



**Comments / Objection to Application 22-26RZ from
Bird Bay Community Association (BBCA)**

I. Summary

Hawk’s Run Development (the “Applicant”) has filed petition 22-26RZ (the “Application”), to amend the Bird Bay PUD “Master Plan” to allow residential development of 70 villas (duplexes) within the land platted as the Bird Bay Golf Course (the “Golf Course”). The Golf Course is depicted on, and included as open space in, the 1977 Master Plan for Bird Bay, which was adopted along with an Amended Annexation Agreement and Developer’s Agreement. Under the PUD provisions of all versions of the Zoning Code in effect since 1977 and the direct promises and representations of the Developer at the time the 1977 Amended Annexation Agreement was approved, the golf course was to be restricted from any other development for at least 99 years, and this was reflected in a covenant in the 1983 Deed to the Golf Course.

The Application is founded on three claims: (1) there is “unused” density within the Bird Bay PUD, even though the current density exceeds the density permitted by the Zoning Code and the Comprehensive Plan; (2) this “unused density” can be transferred to the Golf Course through a change in the Master Plan as long as the overall open space identified in a 1992 “Development Master Plan” (DMP) stays above 50%; and (3) the Application is a “change in plan” that does not require a modification to the entire Bird Bay PUD pursuant to , including joinder or consent by all of the property owners. All of these claims are incorrect.

The Applicant seeks a “change in plans pursuant to Sec. 86-130(v), which states:

Changes in plans. Changes in plans approved as a part of the rezoning to PUD may be permitted by city council upon application by the developer or his successors in interest, and after a recommendation from the planning commission, but only upon a finding that any such changes are in accord with all regulations in effect when the changes are requested and the intent and purpose of the comprehensive plan in effect at the time of the proposed change. Changes other than those indicated shall be processed as for a new application for PUD rezoning.

As further established below, the Application cannot proceed as a “change in plans” because it is not consistent with current regulations and the intent of the comprehensive plan in at least three ways. First, the Bird Bay PUD today has a density of 5.15 units per acre and exceeds the residential density limit of 4.5 units/acre established in Sec. 86-130(j)(i) and the 5 unit/acre maximum density established in Comprehensive Plan. Second, the Bird Bay PUD today does not have 50% open space per the current definitions – or would not have if area is taken from the Golf Course, and the “current regulations” applicable to the Bird Bay PUD require 56% open space and, expressly, keeping the entire Golf Course as open space. Finally, the Application does not meet the “current regulations” for residential development in the Bird Bay PUD, which are the R-3 zone district standards that were in effect in 1977 and were expressly



adopted for the Bird Bay PUD in the 1973 Amendment to the Annexation Agreement, the 1977 Amendment to the Annexation Agreement, and the 1977 Developer's Agreement.

While those issues are particular to the Bird Bay PUD, **under the clear terms of the Zoning Code, if there is “unused density” in any PUD, the only place it may be used through a “change in plans” pursuant to Sec. 86-130(v) is on a parcel already designated for development in the PUD Master Plan, and not on a parcel designated or included as open space.** The density of a parcel already designated in the PUD Master Plan for residential development could be increased, or residential density could be transferred and used in a parcel designated in the PUD Master Plan for commercial or institutional uses. However, any attempt to place residential units on land previously designated as open space in the PUD Master Plan violates the requirement in Sec. 86-130(j)(3) that all open space be protected for at least 99 years. Therefore, any change to a PUD that would eliminate any part of the open space designated in the PUD Master Plan (not just portions asserted to be in excess of the minimum 50% requirement) cannot be approved as a “change in plans” but requires a rezoning of the entire PUD.

Furthermore, the Applicant is not consistent with, and cannot take advantage, of Strategies LU 1.2.16.5 or 1.2.21, for three separate reasons. First, the “currently approved density” was and is limited to the currently approved residential development areas and, more importantly, is clearly tied to the “currently approved open space provisions.” Second, the “currently approved open space provisions” require additional open space (over 50%), expressly required protection of the Golf Course, and have always required that the previously approved open space (including the Golf Course) be protected from development for at least 99 years. Finally, the “other previously approved development standards” for residential development in the Bird Bay PUD are the R-3 standards that were in effect between 1973 and 1977 - -and the current proposal would not satisfy.

The Applicant Must Rezone the Entire Bird Bay PUD in Order to Move Any Approved Density to the Golf Course

Pursuant to Sec. 86-130(v), an Applicant seeking to change an approved PUD master plan must file a rezoning for a new PUD unless there is a finding that “any such changes are in accord with ***all regulations in effect when the changes are requested*** and the intent and purpose of the comprehensive plan in effect at the time of the proposed change.” (emphasis added). The Application cannot support that finding.

Any change to the Bird Bay PUD must be consistent with the Comprehensive Plan. Strategy LU 1.2.16.4 limits the density of a PUD within the applicable MUR land use category to 5 units per gross acre. Strategy LU 1.2.16.5.c requires PUDs to have a minimum of 50% open space. However, Comprehensive Plan Strategies LU 1.2.16.5 and LU 1.2.21 state:

Previously approved PUD developments exceeding the standards of this Strategy shall be permitted to retain their currently approved density and intensity, open space percentage provisions, and other previously approved development standards.

Under Sec. 86-130(x), the regulations and limitations expressed in the various Annexation Agreements provide the “currently approved” density, “open space

percentage provisions,” and “other previously approved developments standards” that govern development of the Bird Bay PUD. That section states:

Previously approved developments. Where, on the effective date of the ordinance from which this chapter is derived, there exists an annexation agreement between a property owner and the city establishing the right for certain development, and where the property which is the subject of the agreement is thereafter classified PUD, ***then the sections of the agreement delineating the physical development of the property shall be construed as meeting the requirements for an application for PUD zoning.*** Final development plans in accordance with this Code and applicable subdivision design standard regulations shall be required for all phases not approved for construction prior to the effective date of the ordinance from which this chapter is derived.

Pursuant to Sec. 86-130(x) (or Section 20-20 of the 1978 Zoning Code), the development regulations for a previously approved PUD that was annexed pursuant to an annexation agreement can be found in the annexation agreement and related documents. In addition, the representations made by the Developer in obtaining the 1977 Master Plan and Amended Annexation Agreement are considered enforceable stipulations on the entire PUD. With respect to any rezoning, LDC § 86-47 states:

Restrictions, stipulations and safeguards attached to an amendment or supplement may include but are not limited to those necessary to protect adjacent or nearby landowners from any deleterious effects from the full impact of any permitted uses, limitations more restrictive than those generally applying to the district regarding density, height, connection to central water and sewer systems, and stipulations requiring that development take place in accordance with a specific site plan.... In cases where stipulations, restrictions or safeguards are attached, all representations of the owner or his agents at public hearings shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. All conditions, restrictions, stipulations and safeguards which are a condition to the granting of the change in zoning district shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief.

(emphasis added).

Bird Bay was annexed into the City pursuant to a 1972 Annexation Agreement that recognized and promised a minimum of 56% open space. The Annexation Agreement was amended in 1973 Amendment, which lowered the density and promised even more open space: 73% open space. When the Amended Annexation Agreement and Master Plan were considered in 1977, the Planning Commission expressly and explicitly stated approval was dependent upon permanent protection of the Golf Course, and the Developer promised to do so and, in fact, presented a covenant restricting the Golf Course to the City. *See Planning Commission Minutes*, October 17, 1977 and November 14, 1977. The Developer's Agreement approved and recorded concurrent with the Amended Annexation Agreement states that a revised covenant protecting the Golf Course (with slightly revised boundaries) would be presented to the City. Pursuant to LDC § 86-47 and 86-130(x), the inclusion of the entire Golf Course as open space, and

Developer's the explicit representation that the Golf Course would be protected, became part of the binding and enforceable stipulations governing the Bird Bay PUD and part of the actual zoning regulation that applies to and within the Bird Bay PUD.

Therefore, any density approved in the 1997 (or earlier) Master Plan and Annexation Agreements was predicated on (1) protection of the entire golf course as open space, and (2) location of the residential development within the areas depicted in the 1977 Master Plan. For the purpose of Strategies LU 1.2.16.5 and 21, any "currently approved density" must be matched by the "currently approved open space provision" including protection of the entire golf course. Those parts of the 1977 Master Plan and Annexation Agreement are also "current regulations" for the purpose of Sec. 86-130(v).

