augustine LLLP, a Florida limited liability limited partnership (the "Borrower"); (ii) the issuance by the Agency of revenue bonds in an approximate amount of \$37,500,000 for the purpose of financing such Senior Living Facility, (iii) an amendment to the Enabling Agreement providing for such approvals, and (iv) the Plan of Finance therein described for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, on May 29, 2014, the Agency issued its \$28,615,000 Capital Trust Agency First Mortgage Revenue Bonds (Silver Creek St. Augustine Project), Series 2014A, which was the

first issue of tax-exempt bonds issued pursuant to the Plan of Finance, and its \$1,000,000 Capital Trust Agency First Mortgage Revenue Bonds (Silver Creek St. Augustine Project), Taxable Series 2014B, and loaned the proceeds thereof to the Borrower for the primary purpose of financing and refinancing the acquisition, construction and equipping of a senior assisted living and memory support facility in unincorporated St. Johns County, Florida, to be known as "Silver Creek St. Augustine", consisting of approximately 72 assisted living units and 48 memory support units (the "Senior Living Facility"); and

WHEREAS, the Borrower has requested the Agency issue additional revenue bonds in one or more series, either taxable or tax-exempt, or both, from time to time in an aggregate principal amount of not exceeding \$12,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized) (collectively, the "Bonds"), provided that any tax-exempt Bonds to be issued shall be issued in an aggregate principal amount not exceeding \$8,885,000 as the second issue of tax-exempt bonds issued pursuant to the Plan of Finance approved by the City Council pursuant to the City Authorizing Resolution, to finance the completion of the Senior Living Facility on behalf of the Borrower and to provide certain working capital for the startup thereof (collectively, the "Supplemental Plan of Finance"); and

WHEREAS, the proposed Senior Living Facility is appropriate to the needs and circumstances of the community in which it will be located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of the local community, (ii) promoting commerce within the State, (iii) serving a public purpose by providing safe, decent and accessible housing facilities for the elderly, and (iv) advancing the economic prosperity and the general welfare of the State and its people; and

WHEREAS, in order to advance and further the public purposes set forth in the Act, it is necessary and in the public interest to facilitate the implementation of the Plan of Finance and the Supplemental Plan of Finance without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and the Supplemental Plan of Finance and to grant all other approvals required by the Enabling Agreement, as amended, and the Original Resolution in connection with the issuance and sale of the Bonds;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. BONDS AND SUPPLEMENTAL PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Supplemental Plan of Finance and the issuance of the Bonds. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, such interlocal agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Supplemental Plan of Finance, the financing, including through reimbursement, of the completion of the Senior Living Facility and to provide certain working capital for the startup thereof through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued, including, without limitation, the Amendment (hereinafter defined). No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 2. AMENDMENT TO THE ENABLING AGREEMENT APPROVED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of Amendment No. 66 to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "A," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, his execution thereof to conclusively establish such approval.

SECTION 3. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

[Remainder of Page Intentionally Left Blank]

SECTION 4. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 19th day of January, 2016.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Matt E. Dannheisser, Mayor

ATTEST:

By: _____
Stephanie D. Lucas, City Clerk

EXHIBIT "A" TO RESOLUTION
AMENDMENT NO. 66
OF THE ENABLING AGREEMENT

This **AMENDMENT NO. 66 TO INTERLOCAL AGREEMENT** (this "Amendment No. 66") is made and entered into as of the 19th day of January, 2016, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, pursuant to an Interlocal Agreement dated as of August 2, 1999, as amended by Amendments No. 1 through No. 65 (collectively, the "Enabling Agreement"), the Parties hereto have heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, on November 18, 2013, the Parties entered into Amendment No. 40 to Interlocal Agreement approving (i) a plan of finance (the "Plan of Finance") for the costs of the acquisition, construction, installation and equipping of a Senior Living Facility (as herein defined) by Silver Creek St. Augustine LLLP, a Florida limited liability limited partnership (the "Borrower"); (ii) the issuance by the Agency of revenue bonds in an approximate amount of \$37,500,000 for the purpose of financing such Senior Living Facility, and (iii) approving a loan program more fully described therein; and

WHEREAS, on May 29, 2014, the Agency issued its \$28,615,000 Capital Trust Agency First Mortgage Revenue Bonds (Silver Creek St. Augustine Project), Series 2014A, which was the first issue of tax-exempt bonds issued pursuant to the Plan of Finance, and its \$1,000,000 Capital Trust Agency First Mortgage Revenue Bonds (Silver Creek St. Augustine Project), Taxable Series 2014B, and loaned the proceeds thereof to the Borrower for the primary purpose of financing and refinancing the acquisition, construction and equipping of a senior assisted living and memory support facility in unincorporated St. Johns County, Florida, to be known as "Silver Creek St. Augustine", consisting of approximately 72 assisted living units and 48 memory support units (the "Senior Living Facility"); and

WHEREAS, the Borrower has requested the Agency issue additional revenue bonds in one or more series, either taxable or tax-exempt, or both, from time to time in an aggregate principal amount of not exceeding \$12,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized) (collectively, the "Bonds"), provided that any tax-exempt Bonds to be issued shall be issued in an aggregate principal amount not exceeding \$8,885,000 as the second issue of tax-exempt bonds issued pursuant to the Plan of Finance approved by the Parties, to finance the completion of the Senior Living Facility on behalf of

the Borrower and to provide certain working capital for the startup thereof (collectively, the "Supplemental Plan of Finance"); and

WHEREAS, the Agency anticipates taking official action to implement the Supplemental Plan of Finance by providing authorization for a loan program (the "Program") to assist the Borrower in the financing herein described, thereby realizing the economies of scale, enhanced bargaining power with banks and credit enhancement providers and other benefits attendant to a large financing with an established issuer of municipal securities; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 66 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing, including through reimbursement, for the completion of the Senior Living Facility and to provide for certain working capital for the startup thereof;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. AMENDMENT OF ENABLING AGREEMENT APPROVED.

This Amendment No. 66 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Senior Living Facility.

SECTION 2. BONDS, PROGRAM, SUPPLEMENTAL PLAN OF FINANCE APPROVED.

The Parties do hereby approve the Supplemental Plan of Finance and the Program and authorize the Bonds and the issuance of the Bonds from time to time, in one or more series, either taxable or tax-exempt, or both, in an aggregate principal amount of not to exceed \$12,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing herein authorized). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue.

The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing, including through reimbursement, of the completion of the Senior Living Facility and to provide for certain working capital for the startup thereof, through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform the purposes stated in the Articles of Incorporation of the Agency to authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of the programs or projects, payments by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or of Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule I attached hereto, which, by this reference thereto, is incorporated herein.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 66 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 66, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify and defend Century and hold Century harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 66, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the

Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and of Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 66 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Matt E. Dannheisser, Mayor

ATTEST:

By: _____
Stephanie D. Lucas, City Clerk

[Signature Page to Amendment No. 66 to Interlocal Agreement]

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

[Signature Page to Amendment No. 66 to Interlocal Agreement]

SCHEDULE I

Payment to Century

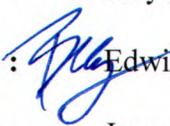
\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.



City of Gulf Breeze

MEMORANDUM

To : Mayor and City Council

From :  Edwin A. Eddy, City Manager

Date : January 15, 2016

Subject: Resolution 03-16, Declaring the Necessity of Eminent Domain Relative to the Extension of Catawba Street

The shore of Pensacola Bay is held in trust by the State for the use and enjoyment of the general public under the Public Trust Doctrine. Perpendicular access to the shore is essential to the public's exercise of such rights. The City's Coastal Management and Recreational and Open Space Elements of its Comprehensive Plan and together with its land development regulations require the City to provide for, preserve, and protect public access to the beaches within the City.

City staff has evaluated the availability of alternatives, including alternative routes, the cost, environmental factors, long range area planning, and safety concerns and has concluded that there are no other better alternatives to provide for, preserve, and protect public access to the beach and shore of Pensacola Bay in this area.

The City has been involved in a lengthy and complicated legal dispute with property owners on either side of Catawba Street. Attached is a copy of a summary of the case as well as a recent ruling by the Circuit Court which found that the deed to the parcel between the end of the Catawba Street right-of-way and the mean high water line was canceled.

To a lay person this ruling means that the many members of the public that used the Catawba right-of-way to gain access to waters of the State of Florida can no longer do so without traversing private property.

The City Council discussed two responses to this ruling. One is to appeal the Court's ruling and the second is to take the property west of the end of the Catawba right-of-way by eminent domain. These options can be pursued together or separately. We recommend pursuing option two as it is a definitive and potentially immediate answer to the question of public access to the water.

