



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE: 01/05/10

SUBJECT: PALMER COLLEGE FOUNDATION, INC. LEASE RENEWAL – ALLEN GREEN CENTER

DEPARTMENT: CITY MANAGER

RECOMMENDED MOTION:

To approve the Third Amendment and Restatement of Lease Agreement for the Allen Green Center with Palmer College Foundation, Inc.

SUMMARY:

Palmer College Foundation, Inc. (Palmer) has leased the Allen Green Center since May 9, 2002. Their current lease agreement expires on March 31, 2010 and Palmer would like to continue use of the facility for their clinic and associated activities. The attached lease agreement is for a 10-year period and may be cancelled by Palmer after the fifth year subject to specified notice requirements and an early termination payment.

Palmer will pay \$410,634 annually in years 1 through 3; \$469,296 annually in years 4 through 7; and \$483,961.50 annually in years 8 through 10. They will continue to be responsible for interior building maintenance and will receive an annual rental credit for taking over all exterior maintenance activities from the City.

Palmer is in good standing with the City and has complied with all provisions in the current lease agreement. Staff recommends approval of the Third Amendment and Restatement of Lease Agreement with Palmer as attached.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Shannon M. Lewis	<i>[Signature]</i>	Date 12/14/2009
FINANCE DEPARTMENT	<i>[Signature]</i>	Approved as to Budget Requirements	Date 12/22/09
CITY ATTORNEY	<i>[Signature]</i>	Approved as to Form and Legality	Date 12/23/09
CITY MANAGER	Approved Agenda Item For:		1/5/10

COUNCIL ACTION: Approved as Recommended Disapproved Tabled Indefinitely
 Continued to Date Certain Approved with Modification:

This Document Prepared by:
Margaret T. Roberts, City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

THIRD AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, with its principal business offices located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129 ("City" or "Landlord"), and **PALMER COLLEGE FOUNDATION, INC.**, f/k/a Palmer Chiropractic University Foundation, Inc., a not-for-profit corporation duly organized under the laws of the State of Iowa, in good standing and authorized to do business in the State of Florida and d/b/a Palmer College of Chiropractic, Florida, having its principal business office located at: 4777 City Center Parkway, Port Orange, Florida 32129 ("Palmer" or "Tenant"), and hereinafter collectively referred to as the "Parties".

WHEREAS, the Parties entered into a Lease Agreement for the Allen Green Civic Center dated May 9, 2002; and

WHEREAS, the Parties entered into a First Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated February 10, 2003; and

WHEREAS, the Parties entered into a Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated March 20, 2007; and

WHEREAS, the Parties entered into an Addendum to Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated October 16, 2007; and

WHEREAS, the Parties entered into a Right of Entry Protocol for the Allen Green Civic Center dated March 25, 2008; and

WHEREAS, the Parties entered into a Second Addendum to Second Amendment and Restatement of Lease Agreement for the Allen Green Civic Center dated January 6, 2009, extending the term of the agreement for one year to terminate on March 31, 2010, at midnight; and

WHEREAS, the Parties desire to amend the Second Amendment and Restatement of Lease Agreement, as amended, as set forth in this Third Amendment and Restatement of Lease Agreement, hereinafter referred to as the "Third Amended Lease Agreement."

NOW, THEREFORE, the Parties, for good and valuable consideration, receipt whereof is hereby acknowledged, agree as follows:

1. **Demised Premises.** The City is the owner of and hereby leases to Palmer and Palmer hereby leases and rents from the City the land and improvements located

thereon as more specifically defined hereafter. The demised premises is commonly referred to as the "Allen Green Civic Center" consisting of **16,972** square feet on the first floor, **2,955** square feet on the second floor and an expansion consisting of **9,404** square feet, for a **total of 29,331 square feet** of the building and structures, together with common grounds and vehicular parking facilities located at: 4705 Clyde Morris Boulevard, Port Orange, Volusia County, Florida and more particularly described on **Exhibit "A"** attached hereto ("Demised Premises"). Palmer shall occupy the Demised Premises as approved by the City Manager and the Parks and Recreation Director and as shown on the floor plan as described on **Exhibit "B."** Palmer, and its agents, employees and invitees shall have the non-exclusive right with others designated by the City to the free use of the common areas in the building and on the common grounds for the intended and normal purpose of such common areas and common grounds. Common areas shall include, but not be limited to, elevators (if any), sidewalks, parking areas, driveways, hallways, stairways, public restrooms, common entrances, lobby and other similar public areas and access ways. The City may change the common areas and common grounds if such changes do not materially and unreasonably interfere with Palmer's access and use of such common areas and common grounds.

2. **Term.** The term of this Third Amended Lease Agreement shall be for ten years, commencing on the 1st day of April, 2010, and extending until midnight on March 31, 2020, and for any additional periods of time during which the Demised Premises is leased by Palmer. The City shall have limited use of the general assembly room ("Auditorium") in the facility. The City and Palmer shall mutually agree upon the schedule for use of the Auditorium. Nothing in this Third Amended Lease Agreement shall prohibit the City from reasonable use of the facility or remaining properties as long as such use does not interfere with Palmer's use of the Demised Premises for purposes as described in Section 5a.
3. **Palmer Modifications.** To meet its growing needs, Palmer plans to make additional interior modifications from time to time. All modifications to the Demised Premises shall be subject to review for grant compliance and approval by the City prior to such modifications being made. At the City's sole option, all modifications shall be removed and the Demised Premises returned to its like condition at lease end.
4. **Payments and Credits.**
 - a. **Rental.** The rental rate shall be based upon the square footage of the Demised Premises totaling 29,331 square feet as follows:
 - (1) The rate of \$14.00 per square foot for years one (1) through three (3) of the Lease (April 1, 2010 – March 31, 2013) shall in each lease year equal **Four Hundred Ten Thousand Six Hundred Thirty-Four and no/100 Dollars (\$410,634.00) annually, and shall be payable in twelve (12) equal monthly installments of Thirty-four Thousand Two Hundred Nineteen and 50/100 Dollars (\$34,219.50).**
 - (2) The rate of \$16.00 per square foot for years four (4) through seven (7) of the Lease (April 1, 2013 – March 31, 2017) shall in each lease year

equal **Four Hundred Sixty-Nine Thousand Two Hundred Ninety-Six and no/100 Dollars (\$469,296.00)** annually, and shall be payable in twelve (12) equal monthly installments of **Thirty-Nine Thousand One Hundred Eight and no/100 Dollars (\$39,108.00)**.

