

This instrument prepared by:  
 Jay D. Asbury, PA  
 234 N. Summit St.  
 Crescent City, FL 32112

Inst: 201054712199 Date: 8/27/2010 Time: 11:56 AM  
 DC: Tim Smith, Putnam County Page 1 of 10 B: 1269 P: 1528

**ORDINANCE NO. 10 - 19**

**AN ORDINANCE VACATING ALL OF THAT PORTION OF 16<sup>TH</sup> STREET WHICH LIES BETWEEN ST. JOHNS AVENUE AND REID STREET (HIGHWAY 17) IN PALATKA, FLORIDA; PROVIDING FOR REVERTER TO THE CITY OF PALATKA; AUTHORIZING EXECUTION OF DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

It is hereby determined that the property hereinafter described to be vacated is no longer necessary as a right-of-way, and it is in the best interest of the public that said property be vacated and closed as a right-of-way and as a public property and be released from any and every public right, use, title and interest, except as hereinafter provided.

**THEREFORE BE IT ORDAINED AS FOLLOWS:**

**SECTION ONE: Vacation and Description**

The following described property be, and the same is hereby vacated and closed as a right-of-way, and said property be, and the same is hereby released and discharged of any and every public right, use, title and interest of the City of Palatka, for right-of-way purposes except that the City of Palatka shall retain an easement for all lawful utility purposes including but not limited to storm drainage. The subject property described in Schedule "A" is the property being vacated herein and said property shall revert to the adjoining and abutting owners who have a reversionary interest, except and subject to: a) a reverter in the event the property ceases to be used as a new car sales center for a period of time, subject to the definitions and terms set forth in Section Two hereof; and b) any easements of record and any easement rights of the City of Palatka over, under and across the property lying and being in Putnam County, Florida, and more particularly described as follows, to wit:

**SEE SCHEDULE "A" ATTACHED HERETO AND MADE A PART HEREOF**

**SECTION TWO: Reverter**

In the event that any material part or portion of the property described in Schedule "A" and the adjacent parcels owned by the Petitioner, St. Johns Chevrolet-Buick-Pontiac-Oldsmobile-GMC, L.L.C. and St. Johns Automotive Real Estate, L.L.C., as described in Schedule "C" attached hereto and made a part hereof, are not collectively used as a new car sales center for a period of time of 180 consecutive days or more, then in that event, the property described in Schedule "A" shall revert to the City of Palatka in fee simple, free and clear of any and all claims whatsoever. For the purposes of this Ordinance No. 10-19, a "new car sales center" shall be defined to include

all activities routinely associated with a facility which sells new cars, to include by not be limited to the sale of used cars; repair of automobiles; preparation of automobiles for sale; modification of new or used cars; financing of new or used cars; and any other activity relating to the repair and sale of cars so long as said activity is ancillary to the new car sales operation.

If any material part or portion of the properties described in Schedule "A" and Schedule "C" are not used as specified above, the City Manager shall have the authority, after due notice to adjoining property owners and other parties having a legal interest in said property, to set said matter for a public hearing to request the City Commission initiate the reverter as set forth in Section One (a) above, thereby returning the property described in Schedule "A" to a public right-of-way. The City Commission shall have the sole authority to determine the extent of all issues relating to non-usage and the quantity of property constituting "material part or portion of the property".

**SECTION THREE: Authorization**

The Mayor and City Manager of the City of Palatka are hereby authorized and directed to execute such instruments as may be necessary or required to show that said right-of-way has been absolutely and completely vacated.

**SECTION FOUR: Legislative Intent**

This ordinance is consistent with provisions of the Florida Constitution; Florida Statutes and applicable case law. [See City of Temple Terrace v. Tozier, 903 So. 2d 970 [Fla. 2d DCA 2005]; Sun Oil Company v. Gerstein, 206 So. 2d 439 (Fla. 3<sup>rd</sup> DCA 1968)].

