CITY OF SANIBEL
LEGAL DEPARTMENT

MEMORANDUM

TO: **Members of City Council**

FROM: **Kenneth B. Cuyler** KBC
City Attorney

DATE: **April 8, 2013**

RE: **Acceptance of Shared Use Path Easement; Indemnity Provision**

The purpose of this Memorandum is to bring to your attention the fact that the Shared Use Path Easement granted by JCKC, Inc. (the owner and developer of the proposed Bennett's Fresh Roast Restaurant to be located at 1020 Periwinkle Way) contains an indemnity and hold harmless provision which requires the City, as Grantee, to indemnify and hold harmless the Grantor "from any and all liability associated with the public use of the easement and to defend Grantor from and against any and all claims, damages, and costs including attorney's fees, arising from or related to the public use of the easement". The City's willingness to agree to indemnity and hold harmless provisions is a business decision for the City. In other words, such provisions are legal, but indemnity and hold harmless provisions are a specific exclusion under the City's general liability insurance policies, meaning that our insurance carrier does not provide coverage for the City's indemnity and hold harmless provisions granted to other parties.

Although the City tries to avoid indemnity and hold harmless provisions whenever possible, in this instance the Grantor has pointed out that the grant of the 5' wide easement is a valuable grant of property rights which is being provided at no cost to the City. Therefore, the Grantor's intent is to limit any liability claim against the Grantor by members of the public who use the Shared Use Path. Although, historically, the City's liability for such claims related to Shared Use Paths have been minimal and infrequent, it is a potential liability nonetheless. The City's liability insurance should address claims against the City in such events, but I wanted to make you aware of the fact that the City's insurance would not cover any claims relating to the indemnity and hold harmless provision provided to the Grantor by the City in the Shared Use Path Easement document.

If you have any questions regarding this matter, please let me know.

KBC/jg

cc: Judie A. Zimomra, City Manager
Pamela Smith, City Clerk

CITY OF SANIBEL
RESOLUTION 13-035

A RESOLUTION ACCEPTING A SHARED USE PATH EASEMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City has requested that a Shared Use Path Easement be granted by JCKC, Inc., the developer of a parcel of property located at 1020 Periwinkle Way and commonly referred to as the proposed Bennett's Fresh Roast Restaurant; and

WHEREAS, JCKC, Inc. as owner and developer of the property has agreed to provide such Shared Use Path Easement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel, Florida:

SECTION 1. The Shared Use Path Easement granted by JCKC, Inc. to the City of Sanibel is hereby approved and accepted in substantially the form attached hereto and incorporated herein as Exhibit "A".

SECTION 2. The City Attorney is hereby authorized and directed to record such Shared Use Path Easement in the Official Records of Lee County, Florida.

SECTION 3. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this 16th day of April, 2013.

AUTHENTICATION:

_____ _____
Kevin Ruane, Mayor Pamela Smith, City Clerk

APPROVED AS TO FORM: Kenneth B. Cuyler 4/8/13
Kenneth B. Cuyler, City Attorney Date

Vote of Council Members:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

Date filed with City Clerk: _____

This Instrument was prepared by and is To Be Returned To:

Kenneth B. Cuyler, Esq.
City Attorney
CITY OF SANIBEL
800 Dunlop Road
Sanibel, Florida 33957 Parcel Strap No. 19-46-23-T3-00008.0000

SHARED USE PATH EASEMENT

THIS INDENTURE, made this 8TH day of APRIL, 2013, by and between JCKC, LLC (herein referred to as "Grantor"), and the City of Sanibel, a Florida municipal corporation, (herein referred to as "Grantee"), the mailing address of which is 800 Dunlop Road, Sanibel, Florida, 33957.

WITNESSETH, that the said Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to the Grantee, and its successors and assigns forever, a perpetual easement to construct, maintain, repair, replace and renew a public shared use path (the "Easement") allowing public use for pedestrians, bicyclists, and other compatible and legal forms of non-motorized transportation and forms of transportation specifically authorized by the City of Sanibel over and across the following described land situate, lying and being in the City of Sanibel, Lee County, Florida, to-wit:

That property which is legally described and depicted on **Exhibit A**, attached hereto and incorporated herein.

This Easement includes the reasonable right of ingress and egress, vehicular and pedestrian, for the purposes of constructing, maintaining, repairing and replacing such shared use path along with the responsibility to keep such path reasonably maintained and repaired at no cost to Grantor for the safe use by those permitted to use the Easement.