Under Florida law governing PUDs, when a PUD is approved with a particular configuration of development areas and open space, the assumption must be that all the depicted open space was necessary for approval of the entire PUD and as a trade-off for allowing higher densities in the residential development areas. See *Palm Beach Polo, Inc. v. Vill. of Wellington*, 918 So. 2d 988, 995 (Fla. 4th DCA 2006) (holding that any development density or rights within the open space of a PUD was transferred to other parts of the PUD). In *City of New Smyrna Beach v. Andover Dev. Corp.*, 672 So. 2d 618, 620 (Fla. 5th DCA 1996, the Court noted:

The plan submitted incorporates the developer's recommendation as to what the setbacks, the percentage of open space, the height of buildings, etc. should be and, once accepted by the governmental agency, these recommendations become fixed as the PUD classification is molded over and around the approved plan.

... once a PUD is approved, there remains no unused authority. Therefore, **if the plan is to be subsequently amended, the PUD classification, by necessity, must also be amended. In order to justify such amendment, the plan as modified must remain compatible with the balance of the project and the surrounding area. It should be the type of amendment, taking into account the changing conditions, that would have been approved in the first instance.**

(emphasis added). Under this case, and under Sec. 86-47 and 86-130(x), the previously approved Master Plan and any associated representations and conditions are part of the Bird Bay PUD zoning and part of the "current regulations."

The Applicant asserts the Bird Bay PUD retains the density approved in the 1977 Master Plan pursuant to Strategy LU 1.2.16.21, and therefore includes "unused units." However, that Master Plan (like the 1973 Master Plan) approved density in particular locations and with consideration of the total amount of open space and with particular consideration of the golf course open space. Therefore, if additional density was approved, so was a higher percentage of open space, including all of the golf course open space. Moreover, all of the density was specifically located in specific areas of the PUD, and placing residential development in different areas (particularly open space areas) is inconsistent with the "current regulation" reflecting the PUD.

In addition, the current open space is not conforming with respect to either the current code or the "previously approved open space percentages." Zoning Code § 86-130(k) and Comprehensive Plan LU Strategies 1.2.16 require a PUD to have a minimum

of 50% open space. In fact, the PUD zoning regulations in effect in 1973 (when the first Amendment to the Annexation Agreement was approved), in 1977 (when the 1977 Amendment was approved), in 1978 (when the new zoning code and maps were adopted and the PUD zoning was applied to Bird Bay), and the current Sec. 86-130(j)(3) require a **minimum** of 50% open space and **also require that all open space within a PUD be protected from future development perpetually, or for at least 99 years.**

The Applicant relies on the 1992 DMP to assert that the existing open space totals 55.3%/109.9 acres, and that there is “available” open space. However, those acreages were (1) inaccurate and (2) include areas that do not qualify as open space. Even the open space acreage were accurate, any reduction in the approved, promised open space is not consistent with the regulation and requirement that all open space in an approved PUD be protected for 99 years. Because the Bird Bay PUD was approved for at least 56% open space, including the Golf Course, and because the Golf Course was always included in that open space, and because the Developer expressly promised to protect the Golf Course in return for, and as part of, obtaining approval of the 1977 Amended Annexation Agreement and 1977 Master Plan, any change to the Golf Course is contrary to the **current regulations** and requires a full rezoning of the entire Bird Bay PUD.

Finally, the Application does not demonstrate compliance with the residential development standards and regulations that apply within the Bird Bay PUD. Pursuant to Comprehensive Plan Strategy LU 1.2.16.3, standards (density, lot sizes, lot widths, lot coverage, setbacks, height, etc.) for residential development within a PUD must be established at the zoning level. Pursuant to Sec. 86-130(x) (or Section 20-20 of the 1978 Zoning Code), the development regulations for a previously approved PUD that was annexed pursuant to an annexation agreement can be found in the annexation agreement and related documents.

Based on the 1973 Amended Annexation Agreement, the 1977 Amended Annexation Agreement, and the Developer's Agreement, the “regulations in effect” for residential development in the Bird Bay PUD are the City's R-3 standards that were in effect between 1973 and 1978. The 1973 Annexation Agreement, as amended by the 1977 Amended Annexation Agreement and the concurrent 1977 Developer's Agreement, expressly stated that residential development in the Bird Bay PUD would be governed by the standards from the R-3 zone district. Therefore, the adopted development standards for the Bird Bay PUD come from the R-3 zone district (from 1977). Those standards included:

- Minimum lot area of 7,500 sq ft for the first four units
- Minimum average lot width – 75'
- Maximum building area – 30%
- Setbacks – the greater of 50% of building height or
- Front yard – 25'
- Side yard – 10' to wall; 7' to overhang
- Rear – 15'

Nothing in the Application acknowledges or demonstrates the proposed residential development will comply with the applicable standards. Not only is the Application inconsistent with the Comprehensive Plan, but it would appear to be inconsistent with the R-3 development standards that apply within the Bird Bay PUD.

The Applicant cannot assert protection under Strategies LU 1.2.16.5 or 1.2.21 because the Application does not comply with the density locations, open space percentages, or other approved development standards established for the Bird Bay PUD. The Application does not qualify as a “change in plans” under Sec. 86-130(v) because it is not consistent with current regulations or the intent (and express Strategies) of the Comprehensive Plan. Therefore, the Applicant must apply to rezone the entire Bird Bay PUD in order to put any density on the Golf Course.

II. Comments on Applicant's Narrative:

Bird Bay PUD- Hawks Run Amendment –

The proposed Hawks Run amendment to the Bird Bay PUD is comprised of the existing 34 acre golf course property within the 198.6 acre Bird Bay PUD. The applicant proposes to redevelop the existing golf course with up to seventy (70) residential villas, an amenity area to serve the new residences, a redesigned twelve (12) hole golf course, and updated golf course amenities including a putting course and a new clubhouse with pro shop and restaurant.

BBCA COMMENT: The Applicant's statement regarding the use (villas) is inconsistent with the proposed Amendment Plan, which describes the development as single family lots. The claims regarding the golf course are unsupported by the "Amendment Plan," which does not show any hole locations or configurations, no new clubhouse, no details for the "putting course," and no location or footprint for the "new clubhouse with pro shop and restaurant."

While an amenity area is designated on the "Amendment Plan" no details are provided for the nature or type of amenities to be constructed, or whether it will include impervious area, or have parking.

While a golf course is a permitted use in a PUD, and a restaurant might be an accessory use to a golf course, it is impossible to determine that the proposed restaurant will be accessory, rather than a primary commercial use, without actual footprints, square footages and other information about the restaurant. If the restaurant is a primary use, it which would have to be specifically located and described in the Amendment Plan, and would require separate analysis for parking, trip generation, and other aspects of the approval. A commercial restaurant use within the golf course is NOT currently authorized under the 1992 DMP or 1977 Master Plan.¹

¹ The staff should determine the restaurant is not accessory if its trip or parking generation exceeds that of the golf course/pro shop. With respect to traffic, the pm peak trip generation for the golf course would be about 7.5 based on 26.4 acres. A “quality” restaurant generates over 7 pm peak trips per 1,000 square feet, while “fast casual” restaurant generates over 14. With respect to parking, a golf course requires 3 spaces per hole under the Zoning Code, so a total of 18 (it is currently under-parked). The Zoning Code requires a restaurant to provide 1 space for every 3 seats, so 18 spaces could support 54 seats; at 15 square feet per occupant (per Fla. Building Code) under the building code, that is about 810 square feet – with a kitchen, still less than 1,200 square feet.

Furthermore, construction of a commercial restaurant could not be “open space”, so the area for the building and any associated parking must be removed from the open space calculations.

The Application and Narrative is replete with obvious errors. Here, the Applicant describes the golf course property as 34 acres in the “Amendment Plan.” However, the included survey demonstrates the golf course is only 33.31 acres, and that area is also reflected on the application page. The Applicant therefore overcounted the open space is overcounted by at least .69 acres, and the remaining golf course under the Application will be 25.75 acres, not 26.44 – before taking out for the pro shop, parking, and other impervious areas.

That is more important because the area of many of the other open spaces areas identified in the Amendment Plan (and the 1992 DMP”) are demonstrably inaccurate, include areas that do not qualify as open space (and did not in 1977 and 1992), and some of those areas may have been double counted. In other words, the area within the Bird Bay PUD (as defined in the 1977 Master Plan and depicted in the 1992 DMP) does not contain 109.9 acres of open space.

The proposed residential development will be limited to two (2) separate development pods, one on the front side of the golf course and one on the back side of the golf course. Each development pod will have direct access from Bird Bay Drive. The development pods have been located on the interior of the golf course in order to preserve golf course/open space views for existing residents of the Bird Bay PUD. Please see attached proposed Bird Bay PUD Hawks Run amendment plan dated March 31, 2022.