**SECTION FIVE: Effective Date**

This ordinance shall take effect on, and the effective date shall be, the date of the adoption of said ordinance by the City Commission of the City of Palatka, Florida.

**PASSED AND ADOPTED BY THE** City Commission of the City of Palatka, Florida, at its regular meeting held on the 26<sup>th</sup> day of August, 2010.

ATTEST

*Betty J. Drugowes*  
CITY CLERK

SIGNED:

*Kay H. Hagg*  
MAYOR

Approved as to contents and form.

*Jay D. Asbury*  
JAY D. ASBURY  
ACTING CITY ATTORNEY

SCHEDULE "A"

All of that property lying and being within the right-of-way area of 16<sup>th</sup> Street which lies between St. Johns Avenue and Reid Street in Palatka, Florida.

**RESTRICTIVE COVENANT AND REVERTER**

WHEREAS, St. Johns Chevrolet-Buick-Pontiac-Oldsmobile-GMC, L.L.C., a Florida limited liability company, and St. Johns Automotive Real Estate, L.L.C., a Florida limited liability company (collectively hereinafter called "Owners"), are the owners of that certain property described in Schedule "C" attached hereto and made a part hereof and, by virtue of City of Palatka, Florida Ordinance No. 10-19 vacating a portion of 16<sup>th</sup> Street, are also the owners of the property described in Schedule "A" attached hereto and made a part hereof; and

WHEREAS, the Owners are desirous of imposing a restrictive covenant and reverter on the property described in Schedule "A".

NOW, THEREFORE, the Owners hereby agree to impose the following restrictive covenant and reverter upon the property described in Schedule "A":

The property described in Schedule "C" is presently being used as a new car sales center and it is the intent of the Owners to utilize the property described in Schedule "A" for the purpose of new car sales. In the event that any material part or portion of the property described in Schedule "A" or Schedule "C" is not used as a new car sales center, as hereinafter defined, for a period of 180 consecutive days or more, then in that event, the property described in Schedule "A" shall revert to the City of Palatka in fee simple, free and clear from any and all claims whatsoever, subject to the terms set forth below.

For purposes of this document, "new car sales center" shall be defined as including all activities routinely associated with a facility which sells new cars, to include but not be limited to sale of used cars; repair of automobiles; preparation of automobiles for sale; modification of new or used cars; financing of new or used cars; and any other activity related to the repair and sale of cars so long as said activity is ancillary to the new car sales operation.

If any material part or portion of the properties described in Schedule "A" and Schedule "C" are not used as specified above, the Palatka City Manager shall have the authority, after due notice to the property owners adjoining those lands described in Schedule "A", to set said matter for a public hearing to request the City Commission initiate the reverter as set forth in herein and in the related Ordinance No. 10-19, thereby returning the property described in Schedule "A" to a public right-of-way. The City Commission shall have the sole authority to determine the extent of non-usage and the quantity of property constituting "material part or portion of the property".

In the event a legal proceeding is brought by any party or parties regarding the validity of the reverter of the property described in Schedule "A" to the City of Palatka, then the proper forum for such proceeding shall be a declaratory action in the Circuit Court of Putnam County, Florida. In the event of a contested proceeding, the prevailing party shall be entitled to recover all of his/her/its attorney fees, court costs and filing fees.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this 9 day of August, 2010.

OWNERS:

ST. JOHNS CHEVROLET-BUICK-PONTIAC-OLDSMOBILE-GMC, L.L.C., a Florida limited liability company

BY: ST. JOHNS AUTOMOTIVE REAL ESTATE, L.L.C., its managing member

BY: [Signature]  
Lane W. Smith, MANAGER

[Signature]  
WITNESS

[Signature]  
WITNESS

STATE OF FLORIDA  
COUNTY OF PUTNAM

The foregoing instrument, RESTRICTIVE COVENANT AND REVERTER, was acknowledged before me this 9 day of August, 2010, by Lane W. Smith, manager of St. Johns Automotive Real Estate, L.L.C., a Florida limited liability company, as managing member of St. Johns Chevrolet-Buick-Pontiac-Oldsmobile-GMC, L.L.C., a Florida limited liability company,

who is personally known to me, or

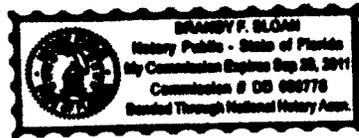
who has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida

Name: Brandy F. Sloan

My Commission Expires: 9/28/2011

My Commission Number is: 017680778



[SIGNATURES CONTINUED ON FOLLOWING PAGES]

OWNERS:

ST. JOHNS AUTOMOTIVE REAL ESTATE, L.L.C., a Florida limited liability company

BY: G M AUTO GROUP, L.L.C., a Florida limited liability company, its managing member

BY: Preston B. Sloan, SR., MANAGER

Stuart Young  
WITNESS

[Signature]  
WITNESS

STATE OF FLORIDA  
COUNTY OF PUTNAM

The foregoing instrument, RESTRICTIVE COVENANT AND REVERTER, was acknowledged before me this 9<sup>th</sup> day of August, 2010, by Preston B. Sloan, SR., manager of G M Auto Group, L.L.C., a Florida limited liability company, as managing member of St. Johns Automotive Real Estate, L.L.C., a Florida limited liability company,

who is personally known to me, or

who has produced \_\_\_\_\_ as identification.

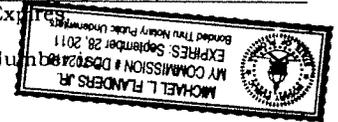
[Signature]

Notary Public, State of Florida

Name: Michael Flanders

My Commission Expires

My Commission Number



[SIGNATURES CONTINUED ON FOLLOWING PAGES]

CONSENTED TO AND JOINED HEREIN:

**PROSPERITY BANK**

Cheryl Reese  
WITNESS

[Signature]  
BY:  
MORTGAGEE/PROSPERITY BANK

[Signature]  
WITNESS

STATE OF FLORIDA  
COUNTY OF PUTNAM

The foregoing instrument, RESTRICTIVE COVENANT AND REVERTER, was acknowledged before me this 9 day of August, 2010, by Chris Kamenski, representative for Mortgagee/Prosperity Bank,

who is personally known to me, or  
 who has produced \_\_\_\_\_ as identification.

Cheryl Reese  
Notary Public, State of Florida

Name: Cheryl Reese  
My Commission Expires: 6-16-14  
My Commission Number is: 00981821



SCHEDULE "A"

All of that property lying and being within the right-of-way area of 16<sup>th</sup> Street which lies between St. Johns Avenue and Reid Street in Palatka, Florida.

SCHEDULE "C"

All of Block 295 of the City of Palatka, according to C.A. Merwin Subdivision recorded in Map Book 2, Page 13 of the Public Records of Putnam County, Florida.  
EXCEPT THEREFROM Lots 8, 9, 10 and 11 of Block 295 of the City of Palatka, according to C.A. Merwin Subdivision recorded in Map Book 2, Page 13 of the Public Records of Putnam County, Florida.

All of Block 303, EXCEPT the South 100 feet of Lot 2, of the City of Palatka, according to Merwin & Ginn Subdivision recorded in Map Book 2, Page 5 of the Public Records of Putnam County, Florida.

SCHEDULE "C"

All of Block 295 of the City of Palatka, according to C. A. Merwin Subdivision recorded in Map Book 2, page 13 of the public records of Putnam County, Florida.

EXCEPT THEREFROM Lots 8, 9, 10 and 11 of Block 295 of the City of Palatka, according to C. A. Merwin Subdivision recorded in Map Book 2, page 13 of the public records of Putnam County, Florida.

All of Block 303, EXCEPT the South 100 feet of Lot 2, of the City of Palatka, according to Merwin & Ginn Subdivision recorded in Map Book 2, page 5 of the public records of Putnam County, Florida.