- (3) The rate of \$16.50 per square foot for years eight (8) through ten (10) of the Lease (April 1, 2017 – March 31, 2020) shall in each lease year equal **Four Hundred Eighty-Three Thousand Nine Hundred Sixty-One and 50/100 Dollars (\$483,961.50)** annually, and shall be payable in twelve (12) equal monthly installments of **Forty Thousand Three Hundred Thirty and 13/100 Dollars (\$40,330.13)**.

Each rental payment described in Section 4.a. of this Third Amended Lease Agreement shall be payable on the first day of the month and each successive first day of the month thereafter, in advance, without notice or demand, **commencing on April 1, 2010**, hereafter referred to as the "Date of First Payment" and shall be delivered to: City of Port Orange, Florida, Attention: Accounts Receivable, 1000 City Center Circle, Port Orange, FL 32129. The rental specified herein shall be net to the City during the term of this Lease. The rental shall include the City's cost of insurance for the real property and general liability, cost of maintaining the structural, mechanical, electrical, plumbing, elevator or access equipment, if any, and other components for the building for the Demised Premises. All other costs, expenses and obligations of every kind including but not limited to electric, water and sanitary sewer services, telecommunications services, maintenance, janitorial and cleaning services, and maintenance of the surrounding grounds services relating to the Demised Premises which may arise or become due during the term of this Lease shall be paid by Palmer. The City shall be indemnified by Palmer against such costs, expenses, and obligations.

- b. **Palmer Credit.** Palmer shall receive an annual credit for taking over all exterior maintenance of the Demised Premises, including mowing, edging, landscaping, irrigation and maintenance of all surrounding grounds, to be credited in twelve (12) equal monthly installments, as follows:

- (1) Credit in an initial annual amount not to exceed **\$28,600.00 for years one (1) through three (3) of the Lease (April 1, 2010 – March 31, 2013)** shall equal **\$2,383.33 per month**.
- (2) Annual credit shall be increased not to exceed **\$30,500.00 for years four (4) through seven (7) of the Lease (April 1, 2013 – March 31, 2017)** and shall equal **\$2,541.67 per month**.
- (3) Annual credit shall be increased not to exceed **\$31,500.00 for years eight (8) through ten (10) of the Lease (April 1, 2017 – March 31, 2020)** and shall equal **\$2,625.00 per month**.

c. Renewal and Replacement Payment.

Beginning April 1, 2019, provided Palmer is then a tenant in possession under this Lease, Palmer shall pay to the City the amount of **Twenty-Five Thousand and no/100 Dollars (\$25,000.00) in twelve (12) equal monthly installments of Two Thousand Eighty-Three and 33/100 Dollars (\$2,083.33)** to cover the costs to the City for painting and replacing the carpet throughout the Demised Premises after Palmer vacates the Demised Premises.

d. Early Termination Payments.

In the event of Palmer's early termination of the Lease after the fifth year, under Section 16a, Palmer shall pay to the City a total sum of **Seventy-Five Thousand Dollars (\$75,000.00), to be paid in twelve (12) equal monthly installments of Six Thousand Two Hundred Fifty Dollars (\$6,250.00) during the final year of occupancy under the Lease.** This shall be the exclusive remedy available to the City under the terms of Section 16 of the Lease.

5. Use of Premises.

- a.** Palmer shall use the Demised Premises for a private college, administrative offices, campus health center, clinical services, outpatient clinic, research center, and such uses as are generally appurtenant to the operation of a private college and campus. Palmer shall comply with all federal, state and local laws, rules and regulations applicable to the use of the Demised Premises. Palmer shall comply with the special event ordinances of the City of Port Orange for any special events held on the Demised Premises.
- b.** As more specifically provided in the attached Right of Entry Protocol marked Exhibit C, the City reserves the right upon 24 hours notice to Palmer to use a portion of the Demised Premises for an emergency evacuation shelter for persons as designated by the City. The City shall use the Auditorium, kitchen, restrooms and other common areas, access ways and common grounds for emergency management purposes. Such use shall be considered an operation of the City who shall be responsible for any damage resulting from said operation. Similarly, in the event of such use as designated by the City, Palmer shall be entitled to reimbursement from the City of any and all reasonable and necessary expenses incurred by Palmer in excess of its average 3 prior billing cycles for utility services which Palmer is obligated to pay as described in Section 10.
- c.** The City further reserves the right to use the new vehicular access and all driveways and parking lot areas across and within the Demised Premises for the purposes of vehicular and pedestrian ingress, egress, parking, and access to the City's adjoining property. The City's adjoining property includes the playing fields, the library parking and the fire station. The City may exercise its right of use as described herein during all times except the

normal hours of operation of Palmer's administrative offices, campus health center, clinical services, outpatient clinic and research center, not to exceed the hours of 7:30 a.m. to 7:30 p.m., Monday through Friday. In the event of a conflict or potential conflict arising out of this use and Palmer operations as may be needed in the future for Saturday operations, the matter shall be presented to the City Manager for final resolution in consultation with Palmer. The City shall prioritize its utilization of the Demised Premises to the northern most driveways and parking spaces for the vehicular ingress and egress from and to Clyde Morris Boulevard, except during special events requiring overflow parking to use the new vehicular access driveways leading to the adjoining City property northeast of the Demised Premises. The City shall provide Palmer with a calendar of special event utilization including four times per year for Family Days, Lakeside Jazz Fest, Fourth of July and the Art Show.