BBCA COMMENT: The Applicant’s claim that the proposed design will “preserve golf course/open space views for existing residents” is refuted by the “Amendment Plan.” Many of the new homesites will be 50’-75’ from existing homes, though the measurements are difficult due to the Applicant’s complete failure to provide lot locations or any dimensions. In addition, the Narrative and Amendment Plan lack any lot development standards (lot size, width, setbacks, height). That failure makes it impossible to determine the compatibility of the proposed residential structures and violates Strategy LU 1.2.16.3 (“Development standards including bulk development standards and housing types are designated at the PUD Zoning level.”).

The Bird Bay PUD has an extensive development history dating back to 1972. The development plan has been modified over the years with the most recent amendment to the Development Master Plan (DMP) in 1992. The 1992 DMP consisted of a modification to the “Bird Bay Villages” development by then developer Ramar. This 1992 DMP noted the existence of 200 existing development units prior to “Bird Bay Villages” **and** 998 approved units, for a total of 1,198 approved units (6.03 units per acre) for the Bird Bay PUD. At the time of the 1992 DMP, Ramar programmed 826 of the 998 approved units leaving 172 approved unbuilt dwelling units.

BBCA COMMENT: This statement is misleading and incomplete. The 1992 DMP identified 1198 total units as having approved, but also specifically

designated the areas in which units could be developed (as did the 1977 Master Plan). The 1992 DMP also identified (and required) 55% open space, including the entire golf course. Critically, the record demonstrates that the approval of the 1977 Master Plan was conditioned on permanently protecting the golf course from future development. See Planning Commission Minutes, October 17, 1977; November 14, 1977, Developer's Agreement dated December 21, 1977, and Deed to Golf Course dated January 27, 1983 (restricting property to golf course uses).

The 1992 DMP added units back to parts of Bird Bay VI from which the Developer had previously lessened the density – a back and forth that started in 1989. The Developer recognized and agreed in 1989 that if the development sites were built out without using the entire density, that density would be lost – See Planning Commission Minutes, October 3, 1989 (chaired by J. Boone).

The PUD Regulations in effect when the Amended Annexation Agreement was approved, and the standards for rezoning amendments today, made the Developer's representations in 1977 (and later) binding stipulations on the development of the Bird Bay PUD. With respect to any rezoning, LDC § 86-47 states:

Restrictions, stipulations and safeguards attached to an amendment or supplement may include but are not limited to those necessary to protect adjacent or nearby landowners from any deleterious effects from the full impact of any permitted uses, limitations more restrictive than those generally applying to the district regarding density, height, connection to central water and sewer systems, and **stipulations requiring that development take place in accordance with a specific site plan....** In cases where stipulations, restrictions or safeguards are attached, **all representations of the owner or his agents at public hearings shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief.** All conditions, restrictions, stipulations and safeguards which are a condition to the granting of the change in zoning district shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief.

(emphasis added).

While the 2017 Comprehensive Plan established the Mixed Use Residential (MUR) land use designation to be placed on all existing PUD zoned properties, and the MUR land use limits PUD development to 5.0 units per acre, Comprehensive Plan Strategy LU 1.2.16.5 provides that previously approved PUD's, such as the Bird Bay PUD, shall be permitted to retain their currently approved density (6.03 units per acre).

BBCA COMMENT: Again, this statement is misleading and incomplete. Comprehensive Plan Strategies LU 1.2.16.5 and LU 1.2.21 state:

Previously approved PUD developments exceeding the standards of this Strategy shall be permitted to retain their currently approved

density and intensity, open space percentage provisions, and other previously approved development standards.

The open space percentage requirement per the 1992 DMP is 55%, while the 1973 Annexation Agreement promised to maintain 56%. The “other approved development standards” included protecting the open space comprising the golf course permanently from redevelopment, as demonstrated by: (1) the LDC ordinances at the time the Amended Annexation Agreement and 1977 Master Plan were approved, and ever since; (2) the specific representations made by the Developer to the City at the time, as identified in the Developer’s Agreement and statements to the Planning Commission in multiple meetings; and (3) the Golf Course Restriction in the 1983 Golf Course Deed.

In addition, the previously approved standards include the 1973 Annexation Agreement, as amended by the 1977 Amended Annexation Agreement, 1977 Master Plan and 1992 DMP, which specifically delineated the areas in which development would occur, the types of development allowed, the footprints of any residential development, and designated the golf course for that use.

The Applicant cannot pick and choose which development standards are binding (density) and which can be ignored (open space, protect golf course, establish development areas). The “approved density” was limited to the approved development areas and conditioned upon providing all of the open space shown on the Master Plan, including the entire golf course.

Because the Applicant seeks to put density outside the previously approved development areas and seeks to reduce the previously approved (and protected) golf course and 55% open space, the Application cannot rely on Strategy LU 1.2.16.5 or 1.2.21 to “grandfather” the density and allow it to be applied within the golf course.

With the addition of the seventy (70) proposed residential units for the Hawks Run amendment to the Bird Bay PUD, the overall project density will be 5.52 units per acre, below the currently approved density of 6.03 units per acre. All other requirements of the Bird Bay PUD will be maintained, including the minimum PUD open space requirement of 50%.

BBCA COMMENT: Again, misleading, incomplete, and incorrect. The “requirements of the Bird Bay PUD” include maintaining 55% open space depicted in the 1977 Master Plan and 1992 DMP (also promised in the 1973 Annexation Agreement and the 1977 Developers Agreement), including the entire golf course, and locating development in the identified development areas, that is, the density was approved not for the entire PUD, but for the specific locations depicted on the Master Plan and DMP. The other requirements of a PUD have not been maintained.

The LDC, including the Section 20A referenced in [the Amendment to the Annexation Agreement and the Developer Agreement], Section 20-20, in effect in 1978, when the property was rezoned to PUD, and the current Section 86-130(j)(3) require that

Land in a PUD designated as open space will be restricted by appropriate legal instrument satisfactory to the city attorney as open space perpetually, or for a period of not less than 99 years. Such instrument shall be binding upon the developer, his successor and assigns and shall constitute a covenant running with the land, and be in recordable form.

(emphasis added).

As documented above, during the approval process for the 1977 Master Plan, Amended Annexation Agreement, and Developer Agreement the Developer repeatedly promised to provide and record restrictions to prevent the golf course from being redeveloped. The Planning Commission minutes demonstrate the Master Plan would not have been approved without that commitment. Therefore, the entire golf course was to be protected under the governing provisions of the LDC and the relevant agreements. The obligation to protect the open space designated in the 1977 Master Plan requirement applies today: if the Applicant is a successor to the developer with the right to change the PUD, the Applicant is obligated to record the instrument designating and restricting the entire golf course as open space.

The proposed Hawks Run amendment to the Bird Bay PUD is consistent and compatible with the existing neighborhood with regard to density, building heights, setbacks and character of use and is consistent with all applicable elements of the Comprehensive Plan and therefore, approval is hereby requested.

*BBCA COMMENT: The Application is **not** consistent with the standards and requirements applicable to the Bird Bay PUD, which authorized up to 1,198 total units, based on their location and configuration as depicted on the 1977 Master Plan and the provision of the open space, including the golf course, which was specifically required (and agreed) to be protected from redevelopment.*

Because the Application fails to provide any description of the proposed lot sizes, lot widths, setbacks, height, building /unit types and configuration, and layout, no conclusion can be reached regarding the compatibility of the residential development – and the Application violates Strategy LU 1.12.16.3 [and is inconsistent with the LDR definition of PUD, which requires a PUD to include “comprehensive and detailed plans which include ... site plans floor plans and elevations... and detailed plans for other uses and improvements on the land as related to the buildings....”]

Because the Application fails to provide any description of the redeveloped golf course, it is impossible to determine whether adequate provision has been made for recreation and open space. Because the Application fails to make any provision for protecting the golf course (as open space or as a functioning golf course), it is impossible to determine that the golf course will provide recreational opportunities or act as a buffer, and also whether the open space requirements are met.

Because the Application fails to provide any physical description and configuration of the proposed pro-shop/clubhouse/restaurant, it is

impossible to determine the impact of that development on open space, permitted uses, compatibility, parking, and traffic circulation.

*For all of those reasons, the **Application is not consistent with the PUD provisions of the Comprehensive Plan, including Strategy LU 1.2.16.3, 1.2.16.4, 1.2.16.5, and 1.2.16.6. Moreover, the application is not “grandfathered” under Strategies LU 1.2.16.5 and 1.2.21 because it does not comply with the previously approved open space percentage and the designated development areas – and therefore must comply with the current plan and LDC requirements. In addition, the Application does not demonstrate that it meets the compatibility requirements of Strategy LU 8.2 (see response to Applicant’s statement regarding the review criteria in Sec. 86-47(1)(a)).***

Because the Application is covered by Strategies LU 1.2.12.5 and 1.2.21, it must comply with the current density and open space requirements of the Comprehensive Plan and LDC or be processed as a new PUD application pursuant to LDR Sec. 89-130(v). It does not meet the current density and open space requirements.

