COUNCIL ITEM 10C
DATE 1/9/12

ORDINANCE 12-03

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF A TEMPORARY ACCESS EASEMENT FROM THE CITY OF PORT ST. LUCIE TO FLORIDA POWER & LIGHT COMPANY; PROVIDING AN EFFECTIVE DATE.

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. That there is hereby authorized the conveyance of certain property referred to as a temporary easement being completely within Parcel 28-A Southern Grove Plat No.3 according to the Plat thereof, recoded in Plat Book 61, Page 17-50 of the Public Records of St. Lucie County, Florida, said grant of easement being more particularly described in Exhibit "A", from the City of Port St. Lucie to Florida Power & Light Company, and the Mayor and City officials are hereby authorized to execute any and all documents necessary to complete the conveyance.

Section 2. This ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this _____ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

ATTEST:

By:_____
JoAnn M. Faiella, Mayor

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:_____
Roger G. Orr, City Attorney

MEMORANDUM

TO: JERRY A. BENTROTT, CITY MANAGER

FROM: PAM E. BOOKER, SENIOR ASSISTANT CITY ATTORNEY

DATE: JANUARY 3, 2012

SUBJECT: SOUTHERN GROVE FPL TEMPORARY ACCESS EASEMENT

Attached please find and Ordinance and a Temporary Access Easement Agreement from the City of Port St. Lucie to Florida Power and Light. The Easement is to allow Florida Power and Light to cross City owned right of way at Paar Drive and west of Village Parkway. This Temporary Access Easement will remain in place until December 31, 2013 or until the roadway segment is open to the public. Please place this item on the next available City Council agenda. Should you have any questions or need addition information, please contact me at 871-5255.

PB/liw

c. Patricia Roebling, City Engineer

RECEIVED

JAN 03 2012

City Manager's Office

Return to: (enclose self-addressed stamped envelope)

Name: Barry E. Somerstein, Esquire

Address:
Greenspoon Marder, P.A.
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, Florida 33301

This Instrument Prepared by:
Barry E. Somerstein, Esquire
Greenspoon Marder, P.A.
200 East Broward Boulevard
Suite 1500
Fort Lauderdale, Florida 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR PROCESSING DATA

TEMPORARY ACCESS EASEMENT AGREEMENT

THIS TEMPORARY ACCESS EASEMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2012, by and between **THE CITY OF PORT ST. LUCIE**, a municipality of the State of Florida ("Grantor"), whose mailing address is 121 SW Port St. Lucie Boulevard, Port St. Lucie, FL 34987, and **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation ("Grantee"), whose mailing address is 700 Universe Boulevard, Juno Beach, Florida 33408.

(Whenever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and their heirs, legal representatives, assigns and successors in title.)

RECITALS

WHEREAS, Grantor owns the property located in St. Lucie County, Florida, and which is more particularly described in **Exhibit "A"** attached hereto and made a part hereof ("Grantor Property"); and

WHEREAS, Grantee owns the property located in St. Lucie County, Florida, and which is more particularly described in **Exhibit "B"** attached hereto and made a part hereof ("Grantee Property or Easement Area").

WHEREAS, Grantor and Grantee desire to set forth the terms and conditions of said easement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. RECITALS. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by this reference.

2. GRANT OF EASEMENT. It is the intent of the Grantor and Grantee that the Grantee shall have access over the Easement Area from the Grantee Property to a public right-of-way. By this instrument and subject to its terms and conditions, the Grantor hereby grants and conveys a temporary non-exclusive access easement over the Easement Area to Grantee and Grantee's employees, agents, contractors, tenants, invitees and licenses (all of the foregoing persons and invitees including without limitation, the Grantee, are hereinafter referred to as the "Grantee Permitted Persons") for ingress, egress and access over, across and upon the Easement Area for Grantee and Grantee Permitted Persons to access Grantee's Property and for Grantee to construct, repair and maintain access drives and underground utility facilities to benefit Grantee's Property.

3. TERMINATION. It is the intent of the parties that this Easement is a temporary access easement and shall terminate at such time that the portion of Becker Road abutting the full frontage of the Property is legally opened and accessible for public use and/or by December 31, 2013, whichever event occurs first.