6. **Fixtures and Alterations.** Palmer shall not make or cause to be made any alterations, additions to the structural, mechanical, electrical, plumbing, access equipment or other components of the building and surrounding site improvements without first notifying the City as set forth in this Section. For all contemplated changes to the components of the building, Palmer shall supply to the City plans and specifications for such work, obtain written approval from the City Manager who shall be the Lease Administrator for the City, and Palmer shall apply for and obtain such permits as may be required under the Land Development Code of the City of Port Orange, Florida and other governing entities. Palmer shall provide performance and payment bonds equal to the value of all contracts for improvements naming the City as an insured. Palmer shall do all things necessary to prevent the filing of any liens for work, labor, services or materials performed or supplied or claimed to have been performed or supplied to Palmer, or anyone holding the Demised Premises, or any part of them, through or under Palmer. If any claim of lien is filed, Palmer shall have it cancelled of record within thirty (30) business days after the date of the filing or, if Palmer in good faith determines that the lien should be contested, Palmer shall furnish security to release the claim of lien as a lien against the property and to prevent any foreclosure, pending resolution of the contest. If Palmer does not release the claim of lien, the City may, but shall not be obligated to, release the claim of lien either by paying the amount claimed to be due or by procuring the release of claim of lien by giving security or in such other manner as may be prescribed by law. Palmer shall repay to the City all sums disbursed or deposited by the City pursuant to the foregoing provisions of this paragraph, including the City's costs, expenses and attorneys' fees reasonably incurred in connection therewith as additional rent hereunder on demand. Nothing contained herein shall imply any consent or agreement of the City or the owner of the entire premises to subject their interests to liability under any mechanics' or other lien law whether or not the performance or the furnishing of such work, labor, services or materials to Palmer or anyone holding the Demised Premises, or any part of them, through or under Palmer has been consented to by the City or the owner of the premises.
7. **Repairs to Demised Premises.** Upon learning of defects or operational deficiencies, Palmer shall provide verbal and written notice to the City identifying components of the building that require repair. The City shall expeditiously

commence and complete the repair, replacement or restoration of the building component to comply with all applicable building, plumbing, electrical, mechanical, accessibility and other codes and in compliance with the purchasing policies duly adopted by the City of Port Orange, Florida.

8. **Items Installed by Palmer.** All additions, alterations, expansions and improvements to the components of the building, grounds and parking lots, including but not limited to wall, ceiling and floor coverings, made by Palmer shall be the property of the City and shall remain the property of the City for the term of this Third Amended Lease Agreement or any extension or renewal thereof.
9. **Signs.** Palmer shall have the right to place upon the Demised Premises such sign or signs as may be necessary to designate the Demised Premises. Such signs shall be maintained in good condition and repair at all times, and shall comply with all zoning and sign requirements of the City of Port Orange. All permits necessary for such signs shall be obtained by Palmer at Palmer's expense.
10. **Utilities Services.** Palmer shall be responsible for all utility services and shall maintain an individual account with the various providers. Palmer shall be responsible for arranging access to and all fees associated with telecommunications services; including, but not necessarily limited to, telephone service, fire and security system monitoring, facsimile, and internet connection.
11. **The City's Right of Entry.** The City, or the City's agents or representatives, shall have the right to enter the Demised Premises during all reasonable hours with reasonable notice to Palmer to inspect the Demised Premises or to make repairs, additions, or alterations as may be deemed necessary for the safety of Palmer, or for the preservation of the Demised Premises or the building. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations, or additions which do not conform to this Third Amended Lease Agreement or to the rules and regulations of the Land Development Code as the same relates to the building and Demised Premises. Palmer shall at all times provide the City with keys to all portions of the Demised Premises. In possessing such keys, the City, its agents and representatives understand that Palmer maintains confidential patient, student, employee, and research records in paper and electronic media in portions of the Demised Premises. The Parties have agreed to the designated locations of such confidential records and have developed a separate right of entry protocol which balances Palmer's rights and responsibilities to maintain confidentiality with the rights and responsibilities of the City as Landlord. A copy of the Right of Entry Protocol dated March 25, 2008, is attached hereto as **Exhibit "C."** The Right of Entry Protocol shall remain in full force and effect during the term of this Third Amended Lease Agreement, and any renewal term.
12. **Assignment.** Palmer shall not sell, assign, mortgage, pledge or in any manner transfer this Third Amended Lease Agreement or any estate or interest thereunder and shall not sublet the leased premises or any part thereof without previous written consent of the City in each instance. The consent by the City to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. The City may withhold its consent to a

proposed assignment of lease or sublease for any reason and shall not be required to accept a proposed assignee or sublease regardless of the reputation or financial responsibility of same. This prohibition against assigning or subletting shall be construed to include an assignment or subletting by operation of law. Palmer shall not permit any licensee or concessionaire therein without previous written consent of the City in each instance. The consent by the City shall not be unreasonably withheld for any licensee to use a portion of the Demised Premises in furtherance of Palmer's operation including, but not limited to, a bookstore or food/refreshment vending machine concession. Further, the consent of the City shall not be unreasonably withheld for any licensee to temporarily use a portion of the Demised Premises in furtherance of Palmer's operation including, but not limited to Palmer related expositions for equipment and professional products or services commonly recognized in the chiropractic profession, if limited to a maximum average of twenty (21) days per calendar quarter.

Notwithstanding the foregoing provisions of this Section, Palmer may assign or sublet the Demised Premises, without the City's consent, to any corporation or other entity which controls, is controlled by or is under common control with Palmer, or to any other corporation or entity resulting from the merger or consolidation with Palmer, or to any corporation or entity which acquires all or substantially all of the assets of Palmer provided that the assignee or subtenant executes a written agreement assuming, in full, the obligations of Palmer under this Third Amended Lease Agreement and agrees to be bound by all the terms and conditions thereof. No assignment or sublet of this Third Amended Lease Agreement at any time shall release Palmer of its obligations hereunder.

- 13. Default by Palmer.** If any installment of rent shall remain due and unpaid for 30 days, or if Palmer shall materially violate or materially default on any of the other covenants, agreements or stipulations of this Third Amended Lease Agreement, the City may, at its option, and without notice in the case of failure to pay rent, and upon reasonable written notice and opportunity to cure as provided below in the case of the material breach of any of the other covenants, if such material breach continues unremedied: (1) elect to declare the entire balance of the rent, minus any rental credit for the leased term immediately due and payable by Palmer; (2) terminate Palmer's right to possession of the Demised Premises and enter the Demised Premises and remove all persons, furniture and equipment located therein; and (3) seek any and all remedies available to the City by statute or law. If Palmer defaults, materially or otherwise, on any covenant other than the payment of rent, the City shall set forth in the written notice, a reasonable time to cure the default which shall not be less than 15 days. Palmer shall take immediate steps to remedy the breach and shall diligently pursue such steps until completed and reasonably accepted by the City. No material default shall be deemed to continue if and so long as Palmer diligently proceeds to cure in good faith or is delayed in or prevented from curing by facts or circumstances beyond Palmer's control. If the material violation or material default continues after the expiration of a reasonable time to cure, as provided herein, then the City may terminate Palmer's right to possession of the Demised Premises and enter the Demised Premises and remove all persons, furniture and equipment located therein, and may seek any and all other remedies available to the City by statute or law. The Parties agree that for purposes of this Third Amended