The density of the Bird Bay PUD, today and under the Application, exceeds the 4.5 units/acre allowed for a PUD under LDC Sec. 86-130(g) and (j), and the 5 units/acre allowed under the Comprehensive Plan by Strategies 1.2.16.6.a and 1.2.16.7.

Apart from being measured incorrectly, much of the open space included in the 1992 DMP and the 1997 Master Plan does not comply with current (and prior) LDC requirements, which exclude most area between and around buildings, submerged lands, parking and streets. Even if the submerged lands, the entirety of the various recreation parcels (including buildings and impervious areas like pools and tennis courts), and the golf course are included, the open space within the original PUD area appears to fall short of the required 50%. Furthermore, the proposed reduction in the amount of open space will result in the total pervious area within the open space (including golf course buildings, parking, and the impervious areas in the clubhouse parcel) exceeding the 5% limit imposed by the LDR definition of open space.

For those reasons, the Application does not comply with the current regulations and comprehensive plan provisions. As a result, the Application does not fall under the permitted “change in plans” provision in LDC § 86-130(v) because the Planning Commission and City Council cannot find the “changes are in accord with all regulations in effect when the changes are requested and the intent and purpose of the comprehensive plan in effect at the time of the proposed changes.” Therefore, the Application must proceed as a new PUD rezoning for the entire Bird Bay PUD.

Any new PUD rezoning would have to encompass all of Bird Bay, and the “unified control” provisions would require, at least, the various

Associations that representative the lands within Bird Bay to consent to the Application.

III. Comments on Applicant's Responses to Rezoning Standards in Sec. 86-47

General note: The Applicant asserts that the proposed amendments to the Master Plan do not constitute a change in zoning. That is not correct. In a PUD, the graphic component of the Master Plan and other descriptions/limitations on the development approved are integral components of the zoning and zone district specifically tailored to the specific property/development project. Any change to the location or amount of open space, or the location of development areas, is a change to the PUD zoning.

1.a – The Application is NOT in compliance with the Comprehensive Plan.
Specifically:

1) The Application does not comply with Strategy LU 1.2.16.3 because it does not provide the required housing types/development standards, including lot sizes, lot widths, setbacks, lot coverage, and height.

2) The Application does not comply with Strategy LU 1.2.16.5 for a “previously approved PUD” because it violates the established and approved open space percentage, the development standards for open space, and the approved location and types of development.

3) The Application does not comply with Strategies LU 1.2.16.4 and 1.12.16.7 because the density exceeds 5 dwelling units per acre and the Application does not comply with Strategy 1.2.16.5.

4) The Application does not comply with the 50% open space requirement of Strategies LU 1.2.16.6(c) and 1.2.16.7. Prior measurements of open space areas were inaccurate and included areas not meeting the definition of open space (in 1977 or today). Prior measurements of the open space did not evaluate the 5% limit on impervious areas, which appear to be violated by the existing Clubhouse Area, boardwalk, golf course structures and parking – and which would be exacerbated by a larger clubhouse/restaurant and additional parking, and also by the proposed “putting area” if it is carpet rather than grass. The 50% open space requirement appears to be violated today and the Application would further reduce the open space below 50%.

5) The Application does not comply with the compatibility requirements of Strategy LU 8.2 because the character and design of this infill project are not compatible with the existing neighborhood and the established plan of development for the Bird Bay PUD.

a) The Application puts new residential units in close proximity to existing residential units and deprives those existing residential units of their longstanding, vested, and protected open space and buffering.

b) The Application eliminates golf course open space that was integral to the approval of the overall project density and which the original developer promised, and was required, to protect in perpetuity.

c) The Application dramatically alters the internal pattern of development, open space and buffering within the community in a manner that is not consistent with the existing development.

d) The Application and Amended Plan do not describe or limit the type, height, setbacks, or other characteristics of the residential uses as necessary to analyze their impacts on other nearby residential uses, which will be in close proximity.

e) The Application and Amended Plan provide for a new “amenity area” but do not describe or limit the types of activities, parking, lighting, hours, or other aspects the amenity area to ensure it will be compatible with the existing residential uses.

f) The Application asserts there will be a new and expanded pro shop and restaurant, but do not establish and standards for their location, size, lighting setbacks, hours of operation, outdoor entertainment, and parking therefore cannot be considered compatible or buffered from the nearby residential uses.

1.b – The Application would change the land use pattern and create additional adverse impacts. Any change to an established PUD is a change in zoning, and any change not expressly contemplated at the time of its initial approval may change the existing land use pattern. In this case, future development within the golf course was specifically rejected in the course of considering the original application. The proposed Master Plan amendment is a change in the Bird Bay PUD that will adversely alter the existing land use pattern because

1) It places residential development with the established golf course/open space area within the approved PUD, which is required to remain intact as part of the original terms of the approval. The proposed residential development will be located in close proximity to the existing residential uses, eliminating the existing pattern of large open space buffers.

2) It changes the original, approved pattern and location of residential development areas within the approved PUD.

3) It proposes a new commercial restaurant within the PUD with no provisions or limits on size, setbacks, buffering or parking.

1.c – The Application changes the relationship between the Bird Bay PUD and adjacent uses by lessening the open space and adding new development areas, though it does not turn the Bird Bay PUD into an isolated district.

1.d – The Application proposes development of “approved units” which will result in increased impacts to public facilities because (i) any units beyond what has been constructed were waived and abandoned, and (ii) the proposed single family uses have greater impacts than the multi-family units originally approved. Both will result in greater loads on schools, utilities and streets which the Applicant has neither calculated nor addressed.

1.e – The current boundaries of development areas and open space within the PUD, which the Applicant seeks to change, are not illogically drawn. The proposed changes are inconsistent with the logic and design of the entire Bird Bay PUD.

1.f – Changed conditions do not make the proposed change necessary. The application simply reflect the prior and current owner’s desire to make a windfall profit by radically altering the established plan of development to develop residential units on planned, committed, and protected open space within the Bird Bay PUD.

1.g – **The proposed change will adversely affect living conditions in the neighborhood,** particularly for all the residential units near the two development pods by eliminating open space and locating residential structures in close proximity, and will adversely affect the entire Bird Bay neighborhood by eliminating open space and violating the original development design with single-family homes

1.h – **The Applicant has not shown there will be no adverse impact to public safety** because the Application does not include a traffic circulation, parking or other study of how the increased trips from the residential and restaurant uses will affect safety, particularly because Bird Bay has no sidewalks along Bird Bay Drive.

1.i – **The Applicant has not demonstrated the proposed change will not create a drainage problem.** The Bird Bay stormwater system is a pre-regulatory system with no existing SWFWMD or FDEP permit and therefore the entire system will have to obtain a Environmental Resource Management Permit (ERP). The Application will add close to 7.6 acres of impervious surface to the existing drainage system from the new residential areas alone – more, when the increased footprint and parking for the pro shop/restaurant is considered. The Applicant has provided no analysis or information demonstrating how and whether runoff from the development will be managed, and whether the means for managing it will create adverse impacts on the existing community. Furthermore, it is clear that the Applicant does not intend the HOA to own the golf course, which leaves open the question of who will serve as the responsible party/operating and management entity for the revised/permitted surface water management system.

1.j – **The Applicant has not demonstrated that the change will not reduce light and air to adjacent areas** because it has not provided any development standards for the residential units and pro shop/restaurant that will be in close proximity to existing residences.

1.k – **The Application will adversely affect property values within Bird Bay,** particularly for those existing units which will have golf course views replaced with new residential or commercial buildings.

1.l – **The change will be a deterrent to the improvement of adjacent properties,** particularly those units adversely affected by their loss of golf course views.

1.m – **The change will constitute a grant of special privilege to the Applicant,** because it completely alters the established plan of development and converts portions of the protected open space to residential uses for the sole benefit and profit of the Applicant.

1.n – **There Applicant DOES propose a change in the existing Bird Bay PUD zoning** by modifying the Master Plan and the established, vested, and protected plan of development. **There are no substantial reasons why the golf course cannot be used in accord with the existing zoning,** and the golf course is protected open space that cannot be developed.

1.o – **The change is out of scale with the needs of the neighborhood** because it converts existing, protected open space into residential development, creates new development areas within the PUD, and violates the established and approved plan of development.