Grantor covenant(s) that Grantor is lawfully seized and possessed of the property constituting such Easement area, having good and lawful right and power to convey said Easement.

As a condition of the grant of this easement, it is acknowledged and agreed by Grantee that the grant of this easement shall not diminish or reduce the development rights of Grantor, its successors and assigns, with respect to calculations for setbacks, permeable/impermeable area, developed area or other development standards including calculations for density and intensity of use (which shall be calculated as if no shared use path or other easement area improvements exist).

As a condition of acceptance and use of this easement, Grantee also agrees to indemnify and hold harmless Grantor from any and all liability associated with the public use of the Easement and to defend Grantor from and against any and all claims, damages, and costs, including attorney's fees and costs, arising from or related to the public use of the Easement.

The grant by Grantor of the shared use path easement shall be non-exclusive, provided, however under no circumstances shall any other rights granted to any party conflict with, diminish, present a safety hazard or in any way interfere with or be inconsistent with the usefulness or purpose of the Grantee's shared use path easement or lawful uses thereof.

This Easement and associated terms and conditions shall be binding upon, and inure to the benefit of, the Grantor and Grantee and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the Grantor has set its hand and seal on the day and year first above written.

WITNESSES:

J. Nelson
1st Witness

J. NELSON
Print Name

Jill R Rlge
2nd Witness

Jill L. Lilge
Print Name

JCKC, LLC

By: [signature]
Joseph C. Schwartzel, President

Date: 4/8/13

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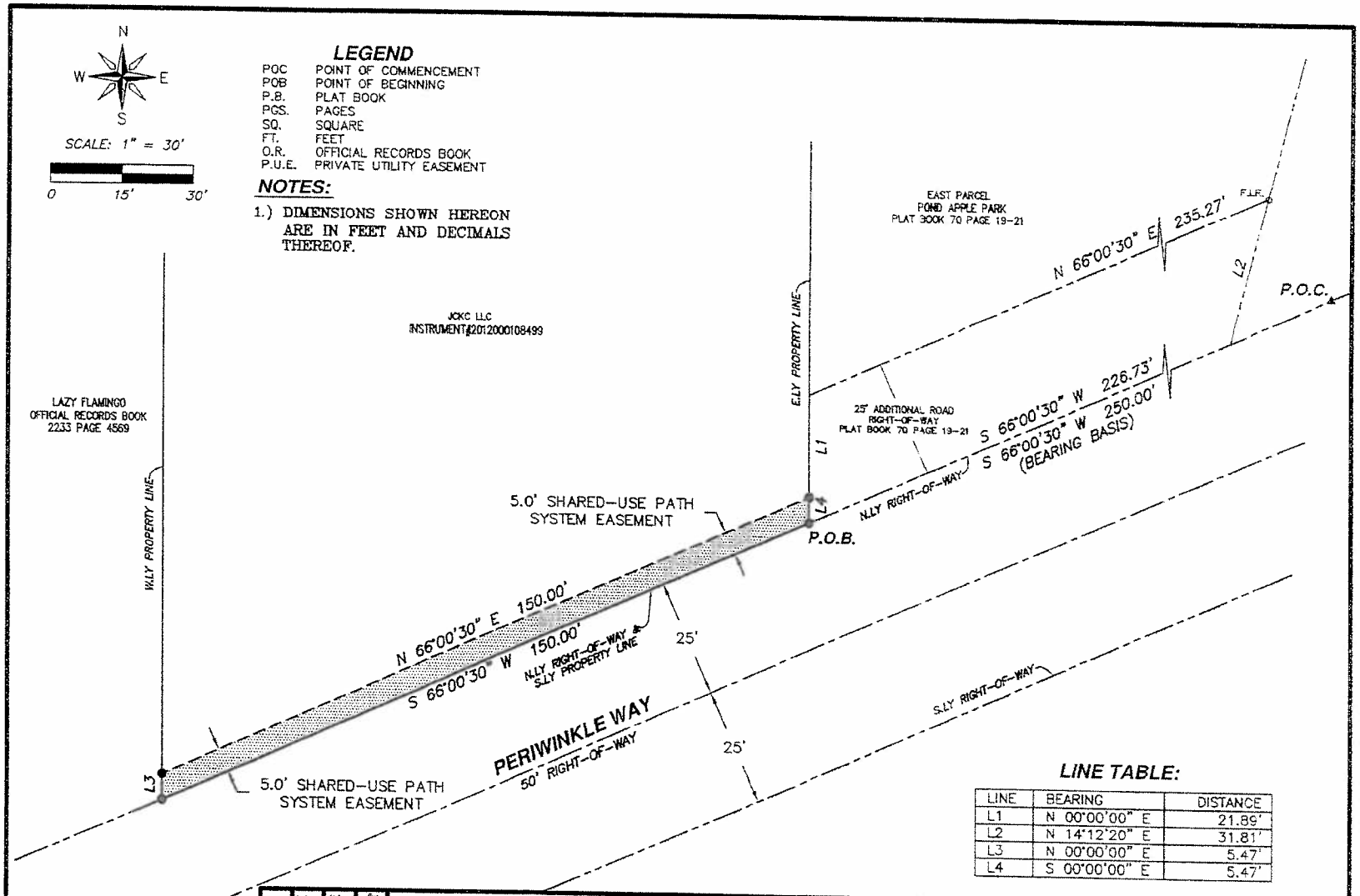
STATE OF FLORIDA)
COUNTY OF LEE)