In order to commence the process of eminent domain, the City Council must adopt a resolution establishing the necessity of taking the property. The taking of the property is a necessity for the following reasons:

-
1. There are many Gulf Breeze citizens that use the Catawba right-of-way to gain access to the waters of the State. Unless the City takes the parcels of property between the Catawba right-of-way and the mean high water line, citizens attempting to gain access to waters of the State may be traversing private property. Public access to the waters of the State is very limited in Gulf Breeze. The City was unable to find any alternate routes to the waters of the State to serve the citizens in this area of the City.
 2. The City has maintained the Catawba right-of-way and advised citizens through posting of signs and other means that public access to the waters of the State was available at this location because it is regularly used by citizens for a multitude of purposes. If the right-of-way was not maintained, it may result in safety concerns for those of the general public who use it.
 3. Unless the City takes the property, citizens using the right-of-way would have reason to believe they could access the water and would be subject to using property not properly maintained for this purpose. For example, the City previously installed stairs on the property beyond the end of the Catawba right-of-way to make it safer for citizens to negotiate a drop off on the parcel west of the end of the Catawba right-of-way. These steps have been removed. The City plans to replace those steps for the safety of the general public and minimize any negative impact caused by public access to the shoreline.
 4. The Catawba right-of-way provides a place where many citizens have gained access to the water over many years. The Catawba right-of-way is one of two access points to the waters of the State on the west face of Gulf Breeze. Citizens walk from this access point to the other or simply wade at the end of Catawba Street. There is very limited parking adjacent to either access point meaning that both are essential. The elimination of access to the water at Catawba would create a burden at the other access point.
 5. The public belief is clearly established that the Catawba right-of-way is available for access to the water. To undo this belief would be impossible.
 6. It is the long range plan of the City to construct a natural walkway, with mulch, crushed rock, etc., to create a promenade that better directs foot traffic through the right-of-way and thus minimizes the impact on the otherwise natural environment of the right-of-way. Additionally, the City will continue to maintain the newly built staircase both for the safety of the general public and again to minimize the impact on the otherwise natural environment around the staircase. Furthermore, at the foot of the staircase, the City will construct a natural grass deck with benches not only to enhance the natural aesthetic near the water but also to enhance the general public's ability to enjoy this right-of-way. Finally, as mentioned earlier, a staircase

to the bench would be constructed for the safety of the general public and minimize the impact of public access to the shoreline.

RECOMMENDATION:

THAT THE CITY COUNCIL ADOPT RESOLUTION 03-16 ESTABLISHING THE NECESSITY OF TAKING THE QUIET TITLE PARCELS BETWEEN THE CATAWBA RIGHT-OF-WAY AND THE WATERS OF THE STATE OF FLORIDA.



GALLOWAY
JOHNSON
TOMPKINS
BURR AND
SMITH

Texas ■ Louisiana ■ Missouri ■ Mississippi ■ Alabama ■ Florida ■ Georgia

BENJAMIN J. ZIMMERN
Licensed in Florida and Alabama
bzimmer@gallowayjohnson.com

118 E. Garden Street
Pensacola, Florida 32502
Tel: 850-436-7000
Fax: 850-436-7099
www.gjtbs.com

October 21, 2015

**THIS DOCUMENT CONTAINS PRIVILEGED INFORMATION AND WAS PREPARED EXCLUSIVELY FOR
CIVIL LITIGATION**

Edwin A. Eddy
City Manager – City of Gulf Breeze
1070 Shoreline Drive
Gulf Breeze, FL 32561
eaeddy@gulfbreezefl.gov

Re: Reese/Peters v. City of Gulf Breeze

Buz:

I wanted to provide a brief overview of the history of this dispute as well as an update on the litigation. The fundamental underlying subject of the lawsuit is whether the public can continue to use the area at the end of the Catawba right of way to access the water. The Catawba right of way is 50 feet wide and stops approximately 15 feet from the water's edge. The Peters and John Reese own the lots adjacent to the Catawba right of way. The disputed property has gone by several names: The Plaintiffs refer to it as the "Quiet Title Parcel" and the City has referred to it as the "Catawba Extension." Regardless of the name it is that last 15 feet from the end of Catawba right of way to the water in dispute. Photographs of the area have been incorporated at the end of this document for your review.

History of the Subdivision

In December 1950, the plat of Casablanca Parcel No. 2 subdivision (the "Subdivision") was dedicated and included a public park called "Sand Beach Park." There were no "waterfront" lots as Sand Beach Park existed between the platted lots and the mean high water mark of Santa Rosa Sound. On the plat there is a dedication that the streets and the parks were dedicated to the public. Dedicated property is not owned by the City, rather the City has the absolute and complete right to use the property that is subject to the dedication. The actual ownership of the

area is maintained by the adjacent property owner. Unfortunately, the dedication was never accepted by the County.

In September 1951, an Amended Plat was dedicated. The Amended Plat created Eufala Street which bisected Lots 13-21; the Northern Lots were renumbered 13-B through 21-B and the Southern Lots were renumbered 13-A through 21-A. The Amended Plat also created Catawba Street between Lots 14 and 15 which terminated at the boundary of Sand Beach Park, it does not extend all the way to the water. The Amended Plat and its dedication of streets and parks was accepted by the County. As a result the City was granted a right of way over Catawba Street as drawn on the Amended Plat. Although Catawba Street is a paved road between Fairpoint and Eufaula Street, south of Eufaula Street it remains unpaved. As shown in the photographs wooden barricades and several signs have been posted by the City over the years at the intersection.

In September 1962, the developer of the Subdivision recorded a Quit Claim Deed which transferred Sand Beach Park to the upland property owners in the subdivision. This Quit Claim effectively dissolved Sand Beach Park and gave the property to the upland owners. There was some dispute over the next 18 years as the impact of that deed. The City's position was that Sand Beach Park had been dedicated prior to the deed and that the public had been using the park area. In 1979, several property owners from the Subdivision filed suit against the City trying to establish their ownership in the Park. The Santa Rosa Court ultimately ruled in the landowner's favor and the City unsuccessfully appealed the decision. The decision does not expressly address the impact of the Deed on the Catawba right of way. After that decision the City has maintained that the public has no right to access the Park, except for the area immediately below Catawba Street.

Litigation

The Peters purchased their property in 1983 and Mr. Reese purchased his in 1976. In 2013, after decades of public use of the Catawba Right of Way and the Catawba Extension the Peters and Mr. Reese filed suit against the City. The City has also filed a counterclaim. There are several legal causes of action asserted, but the issues can be distilled into two main theories: 1) ownership of the Catawba Extension and 2) the existence of an easement over the Catawba Extension in favor of the public.

On the first issue, the City's position was that the Catawba Extension was still owned by the same individuals who owned the Peters and Reese's Lots at the time of the 1962 Quit Claim Deed. The foundation for this argument was that the deeds issued after 1962 did not expressly transfer the Catawba Extension to the Peters or Mr. Reese. In 2013, the City purchased the eastern half of the Catawba Extension from the daughter of the Pattersons who owned the Peters Lot in 1962. The ownership issue was decided by the Court earlier this month in favor of the

Plaintiffs. The Plaintiffs' argument was that without an express intent to exclude the Extension the entire property was transferred. That decision can be appealed.

The second issue is the existence of a prescriptive easement over the Catawba Extension. Similar to adverse possession, a prescriptive easement can be established by continually using the property for 20 years without the owners consent. If established, the judge would give the City the minimum amount of property necessary to accomplish the prescriptive use. The test to establish a prescriptive easement is difficult, but there is evidence to support the claim. The City would present evidence and testimony of the usage of the Catawba Extension over the years from both City staff as well as residents of Gulf Breeze who use the Extension.

As always, we stand ready to discuss this matter further at your convenience.

Sincerely,

Benjamin J. Zimmern

Benjamin J. Zimmern

Enclosure



Ex. 1 – Overview of Gulf Breeze – with area of dispute highlighted



Ex. 2 – Closer satellite view of disputed area.



Ex. 3 – Amended Plat showing Catawba Street superimposed over satellite view.



Ex. 4 – Looking up at Extension from beach.



Ex. 5 – Looking toward intersection of Catawba and Eufaula.



Ex. 6 – Looking down Catawba right of way towards water.

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA**

**JOHN LANCE REESE, PETER PETERS
and MITZI PETERS, as Trustees of the
Peters Living Trust Dated September 9, 2010,**

Plaintiffs,

vs.

Case No.: 2013-CA-000838

**THE CITY OF GULF BREEZE, a municipal
corporation, and ELIZABETH A. GREER,
Individually and as Trustee as identified under
The Last Will and Testament of Mary J. Patterson
a/k/a Mary Elizabeth Patterson,**

Defendants.

**ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
THE EFFECT OF THE GREER QUITCLAIM DEED AND DEFENDANT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

THIS CAUSE came before the Court upon the Plaintiffs' Motion for Partial Summary Judgment as the Effect of the Greer Quitclaim Deed filed on July 28, 2015 and the Defendant City of Gulf Breeze's¹ Motion for Partial Summary Judgment filed on July 15, 2015. The Court held a hearing on these motions on September 28, 2015. The Court, having considered the motions and all documents filed in support thereof and in opposition thereto, the arguments of counsel, the applicable law and being otherwise fully advised in the premises, finds as follows:

1. The subject of the instant motions is the deed recorded November 15, 2013 in Official Records Book 3304, Page 70 of the Santa Rosa County public records (hereafter, the "Greer Deed"). In that recorded deed, Defendant Elizabeth Greer, Individually and as Trustee as identified under the Last Will and Testament of Mary J. Patterson a/k/a Mary Elizabeth Patterson

¹ Hereafter, "City"

(hereafter "Greer"), conveyed unto the City any and all interest which Greer held at that time in the following described real property:

BEGINNING AT A 1/2" CAPPED IRON ROD, NUMBER 7174, MARKING THE SOUTHWESTERLY CORNER OF LOT 15A, BLOCK 36, CASABLANCA SUBDIVISION, PARCEL NO. 2, A RESUBDIVISION OF LOTS 13-21 INCLUSIVE OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, AS RECORDED IN PLAT BOOK "A", AT PAGE 86A, OF THE PUBLIC RECORDS OF SANTA ROSA COUNTY, FLORIDA; THENCE GO SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF THE WESTERLY LINE OF SAID LOT FOR DISTANCE OF 15.00 FEET TO A POINT HEREINAFTER REFERED TO AS POINT "A", THENCE CONTINUE SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF THE WESTERLY LINE OF SAID LOT FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO THE INTERSECTION WITH THE MEAN HIGH WATER LINE OF SANTA ROSA SOUND; THENCE MEANDER NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE TO AN INTERSECTION WITH A PROJECTION OF THE CENTERLINE OF CATAWBA ST. (50' R/W); THENCE DEPARTING SAID MEAN HIGH WATER LINE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID CENTERLINE, FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO A POINT HEREINAFTER REFERED TO AS POINT "B", SAID POINT "B" LYING NORTH 48 DEGREES 53 MINUTES 08 SECONDS WEST FOR DISTANCE OF 25.14 FEET FROM THE AFORESAID POINT "A"; THENCE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID CENTERLINE FOR A DISTANCE OF 13.00 FEET TO THE INTERSECTION WITH THE WESTERLY PROJECTION OF THE SOUTH LINE OF SAID LOT; THENCE GO SOUTH 53 DEGREES 27 MINUTES 00 SECONDS EAST ALONG THE WESTERNLY PROJECTION OF THE SOUTHERLY LINE OF SAID LOT FOR A DISTANCE OF 25.03 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL IS SITUATED IN SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, SANTA ROSA COUNTY, FLORIDA AND CONTAINS 0.01 ACRES MORE OR LESS.

(hereafter, the "Peters Quiet Title Parcel")

2. The Peters Quiet Title Parcel comprises a portion of the strip of land originally offered for dedication as "Sand Beach Park" under the 1950 Casablanca subdivision plat. However, the dedication offer was revoked by the quitclaim deed recorded September 11, 1962 in Official Records Book 45, Page 227 of the Santa Rosa County public records (hereafter, the "1962 Deed"). See *Santa Rosa County v. Pollak*, 418 So. 2d 300 (Fla. 1st DCA 1982).

3. The Plaintiffs request this Court grant partial summary judgment in their favor as to Count III of the first amended complaint, which seeks the equitable remedy of cancelation of the Greer Deed. *See St. Lucie Estates v. Nobles*, 141 So. 314 (Fla. 1932); *International Realty Associates, Inc. v. McAdoo*, 99 So. 117 (Fla. 1924).

4. On the other hand, the City claims ownership of the Peters Quiet Title Parcel under the Greer Deed. Specifically, the City contends that Plaintiffs are owners of Lot 15A in the Casablanca subdivision but not the additional unplatted parcel of land between Lot 15A and the high water mark of Santa Rosa Sound. To support this contention, the City relies on the fact that the summary final judgment in *Pollack vs. The City of Gulf Breeze* delineated two separate parcels as to each plaintiff and intervenor named therein. The City argues that because the Plaintiffs' predecessor in interest did not specifically convey the unplatted parcel at issue, the City asserts ownership of it by virtue of the Greer Deed and requests this Court find the Plaintiffs lack ownership rights to it.

5. The Court does not agree with the City's contention. The Court finds that at all times relevant to these proceedings the Peters Quiet Title Parcel, including the waterfront area described by metes and bounds in the first amended complaint as

The unplatted parcel of land lying between said Lot 15A as shown on the above-described plat and the waterline and the boundaries of the property of this parcel are: the Southerly boundary line of Lot 15A, the extension of the Easterly and Westerly boundary lines of said Lot 15A to the high water mark and the Southerly boundary line shall be the high water mark of the water. This said land may be more particularly described as lying and being between the Southerly line of said Lot 15A, and the high water mark, and between the extensions of the Easterly and Westerly lot lines to the water, of Lot 15 A

has been owned and conveyed in conjunction with the parcel of land known as

Lot 15A, Block 36, Casablanca Subdivision, Parcel No. 2, a portion of Section 6, Township 3 South, Range 29 West, according to plat recorded in Plat Book "A" at Page 86-A of the public records of Santa Rosa County, Florida.

(hereafter, collectively, “Lot 15A”)

6. The Court bases this finding upon the unambiguous language contained in the 1962 Deed which necessarily includes and pertains to Lot 15A. The 1962 Deed expressly states the grantors’ intent “to remove all doubt as to the title and accompanying riparian right in certain supposedly waterfront lots in various parcels of Casablanca Subdivision.” The 1962 Deed clearly and specifically was intended to “vest title in unplatted parcels of land in the individual adjacent lot owner with full riparian attendant thereto, with the limits of each owner’s ownership being delineated by **an extension of his lot lines to the water.**” (emphasis added). Therefore, the Court finds that the 1962 Deed effectively clarified any uncertainty as to the ownership of the unplatted parcels of land at issue by extending the lot lines of each adjacent owner to the water (Santa Rosa Sound).

7. The Court’s finding is not inconsistent with the summary final judgment in *Pollak v. The City of Gulf Breeze* (Santa Rosa County consolidated case numbers 80-C-198, 80-C-250, 80-C-296). As the First District Court of Appeal stated in affirming the judgment, “This suit involves only public rights to the property known as Sand Beach Park and **does not involve or adjudicate private rights of lot owners in the subdivision.**” *Santa Rosa County v. Pollak*, 418 So. 2d at 303.

8. The City relies much on the fact that the 1980 summary final judgment delineated two separate parcels for each applicable plaintiff and intervenor. However, the mere fact that the Circuit Judge who authored the 1980 summary judgment choose to describe the property at issue in two parts did not actually create a division in the relevant lots. The Court’s 1980 order simply vindicated the rights of the private land owners by virtue of the 1962 Deed against the City’s claim under the 1950 plat. Indeed, the 1962 Deed still is the applicable instrument for resolving

the issues presented. The 1980 summary judgment did not supplant or alter the 1962 Deed in any way.

9. Furthermore, the Plaintiffs' predecessor in interest was not a party to *Pollak v. The City of Gulf Breeze*. Thus, to the extent the 1980 summary judgment may have the appearance of creating some ambiguity regarding whether the parcels described in the judgment had been divided into two parts, the judgment does not create any confusion as to Lot 15A because it was not described in the 1980 order at all, much less in any way that could be construed as a judicial declaration that Lot 15A had been "divided" by judicial decree.

10. Accordingly, the Court finds that Lot 15A (including the land purportedly conveyed by the Greer Deed) was conveyed by each of the following instruments:

- Warranty deed dated December 8, 1980 executed and delivered by Charles A. Patterson and Mary J. Patterson to Donald T. Greer and Elizabeth A. White (n/k/a Elizabeth A. Greer)(*see* Santa Rosa Co. Official Records Book 529, Page 781)
- Warranty deed dated August 24, 1983, executed and delivered by Donald T. Greer and Elizabeth A. White (n/k/a Elizabeth A. Greer) to Peter G. Peters and Mitzi A. Peters (*see* Santa Rosa Co. Official Records Book 649, Page 127)
- Warranty deed dated September 9, 2010, executed and delivered by Peter G. Peters and Mitzi A. Peters to the Peters Living Trust (*see* Santa Rosa Co. Official Records Book 3040, Page 1156)

11. The Court finds that the Peters Quiet Title Parcel is part of Lot 15A as a matter of law. *See Walker v. Pollack*, 74 So. 2d 886, 887 (Fla. 1954); *New Fort Pierce Hotel Co for use of Carlton v. Phoenix Tax Title Corp.*, 171 So. 525, 526 (Fla. 1936); *Burns v. McDaniel*, 140 So. 314 (Fla. 1932); *Smith v. Horn*, 70 So. 435 (Fla. 1915); *Calvert v. Morgan*, 436 So. 2d 314, 315 (Fla. 1st DCA 1983).