1.p – **There are areas within the city already zoned for the proposed residential uses.**

IV. Additional BBCA Comments on Application Materials:

- 1) *The Application does not satisfy the Florida law requirements for amending an established PUD, as set forth in City of New Smyrna Beach v. Andover Development Corporation, 672 So. 2d 618 (Fla. 5th DCA 1996), which states:***

This approved plan became an integral part of the R–R PUD zone; **there is no R–R PUD zoning classification separate and distinct from a previously approved specific project plan.**

It is important to emphasize the distinction between a PUD classification and the normal zoning districts. ***Unlike a normal construction project*** which is designed to fit within the fixed parameters (setbacks, maximum lot coverage, height limitations, etc.) of a normal zoning classification, **the PUD concept is flexible and permits the developer to present a plan covering a large tract (fifty-five acres in this case) which is unique and which meets the developer's concept of the best use of the particular area.** The developer may suggest high-rise buildings in order to permit greater open space. But in any event, the height of the buildings must be in harmony with the rest of the proposed development and the surrounding area. The plan submitted incorporates the developer's recommendation as to what the setbacks, the percentage of open space, the height of buildings, etc. should be and, once accepted by the governmental agency, these recommendations become fixed as the PUD classification is molded over and around the approved plan. **The PUD classification, therefore, although flexible in concept, becomes rigid in application.**

And because of this distinction, unlike a normal zoning classification, there remains no “unused” development authority in the PUD. For example, if one builds a home twenty-five feet high in a residential zone that permits thirty-five foot structures, such owner may expect to be able to “add on” at a later date up to the height limitation. But once a PUD is approved, there remains no unused authority. Therefore, **if the plan is to be subsequently amended, the PUD classification, by necessity, must also be amended. In order to justify such amendment, the plan as modified must remain compatible with the balance of the project and the surrounding area. It should be the type of amendment, taking into account the changing conditions, that would have been approved in the first instance.**

City of New Smyrna Beach, 672 So. 2d at 620 (emphasis added). This critical standard needs to be considered in reviewing and applying LDR Sec. 86-130(v).

- 2) *The Application violates critical substantive and procedural provisions of the Land Development Regulations.***
 - a. The Applicant has not demonstrated unified control or a development agreement covering the entire Bird Bay PUD, as required by LDR Sec. 86-130(k). Unified control or consent from the entire PUD is required because the Application seeks to alter the entire approved and established scheme of

development and eliminate required and protected open space and therefore amends the entire Bird Bay PUD.

- b. The Application would result in the Bird Bay PUD exceeding the maximum density of 4.5 dwelling units per acre, in violation of LDR Sec. 86-130(j)(1) and is not otherwise grandfathered under the Comprehensive Plan.
- c. The Application converts and eliminates existing, approved open space that must be restricted for at least 99 years pursuant to LDR Sec. 86-130(j)(3), as was promised by the developer when obtaining the Annexation Agreement and Master Plan approval in 1977, and also when the deed to the golf course was recorded in 1983.
- d. The Applicant has not demonstrated that there is, or will be, at least 50% open space, as required by LDR Sec. 86-130(j)(1).
- e. The Applicant has not demonstrated that the impervious areas within the open space in the PUD will not violate the 5% limit imposed in the LDR definition.
- f. The Application's Amendment Plan does not depict lot lines/footprint designations, parking areas, residential and commercial uses, and use/development standards for the proposed new residential units or for the proposed new pro shop/restaurant within the golf course, as required by LDR Sec. 86-130(t)(3)(c)(4), and inherent in the definition of Planned Unit Development set out in Sec. 86-570.
- g. The Application has not analyzed the sufficiency of the existing water and sewer infrastructure to handle the increased loads of the proposed residential and pro shop/restaurant uses, as required by LDR Sec. 86-130(m) and (s).
- h. The Application does not demonstrate that the proposed residential and pro shop/restaurant uses will comply with the City's parking standards and codes, as required by LDR Sec. 86-130(q).
- i. The Application's Amendment Plan does not include accurate or complete tabulations of acreages for different uses within the Bird Bay PUD, as required by LDR Sec. 86-130(t)(3)(c)(6), and therefore does not include accurate or complete tabulations of the relationship of the Bird Bay PUD land use intensity and the numbers and types of development, as required by LDR Sec. 86-130(t)(3)(c)(6).
 - i. The open space in the PUD is NOT 109.9 acres, as stated in the 1992 DMP and the Amended Plan.
 - ii. The impervious areas within the existing open space appear to exceed 5%, and the removal of additional open space would make that violation worse.
- j. The Application does not put the Golf Course into common ownership, as required for Open Space by the definition of open space set out in LDR Sec. 86-570, and does not restrict the golf course to open space use as required by LDC Sec. 86-130(j)(1) and (3).
- k. The Declaration of Covenants provided is clearly inadequate and inapplicable to demonstrate how open space, recreational areas, and infrastructure will be protected, operated and managed, as required by LDR Sec. 86-130(k)(2):
 - i. The Declaration is clearly for some development located within unincorporated Sarasota County, not the development within the City of Venice proposed in the application.
 - ii. The Declaration is for only 4 lots (see Recital B), not the 70 proposed in the Application.

- iii. The Declaration does not address the golf course land or operations.
- iv. The Application mentions villas – attached homes – but there are no provisions in the Declaration for common wall or roof maintenance or other issues associated with villa development.
- v. The Declaration discusses but does not identify recreation facilities.

The Applicant clearly submitted a “pro forma” declaration for some other project without any regard to whether it addresses the requirements of the LDC.

**APPLICABLE PROVISIONS OF THE LAND DEVELOPMENT REGULATIONS/ZONING
CODE AND COMPREHENSIVE PLAN**

Land Development Regulations/ Zoning Code

Sec. 86-47. - Amendments to the land development code.

(g) *Restrictions, stipulations and safeguards.*

(2) Restrictions, stipulations and safeguards attached to an amendment or supplement may include but are not limited to those necessary to protect adjacent or nearby landowners from any deleterious effects from the full impact of any permitted uses, limitations more restrictive than those generally applying to the district regarding density, height, connection to central water and sewer systems, and stipulations requiring that development take place in accordance with a specific site plan. The city council may also stipulate that the development take place within a given period of time after which time public hearings will be initiated and the district returned to the original designation or such other district as determined appropriate by city council in accordance with the comprehensive plan. **In cases where stipulations, restrictions or safeguards are attached, all representations of the owner or his agents at public hearings shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. All conditions, restrictions, stipulations and safeguards which are a condition to the granting of the change in zoning district shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief.**

(emphasis added).

Sec. 86-130. - PUD planned unit development district

...

(g) Maximum residential density. Maximum number of dwelling units per acre in PUD districts is 4.5.

...

(j) Land use intensity; open space; dedication of land for municipal uses.

(1) ***In a PUD a maximum density of 4.5 dwelling units per gross acre shall be allowed, provided that such maximum density may be varied by city council, after recommendation by the planning commission, where a showing is made that such maximum density is inappropriate based upon the intensity and type of land use in the immediate vicinity and the intent of the comprehensive plan for the area requested. A minimum of 50 percent of the PUD shall be open spaces.***

..

(3) ***Land in a PUD designated as open space will be restricted by appropriate legal instrument satisfactory to the city attorney as open space perpetually, or for a period of not less than 99 years. Such instrument shall be binding upon the***

developer, his successor and assigns and shall constitute a covenant running with the land, and be in recordable form.

(k) *Evidence of unified control; development agreements. All land in a PUD shall be under the control of the applicant*, whether that applicant is an individual, partnership or corporation or a group of individuals, partnerships or corporations. ***The applicant shall present firm evidence of the unified control of the entire area within the proposed PUD.***

...

(t)(3) – Materials to be submitted . In addition to information required for application for rezoning, the applicant shall submit the following materials or data:

a. Evidence of unified control of the proposed PUD and the agreements required by this chapter.

b. A statement of the land use intensity sought for the PUD and supporting evidence or documentation as the applicant may feel is pertinent to enable the planning commission and city council to determine whether or not the land use intensity rating requested is reasonable and proper.

c. A master plan containing the following:

1. The title of the project and the names of the professional project planner and the developer.

2. Scale, date, north arrow and general location map.

3. Boundaries of the property involved, and all existing streets, buildings, watercourses, easements, section lines and other existing important physical features in and adjoining the project.

4. Master plan locations of the different uses proposed, by dwelling types, open space designations, recreational facilities, commercial uses, other permitted uses, and off-street parking and off-street loading locations.

5. Master plan showing access and traffic flow and how vehicular traffic will be separated from pedestrian and other types of traffic.

6. Tabulations of total gross acreage in the development and the percentages thereof proposed to be devoted to the several dwelling types, other permitted uses, recreational facilities, streets, parks and other reservations.

7. Tabulations demonstrating the relationship of the development to proposed land use intensity and proposed numbers and types of dwelling units.

