

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050351

1. ACTION REQUESTED/PURPOSE: Approve a request for a License & Agreement to Hold Lee County Harmless ("License") to allow the placement of parking in a portion of the County's drainage easement on the south side of College Parkway and authorize the Chairman to execute the License. Board approval is necessary to authorize the License.

2. WHAT ACTION ACCOMPLISHES: Authorizes a license to allow Park Central, LLC, to place parking in a portion of the County's drainage easement on the south side of College Parkway at its property located at 8255/8267 College Parkway, Fort Myers, Florida

3. MANAGEMENT RECOMMENDATION:

4. Departmental Category: 09

C9A

5. Meeting Date:

04-05-2005

6. Agenda:

7. Requirement/Purpose: (specify)

8. Request Initiated:

<input checked="" type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	<input type="checkbox"/> Ch.125, F.S.	<input type="checkbox"/> Commissioner
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	<input type="checkbox"/>	<input type="checkbox"/> Department
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	<input type="checkbox"/>	<input type="checkbox"/> Division
<input type="checkbox"/> Public	<input type="checkbox"/> Other	<input type="checkbox"/>	<input type="checkbox"/> By: Scott M. Gilbertson
<input type="checkbox"/> Walk-On			

9. Background:

Park Central, LLC ("Park Central"), is the owner of property located at 8255/8267 College Parkway, Fort Myers, Florida (STRAP#: 15-45-24-00-00100.0000). The property is being developing as a commercial site. To complete the project, Park Central must construct parking on the site. Park Central has proposed to also locate parking at the east end of their site, over a portion a 20-foot wide drainage easement owned by Lee County; however, Park Central requires the County's permission to construct parking within any portion of this drainage easement.

Lee County DOT does not object to Park Central's placement of parking within the County's drainage easement, provided certain conditions are met. One condition is the County's issuance of a License to allow the parking at this location and Park Central's acceptance of the terms contained in that License. If approved, the License would require Park Central, or any successor property owner, to remove or relocate the parking if requested to do so by the County. Park Central must also agree to hold Lee County harmless from any claims resulting from their placement or use of parking within the County's drainage easement. Park Central's use of the County's drainage easement will be subordinate and inferior to the County's rights in the drainage easement. A copy of the License is attached. Park Central will be responsible for the cost of recording the License in the Public Records of Lee County, Florida.

Attachment: *License & Agreement to Hold Lee County Harmless*

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services	County Manager/P.W. Director				
<i>[Signature]</i>				<i>[Signature]</i>	<i>AM 3/23</i>	Analyst	Risk	Grants	Yr.	<i>[Signature]</i>
				<i>3-27-05</i>	<i>PK 3/21</i>		<i>3/21/05</i>		<i>3/22/05</i>	<i>3-18-05</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty
Date: *3/18/05*
Time: *3:55*
Forwarded To:
Co. Helm.
3/21/05 11AM

RECEIVED BY
COUNTY ADMIN: *MP*
3-21-05
11:45
COUNTY ADMIN
FORWARDED TO: *PP*
3/23/05
5pm

This Instrument Prepared by:

Office of the County Attorney
Lee County, Florida
Post Office Box 398
Fort Myers, Florida 33902-0398

STRAP No. 15-45-24-00-00100.0000

THIS SPACE FOR RECORDING

**LICENSE & AGREEMENT TO HOLD
LEE COUNTY HARMLESS**

THIS LICENSE & AGREEMENT TO HOLD LEE COUNTY HARMLESS ("*License*") is executed this ____ day of _____, 2005, by **LEE COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, ("*County*" or "*Licensor*"), in favor of **PARK CENTRAL, LLC**, a Florida Limited Liability Company, whose address is 3364 Cleveland Avenue, Fort Myers, Florida 33901 ("*Park*" or "*Licensee*").

WHEREAS, Park is the owner of real property located at 8255/8267 College Parkway, Fort Myers, Florida, being more particularly described in the Special Warranty Deed of The Canterbury School, Inc., to Park Central, LLC, acknowledged April 28, 2004 and recorded in the Official Records (O.R.) of the Public Records of Lee County, Florida at O.R. Book 4281, Pages 3381 - 3382, which description is incorporated herein by reference (the "*Park's Property*"); and

WHEREAS, the County is the owner of a 20-foot wide drainage easement located, in part, along the easterly property line of the Property, which drainage easement is more particularly described in the Warranty Deed of Elwood Safron, individually and as Trustee, to Lee County, Florida, dated December 19, 1988 and recorded in the Public Records of Lee County, Florida at O.R. Book 2038, Pages 347 - 349, which description is incorporated herein by reference (the "*County's Easement*"); and

WHEREAS, pursuant to Lee County Development Order DOS2004-00095 (referred to as "*DOS2004-00095*"), the terms of which are incorporated herein by reference, Park seeks to construct and pave the portion of the County's Easement located on Park's Property for use as a parking lot to serve the buildings and related improvements being constructed on the remainder of Park's Property; and

WHEREAS, the parking lot cannot be constructed within the County's Easement with without the County's permission or approval; and

C12(____)
____-____-05

WHEREAS, the County has the authority to issue a non-exclusive license to Park, which license is revocable at the will of the County, to allow the construction of the parking lot within the portion of the County's Easement located on Park's Property.