Lease Agreement, the determination of the materiality of any violation or default shall be governed by Florida law and shall include the following criteria: (1) the extent to which the injured party will be deprived of the benefit which can reasonably be expected; (2) the extent to which the injured party can be adequately compensated for the part of the benefit of which the injured party will be deprived; (3) the extent to which the breaching party will suffer forfeiture; (4) the likelihood that the breaching party will cure; and (5) the extent to which the behavior of the breaching party comports with the standards of good faith and fair dealing. In the event of a dispute between the Parties as to the materiality of the violation or default, the Parties agree to participate in nonbinding mediation. Mediation shall be initiated at the written request of either party. Within 60 days of the notice requesting mediation the Parties shall select a mediator and schedule the mediation conference, unless additional time is mutually agreed upon by the Parties. Each party agrees to share equally in the cost of the mediator.

14. If the City has actual knowledge Palmer has abandoned the Demised Premises, or the City reasonably believes Palmer has been absent from the Demised Premises for a period of thirty (30) consecutive days with rent not current, then the City may serve a written notice of abandonment upon Palmer, and after ten (10) days have elapsed since service of such notice, then the City may declare this Lease abandoned, and shall, in such event, make reasonable efforts to relet the Premises. Damages shall include, but shall not be limited to, the following: (a) all actual damages suffered by the City until the property is relet, including reasonable expenses incurred in reletting or in attempting to relet; and (b) the difference between the rent received when the property is relet and the rent reserved under this Third Amended Lease Agreement. In calculating this difference, Palmer shall be given the benefit of any rental credit. After the premises have been relet, Palmer agrees to pay to the City, on the last day of each rental period, the difference between the rent received for the period from reletting and the rent reserved under this Third Amended Lease Agreement for that period. In calculating this difference, Palmer shall be given the benefit of any rental credit.
15. **Loss or Destruction of Demised Premises.** If the Demised Premises become, as a practical matter, totally untenable after a casualty loss such as fire, storm, explosion, earthquake, or other casualty loss, this Third Amended Lease Agreement shall be at an end from such time, except for the purpose of enforcing rights and obligations that may have then accrued under this Third Amended Lease Agreement, including but not limited to, the payment of insurance claims, indemnity, and any remaining rental credit. The rental shall then be accounted for between the City and Palmer up to the time of such injury or destruction of the Demised Premises, Palmer paying up to such date and the City crediting to Palmer the rents collected beyond such date, if any. Should only a part of the Demised Premises be rendered untenable, the rental minus any rental credit shall abate in the proportion which the injured part bears to the whole Demised Premises, and such part so injured shall be restored by the City as speedily as practicable, after which the full rent minus any rental credit shall recommence and the Third Amended Lease Agreement shall continue according to its terms.

16. Surrender or Early Termination of Lease by Palmer.

- a. The City agrees that Palmer may terminate this Third Amended Lease Agreement after the fifth year and before October 1, 2018 upon providing to the City 18 months written notice in advance of the intended voluntary or other surrender by Palmer of the Demised Premises. In the absence of any material default or material breach of covenants as otherwise set forth in this Third Amended Lease Agreement, such termination shall relieve Palmer of any further obligation for unpaid monthly rental payments subsequent to the surrender date and not yet due and payable. However, Palmer shall be responsible for early termination payments as set forth in Section 4d of this Third Amended Lease Agreement.
- b. In the event Palmer surrenders or terminates this Lease prior to the end of the fifth year, Palmer shall be responsible for making the monthly rental payments through the end of the fifth year, as set forth in Section 4a(1) and 4a(2) of this Third Amended Lease Agreement.

17. Attorney's Fees. In the event civil action shall be brought by one party against the other to enforce any term, condition, or statutory right arising out of this Third Amended Lease Agreement, the prevailing party may apply to the Court for its reasonable attorney's fees which shall be fixed by the Court.

18. Recordation. This Lease shall not be recorded by Palmer without the consent of the City.

19. Waste. Palmer agrees to commit or suffer no act that would result in damage to or waste of the Demised Premises.

20. Palmer's Personal Property. All personal property of Palmer in the Demised Premises shall be and remain in the Demised Premises at Palmer's sole risk and the City shall not be liable for any damage to nor loss of such personal property arising from any acts of negligence of any other persons; nor from the leaking of the roof; nor from the bursting, leaking or overflowing of water, sewer, or steam pipes; nor from heating or plumbing fixtures; nor from electric wires or fixtures; nor from any other cause whatsoever. Notwithstanding the foregoing, the City shall maintain personal property coverage for damage to the personal property of Palmer resulting from the negligence of the City's employees and agents.

21. The City's Personal Property. The personal property of the City in the Demised Premises is described on the inventory attached hereto as **Exhibit "D."** The City Manager shall be authorized to update the inventory list and to amend the inventory in writing as shown on Exhibit "D," from time to time, accordingly. The inventory shall remain within the Demised Premises and Palmer shall be permitted to utilize the inventory for its operations. Palmer shall be permitted to utilize the pews from the Auditorium. Palmer shall be responsible for any damage to the inventory resulting from Palmer or its agents' use and shall immediately repair any such damage incurred. Palmer shall not be liable for any damage to nor loss of such inventory arising from any acts of negligence of any other persons; nor from the

leaking of the roof; nor from the bursting, leaking or overflowing of water, sewer, or steam pipes; nor from heating or plumbing fixtures; nor from electrical wires or fixtures; nor from any other cause whatsoever. Notwithstanding the foregoing, Palmer shall maintain inventory coverage for damage to the inventory described on Exhibit "D" resulting from the negligence of Palmer's employees and agents. Except as otherwise provided herein, upon termination of this Third Amended Lease Agreement, the inventory shall be returned to the City in the same condition as originally received, excepting normal wear and tear.