8. Where required by the planning commission, an ecological survey in accordance with the standards of the state department of environmental protection and the water and navigation control act of the county, as they may from time to time be amended.

(v) Changes in plans. ***Changes in plans*** approved as a part of the rezoning to PUD ***may be permitted by city council upon application by the developer or his successors in interest, and after a recommendation from the planning commission, but only upon a finding that any such changes are in accord with all regulations in effect when the changes are requested and the intent and purpose of the comprehensive plan in effect at the time of the proposed change.*** Changes other than those indicated shall be processed as for a new application for PUD rezoning.

(x) Previously approved developments. Where, on the effective date of the ordinance from which this chapter is derived, there exists an annexation agreement between a property owner and the city establishing the right for certain development, and where the property which is the subject of the agreement is thereafter classified PUD, ***then the sections of the agreement delineating the physical development of the property shall be construed as meeting the requirements for an application for PUD zoning.*** Final development plans in accordance with this Code and applicable subdivision design standard regulations shall be required for all phases not approved for construction prior to the effective date of the ordinance from which this chapter is derived.

(emphasis added).

Sec. 86-570. – Definitions

Open space means ***property which is unoccupied or predominantly unoccupied by buildings or other impervious surfaces and which is used for parks, recreation, conservation, preservation of native habitat and other natural resources, or historic or scenic purposes. It is intended that this space be park-like in use.*** The term "unoccupied or predominantly unoccupied by buildings or other impervious surfaces," as used in this definition, shall mean that not more than five percent of the area of any required open space, when calculated by each area shall be occupied by such surfaces. ***Such open space shall be held in common ownership by all owners within the development for which the open space is required. Any property within 20 feet of any structure (except accessory structures within the designated open space) or any proposed open space area having any dimension of less than 15 feet, shall not be considered open space*** in meeting the requirements of this chapter. Where areas within a development are identified as native habitat, such areas shall be utilized to fulfill the open space requirements of this chapter.

...

Planned unit development district. A planned unit development district (PUD):

- (1) Is land under unified control, planned and developed as a whole in a single development operation or approved programmed series of development operations for dwelling units and related uses and facilities;
- (2) Includes principal and accessory uses and structures substantially related to the character of the development itself and the surrounding area of which it is a part;

- (3) **Is developed according to comprehensive and detailed plans which include not only streets, utilities, lots or building sites and the like, but also site plans, floor plans and elevations for all buildings as intended to be located, constructed, used and related to each other, and detailed plans for other uses and improvements on the land as related to the buildings; and**
- (4) **Includes a program for full provision of maintenance and operation of such areas, improvements, facilities and services as will be for common use by some or all of the occupants of the planned unit development, but will not be provided, operated or maintained at public expense.**

(emphasis added).

Comprehensive Plan

Strategy LU 1.2.16 - Mixed Use Residential (MUR)

1. Limited to existing and proposed properties zoned or proposed to be zoned PUD.
2. Consistent with the PUD Zoning, conservation and ***functional open spaces*** are required. See also Strategy OS 1.11.1 – Mixed Use Residential District Requirements.
3. ***Development standards including bulk development standards and housing types are designated at the PUD Zoning level.***
4. A variety of residential density ranges are envisioned ***providing the overall density does not exceed 5.0 dwelling units per gross acre for the subject project/property.***
5. ***Previously approved PUD developments exceeding the standards of this Strategy shall be permitted to retain their currently approved density and intensity, open space percentage provisions, and other previously approved development standards.***
6. Min/Max Percentages as follows:
 - a) Residential: 95% / 100%
 - b) Non-Residential: 0% / 5%
 - c) ***Open Space (including both Functional and Conservation): 50% (min). Open Space shall be comprised of a mix of Functional and Conservation Open Space to achieve 50%, with either type being no less than 10%. For the purposes of this Strategy, Functional Open Space may include public and or private open space.***
...
7. Intensity/Density:
 - a) ***Residential Density: 1.0 – 5.0***

Strategy LU 1.2.21 – *Previously approved Planned Developments* Previously approved Planned Developments including PUD and CMU developments exceeding the standards of this Strategy ***shall be permitted to retain their currently approved land use(s), density and intensity, open space percentage provisions, and other previously approved development standards.***



LAW OFFICE OF ROBERT K. LINCOLN, P.A.

LAND-USE-AND-LOCAL GOVERNMENT LAW AND LITIGATION

2055 WOOD STREET, SUITE 206, SARASOTA, FL 34237 | (941) 681-8700 | WWW.FLALANDLAW.COM

By email to: rfeinsod@venicefl.gov

August 4, 2021

Ron Feinsod, Mayor
City of Venice
401 West Venice Avenue
Venice, FL 34285

RE: Enforcement of PUD Open Space Requirements and Deed Restriction
Bird Bay Golf Course

Dear Mayor Feinsod:

I represent the Bird Bay Community Association, Inc. with respect to their concerns about possible redevelopment of the Bird Bay Golf Course (as platted, now called Hawks Run Golf Course) within their community. The current owner of Golf Course has stated that it is in contract negotiations with at least two developers who wish to redevelop the "front nine." At least one of those developers has sent representatives from the Boone Law Firm to talk to City staff about the possibility of redeveloping parts of the Golf Course as residential.

The City should put an end to any speculation that the Golf Course could be redeveloped by informing the current owner that the City will recognize and enforce the restriction imposed by a 1983 Deed the ("Golf Course Restriction") that states:

By this conveyance and Grantee's acceptance of it the parties covenant and agree that the property may be used for Golf Course purposes and related uses only. This restriction shall constitute a covenant running with the land and shall be binding upon the parties hereto, their successors and assigns, and shall be enforceable by Grantor, its successors and assigns, and third parties benefitting from this covenant.

See 1983 Golf Course Deed (attached as Exhibit 1).

The City is a "third party benefitting from this covenant" because the restriction was imposed to implement the PUD open space requirements of the City's Zoning Code, and the terms of an Amended Annexation Agreement and Master Plan that was approved in 1977 (attached as Exhibit 2). The Master Plan depicted the golf course and included it in its open space calculation. The Amended Annexation required development substantially in accordance with the Master Plan.

The City's 1977 Zoning Code required PUDs to provide at least 50% open space, as did the Zoning Code in effect in 1978 when Bird Bay (including the Golf Course) was rezoned to PUD, as does the City's current Land Development Code. Every version of the Codes required PUD open space to be guaranteed for 99 years in a dedication. Indeed, the requirement to protect the open space through a dedication or covenant was acknowledged in a 1977 Developer's Agreement with the City (attached as Exhibit 3). While it appears that no dedication to the City covering the open space was recorded, the Golf Course Restriction implemented the Zoning Code requirement. The City has an obligation to enforce that covenant.



It is worth noting that John Robertson purchased the Golf Course in 1983. He then platted it as "Bird Bay Golf Course" in 1985. Mr. Robertson incorporated Bird Bay Executive Golf Club, Inc. to operate the Golf Course and then sold the Golf Course to that entity (which clearly knew of the Golf Course Restriction) in 1993. Mr. Robertson's son now runs the business. Despite the clear and binding Golf Course Restriction, the ownership is marketing the Golf Course to developers for redevelopment. Moreover, the owner has used those efforts to demand that all Bird Bay unit owners pay it exorbitant annual "membership fees" – in the amount of \$400.00 per unit per year – if they do not want to see new residential development on the Golf Course. For 1026 residential units, such fees amount to over \$400,000.00 annually.

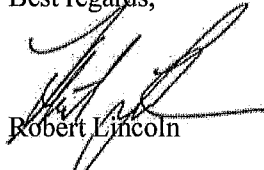
Because the 1983 Deed was recorded over 30 years ago, I expect the owners or their attorneys will attempt to incorrectly claim the Golf Course Restriction was extinguished by Florida's Marketable Record Title Act (MRTA). By law, MRTA does not extinguish the Golf Course Restriction because it was imposed to implement a Zoning requirement. See *Save Calusa Tr. v. St. Andrews Holdings, Ltd.*, 193 So.3d 910, 915 (Fla. 3d DCA 2016) (MRTA did not apply where a "covenant sealed the intent and objectives of the County's regulation of the golf course property."). The City must enforce the Golf Course Restriction to protect the open space and the integrity of the Bird Bay PUD.

The owner and its attorneys may also attempt to falsely claim the City's refusal to allow redevelopment of the Golf Course would be an unconstitutional taking or compensable under the Bert J. Harris Property Rights Protection Act. By law, an open space restriction imposed in the context of a PUD, where density and uses are moved from the open space to other parts of the development, is not compensable. See *Palm Beach Polo, Inc. v. Vill. of Wellington*, 918 So.2d 988, 995 (Fla. 4th DCA 2006) (owner of open space/preserve area within PUD had no "reasonable investment backed expectation" to develop where density had been transferred to other parts of the project as part of the PUD approval).