12. The Peters Quiet Title Parcel was not expressly reserved or excepted from the conveyances described in paragraph 10, *supra*. Thus, title to the Peters Quiet Title Parcel passed

by operation of law in each of those conveyances. *See Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289 (Fla. 1956); *Joseph v. Duran*, 463 So. 2d 316 (Fla. 1st DCA 1983).

13. Greer did not expressly except or reserve the Peters Quiet Title Parcel from her conveyance to Peter and Mitzi Peters in the warranty deed dated August 24, 1983. Accordingly, Greer conveyed all of her interest in the Peters Quiet Title Parcel in 1983 and Greer retained no interest in the Peters Quiet Title Parcel. Because Greer held no interest in the Peters Quiet Title Parcel in 2013, the Greer Deed conveyed no property interest to the City.

14. The City holds no right, title or interest in the Peters Quiet Title Parcel under the Greer Deed as a matter of law. The Plaintiffs have demonstrated an entitlement to the equitable remedy of cancellation of the Greer deed. *See Langley v. Irons Land & Development Co.*, 114 So. 769 (Fla. 1927).

15. The Court finds that Greer Deed in a nullity, constitutes a cloud on title to the Peters Quiet Title Parcel, and is due to be delivered up, cancelled and removed from the public records of Santa Rosa County, Florida.

Accordingly, it is **ORDERED and ADJUDGED** that:

- (a) Plaintiffs' Motion for Partial Summary Judgment as to the Effect of the Greer Quitclaim Deed is hereby **GRANTED**;
- (b) The City's Motion for Partial Summary Judgment is hereby **DENIED**;
- (c) Lot 15A, Block 36, Casablanca Subdivision, Parcel No. 2, has as its southern boundary the mean high water line of Pensacola Bay (Santa Rosa Sound) and as its western boundary the centerline of Catawba Street right-of-way, subject to the right, if any, held by Defendant, City of Gulf Breeze, in the right-of-way, together

with a projection of the centerline of the Catawba Street right-of-way south to the mean high water line of Pensacola Bay (Santa Rosa Sound)

- (d) The City shall deliver to this Court for cancellation that certain deed recorded in Official Records Book 3304, Page 70, of the public records of Santa Rosa County, Florida; and
- (e) The Clerk of this Court shall cancel and remove the aforesaid deed from the public records of Santa Rosa County, Florida.

DONE and ORDERED in Chambers at Milton, Santa Rosa County, Florida on this

15th day of October, 2015.



JOHN F. SIMON, JR.
Circuit Judge

Copies furnished to:

William J. Dunaway, Esq.
Benjamin J. Zimmern, Esq.

PARCEL 101

RESOLUTION BY THE CITY OF GULF BREEZE, FLORIDA

RESOLUTION NO. 03-16

RESOLUTION BY THE CITY OF GULF BREEZE, FLORIDA: GRANTING THE AUTHORITY TO ACQUIRE CERTAIN PROPERTY NECESSARY TO PROVIDE PUBLIC USE AND ACCESS TO AND FROM THE PLATTED CATAWBA STREET RIGHT-OF-WAY AND THE SHORE OF PENSACOLA BAY; DECLARING THE NEED TO EXERCISE EMINENT DOMAIN POWERS TO ACQUIRE SAID PROPERTY FAILING AN AGREEMENT WITH THE LANDOWNER REGARDING THE AMOUNT OF COMPENSATION TO BE PAID FOR THE PROPERTY; SETTING FORTH THE USE, NECESSITY AND DESCRIPTION OF SAID PROPERTY; AUTHORIZING THE CITY ATTORNEY OR HIS DESIGNEE TO COMMENCE AND PROSECUTE ALL PROCEEDINGS NECESSARY FOR ACQUIRING SAID PROPERTY FOR THE PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, sections 163.3177(6)(a)3.c., 163.3177(6)(e) and 163.3177(6)(g), Florida Statutes, the Coastal Management and Recreation and Open Space Elements of the City of Gulf Breeze's Comprehensive Plan and the City's land development regulations require the City to provide for, preserve and protect public use of and access to beaches, and to preserve recreational use of waterfronts for water-dependent uses within the City;

WHEREAS, after consideration of the availability of alternatives, including alternative routes, the costs of the Project (as described in Section One below) environmental factors, long range area planning, and safety concerns (see, Schedule 2), and in order to provide for, preserve and protect public access to the beach and shore of Pensacola Bay, and to preserve recreational use of the waterfront for water-dependent uses along and adjacent to the south shore of the City of Gulf Breeze, the City has determined it is in the public interest to provide public use and access to and from the platted Catawba Street right-of-way and the shore of Pensacola Bay, and, in

connection therewith, to construct a staircase and observation deck and related improvements as specified hereafter, and has determined the property necessary for that use;

WHEREAS, the City of Gulf Breeze therefore desires to acquire such property necessary for that use by negotiation, contract, condemnation or otherwise;

WHEREAS, the City of Gulf Breeze has caused the property necessary for the Project to be located and surveyed;

WHEREAS, the City of Gulf Breeze has appropriated revenue for the Project and for the property to be acquired; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, SANTA ROSA COUNTY, FLORIDA, THAT:

SECTION ONE: GENERAL PROJECT DESCRIPTION

The Project consists of providing for, preserving and protecting public use of and access to the beach and shore of Pensacola Bay from the platted Catawba Street right-of-way starting at the southerly edge of said right-of-way and ending at the mean high water line of Pensacola Bay, and, in connection therewith, constructing, installing and maintaining a staircase and observation deck, fencing, benches, landscaping and other associated related improvements.

SECTION TWO: USE, NECESSITY AND DESCRIPTION OF PROPERTY

The City Council finds that a non-exclusive easement for the purposes and uses described in the attached Schedule I ("Parcel 101") is necessary for the Project and is being acquired for the public purpose of providing for, preserving and protecting public use of and access to the beach and shore of Pensacola Bay from the platted Catawba Street right-of-way, and, in connection therewith, constructing, installing and maintaining

a staircase and observation deck, fencing, benches, landscaping and other associated related improvements.

SECTION THREE: AUTHORITY

By virtue of the authority granted to the City of Gulf Breeze by Chapters 73, 74, and 166, Florida Statutes, and by all other statutory or common laws which grant to the City Council the power to proceed with acquiring property for a public use or purpose, the City Council hereby authorizes and directs the City Attorney or his designee to acquire Parcel 101 by negotiation, contract, eminent domain, or other lawful means, for the above-described public use or purposes necessary for the completion of the Project, and to take such other actions including the hiring of appraisers and other experts necessary thereto.

Likewise, City Council hereby authorizes and directs the City Attorney or his designee to bring and prosecute a petition in eminent domain in the name and on behalf of the City of Gulf Breeze to acquire Parcel 101 and to take all other action advisable or necessary to prosecute and defend the petition in eminent domain and related causes to conclusion.

SECTION FOUR: EFFECTIVE DATE

This Resolution is effective immediately.

DULY PASSED AND ADOPTED by the City Council of the City of Gulf Breeze, Santa Rosa County, Florida, this ____day of January, 2016.

AUTHENTICATION:

Matt E. Dannheisser, Mayor

Stephanie D. Lucas, City Clerk

APPROVED AS TO FORM: _____
Michael J. Stebbins, City Attorney

Date

VOTE:

Dannheisser	_____
Fitch	_____
Henderson	_____
Bookout	_____
Landfair	_____

Date filed with City Clerk: _____

SCHEDULE 1
(PERPETUAL NON-EXCLUSIVE EASEMENT TERM SHEET)

(PARCEL 101)

The following summarizes the easement interests and rights the City of Gulf Breeze (hereinafter the "City") shall acquire from the property owners/interest holders (hereinafter "Owner(s)") of certain real property as described in the attached legal description (Exhibit "A") and the obligations with which the City has agreed to comply with under said easement:

1. The Permanent Easement interests and rights acquired by the City are the non-exclusive and perpetual right, privilege and easement to provide for, preserve and protect public use of and access to the beach and shore of Pensacola Bay for riparian and recreational uses and, in connection therewith to construct, install, maintain, operate, inspect, repair and alter, (collectively, the "Beach and Shore Access and Use Operations") a staircase and observation deck, fencing, benches, landscaping and such other improvements as are reasonably necessary in connection with such uses (collectively, the "Beach and Shore Access and Use Facilities"), on, under, above, across, within and through the lands described on Exhibit "A."