22. Insurance, Loss, Indemnity, Liability.

- a. Palmer shall during the entire term of this Third Amended Lease Agreement except as provided otherwise, keep in full force and effect a policy of comprehensive general liability insurance with respect to the Demised Premises, in the amount of not less than One Million Dollars (\$1,000,000.00) per occurrence. Further, the City shall provide property insurance for the building for its full replacement cost.

Palmer shall reimburse the City for 50% of the cost of property insurance. Palmer shall be responsible to insure its personal property located within the Demised Premises.

The policy(ies) shall name the City, as an additional insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) days prior written notice, except for non-payment of premium which, by law, is ten (10) days notice. The insurance shall be evidenced by a certificate in a form acceptable to the City, stating the amount of any "deductible," written by an insurance company reasonably acceptable to the City, and a copy of the policy or certificate of insurance shall be delivered to the City prior to the commencement of this Lease.

In the event Palmer shall fail to procure the insurance, the City may, but shall be under no obligation to, procure insurance in which event Palmer agrees to pay to the City, as additional rent, the amount of the premium on the first day of the month following the month in which the City notifies Palmer of the amount of the premium due. The City Manager shall be authorized to approve in writing amendments to this paragraph, from time to time, to adjust insurance limits and coverage consistent with City policy and in keeping with the nomenclature of the insurance industry.

- b. Palmer shall indemnify, defend and hold the City and its officers, agents, representatives and employees harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence resulting from Palmer's operation of the college directly related to its use and occupancy of the Demised Premises or any part of the Demised Premises occasioned wholly or in part by any act or omission of Palmer or those acting under Palmer or Palmer's agents, and employees, including students under the supervision of instructors and student body activities

sanctioned by Palmer. In the event that the City shall, without fault on its part, be made a party to any litigation commenced by or against Palmer, City shall promptly notify Palmer in writing of any claim asserted against the City hereunder, and shall promptly deliver to Palmer the original or a true copy of any summons or any process, pleading or notice issued in any suit or other proceeding to assert or enforce any such claim. Palmer may defend any such suit brought against itself and also the City with Palmer's own attorneys and the City may participate in such defense at its expense. Palmer shall fully comply with all health and police regulations of insurance carriers writing policies covering the building and Demised Premises. The City shall not be responsible for student actions occurring on the Demised Premises.

- 23. **Severability.** If any portion of this Third Amended Lease Agreement shall be adjudged to be invalid, such portion shall be deemed severable, and shall not invalidate or impair the Lease Agreement as a whole or any other provision of the Lease Agreement.
- 24. **The Parties are Not Partners.** It is expressly understood that neither the City nor Palmer shall be construed or held to be a partner or associate of the other in the conduct of their respective business. The relationship between the Parties hereto is and shall remain at all times that of Landlord and Tenant.
- 25. **Notices.** Except for the monthly rental, all notices shall be put in writing, sent by certified or registered mail or shall be delivered in hand to:

Landlord: Attention: Lease Administrator/City Manager
Mailing Address: City of Port Orange, Florida
1000 City Center Circle
Port Orange FL 32129

Tenant: Attention: Treasurer
Mailing Address: Palmer College Foundation, Inc.
1000 Brady Street
Davenport, Iowa 52803

With a written copy of any such to notice to:

Attention: _____
Administration
4777 City Center Parkway
Port Orange, FL 39129-0153

This paragraph shall apply to notices provided for in this Third Amended Lease Agreement or by the laws of the State of Florida.

- 26. **Mitigation of Damages.** Notwithstanding any contrary covenant, agreement, or stipulation of this Third Amended Lease Agreement, the City and Palmer shall each have the obligation to mitigate, in every reasonable manner, all damages that may or

shall be caused or suffered by virtue of the other's defaults under or in violation of any covenant, agreement or stipulation.

27. **Written Agreement.** This Third Amended Lease Agreement contains the entire agreement between the Parties hereto and all previous negotiations leading thereto, and it may be modified only by an agreement in writing signed and sealed by the City and Palmer. This Third Amended Lease Agreement shall be interpreted in accordance with the laws of the State of Florida and venue for any litigation involving this Third Amended Lease Agreement shall be in Volusia County, Florida. Upon early termination, surrender or abandonment, Palmer shall provide written notice of same.
28. **Time.** Time is of the essence in all of the terms and provisions of this Third Amended Lease Agreement.
29. **Peaceful Possession.** Subject to the terms, conditions and covenants of this Third Amended Lease Agreement, Palmer shall and may peaceably have, hold and enjoy the Demised Premises without hindrance or molestation by the City.
30. **Captions.** The captions appearing in this Third Amended Lease Agreement are for reference purposes only and shall not be considered to vary, modify, or amend said Third Amended Lease Agreement.
31. **Counterparts.** This Third Amended Lease Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile of an executed copy of this Third Amended Lease Agreement shall be deemed valid as if an original signature was delivered.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Lease Agreement the day and year stated hereinafter.

LANDLORD:
CITY OF PORT ORANGE, FLORIDA

Witness

By: _____
Allen Green, Mayor

Witness

Attest: _____
Kenneth W. Parker, City Manager

Witness

Date Signed: _____, 2009

Witness

Corporate Seal

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing **THIRD AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT** on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who [] are personally known to me, or [] have produced _____ as identification.

(Seal)

Notary Public, State of Florida at Large
Printed name, commission and expiration:

TENANT:

Palmer College Foundation, Inc., an Iowa not-for-profit corporation, d/b/a Palmer College of Chiropractic, Florida

Mary Johnson
Witness

By: Thomas L. Tiemeier
Thomas L. Tiemeier, Treasurer and Vice Chancellor for Administration

Claudia Jenkins
Witness

Date Signed: December 14, 2009

STATE OF IOWA
COUNTY OF SCOTT

The foregoing instrument was acknowledged before me this 14th day of December, 2009, by Thomas L. Tiemeier, Treasurer and Vice Chancellor of Administration, duly authorized to execute the foregoing THIRD AMENDMENT AND RESTATEMENT OF LEASE AGREEMENT on behalf of Palmer College Foundation, Inc., an Iowa not-for-profit corporation, d/b/a Palmer College of Chiropractic, Florida, and who is personally known to me, or has produced Driver's License as identification.