Bird Bay's residents and unit owners purchased their properties in reliance on the PUD and Master Plan approvals, and their requirements to preserve the open space, including the Golf Course. The City somehow allowed the development to proceed without obtaining the required dedication (or at least without recording it), and now the residents are faced with extortionate demands and the threat of development on that open space. The City must intercede and clearly inform the ownership and any potential developers that the City considers the Golf Course to be protected open space. Further, the City must affirmatively state it will enforce the Golf Course Restriction, and will not accept or consider any applications to amend the comprehensive plan or the PUD to allow development of the Golf Course.

I look forward to working with the City on this matter of mutual concern.

Best regards,



Robert Lincoln

adr/RKL

Enc.

cc: Venice City Council Members, citycouncil@venicefl.gov
Kelly Fernandez, City Attorney, kfernandez@swflgovlaw.com
Edward Lavalley, City Manager, elavalley@venicegov.com
Jeffrey Shrum, Development Services Director, jshrum@venicegov.com
Roger Clark, City Planning Manager, rclark@venicegov.com

*Rec'd 21. 20
Book 1012 50*

(H)
✓

RECORDED IN PUBLIC RECORDS
SARASOTA COUNTY, FLORIDA
SARASOTA COUNTY CLERK'S OFFICE
SARASOTA, FLORIDA 33578

WARRANTY DEED

251758

GRANTOR: FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION,
a Corporation organized and existing under the laws
of the United States of America.

DS PAID 1,411.50 CALL 3/1/83
R H PROPERTY CO
SARASOTA, FL
By: W. J. Wilkins
Deputy Clerk

GRANTEE: JOHN T. ROBERTSON

Grantee's Post Office Address: 2323 Teal Avenue
Sarasota, Florida 33582

O. R. 1562 PG 0183

Grantor, for and in consideration of the sum of one dollar, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's heirs and assigns forever, the following described land, to wit:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is subject to the following:

a. Long-Term and Non-Exclusive Use Agreement dated November 30, 1977, and Recorded in O.R. Book 1215, Page 2126, Public Records of Sarasota County, Florida.

b. Annexation Agreement with the City of Venice dated August 21, 1972, recorded in O.R. Book 977, Pages 1373, thru 1387, as amended in O.R. Book 997, Page 1510, O.R. Book 999, Page 2130, and O.R. Book 1219, Page 1414, and Resolutions and Petitions for Annexation in connection therewith recorded in O.R. Book 977, Page 1368, and O.R. Book 997, Page 1506, Public Records of Sarasota County, Florida.

c. Articles of Incorporation and Bylaws of BIRD BAY COMMUNITY ASSOCIATION, INC., recorded in O.R. Book 1269, Pages 640 thru 659, Public Records of Sarasota County, Florida.

d. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the City of Venice dated July 23, 1981 recorded in O.R. Book 1456, Pages 158 thru 165 of said records.

e. Sanitary Sewer Easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the CITY OF VENICE recorded in O.R. Book 1456, at Page 156 of said records.

f. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for ingress, egress and parking, recorded in O.R. Book, 1562, Page 174 of the Public Records of Sarasota County, Florida.

g. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for irrigation, recorded in O.R. Book, 1562, Page 176 of the Public Records of Sarasota County, Florida.

h. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for drainage, recorded in O.R. Book, 1562, Page 160 of the Public Records of Sarasota County, Florida.

i. Property Taxes for 1983 and subsequent years.

By this conveyance and Grantee's acceptance of it the parties covenant and agree that the property may be used for Golf Course purposes and related uses only. This restriction shall constitute a covenant running with the land and shall be binding upon the parties hereto, their successors and assigns, and shall be enforceable by Grantor, its successors and assigns, and third parties benefiting from this covenant.

O. R. 1562 PG 0184

Dated: January 27, 1983

Witnesses:

[Signature]
[Signature]

FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America

By: [Signature]
Its Executive Vice President

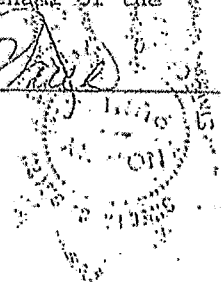
STATE OF FLORIDA
COUNTY OF ~~MANATEE~~ MANATEE

The foregoing instrument was acknowledged before me this 27th day of January, 19 83, by James U. Wade as Exec. Vice President of FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America, on behalf of the corporation.

[Signature]
NOTARY PUBLIC

My Commission Expires:

Notary Public, State of Florida at large
My Commission Expires January 27, 1984.



O.R. 1562 PG 0185

Commence at the Southwest corner of Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., run N89° 31'14"W, 661.50 feet along the Southerly line of said Section 6; thence N23°36'00"E, 250.80 feet; thence by a curve to the left Radius 610.71 feet, Arc 291.22 feet, Chord N10°16'21"E, 288.46 feet for a Point of Beginning. Thence continue along said curve to the left, Radius 610.71 feet, Arc 22.71 feet, Chord N04°27'12"W, 22.71 feet; thence by a curve to the right, Radius 305.00 feet, Arc 119.77 feet, Chord N05°43'53"E, 119.01 feet; thence N16°58'53"E, 75.26 feet to a point on the Southerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Southerly and Easterly boundary line of said Bird Bay I A Condominium by the following seven courses: S73°01'07"E, 129.13 feet; thence N76°44'55"E, 46.65 feet, thence N12°49'07"E, 180.71 feet; thence N55°59'07"E, 42.13 feet; thence N04°55'16"E, 143.08 feet; thence N66°28'25"W, 74.02 feet; thence N10°16'12"E, 234.73 feet to the most Southerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Pages 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Easterly boundary line of said Bird Bay II A Condominium by the following seven courses: N12°56'43"E, 121.28 feet; thence N27°36'33"E, 196.36 feet; thence N71°25'08"E, 247.92 feet; thence N40°20'30"E, 95.78 feet; thence N06°51'02"W, 259.85 feet; thence N41°29'47"E, 69.43 feet; thence East 10.00 feet; thence leaving said Easterly boundary line run N85°11'47"E, 156.81 feet; thence S53°55'53"E, 43.99 feet; thence S25°36'40"E, 284.87 feet to the Northwest corner of Bird Bay Village Condominium Unit 1, as recorded in Condominium Plat Book 6, Pages 53 thru 53I, Public records of Sarasota County, Florida; thence traverse along the Westerly boundary line of said Bird Bay Village Condominium Unit 1 by the following seventeen courses: S25°37'32"E, 33.93 feet; thence S03°41'20"E, 49.09 feet, thence S16°33'54"W, 215.13 feet; thence S60°45'36"W, 175.03 feet; thence S30°46'43"W, 75.80 feet; thence S12°57'23"E, 76.90 feet; thence S40°47'12"E, 184.39 feet; thence S86°52'06"W, 252.36 feet; thence S46°55'26"W, 30.67 feet; thence S06°58'55"W, 148.32 feet; thence S27°54'34"E, 154.77 feet; thence S76°39'26"W, 158.15 feet; thence S56°54'34"W, 80.99 feet; thence S25°42'06"W, 75.08 feet; thence S47°14'03"W, 150.75 feet; thence S86°31'17"W, 132.91 feet; thence S77°28'40"W, 207.18 feet to the Point of Beginning. Said tract contains 15.07 Acres more or less.