2. Owner(s) may continue to use the Permanent Easement for any lawful purposes that do not interfere with the City's acquired rights; provided, however, that Owner(s) may not construct or permit to be constructed any building, structure, excavation or other improvement or obstruction, on, over, under, above, across, within or through the Permanent Easement which would interfere with the exercise by the City of its acquired easement rights, including its right of ingress to and egress from the Permanent Easement and the safe and efficient conduct of the Beach and Shore Access and Use Operations relating to the Beach and Shore Access and Use Facilities. The City will provide Owner(s), either upon Owner(s)'s request or at the City's option, a prior written determination that any particular exercise of the right to use the Permanent Easement area by Owner(s) does not interfere with the safe and efficient exercise of the City's rights, which determination shall not be arbitrarily or unreasonably withheld, delayed or conditioned.

4. The easement rights acquired by the City shall be in addition to, and not in lieu of any prior existing rights of the City. Nothing contained herein shall be deemed or construed to be a merger, release, waiver, modification or amendment of any rights or choses in action the City presently owns or holds, as reflected in instruments recorded in the official records of the county where this Permanent Easement, if any, are located, including, but not limited to rights-of-way or easements encumbering other portions of Owner(s)'s property.

5. The rights, benefits, burdens and obligations herein acquired, assumed by or imposed on the City and Owner(s), as the case may be, shall inure to, bind and oblige respectively Owner(s) and his, hers, its or their heirs, executors, administrators, personal representatives, successors and assigns, as well as the City and its successors and assigns.

EXHIBIT "A" TO SCHEDULE 1
(LEGAL DESCRIPTION OF PARCEL 101)

PARCEL 101A

BEGINNING AT A 1/2" CAPPED IRON ROD, NUMBER 7174, MARKING THE SOUTHEASTERLY CORNER OF LOT 14A, BLOCK 36, CASABLANCA SUBDIVISION, PARCEL NO. 2, A RESUBDIVISION OF LOTS 13-21 INCLUSIVE OF SECTION 6; TOWNSHIP 3 SOUTH, RANGE 29 WEST, AS RECORDED IN PLAT BOOK "A", AT PAGE 86A, OF THE PUBLIC RECORDS OF SANTA ROSA COUNTY, FLORIDA; THENCE GO SOUTH 47 DEGREES 58 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF THE SOUTHERLY LINE OF SAID LOT FOR A DISTANCE OF 25.27 FEET TO AN INTERSECTION WITH THE CENTERLINE OF CATAWBA ST. (50' R/W); THENCE GO SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF SAID CENTERLINE FOR A DISTANCE OF 13.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", THENCE CONTINUE SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF SAID CENTERLINE FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO THE INTERSECTION WITH THE MEAN HIGH WATER LINE OF SANTA SOUND; THENCE MEANDER NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE TO AN INTERSECTION WITH A PROJECTION THE EASTERLY LINE OF THE AFORESAID LOT 14A; THENCE DEPARTING SAID MEAN HIGH WATER LINE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID EASTERLY LOT LINE, FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO A POINT HEREINAFTER REFERRED TO AS POINT "B", SAID POINT "B", LYING NORTH 52 DEGREES 29 MINUTES 43 SECONDS WEST FOR A DISTANCE OF 25.06 FEET FROM THE AFORESAID POINT "A"; THENCE CONTINUE NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG SAID PROJECTION OF THE EASTERLY LINE OF LOT 14A, FOR A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL IS SITUATED IN SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, SANTA ROSA COUNTY, FLORIDA AND CONTAINS 0.01 ACRES MORE OR LESS.

PARCEL 101B

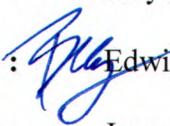
BEGINNING AT A ½" CAPPED IRON ROD, NUMBER 7174, MARKING THE SOUTHWESTERLY CORNER OF LOT 15A, BLOCK 36, CASABLANCA SUBDIVISION, PARCEL NO. 2, A RESUBDIVISION OF LOTS 13-21 INCLUSIVE OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, AS RECORDED IN PLAT BOOK "A", AT PAGE 86A, OF THE PUBLIC RECORDS OF SANTA ROSA COUNTY, FLORIDA; THENCE GO SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF THE WESTERLY LINE OF SAID LOT FOR A DISTANCE OF 15.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", THENCE CONTINUE SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF THE WESTERLY LINE OF SAID LOT FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO THE INTERSECTION WITH THE MEAN HIGH WATER LINE OF SANTA SOUND; THENCE MEANDER NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE TO AN INTERSECTION WITH A PROJECTION THE CENTERLINE OF CATAWBA ST. (50' R/W); THENCE DEPARTING SAID MEAN-HIGH WATER LINE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID CENTERLINE, FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO A POINT HEREINAFTER REFERRED TO AS POINT "B", SAID POINT "B" LYING NORTH 48 DEGREES 53 MINUTES 08 SECONDS WEST FOR A DISTANCE OF 25.14 FEET FROM THE AFORESAID POINT "A" ; THENCE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID CENTERLINE FOR A DISTANCE OF 13.00 FEET TO THE INTERSECTION WITH THE WESTERLY PROJECTION OF THE SOUTH LINE OF SAID LOT; THENCE GO SOUTH 53 DEGREES 27 MINUTES 00 SECONDS EAST ALONG THE WESTERLY PROJECTION OF THE SOUTHERLY LINE OF SAID LOT FOR A DISTANCE OF 25.03 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL IS SITUATED IN SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, SANTA ROSA COUNTY, FLORIDA AND CONTAINS 0.01 ACRES MORE OR LESS.



City of Gulf Breeze

MEMORANDUM

To : Mayor and City Council

From :  Edwin A. Eddy, City Manager

Date : January 15, 2016

Subject: Resolution 03-16, Declaring the Necessity of Eminent Domain Relative to the Extension of Catawba Street

The shore of Pensacola Bay is held in trust by the State for the use and enjoyment of the general public under the Public Trust Doctrine. Perpendicular access to the shore is essential to the public's exercise of such rights. The City's Coastal Management and Recreational and Open Space Elements of its Comprehensive Plan and together with its land development regulations require the City to provide for, preserve, and protect public access to the beaches within the City.

City staff has evaluated the availability of alternatives, including alternative routes, the cost, environmental factors, long range area planning, and safety concerns and has concluded that there are no other better alternatives to provide for, preserve, and protect public access to the beach and shore of Pensacola Bay in this area.

The City has been involved in a lengthy and complicated legal dispute with property owners on either side of Catawba Street. Attached is a copy of a summary of the case as well as a recent ruling by the Circuit Court which found that the deed to the parcel between the end of the Catawba Street right-of-way and the mean high water line was canceled.

To a lay person this ruling means that the many members of the public that used the Catawba right-of-way to gain access to waters of the State of Florida can no longer do so without traversing private property.

The City Council discussed two responses to this ruling. One is to appeal the Court's ruling and the second is to take the property west of the end of the Catawba right-of-way by eminent domain. These options can be pursued together or separately. We recommend pursuing option two as it is a definitive and potentially immediate answer to the question of public access to the water.

In order to commence the process of eminent domain, the City Council must adopt a resolution establishing the necessity of taking the property. The taking of the property is a necessity for the following reasons:

-
1. There are many Gulf Breeze citizens that use the Catawba right-of-way to gain access to the waters of the State. Unless the City takes the parcels of property between the Catawba right-of-way and the mean high water line, citizens attempting to gain access to waters of the State may be traversing private property. Public access to the waters of the State is very limited in Gulf Breeze. The City was unable to find any alternate routes to the waters of the State to serve the citizens in this area of the City.
 2. The City has maintained the Catawba right-of-way and advised citizens through posting of signs and other means that public access to the waters of the State was available at this location because it is regularly used by citizens for a multitude of purposes. If the right-of-way was not maintained, it may result in safety concerns for those of the general public who use it.
 3. Unless the City takes the property, citizens using the right-of-way would have reason to believe they could access the water and would be subject to using property not properly maintained for this purpose. For example, the City previously installed stairs on the property beyond the end of the Catawba right-of-way to make it safer for citizens to negotiate a drop off on the parcel west of the end of the Catawba right-of-way. These steps have been removed. The City plans to replace those steps for the safety of the general public and minimize any negative impact caused by public access to the shoreline.
 4. The Catawba right-of-way provides a place where many citizens have gained access to the water over many years. The Catawba right-of-way is one of two access points to the waters of the State on the west face of Gulf Breeze. Citizens walk from this access point to the other or simply wade at the end of Catawba Street. There is very limited parking adjacent to either access point meaning that both are essential. The elimination of access to the water at Catawba would create a burden at the other access point.
 5. The public belief is clearly established that the Catawba right-of-way is available for access to the water. To undo this belief would be impossible.
 6. It is the long range plan of the City to construct a natural walkway, with mulch, crushed rock, etc., to create a promenade that better directs foot traffic through the right-of-way and thus minimizes the impact on the otherwise natural environment of the right-of-way. Additionally, the City will continue to maintain the newly built staircase both for the safety of the general public and again to minimize the impact on the otherwise natural environment around the staircase. Furthermore, at the foot of the staircase, the City will construct a natural grass deck with benches not only to enhance the natural aesthetic near the water but also to enhance the general public's ability to enjoy this right-of-way. Finally, as mentioned earlier, a staircase

to the bench would be constructed for the safety of the general public and minimize the impact of public access to the shoreline.