Inne Lindstrom
Notary Public, State of Iowa at Large
Printed name, commission and expiration: 2/2011

(Seal)

EXHIBIT A

THE WEST ONE-HALF (1/2) OF THE FOLLOWING DESCRIBED PROPERTY:

Part of the South one-half of Government Lots 5 and 6, Section 8, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows:

From a Point of Beginning being a concrete monument marking the Northwest corner of Lot 3, KINGSWOOD SUBDIVISION as recorded in Map Book 35, Pages 113 and 114 of the Public Records of Volusia County, Florida; thence South 00 degrees 18 minutes 15 seconds East along the West line of Lots 3 through 8 (shown as S. 00-38-50 E on said plat) for a distance of 450.06 feet to a concrete monument marking the Northeast corner of Lot 10, said KINGSWOOD SUBDIVISION; thence South 89 degrees 30 minutes 08 seconds West along the North line of Lots 10 through 18 (shown as S 89-03-00 W on said plat) for a distance of 806.64 feet to the Easterly right of way line of Clyde Morris Boulevard (a 100 foot wide right of way as described in Official Records Book 3331, Page 587); thence North 07 degrees 30 minutes 34 seconds West along said East right of way line for a distance of 453.28 feet to the North line of the South one-half of said Government Lots 5 and 6, said North line being also the North line of the South 1/2 of the Southwest 1/4 of said Section 8; thence North 89 degrees 20 minutes 08 seconds East along said North line of the South one-half of Government Lots 5 and 6, being along the South boundary of lands described in Official Records Book 3148, page 1572, and Official Records Book 1619, page 321, for a distance of 863.50 feet to the Point of Beginning of this description.

THE ABOVE PROPERTY MAY ALSO BE DESCRIBED AS FOLLOWS:

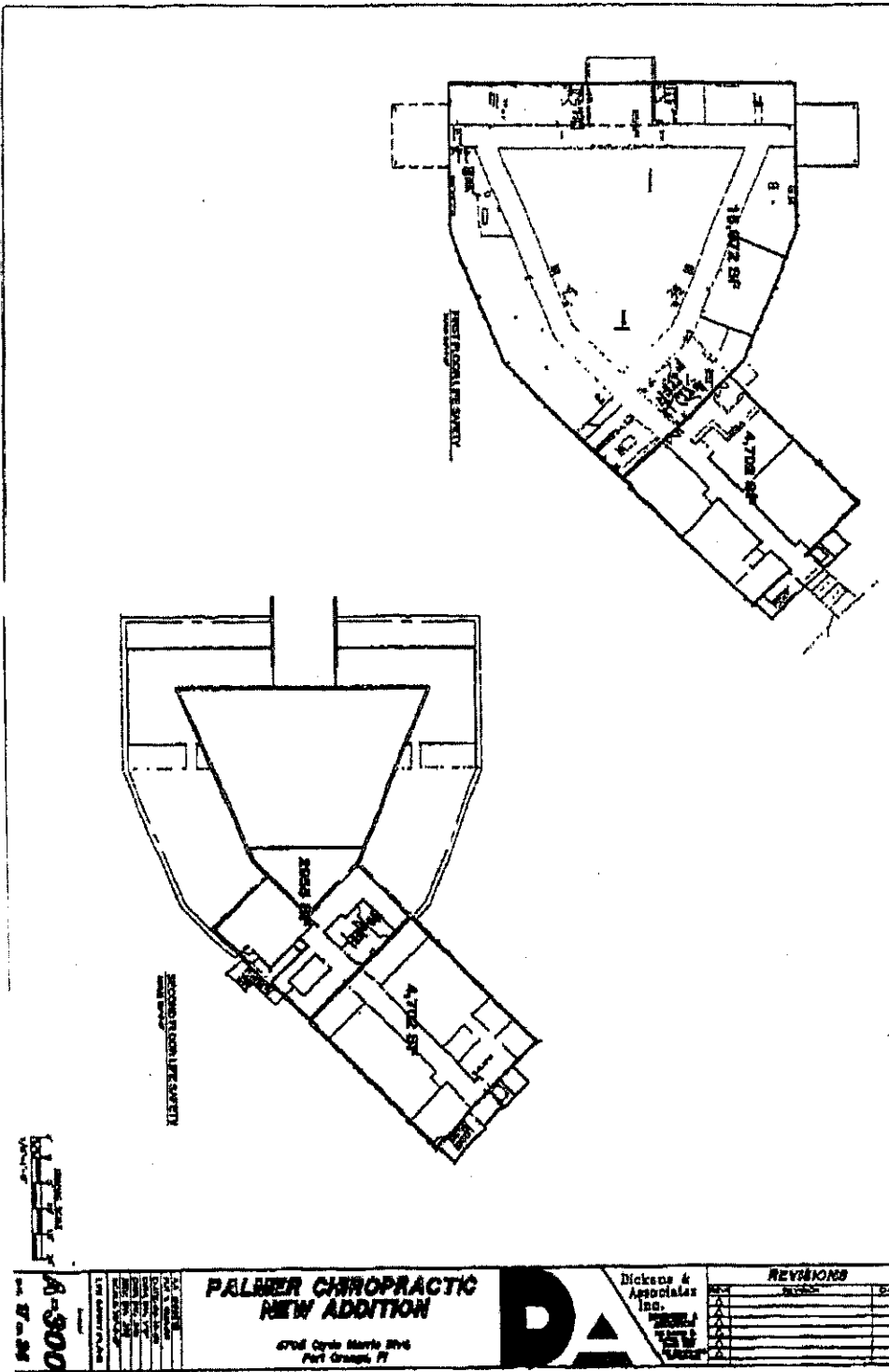
THE WEST ONE-HALF (1/2) OF THE FOLLOWING DESCRIBED PROPERTY:

A portion of the Southwest quarter of Section Eight (8), Township Sixteen (16) South, Range Thirty-Three (33) East, described as follows:

Commencing at a 2-inch iron pipe marking the Southwest quarter of said Section 8, thence North 88 degrees 44 minutes 50 seconds East along the Southerly line of said Section 8 a distance of 891.55 feet to a point in the center line of the Samsula-Port Orange Road; thence North 7 degrees 52 minutes 40 seconds West along the center line of said Samsula-Port Orange Road a distance of 872.02 feet to Place of Beginning; thence North 89 degrees 3 minutes East a distance of 856.81 feet; thence North 0 degrees 38 minutes 10 seconds West a distance of 450 feet to a point in the North line of the South half of the Southwest Quarter of said Section 8, thence South 89 degrees 03 minutes West along the North line of the South half of the Southwest quarter of said Section 8 a distance of 914.02 feet to the center line of the said Samsula-Port Orange Road; thence South 7 degrees 52 minutes 40 seconds East a distance of 453.31 feet to the Place of Beginning, LESS AND EXCEPT that portion taken for road right-of-way.