NOW THEREFORE, for and in consideration of the sum of One and xx/100 Dollar (\$1.00), the promises of the Licensee contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County hereby authorizes, approves and issues a non-exclusive, temporary License to Park to construct a parking lot within a portion of the County's Easement located on Park's Property, subject to the following conditions:

1. The above recitals are acknowledged by the parties to be true and correct and are incorporated herein by reference.
2. This License is temporary, non-exclusive and fully revocable by the County at any time and for any reason whatsoever as determined solely by the County. The License may be terminated by the County upon the sending of a notice of revocation to the Licensee, via regular mail, postage prepaid, at the address for the property as maintained by the Lee County Tax Collector.
3. This License allows the placement and construction of a parking lot within the portion of the County's Easement located on Park's Property, but such use is specifically made subject to the terms and conditions approved and made a part of DOS2004-00095. This License will create the relationship of Licensor and Licensee between the parties, and no estate or title will pass out of the Licensor. This License may not be construed to constitute an easement.
4. Licensee agrees to timely maintain, at no cost to the County, all of the improvements constructed or installed pursuant to DOS2004-00095. In the event the Owner fails to make timely repairs, the parties agree that the County may revoke this License or any underlying County approval for the parking lot under DOS2004-00095.
5. Licensee may alter the improvements constructed on Park Property within the County's Easement, provided prior approval for the alteration is obtained from the Lee County Department of Transportation. Approval to alter the improvements will not diminish the Licensee's responsibility for continued maintenance. Licensee also agrees to prevent the creation of any obstructions or conditions that may impede the flow of water through the County's drainage facilities now existing or hereafter constructed within the County's Easement.
6. Licensee agrees to repair any damage caused by Licensee, its agents or invitees that may occur to the County's drainage facilities located within the County's Easement during the course of Park's construction, installation, maintenance or use of the improvements authorized under LDO2004-00095.

7. Licensee also agrees to allow the County, or it's agents, a reasonable right of access across Licensee's property, on either paved or unpaved surfaces, for the purposes repairing, replacing and maintaining the County's drainage facilities within the County's Easement, doing no unnecessary damage.
8. The County reserves the right to enter on and install, repair and maintain its drainage facilities located within the County's Easement. The County will reasonably restore any damage done to the Licensee's permitted improvements within the County's Easement. However, replacement of any paving materials will be limited to either asphalt or concrete with no color or other enhancements.
9. Licensee, as the current owner of the Property benefitted by the License herein, for themselves, their heirs, successors and assigns, agree, upon the receipt of a request from the County, to immediately remove or relocate the parking lot, in part or in whole, as requested. In the event Licensee fails to immediately remove or relocate the parking lot when requested, then the County is authorized to remove the parking lot, in part or in whole, at the full expense of the Licensee or any subsequent owner of the Property.
10. Licensee, for itself, its successors and assigns, agrees to indemnify, hold harmless and defend the County and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any negligent or willful act or omission of the Licensee, or the Licensee's agents, consultants, employees or subcontractors during the installation or maintenance of the parking lot or related improvements. This includes any costs related to these actions.
11. If the Licensee desires to abandon it's use of the parking lot or other constructed improvements within the County's Easement, then the County may, after receipt of Licensee's written abandonment notice, require Licensee to remove, at Licensee's sole expense, any pavement and all other improvements constructed or installed within the County's Easement by Park under the terms of this License.
12. The terms and condition of this License are deemed to run with the Property and, as such, will be binding upon and inure to the benefit of the successors, assigns, executors, personal representatives and administrators of the respective parties hereto.
13. This License will be construed and enforced in accordance with Florida law.
14. This License constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified except by written agreement executed with the same formality.
15. Licensee, by accepting this License, specifically accepts and agrees to be bound by the stated conditions contained therein
16. This License must be recorded in the Official Records of the Public Records of Lee County, Florida.

This License applies only to the interest of Lee County and its Board of County Commissioners in the County's Easement referenced herein, and does not warrant the title or represent any state of facts concerning the title.

IN WITNESS WHEREOF the COUNTY has caused this License to be executed in its name by its Board of County Commissioners, acting by the Chair or Vice Chair of said Board, the day and year first written above.

(OFFICIAL SEAL)

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO LEGAL FORM:

John J. Fredyma
Assistant County Attorney
Office of County Attorney

**Licensee's Acceptance of Terms and Conditions
of License & Agreement to Hold Lee County Harmless**

Licensee specifically accepts and agrees to be bound by the terms and conditions stated and contained in this License & Agreement to Hold Lee County Harmless.

IN WITNESS WHEREOF, the Licensee has hereunto set its corporate hand intending to be bound as of the date first written above.

Signed, sealed and delivered
in the presence of

Park Central, LLC

[1st Witness' Signature]

[Type or Print Name]

[2nd Witness' Signature]

[Type or Print Name]

BY: _____
[Signature]

[Type or Print Name]
Manger
[Corporate Office or Title]

COUNTY OF _____ :
STATE OF _____ :

The foregoing instrument was acknowledged before me this ____ of _____ 2005,
by _____, the **Manger** of
[Name] [Corporate Office or Title]

Park Central, LLC, a Florida Limited Liability Company, on behalf of the company. He/she
is personally known to me, or has produced _____
_____ as identification.

[stamp or seal]

[Signature of Notary]

[Typed or printed name]

[Title]

[Serial number, if any]