RECOMMENDATION:

THAT THE CITY COUNCIL ADOPT RESOLUTION 03-16 ESTABLISHING THE NECESSITY OF TAKING THE QUIET TITLE PARCELS BETWEEN THE CATAWBA RIGHT-OF-WAY AND THE WATERS OF THE STATE OF FLORIDA.



GALLOWAY
JOHNSON
TOMPKINS
BURR AND
SMITH

Texas ■ Louisiana ■ Missouri ■ Mississippi ■ Alabama ■ Florida ■ Georgia

BENJAMIN J. ZIMMERN
Licensed in Florida and Alabama
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www.gjtbs.com

October 21, 2015

**THIS DOCUMENT CONTAINS PRIVILEGED INFORMATION AND WAS PREPARED EXCLUSIVELY FOR
CIVIL LITIGATION**

Edwin A. Eddy
City Manager – City of Gulf Breeze
1070 Shoreline Drive
Gulf Breeze, FL 32561
eaeddy@gulfbreezefl.gov

Re: Reese/Peters v. City of Gulf Breeze

Buz:

I wanted to provide a brief overview of the history of this dispute as well as an update on the litigation. The fundamental underlying subject of the lawsuit is whether the public can continue to use the area at the end of the Catawba right of way to access the water. The Catawba right of way is 50 feet wide and stops approximately 15 feet from the water's edge. The Peters and John Reese own the lots adjacent to the Catawba right of way. The disputed property has gone by several names: The Plaintiffs refer to it as the "Quiet Title Parcel" and the City has referred to it as the "Catawba Extension." Regardless of the name it is that last 15 feet from the end of Catawba right of way to the water in dispute. Photographs of the area have been incorporated at the end of this document for your review.

History of the Subdivision

In December 1950, the plat of Casablanca Parcel No. 2 subdivision (the "Subdivision") was dedicated and included a public park called "Sand Beach Park." There were no "waterfront" lots as Sand Beach Park existed between the platted lots and the mean high water mark of Santa Rosa Sound. On the plat there is a dedication that the streets and the parks were dedicated to the public. Dedicated property is not owned by the City, rather the City has the absolute and complete right to use the property that is subject to the dedication. The actual ownership of the

area is maintained by the adjacent property owner. Unfortunately, the dedication was never accepted by the County.

In September 1951, an Amended Plat was dedicated. The Amended Plat created Eufala Street which bisected Lots 13-21; the Northern Lots were renumbered 13-B through 21-B and the Southern Lots were renumbered 13-A through 21-A. The Amended Plat also created Catawba Street between Lots 14 and 15 which terminated at the boundary of Sand Beach Park, it does not extend all the way to the water. The Amended Plat and its dedication of streets and parks was accepted by the County. As a result the City was granted a right of way over Catawba Street as drawn on the Amended Plat. Although Catawba Street is a paved road between Fairpoint and Eufaula Street, south of Eufaula Street it remains unpaved. As shown in the photographs wooden barricades and several signs have been posted by the City over the years at the intersection.

In September 1962, the developer of the Subdivision recorded a Quit Claim Deed which transferred Sand Beach Park to the upland property owners in the subdivision. This Quit Claim effectively dissolved Sand Beach Park and gave the property to the upland owners. There was some dispute over the next 18 years as the impact of that deed. The City's position was that Sand Beach Park had been dedicated prior to the deed and that the public had been using the park area. In 1979, several property owners from the Subdivision filed suit against the City trying to establish their ownership in the Park. The Santa Rosa Court ultimately ruled in the landowner's favor and the City unsuccessfully appealed the decision. The decision does not expressly address the impact of the Deed on the Catawba right of way. After that decision the City has maintained that the public has no right to access the Park, except for the area immediately below Catawba Street.

Litigation

The Peters purchased their property in 1983 and Mr. Reese purchased his in 1976. In 2013, after decades of public use of the Catawba Right of Way and the Catawba Extension the Peters and Mr. Reese filed suit against the City. The City has also filed a counterclaim. There are several legal causes of action asserted, but the issues can be distilled into two main theories: 1) ownership of the Catawba Extension and 2) the existence of an easement over the Catawba Extension in favor of the public.

On the first issue, the City's position was that the Catawba Extension was still owned by the same individuals who owned the Peters and Reese's Lots at the time of the 1962 Quit Claim Deed. The foundation for this argument was that the deeds issued after 1962 did not expressly transfer the Catawba Extension to the Peters or Mr. Reese. In 2013, the City purchased the eastern half of the Catawba Extension from the daughter of the Pattersons who owned the Peters Lot in 1962. The ownership issue was decided by the Court earlier this month in favor of the

Plaintiffs. The Plaintiffs' argument was that without an express intent to exclude the Extension the entire property was transferred. That decision can be appealed.

The second issue is the existence of a prescriptive easement over the Catawba Extension. Similar to adverse possession, a prescriptive easement can be established by continually using the property for 20 years without the owners consent. If established, the judge would give the City the minimum amount of property necessary to accomplish the prescriptive use. The test to establish a prescriptive easement is difficult, but there is evidence to support the claim. The City would present evidence and testimony of the usage of the Catawba Extension over the years from both City staff as well as residents of Gulf Breeze who use the Extension.

As always, we stand ready to discuss this matter further at your convenience.

Sincerely,

Benjamin J. Zimmern

Benjamin J. Zimmern

Enclosure



Ex. 1 – Overview of Gulf Breeze – with area of dispute highlighted



Ex. 2 – Closer satellite view of disputed area.



Ex. 3 – Amended Plat showing Catawba Street superimposed over satellite view.



Ex. 4 – Looking up at Extension from beach.



Ex. 5 – Looking toward intersection of Catawba and Eufaula.



Ex. 6 – Looking down Catawba right of way towards water.

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

JOHN LANCE REESE, PETER PETERS
and MITZI PETERS, as Trustees of the
Peters Living Trust Dated September 9, 2010,

Plaintiffs,

vs.

Case No.: 2013-CA-000838

THE CITY OF GULF BREEZE, a municipal
corporation, and ELIZABETH A. GREER,
Individually and as Trustee as identified under
The Last Will and Testament of Mary J. Patterson
a/k/a Mary Elizabeth Patterson,

Defendants.

**ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO
THE EFFECT OF THE GREER QUITCLAIM DEED AND DEFENDANT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

THIS CAUSE came before the Court upon the Plaintiffs' Motion for Partial Summary Judgment as the Effect of the Greer Quitclaim Deed filed on July 28, 2015 and the Defendant City of Gulf Breeze's¹ Motion for Partial Summary Judgment filed on July 15, 2015. The Court held a hearing on these motions on September 28, 2015. The Court, having considered the motions and all documents filed in support thereof and in opposition thereto, the arguments of counsel, the applicable law and being otherwise fully advised in the premises, finds as follows:

1. The subject of the instant motions is the deed recorded November 15, 2013 in Official Records Book 3304, Page 70 of the Santa Rosa County public records (hereafter, the "Greer Deed"). In that recorded deed, Defendant Elizabeth Greer, Individually and as Trustee as identified under the Last Will and Testament of Mary J. Patterson a/k/a Mary Elizabeth Patterson

¹ Hereafter, "City"

(hereafter "Greer"), conveyed unto the City any and all interest which Greer held at that time in the following described real property:

BEGINNING AT A 1/2" CAPPED IRON ROD, NUMBER 7174, MARKING THE SOUTHWESTERLY CORNER OF LOT 15A, BLOCK 36, CASABLANCA SUBDIVISION, PARCEL NO. 2, A RESUBDIVISION OF LOTS 13-21 INCLUSIVE OF SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, AS RECORDED IN PLAT BOOK "A", AT PAGE 86A, OF THE PUBLIC RECORDS OF SANTA ROSA COUNTY, FLORIDA; THENCE GO SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF THE WESTERLY LINE OF SAID LOT FOR DISTANCE OF 15.00 FEET TO A POINT HEREINAFTER REFERED TO AS POINT "A", THENCE CONTINUE SOUTH 33 DEGREES 37 MINUTES 00 SECONDS WEST ALONG A PROJECTION OF THE WESTERLY LINE OF SAID LOT FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO THE INTERSECTION WITH THE MEAN HIGH WATER LINE OF SANTA ROSA SOUND; THENCE MEANDER NORTHWESTERLY ALONG SAID MEAN HIGH WATER LINE TO AN INTERSECTION WITH A PROJECTION OF THE CENTERLINE OF CATAWBA ST. (50' R/W); THENCE DEPARTING SAID MEAN HIGH WATER LINE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID CENTERLINE, FOR A DISTANCE OF 1.0 FOOT MORE OR LESS TO A POINT HEREINAFTER REFERED TO AS POINT "B", SAID POINT "B" LYING NORTH 48 DEGREES 53 MINUTES 08 SECONDS WEST FOR DISTANCE OF 25.14 FEET FROM THE AFORESAID POINT "A"; THENCE GO NORTH 33 DEGREES 37 MINUTES 00 SECONDS EAST ALONG A PROJECTION OF SAID CENTERLINE FOR A DISTANCE OF 13.00 FEET TO THE INTERSECTION WITH THE WESTERLY PROJECTION OF THE SOUTH LINE OF SAID LOT; THENCE GO SOUTH 53 DEGREES 27 MINUTES 00 SECONDS EAST ALONG THE WESTERNLY PROJECTION OF THE SOUTHERLY LINE OF SAID LOT FOR A DISTANCE OF 25.03 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL IS SITUATED IN SECTION 6, TOWNSHIP 3 SOUTH, RANGE 29 WEST, SANTA ROSA COUNTY, FLORIDA AND CONTAINS 0.01 ACRES MORE OR LESS.

(hereafter, the "Peters Quiet Title Parcel")

2. The Peters Quiet Title Parcel comprises a portion of the strip of land originally offered for dedication as "Sand Beach Park" under the 1950 Casablanca subdivision plat. However, the dedication offer was revoked by the quitclaim deed recorded September 11, 1962 in Official Records Book 45, Page 227 of the Santa Rosa County public records (hereafter, the "1962 Deed"). See *Santa Rosa County v. Pollak*, 418 So. 2d 300 (Fla. 1st DCA 1982).

3. The Plaintiffs request this Court grant partial summary judgment in their favor as to Count III of the first amended complaint, which seeks the equitable remedy of cancelation of the Greer Deed. *See St. Lucie Estates v. Nobles*, 141 So. 314 (Fla. 1932); *International Realty Associates, Inc. v. McAdoo*, 99 So. 117 (Fla. 1924).

4. On the other hand, the City claims ownership of the Peters Quiet Title Parcel under the Greer Deed. Specifically, the City contends that Plaintiffs are owners of Lot 15A in the Casablanca subdivision but not the additional unplatted parcel of land between Lot 15A and the high water mark of Santa Rosa Sound. To support this contention, the City relies on the fact that the summary final judgment in *Pollack vs. The City of Gulf Breeze* delineated two separate parcels as to each plaintiff and intervenor named therein. The City argues that because the Plaintiffs' predecessor in interest did not specifically convey the unplatted parcel at issue, the City asserts ownership of it by virtue of the Greer Deed and requests this Court find the Plaintiffs lack ownership rights to it.

5. The Court does not agree with the City's contention. The Court finds that at all times relevant to these proceedings the Peters Quiet Title Parcel, including the waterfront area described by metes and bounds in the first amended complaint as

The unplatted parcel of land lying between said Lot 15A as shown on the above-described plat and the waterline and the boundaries of the property of this parcel are: the Southerly boundary line of Lot 15A, the extension of the Easterly and Westerly boundary lines of said Lot 15A to the high water mark and the Southerly boundary line shall be the high water mark of the water. This said land may be more particularly described as lying and being between the Southerly line of said Lot 15A, and the high water mark, and between the extensions of the Easterly and Westerly lot lines to the water, of Lot 15 A

has been owned and conveyed in conjunction with the parcel of land known as

Lot 15A, Block 36, Casablanca Subdivision, Parcel No. 2, a portion of Section 6, Township 3 South, Range 29 West, according to plat recorded in Plat Book "A" at Page 86-A of the public records of Santa Rosa County, Florida.

(hereafter, collectively, “Lot 15A”)

6. The Court bases this finding upon the unambiguous language contained in the 1962 Deed which necessarily includes and pertains to Lot 15A. The 1962 Deed expressly states the grantors’ intent “to remove all doubt as to the title and accompanying riparian right in certain supposedly waterfront lots in various parcels of Casablanca Subdivision.” The 1962 Deed clearly and specifically was intended to “vest title in unplatted parcels of land in the individual adjacent lot owner with full riparian attendant thereto, with the limits of each owner’s ownership being delineated by **an extension of his lot lines to the water.**” (emphasis added). Therefore, the Court finds that the 1962 Deed effectively clarified any uncertainty as to the ownership of the unplatted parcels of land at issue by extending the lot lines of each adjacent owner to the water (Santa Rosa Sound).

7. The Court’s finding is not inconsistent with the summary final judgment in *Pollak v. The City of Gulf Breeze* (Santa Rosa County consolidated case numbers 80-C-198, 80-C-250, 80-C-296). As the First District Court of Appeal stated in affirming the judgment, “This suit involves only public rights to the property known as Sand Beach Park and **does not involve or adjudicate private rights of lot owners in the subdivision.**” *Santa Rosa County v. Pollak*, 418 So. 2d at 303.

8. The City relies much on the fact that the 1980 summary final judgment delineated two separate parcels for each applicable plaintiff and intervenor. However, the mere fact that the Circuit Judge who authored the 1980 summary judgment choose to describe the property at issue in two parts did not actually create a division in the relevant lots. The Court’s 1980 order simply vindicated the rights of the private land owners by virtue of the 1962 Deed against the City’s claim under the 1950 plat. Indeed, the 1962 Deed still is the applicable instrument for resolving

the issues presented. The 1980 summary judgment did not supplant or alter the 1962 Deed in any way.

9. Furthermore, the Plaintiffs' predecessor in interest was not a party to *Pollak v. The City of Gulf Breeze*. Thus, to the extent the 1980 summary judgment may have the appearance of creating some ambiguity regarding whether the parcels described in the judgment had been divided into two parts, the judgment does not create any confusion as to Lot 15A because it was not described in the 1980 order at all, much less in any way that could be construed as a judicial declaration that Lot 15A had been "divided" by judicial decree.

10. Accordingly, the Court finds that Lot 15A (including the land purportedly conveyed by the Greer Deed) was conveyed by each of the following instruments:

- Warranty deed dated December 8, 1980 executed and delivered by Charles A. Patterson and Mary J. Patterson to Donald T. Greer and Elizabeth A. White (n/k/a Elizabeth A. Greer) (*see* Santa Rosa Co. Official Records Book 529, Page 781)
- Warranty deed dated August 24, 1983, executed and delivered by Donald T. Greer and Elizabeth A. White (n/k/a Elizabeth A. Greer) to Peter G. Peters and Mitzi A. Peters (*see* Santa Rosa Co. Official Records Book 649, Page 127)
- Warranty deed dated September 9, 2010, executed and delivered by Peter G. Peters and Mitzi A. Peters to the Peters Living Trust (*see* Santa Rosa Co. Official Records Book 3040, Page 1156)

11. The Court finds that the Peters Quiet Title Parcel is part of Lot 15A as a matter of law. *See Walker v. Pollack*, 74 So. 2d 886, 887 (Fla. 1954); *New Fort Pierce Hotel Co for use of Carlton v. Phoenix Tax Title Corp.*, 171 So. 525, 526 (Fla. 1936); *Burns v. McDaniel*, 140 So. 314 (Fla. 1932); *Smith v. Horn*, 70 So. 435 (Fla. 1915); *Calvert v. Morgan*, 436 So. 2d 314, 315 (Fla. 1st DCA 1983).

12. The Peters Quiet Title Parcel was not expressly reserved or excepted from the conveyances described in paragraph 10, *supra*. Thus, title to the Peters Quiet Title Parcel passed

by operation of law in each of those conveyances. *See Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289 (Fla. 1956); *Joseph v. Duran*, 463 So. 2d 316 (Fla. 1st DCA 1983).

13. Greer did not expressly except or reserve the Peters Quiet Title Parcel from her conveyance to Peter and Mitzi Peters in the warranty deed dated August 24, 1983. Accordingly, Greer conveyed all of her interest in the Peters Quiet Title Parcel in 1983 and Greer retained no interest in the Peters Quiet Title Parcel. Because Greer held no interest in the Peters Quiet Title Parcel in 2013, the Greer Deed conveyed no property interest to the City.

14. The City holds no right, title or interest in the Peters Quiet Title Parcel under the Greer Deed as a matter of law. The Plaintiffs have demonstrated an entitlement to the equitable remedy of cancellation of the Greer deed. *See Langley v. Irons Land & Development Co.*, 114 So. 769 (Fla. 1927).

15. The Court finds that Greer Deed in a nullity, constitutes a cloud on title to the Peters Quiet Title Parcel, and is due to be delivered up, cancelled and removed from the public records of Santa Rosa County, Florida.