EXHIBIT "A"

Exhibit "B"



11/11/09

A-300

NO.	DATE	DESCRIPTION

**PALMER CHIROPRACTIC
NEW ADDITION**
4701 Gayle Marie Blvd
Part Group #1



Dickenson &
Associates
Inc.
1000
1000
1000

REVISIONS	
NO.	DATE

EXHIBIT "B"

PAGE 03

DICKENS & ASSOC.

9/98-297-88

75 14 2007/07/07

RIGHT OF ENTRY PROTOCOL

This Right of Entry Protocol ("Protocol") is made and entered into the day and year set forth herein by and between the **City of Port Orange, Florida**, a chartered municipal corporation with its principal business offices located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129 ("City" or "Landlord") and **Palmer College Foundation, Inc.**, a not for profit corporation duly organized under the laws of the State of Iowa, in good standing and authorized to do business in the State of Florida and d/b/a Palmer College of Chiropractic Florida, having its principal business office located at 4777 City Center Parkway, Port Orange, Florida 32129 ("Palmer" or "Tenant") and hereinafter collectively referred to as the Parties.

WHEREAS, the Parties entered into a Second Amendment and Restatement of Lease Agreement dated March 20, 2007 ("Lease") of the Demised Premises ("Allen Green Civic Center or AGCC") to be used by Palmer for a private college, administrative offices, campus health center, clinical services, outpatient clinic, research center, and such uses as are generally appurtenant to the operation of a private college and campus;

WHEREAS, section 5b of the Lease reserves to the City the right, upon 24 hours notice to Palmer, to enter and use a portion of the AGCC for an emergency evacuation shelter for persons as designated by the City;

WHEREAS, section 5b of the Lease authorizes the City to use the AGCC's general assembly room (auditorium), kitchen, restrooms and other common areas, access ways and common grounds for emergency management purposes;

WHEREAS, section 11 of the Lease provides the City with keys and the right to enter all portions of the AGCC during all reasonable hours with reasonable notice to Palmer to inspect, to make repairs, additions or alterations for the safety of Palmer or for the preservation of AGCC or the building;

WHEREAS, section 11 of the Lease recognizes the City's right of entry to the AGCC is subject to Palmer's confidential patient, student, employee and research records in paper and electronic media located in portions of the AGCC;

WHEREAS, as further provided in section 11, the parties agreed to designate the locations of such confidential records and to develop this protocol which balances Palmer's rights and responsibilities to provide clinical services while maintaining confidentiality with the rights and responsibilities of the City as Landlord which would include the City's reservation to use a portion of the AGCC for an emergency evacuation shelter; and

WHEREAS, the City shall make every effort to work with Palmer to coordinate the timing of the access; and

WHEREAS, Palmer recognizes in the event the City gives notice of access in response to emergency conditions the City will act as quickly as possible to restore the Demised Premises; and

WHEREAS, pursuant to the Lease, the City and Palmer have jointly drafted this Protocol.

NOW, THEREFORE the Parties, for good and valuable consideration, receipt of which is hereby acknowledged, agree as follows:

1. Palmer designates the following rooms within AGCC as repositories of confidential patient, student and employee, and research records in paper and electronic media:

- (a) #101 Office
- (b) #103 Office
- (c) #103A Office
- (d) #104 Storage
- (e) #105 Office
- (f) #105A Office
- (g) #105B Office
- (h) #112 Storage
- (i) #113 Office
- (j) #115 Records Room
- (k) #117 Records Room
- (l) #216 Faculty Office
- (m) #306F Faculty Office
- (n) #317 Faculty Office
- (o) #407F Faculty Office
- (p) #410B Faculty Office

The above room designations may be changed by Palmer from time to time upon written notice to:

Attention: City Manager
City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129

2. The above referenced rooms are accessible to the City with reasonable notice via telephone or email from the City to one or more of the following Palmer officials for the purposes specified in section 11 of the lease:

Page 2 of 5

EXHIBIT "C"

- (a) Facilities Manager Brad Kuhns
Palmer Phone (386) 763-3690
Palmer Fax: (386) 763-2751
email: Brad.Kuhns@palmer.edu
Cell phone: (386) 566-7180

- (b) Director of Clinics, Albert Luce
Palmer Phone (386)763-2754
Palmer Fax: (386)763-2716
email: Al.Luce@palmer.edu
Cell phone: (321) 948-6535

- (c) Director of Institutional Support George Bertish
Palmer Phone (386) 763-2669
Palmer Fax: (386) 763-2643
email: George.Bertish@palmer.edu
cell phone: (386) 503-9456

The above listed Palmer officials and/or their respective contact information may be changed from time to time upon written notice by Palmer to the City as provided in paragraph 1 above.

3. If, and in the event, the City provides notice for access under section 11, Palmer shall have the right and the responsibility to designate a representative to be present to protect and maintain the confidentiality of its records while the City has access to one or more of such rooms.

4. If, and in the event, the City exercises its section 5b right to enter and use a portion of the AGCC for an emergency evacuation shelter, then such 24 hour notice from the City shall be timely provided to one or more of the Palmer officials listed in paragraph 2 of this Protocol.

5. Upon receipt of the City's notice designating an emergency shelter, Palmer shall have the right to secure and lock the rooms listed in paragraph 1 of this Protocol in order to protect and maintain the confidentiality of its records subject only to the City's rights under section 11 of the Lease. If, and in the event, the City also provides notice for access under section 11 after providing the section 5b emergency shelter notice, Palmer shall have the right and the responsibility to designate a representative to be present to protect and maintain the confidentiality of its records while the City has access to one or more of such rooms designated in paragraph 1 of this Protocol.