4. MAINTENANCE OF EASEMENT. Grantor shall maintain the Easement Area in good condition and repair. Grantee shall maintain any access drives, underground utilities and any other improvements constructed by Grantee within the Easement Area in good condition and repair. Grantee shall promptly repair any damage to the Easement Area caused by Grantee and/or Grantee Permitted Persons.

5. USE OF THE EASEMENT AREA. The Grantee Permitted Persons shall use the Easement Area (i) in accordance with all applicable current and future federal, state and local laws, rules and regulations, licenses, permits and orders including those of all applicable governmental and quasi-governmental agencies, boards and instrumentalities, and (ii) to the extent commercially reasonable, in a manner which minimizes interference with Grantor and Grantor's employees, licensees, tenants, agents, invitees and contractors (all of the foregoing persons and entities including without limitation Grantor are hereafter referred to as the "Grantor Permitted Persons") use of and activities on the Grantor Property and in a manner which avoids disruption to the Grantor Permitted Persons' use of and activities on the Easement Area and/or the Grantor Property. Neither Grantor nor Grantee shall allow any Grantor Permitted Person or Grantee Permitted Person to permanently store or place at any time any items (including vehicles) within the Easement Area which could block free vehicular and pedestrian access from and across the Easement Area. The parties hereto acknowledge that the flow and passage of vehicular and pedestrian traffic to and from the Grantee Property over the Easement Area may be disrupted for limited periods of time for repair, restoration, reconstruction, or to prevent a public taking through condemnation or other means of public acquisition. In the event such disruption causes unreasonable hardship to Grantee or interferes with Grantee's ability to access its Proposed Use, Grantor will provide Grantee with immediate alternate access.

6. COMPLIANCE. Grantee shall comply with all applicable laws, codes, rules, regulations, statutes, ordinances, permits, rules and regulations of applicable governmental authorities, including environmental laws, with respect to use and enjoyment of any of the rights and easements granted herein. In connection with any work to be performed by a Grantee pursuant to this Agreement, all work shall be in accordance with all applicable governmental requirements and permits to the extent appropriate and shall be done in a good and workmanlike manner, free and clear of liens and encumbrances.

7. INDEMNIFICATION. Grantee shall indemnify, defend and hold harmless Grantor, and its directors, officers, employees and agents, and their respective heirs, successors and assigns, from and against any and all liability to any person or entity for or on account of any death or injury to persons or any damage to property, as well as any loss, damage, lien, claim, injury or expense (including reasonable attorneys' fees and costs) which is caused by the negligence or willful act or omission of Grantee or, resulting from, arising out of or occurring in connection with the use of the Easement Area by any Grantee Permitted Person, including, without limitation, a violation of any federal, state or local environmental, health or safety rules or regulations by any Grantee Permitted Person in the use of the Easement Area.

8. ATTORNEYS' FEES. In the event of any litigation concerning this Agreement, any provision hereof, or any right or easement reserved or arising under, out of or by virtue of the execution of the delivery and/or recordation of this instrument, the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees and other legal expenses related thereto, including without limitation, those incurred at or before the trial level or in any appellate, bankruptcy or administrative proceeding.

9. TIME OF THE ESSENCE. Time is of the essence with respect to all matters set forth herein.

10. WAIVER. No waiver of any of the provisions of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted and any such waiver shall only be applicable to the specific instance in which it relates and shall not be deemed to be a continuing or future waiver.

11. GOVERNING LAW AND SELECTION OF FORUM. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and venue for any litigation arising hereunder shall be in St. Lucie County, Florida.

12. NOTICE. Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall either be (i) hand-delivered, (ii) sent by Federal Express or a comparable overnight mail service, (iii) mailed by U.S. certified mail, return receipt requested, postage prepaid, or (iv) sent by telephone facsimile transmission provided that an original copy of the transmission shall be mailed by regular mail as follows:

If to Grantee:

Florida Power & Light Company
Attn: Samantha Saucier, Corporate Real Estate
700 Universe Blvd.
Juno Beach, FL 33408

with a copy to:

Florida Power & Light Company
Attn: General Counsel, Law Department
700 Universe Blvd.
Juno Beach, FL 33408

If to Grantor:

Jerry A. Bentrott, City Manager
City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984

with a copy to:
Pam E. Booker, Senior Assistant City Attorney
City of Port St. Lucie
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984

with a copy to:

Greenspoon Marder, P.A.
200 E. Broward Boulevard
Fort Lauderdale, Florida 33301
Attn: Barry Somerstein, Esq.

Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees for the purpose of this paragraph may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

13. LIENS. Grantee will not suffer or permit any mechanics' lien, equitable lien or any other lien or encumbrance of any kind to be filed or otherwise asserted against the Easement Area, and will cause any such lien to be released or bonded within thirty (30) days of the date of filing same, time being of the essence. No Grantee Permitted Person under any circumstance shall have the power to subject the Easement Area to any mechanic's or materialman's lien, or liens of any kind

14. ENTIRE AGREEMENT. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

IN WITNESS WHEREOF, the Grantor and Grantee have executed and delivered this Agreement and have intended the same to be and become effective on the month, day, and year written above.

Witnesses:

GRANTOR:

THE CITY OF PORT ST. LUCIE, a municipality of the State of Florida

_____
Print Name:_____

By:_____
Name:_____
Title:_____

_____
Print Name:_____

APPROVED: as to Form and Correctness

_____
City Attorney

GRANTEE:

FLORIDA POWER & LIGHT COMPANY., a Florida corporation

_____
Print Name:_____

By:_____
Name:_____
Title:_____

_____
Print Name:_____

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, the _____ of THE CITY OF PORT ST. LUCIE, a municipality of the State of Florida, freely and voluntarily under authority duly vested in him/her by said company and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2012.

_____
Notary Public

_____
Printed, typed or stamped name of Notary Public

My Commission Expires:

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, the _____ of FLORIDA POWER & LIGHT COMPANY., a Florida corporation, freely and voluntarily under authority duly vested in him/her by said company and that the seal affixed thereto is the true corporate seal of said corporation. He/she is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2012.

_____
Notary Public

_____
Printed, typed or stamped name of Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR PROPERTY OR EASEMENT AREA

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE PROPERTY

Parcel 28-A SOUTHERN GROVE Plat No. 3 according to the Plat thereof, recorded in Plat Book 61, Page 17-50, of the Public Records of St. Lucie County, Florida.

LEGAL DESCRIPTION

Being a parcel of land lying in the right-of-way of E/W 4 (Parr Drive), as recorded in Official Records Book 2899, Page 2930, Public Records of St. Lucie County, Florida, being more particularly described as follows;

Begin at the intersection of the South right-of-way line of E/W 4 R/W (Parr Drive) a 150.00 foot wide right-of-way, and the East line of a 110.00' foot wide Florida Power & Light easement as recorded in Deed Book 234, Page 102; thence North 00°02'34" East, a distance of 150.00 feet; thence South 89°59'43" East, a distance of 20.00 feet; thence South 00°02'34" West, a distance of 150.00 feet; thence North 89°59'43" West, a distance of 20.00 feet to the POINT OF BEGINNING.

Containing 3,000.0 square feet, more or less.

NOTE: THIS IS NOT A SKETCH OF SURVEY, BUT ONLY A GRAPHIC DEPICTION OF THE DESCRIPTION SHOWN HEREON. THERE HAS BEEN NO FIELD WORK, VIEWING OF THE SUBJECT PROPERTY OR MONUMENTS SET IN CONNECTION WITH THE PREPARATION OF THE INFORMATION SHOWN HEREON.

NOTE: LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHT-OF-WAY AND/OR EASEMENTS OF RECORD.

Michael T. Kolodziejczyk
Professional Surveyor and Mapper
Florida Certificate No. 3864

11/15/2011
Signature Date

Sheet 1 of 2

DESCRIPTION
OF
ACCESS EASEMENT

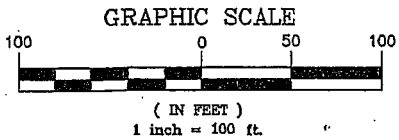
File: 08-260-WA59 s&d ae2.dwg
Date: 11-08-2011
Tech: GLM