Accordingly, it is **ORDERED and ADJUDGED** that:

- (a) Plaintiffs' Motion for Partial Summary Judgment as to the Effect of the Greer Quitclaim Deed is hereby **GRANTED**;
- (b) The City's Motion for Partial Summary Judgment is hereby **DENIED**;
- (c) Lot 15A, Block 36, Casablanca Subdivision, Parcel No. 2, has as its southern boundary the mean high water line of Pensacola Bay (Santa Rosa Sound) and as its western boundary the centerline of Catawba Street right-of-way, subject to the right, if any, held by Defendant, City of Gulf Breeze, in the right-of-way, together

with a projection of the centerline of the Catawba Street right-of-way south to the mean high water line of Pensacola Bay (Santa Rosa Sound)

- (d) The City shall deliver to this Court for cancellation that certain deed recorded in Official Records Book 3304, Page 70, of the public records of Santa Rosa County, Florida; and
- (e) The Clerk of this Court shall cancel and remove the aforesaid deed from the public records of Santa Rosa County, Florida.

DONE and ORDERED in Chambers at Milton, Santa Rosa County, Florida on this

15th day of October, 2015.



JOHN F. SIMON, JR.
Circuit Judge

Copies furnished to:

William J. Dunaway, Esq.
Benjamin J. Zimmern, Esq.



To: Vernon L. Prather, Director of Public Services

From: Ashley Tyler, Marketing Representative 

Date: January 6, 2016

RE: Natural Gas Report

In March 2012 we began service on Pensacola Beach with The Grand Marlin, our first natural gas customer on Pensacola Beach. Since then we have acquired over 132 customers; 43 commercial and 88 residential.

In December 2015, the monthly gross sales for Pensacola Beach exceeded \$78,000. This brings the total sales for the 1st Quarter of Fiscal Year 2016 for Pensacola Beach to over \$204,000.

The Pensacola Beach gas system has generated more than \$1.8 million in total sales since March 2012. Pensacola Beach is typically responsible for 30% of sales.

In Fiscal Year 2014 we surpassed previous total gas system throughput records by distributing 1.8 Million therms. Fiscal Year 2015 brought a warmer winter resulting in the total gas system distributing 1.7 Million therms. This is illustrated in the attached graph.

We continue to acquire new commercial customers from other energy sources, as well as continued conversions in the residential market.

Some current and future commercial projects include:

- Portofino Resort: additional fire pits and torches, future construction of two towers
- Holiday Inn Express: Pool Heat
- San Souci: Laundry equipment and pool heat
- Future Construction of Pensacola Beach Convention Center located between Margaritaville and Holiday Inn Express

Gulf Breeze Natural Gas Total by Fiscal Year





City of Gulf Breeze

TO: Edwin A. Eddy, City Manager

FROM: Vernon L. Prather, Director of Public Services *V.P.*

DATE: January 6, 2016

RE: Stormwater Construction Update

The City began construction of major stormwater improvements and additions in 2014. The project is jointly funded with a \$1,570,000 grant from Department of Environmental Protection and City funds. The project was originally bid at \$1,835,956 with subsequent changes adjusting the contract to \$2,867,933. The project consists of two main areas:

Southern Section:

Stormwater infrastructure was installed on portions of Camelia, Dolphin, and Florida Avenue. New electric control panels were installed for the existing two (2) Stormwater Pump Stations on Camelia. The streets were repaved after construction.

Washington Avenue: A new pump station was installed along with new stormwater inlets and the street was repaved.

The Southern Section was completed at a cost of \$1,126,855 with pump station start up on Dec. 22, 2015. This system substantially reduces the likelihood of flooding as it provides for management of ground water and the new Washington Stormwater Station has the capacity to remove an additional 2.0 million gallons per day (MGD).

Northern Section:

This project was originally designed as a pump station with a force main routed to the north with discharge to Hoffman Bayou. Further evaluation and discussion, resulted in the granting of an easement from the Santa Rosa County School Board and a redesign of the stormwater system to 30" gravity pipe with discharge southward to wetlands.

The new gravity system provides service to Dracena, Russ, Kevin, Center, and a portion of Nightingale Lane. It also serves the western portion of the school property.

The redesign and subsequent upsizing of the infrastructure, enables the Northern Section to transport up to 10 MGD which is 5 times the amount of the original design. The cost for the redesign and added construction resulted in the project increasing by \$463,000 from the original design.

The construction of the Northern Section is 65% complete. The school portion is complete and is in service at this time. The contractor is currently working in the Russ Drive area. (an area which frequently floods). The entire project is anticipated to be complete by the end of April 2016.

Please note that the new Stormwater Systems will not prevent flooding in all situations or rain events. It will however, reduce the likelihood of flooding or the severity of the flood event as compared to the same drainage basin with no infrastructure.



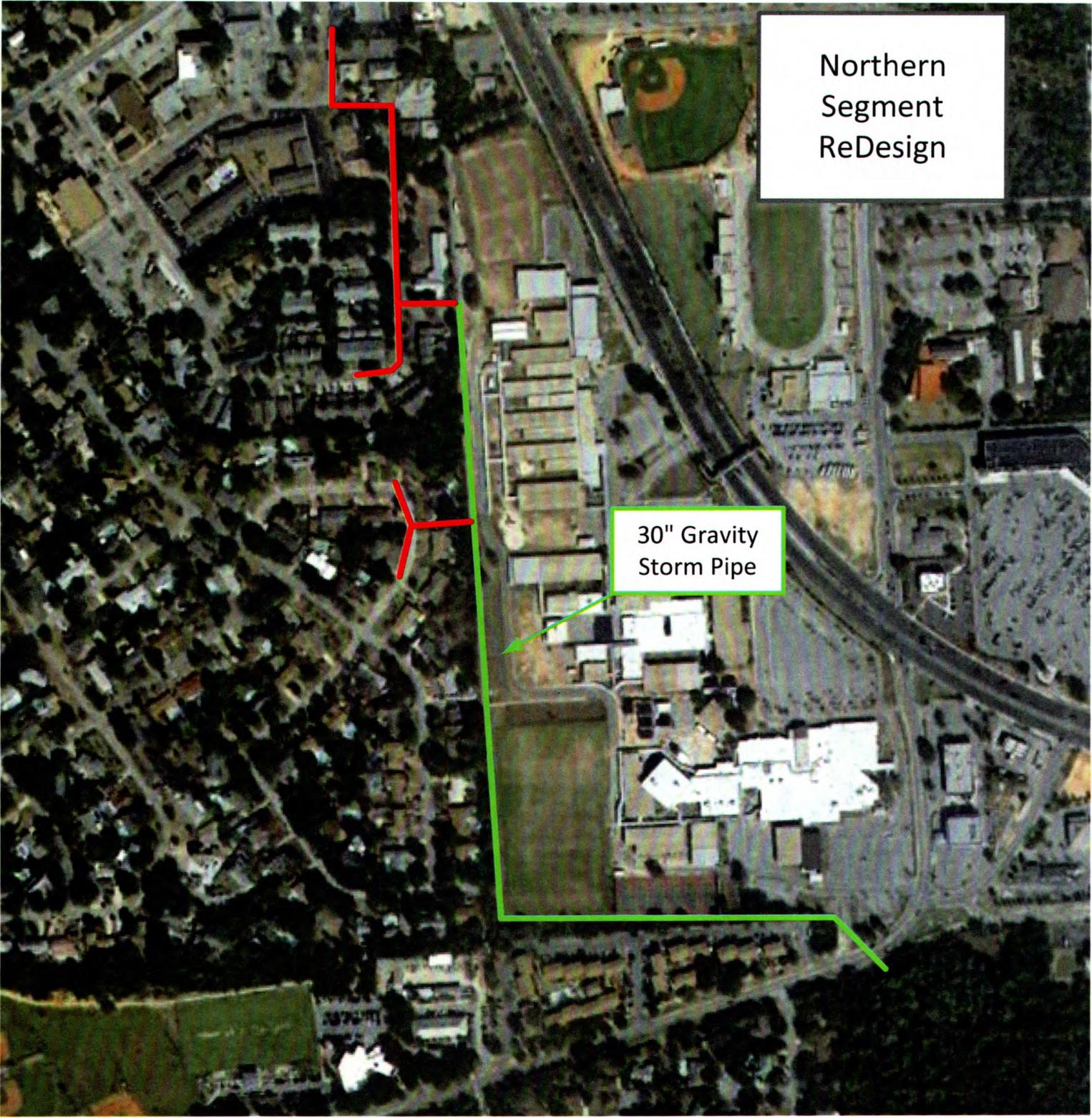
New Inlet/Exfiltration System

New Pump Station

Existing Pump Stations

New 12" Force Main

Southern Section



Northern
Segment
ReDesign

30" Gravity
Storm Pipe