I HEREBY CERTIFY that, the foregoing instrument was acknowledged before me on this 8th day of April, 2013 by Joseph C. Schwartzel, as President of JCKC, LLC. He is personally known to me or has produced personally known as identification.

Jill L Rlge
Notary Public, State of Florida
Print Name: Jill L. Lilge
Commission No: DD 962752
Date Commission Expires: 4-25-14

JILL L. LILGE
Notary Public - State of Florida
My Comm. Expires Apr 25, 2014
Commission # DD 962752
Bonded Through National Notary Assn.



LINE TABLE:

LINE	BEARING	DISTANCE
L1	N 00°00'00" E	21.89'
L2	N 14°12'20" E	31.81'
L3	N 00°00'00" E	5.47'
L4	S 00°00'00" E	5.47'

SHEET 1 OF 2
NOT A SURVEY

SCALE: 1" = 30'
DRAWING: 1020periwinkle
DRAWN BY: KAS
JOB: bennetts

5.0' SHARED-USE PATH EASEMENT
SKETCH TO ACCOMPANY PROPERTY DESCRIPTION

A PARCEL OF LAND LOCATED IN
SECTION 19 TOWNSHIP 46 SOUTH RANGE 23 EAST
LEE COUNTY, FLORIDA

KRIS A SLOSSER P.S.M.
4642 VILLA CAPRI LN. BONITA SPRINGS
FLORIDA 34134 (239) 947-1915

EXHIBIT A
1 of 2

PROPERTY DESCRIPTION

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, CITY OF SANIBEL, LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 23 EAST, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 23 EAST AND THE NORTH RIGHT-OF-WAY LINE OF PERIWINKLE WAY; THENCE S 66°00'30" W ALONG SAID NORTH RIGHT-OF-WAY LINE, FOR A DISTANCE OF 250.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND AS RECORDED IN INSTRUMENT #2012000108499 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE CONTINUE S 66°00'30" W ALONG SAID NORTH RIGHT-OF-WAY LINE AND THE SOUTH LINE OF SAID PARCEL, FOR A DISTANCE OF 150.00 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL; THENCE N 00°00'00" E ALONG THE WESTERLY LINE OF SAID PARCEL, FOR A DISTANCE OF 5.47 FEET; THENCE N 66°00'30" E FOR A DISTANCE OF 150.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARCEL; THENCE S 00°00'00" E ALONG SAID EASTERLY LINE, FOR A DISTANCE OF 5.47 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL OF LAND AND THE POINT OF BEGINNING.

PARCEL CONTAINS 749.6 SQUARE FEET MORE OR LESS

KAS 03/08/13

KRIS A. SLOSSER, STATE OF FLORIDA, (P.S.M. #5560)
SEE ATTACHED SKETCH

SHEET 2 OF 2
NOT A SURVEY

DRAWING: BENNETTS
DRAWN BY: KAS

5.0' SHARED-USE PATH EASEMENT PROPERTY DESCRIPTION

A PARCEL OF LAND LOCATED IN
SECTION 19 TOWNSHIP 46 SOUTH RANGE 23 EAST
LEE COUNTY, FLORIDA

KRIS A SLOSSER P.S.M.
4642 VILLA CAPRI LN. BONITA SPRINGS
FLORIDA 34134 (239) 947-1915

EXHIBIT A
2 of 2