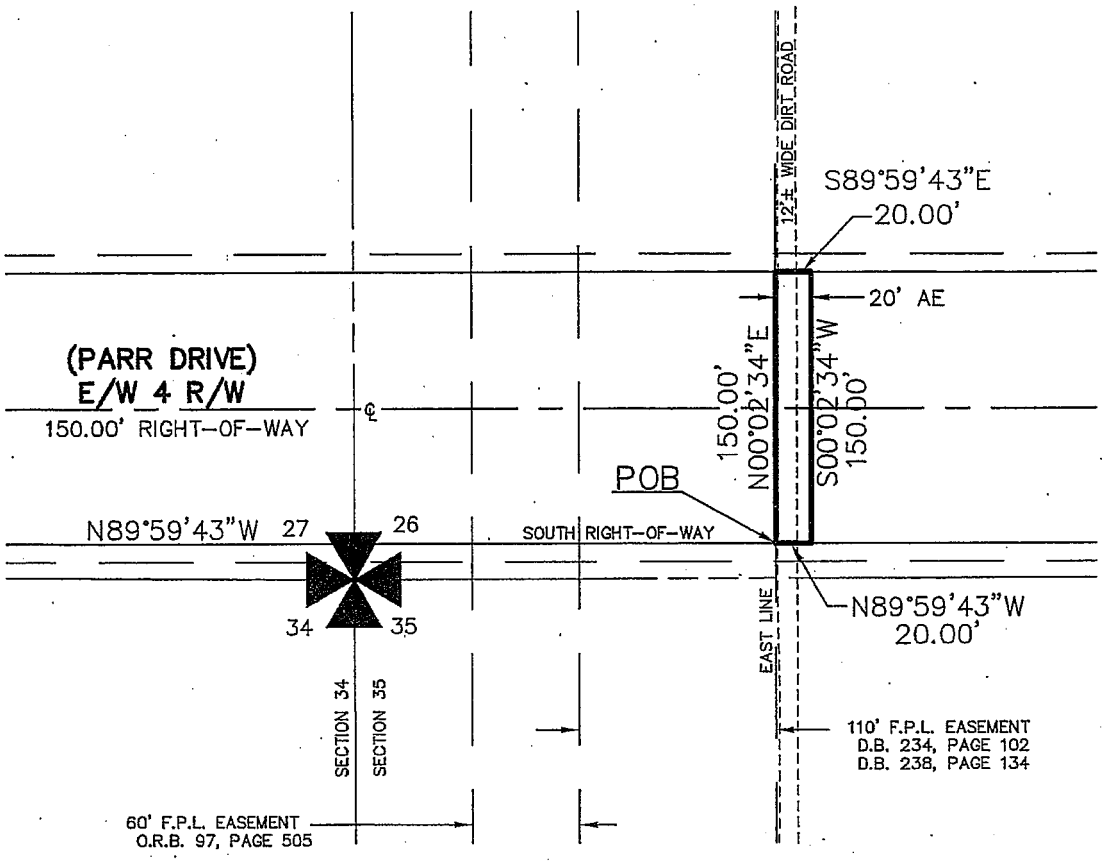
CULPEPPER & TERPENING, INC
CONSULTING ENGINEERS | LAND SURVEYORS
2980 SOUTH 25th STREET
FORT PIERCE, FLORIDA 34981
PHONE 772-464-3537 FAX 772-464-9497
www.ct-eng.com
STATE OF FLORIDA CERTIFICATION No. LB 4286

\Proj-2008\08-260 Southern Groves\Survey\WA-59\08-260-WA59-s&d-ae2.dwg, 11/15/2011 2:02:59 PM

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

THIS IS NOT A SURVEY





AE = ACCESS EASEMENT
D.B. = DEED BOOK
POB = POINT OF BEGINNING
℄ = CENTERLINE
F.P.L. = FLORIDA POWER & LIGHT
O.R.B. = OFFICIAL RECORDS BOOK

BEARINGS SHOWN HEREON ARE ASSUMED AND RELATIVE TO THE SOUTH RIGHT-OF-WAY LINE OF EE/W 4 R/W (PARR DRIVE) HAVING A BEARING OF N89°59'43"W

SKETCH OF DESCRIPTION

OF

ACCESS EASEMENT

File: 08-260-WA59 s&d ae2.dwg

Date: 11-08-2011

Tech: GLM

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