6. Upon notification of the need for an emergency evacuation shelter, the City and Palmer shall make their best efforts under the circumstances to designate a representative of each who will be responsible to coordinate their respective actions as Landlord and Tenant.

7. Without abandoning its then existing clinic patients' chiropractic needs, Palmer shall curtail but not eliminate its clinical operations to reasonably accommodate the City's need to not only prepare but also maintain the AGCC to house an emergency evacuation shelter.

8. In addition to the chiropractic care described in the preceding paragraph, Palmer shall on a case by case basis provide emergency chiropractic care to first responders and sheltered individuals provided:

- (a) appropriate space and functioning equipment is available in AGCC; and
- (b) available faculty who are authorized to practice chiropractic under Florida law volunteer to provide necessary chiropractic emergency care pursuant to Florida Statute §768.13 known and cited as the "Good Samaritan Act".

9. Except as provided in paragraphs 1 and 2, this Protocol may be modified only by an agreement in writing signed by the parties as provided in Section 26 of the Lease.

10. This Protocol shall remain in full force and effect during the remaining term of the Lease provided Palmer is in physical possession of AGCC.

11. This Protocol may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile of an executed copy of this Protocol shall be deemed valid as if an original signature was delivered.

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Right of Entry Protocol on the day and year stated hereinafter.

Shirley M. Kelly
Witness
Myr J. Retire
Witness
Shirley M. Kelly
Witness
Myr J. Retire
Witness

Landlord:
CITY OF PORT ORANGE, FLORIDA

By: Allen Green
Allen Green, Mayor

Attest: Kenneth W. Parker
Kenneth W. Parker, City Manager

Date Signed: March 25, 2008

Corporate Seal

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EXHIBIT "C"

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 25th day of March, 2008, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing RIGHT OF ENTRY PROTOCOL on the behalf of the CITY OF PORT ORANGE, FLORIDA, a chartered municipal corporation, and who are personally know to me, or have produced _____ as identification.



[Signature]
Notary Public, State of Florida at Large
Printed name, commission and expiration:

Tenant:
Palmer College Foundation, Inc. an Iowa not-for-profit corporation, d/b/a Palmer College of Chiropractic, Florida

[Signature]
Witness

By: [Signature]
Thomas L. Tiemeier, Authorized Agent

Witness

Date Signed: March 17, 2008

Corporate Seal

STATE OF IOWA
COUNTY OF SCOTT

The foregoing instrument was acknowledged before me this 17 day of March, 2008, by Thomas L. Tiemeier, Chief Financial Officer and being duly authorized to execute the foregoing RIGHT OF ENTRY PROTOCOL on behalf of Palmer College Foundation, Inc. an Iowa not-for-profit corporation, d/b/a Palmer College of Chiropractic, Florida, and who is personally known to me, or has produced _____ as identification.

(Seal)

[Signature]
Notary Public, State of Iowa at Large
Printed name, commission and expiration



Page 5 of 5

EXHIBIT "C"

CITY OF PORT ORANGE
LISTING OF CITY PROPERTY
ALLEN GREEN CIVIC CENTER
4705 CLYDE MORRIS
PORT ORANGE, FL 32129

W

Room/Area:

Pastor's Study: Book shelves attached to wall stay at the Church. NOTE: All book shelves in the building that are attached stay with the building.

Main Auditorium/Sanctuary:

1. Pews: City has a one (1) year option on -pew seating to retain or replace the seating with another seating arrangement. Should the City wish to purchase pew seating a mutually agreeable price will be negotiated. If no agreement is reached on the purchase of pews, the church may sell the pews or take seating when they vacate the building.
2. Sound System(includes the following):

- Table in Sound Booth
 - All mounted speakers (10) with auxiliary control
 - (2) Foyer
 - (4) Sanctuary
 - (1) Nursery
 - (3) Fellowship Hall
 - Lights control panel mounted in Sound System Booth
 - Automatic Screen mounted in ceiling above platform
And switch located in Sound System Booth.
 - Sound Board - 16 inputs
 - Equalizer #1 Ross R-12SP
 - Stereo Amplifier (2)
 - Pyramid Amplifier PA-310
 - Digitec Programmable Equalizer
 - FXR Digital Multiple Effects Processor
 - Phillips Magnavox Five Disk CD Player
 - TEAC Dual Track Tape Deck
 - TEAC Dual Track Tape Deck
 - (3) Handheld Microphones/wireless
 - (2) Dual Channel Wireless Microphone Receivers
 - (2) PL66 Microphones with cords
 - (2) Sanson Microphones with cords, 1-S2's, 1-S1's
- Prescolite Series 7-12
- Peavy Unity Series 2000
Serial # OA-04712920
Serial #001984
QSC-MX700's/Serial
#089349627 & #09942968
Serial #000705
Model Mono 28/Serial
33855233
Serial #423-050884843
Serial # KQ019611-10302282
Model W-350/Serial # 535954 93
Model EW-750R/Serial #03026102
Colors Blue, Yellow, White

Confidential

EXHIBIT "D"
Page 1

5/31/2007

CITY OF PORT ORANGE
LISTING OF CITY PROPERTY
ALLEN GREEN CIVIC CENTER
4705 CLYDE MORRIS
PORT ORANGE, FL 32129

- (4) Microphone Stands with Microphone holders
 - (1) Lapel microphone/wireless
 - (1) Receiver for lapel wireless Microphone
 - (9) Drop Microphones
 - (7) White Crown
 - (2) Black
 - (2) Monitors located on platform
 - (2) Horizon monitors
- Samson VT-1, Serial #12101254
Samson VR-1, Serial #14101458
CM-30VV
A-T853A
Serial #9426308 & #9426309
3. Risers: (27) Carpeted Stage risers
4. Handicap Wheelchair Lift: This equipment stays in the auditorium

Kitchen

- Continental Refrigerator/Freezer Stainless Steel
- Maytag Dishwasher
- (2) Oven/Microwaves-Kenmore
- GE - Hotpoint Built in Stove
- Misc.rolls of carpet remnants

NOTE: Items missing from previous list September 2, 1999 when the City of Port Orange purchased the Port Orange Church of the Nazarene.

- (1) Handheld Microphones/wireless
- (2) Samson Microphones with Cords,

Confidential

EXHIBIT "D"
Page 2

5/31/2007