June 2, 1982

O.R. 1562 PG 0186

From the Southwest corner of the Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., Sarasota County, Florida, run N89°31'14"W, 698.77 feet along the South line of the Southeast 1/4 of said Section 6; thence S23°56'00"W, 146.33 feet to the Northeasterly R/W line of Venice By-Pass (State Road No. 45-A, 200 foot R/W at this point); thence N66°04'00"W, along said Northeasterly R/W line 5.81 feet; thence N23°56'00"E, 250.00 feet; thence N66°04'00"W, 40.00 feet to the Westerly R/W of Bird Bay Drive West for a Point of Beginning. Thence N66°04'00"W, 848.51 feet to a point on the Easterly R/W line of Seaboard Coastline Railroad (100 foot R/W); thence N11°50'34"W, 975 feet more or less along said Easterly R/W line to the Mean High Water line of Curry Creek; thence Northeasterly along said Mean High Water line 55 feet more or less to the most Westerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Page 23 thru 230, Public records of Sarasota County, Florida; thence traverse along the Southerly boundary of said Bird Bay II A Condominium by the following nine courses: S59°21'45"E, 255.41 feet more or less; thence S52°11'29"E, 81.56 feet; thence N86°46'08"E, 62.10 feet; thence N36°01'39"E, 170.02 feet; thence N53°48'01"E, 171.01 feet; thence N55°21'49"E, 184.74 feet; thence N60°00'22"E, 226.64 feet; thence N85°07'05"E, 197.53 feet; thence S73°06'25"E, 114.42 feet to a point on the Westerly R/W line of said Bird Bay Drive West; thence run along said Westerly R/W line by a curve to the left, Radius 270.00 feet, Arc 136.96 feet, Chord S23°50'48"W, 135.50 feet; thence S09°18'53"W, 147.33 feet to a point a point of intersection with said Westerly R/W line Bird Bay Drive West and the Northerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Northerly, Westerly and Southerly boundaries of said Bird Bay I A condominium by the following fifteen courses: N56°56'08"W, 121.64 feet, thence S38°51'02"W, 190.45 feet; thence N77°45'43"W, 30.00 feet; thence S36°48'18"W, 106.43 feet; thence S70°12'25"W, 193.25 feet;

O.R. 1562 PG 0187

thence S68°55'08"W, 222.28 feet; thence S55°06'44"W, 148.54 feet; thence S34°20'53"E, 157.51 feet; thence S26°01'06"E, 167.22 feet; thence S44°03'15"E, 38.16 feet, thence S38°07'39"E, 120.66 feet; thence S63°23'51"E, 106.11 feet; thence N73°39'10"E, 177.00 feet; thence N75°00'42"E, 153.00 feet; thence S73°01'07"E, 52.35 feet to a point on said Westerly R/W line Bird Bay Drive West; thence by a curve to the left, Radius 385.00 feet, Arc 151.19 feet, Chord S05°43'53"W, 150.22 feet along said Westerly R/W line; thence continue along said Westerly R/W line by a curve to the right, Radius 530.71 feet, Arc 164.40 feet, Chord S03°21'21"W, 163.75 feet; thence leaving said Westerly R/W line run N 79°34'26"W, 50.65 feet; thence N41°27'56"W, 15.93 feet; thence N81°58'01"W, 40.85 feet; thence N07°30'19"E, 41.32 feet; thence N85°30'41"W, 81.17 feet; thence N04°31'32"E, 37.98 feet; thence N23°04'31"E, 49.27 feet; thence S76°00'18"W, 217.21 feet; thence by a curve to the left, Radius 43.00 feet, Arc 95.91 feet, Chord S12°06'33"W, 77.23 feet; thence S51°47'21"E, 142.85 feet; thence S70°25'45"E, 233.38 feet to point on said Westerly R/W line of Bird Bay Drive West; thence S23°56'00"W, 124.31 feet along said Westerly R/W line to the Point of Beginning. Said tract contains 18.25 Acres more or less.

June 2, 1982

Together with that certain access easement dated November 17, 1982 recorded in O.R. Book 1548, Page 672 of the Public Records of Sarasota County, Florida.

FILED AND RECORDED
 T. H. ASHLEY JR. CLERK
 SARASOTA CO. FLA.
 JUN 1 9 06 PM '82

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OR 1219 Pg 1414 ^{2/5 P}

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AMENDMENT TO ANNEXATION AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morris, Jr. and Jaime S. Carrion, hereinafter referred to as "Owner," and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City."

W I T N E S S E T H :

WHEREAS, City and Amalgamated Transit Union, Trustees, and Valencia Development Corporation entered into an Agreement dated August 21, 1972, recorded in Official Records Book 977 at page 1373 of the Public Records of Sarasota County, Florida, in which certain properties more particularly described therein were annexed to the City of Venice pursuant to the terms and provisions of that Agreement; and

WHEREAS, City and Charles F. Schiear, Jr. as Trustee U/A dated October 24, 1966, entered into an Agreement dated February 15, 1973, recorded in Official Records Book 997, page 1510 of the Public Records of Sarasota County, Florida, in which land contiguous to the above described lands were annexed to the City of Venice pursuant to the terms and provisions of that Agreement; and

WHEREAS, City and Valencia Development Corporation entered into an Amendment to the above Agreement dated April 24, 1973, recorded in Official Records Book 999, page 2130 of the Public Records of Sarasota County, Florida; and

WHEREAS, a portion of said lands have heretofore been developed by Valencia Development Corporation and submitted to condominium ownership as portions of Bird Bay Village Unit One; and

WHEREAS, the remainder of the annexed lands have been conveyed by Valencia Development Corporation to Venice Properties, Inc. a Florida corporation hereinafter called "Properties;" and

WHEREAS, Properties has conveyed a portion of the remaining undeveloped lands to Owner by warranty deed dated June 14, 1977, recorded in

OR 1219 Pg 1414

Official Records Book 1177, page 1912 of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties has granted to Owner and Jaime S. Carrion and Robert A. Morris, Jr. options to purchase the remainder of the undeveloped lands as evidenced by various Memorandum and Notice of Option to Purchase dated June 14, 1977, and recorded respectively in Official Records Book 1218, beginning at pages 689, 694 and 697, Public Records of Sarasota County, Florida; and

WHEREAS, Properties has leased with an option to purchase the golf course portion of said lands to Bird Bay Golf Club, Inc., a Florida corporation owned and controlled by Robert A. Morris, Jr. and Jaime S. Carrion, as is more particularly described in the Memorandum and Notice of Lease Agreement with Option to Purchase dated March 2, 1977, recorded in Official Records Book 1177, page 1935 of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties has leased with an option to purchase the Administration Building and Model Center site to Bird Bay Realty Company, a Florida corporation owned and controlled by Robert A. Morris, Jr. and Jaime S. Carrion, as is more particularly described in the Memorandum and Notice of Lease Agreement with Option to Purchase dated June 14, 1977, recorded in Official Records Book 1177, page of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties, Bird Bay Golf Club, Inc. and Bird Bay Realty Company are executing this Agreement for the purpose of evidencing their consent hereto; and

WHEREAS, Owner desires to modify the original Annexation Agreements as Amended, altering the land use plan for the Planned Residential Community and City desires to modify the Agreement by providing for the application of certain provisions from the Code of the City of Venice to the future development of said undeveloped lands.

NOW THEREFORE, in consideration of the mutual agreements herein undertaken, the parties hereto agree that the above described Annexation Agreement be amended and modified as follows:

1. Paragraph 1 is hereby amended to read as follows:

1. LAND USE:

Owner will develop the lands in a planned residential community substantially in accordance with the land use Master Plan thereof prepared by Robert A. Morris, Jr., AIA, initialed by Owner and City and attached hereto as Exhibit "A" and by this reference made a part hereof providing for a maximum density of 998 units in addition to the existing units in Bird Bay Village Unit One. The Planned Unit Development portion of said lands shall be developed in accordance with the portions of Chapter 20A of the Code of the City of Venice which are applicable to existing Planned Unit Developments. No building or occupancy permit shall be issued by the City with respect to any portion of said lands unless the same shall be embraced within the intent of said Master Plan or such modification of substitution thereof as may hereafter be approved by the City Council.

2. Paragraph 3 a) is hereby amended to read as follows:

a) A preliminary subdivision plat or condominium plat, as appropriate, has been submitted to and approved by the City Council.

3. Paragraph 11(d) is hereby amended to read as follows:

(d) The Subdivision Regulations of the City of Venice shall apply where such regulations are appropriate and applicable and are not inconsistent with the Annexation Agreements as amended hereby. The maximum density for the development of the remaining undeveloped lands shall be reduced to 998 units as shown on the Master Plan attached.

This Agreement shall run with the land as described above and shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this Agreement by its duly authorized general partner and City has executed this Agreement by its duly authorized officials and its corporate seal affixed hereto effective the day and year first above written.

partnership, and as Vice President of BIRD BAY GOLF CLUB, INC. and BIRD BAY REALTY COMPANY, a Florida corporations, on behalf of the corporations.

Norma J. Nelson
Notary Public
My commission expires:

Notary Public, State of Florida at Large
My Commission Expires May 2 1979
Bonded by American Ind & County Co

STATE OF FLORIDA)
COUNTY OF SARASOTA)

The foregoing instrument was acknowledged before me this 8th day of February, 1978, by HARRY E. CASE, Mayor of the CITY OF VENICE, and by STEVE ALBEE, JR., City Clerk of the City of Venice, a municipal corporation in the County of Sarasota, State of Florida, on behalf of the corporation.

Norma J. Nelson
Notary Public
My commission expires:

STATE OF FLORIDA)
COUNTY OF SARASOTA)

Notary Public, State of Florida at Large
My Commission Expires July 10, 1981
Bonded By U S F & G

The foregoing instrument was acknowledged before me this 3rd day of January, 1978, by JAMES U. WADE, President of VENICE PROPERTIES, INC., a Florida corporation, on behalf of the corporation.

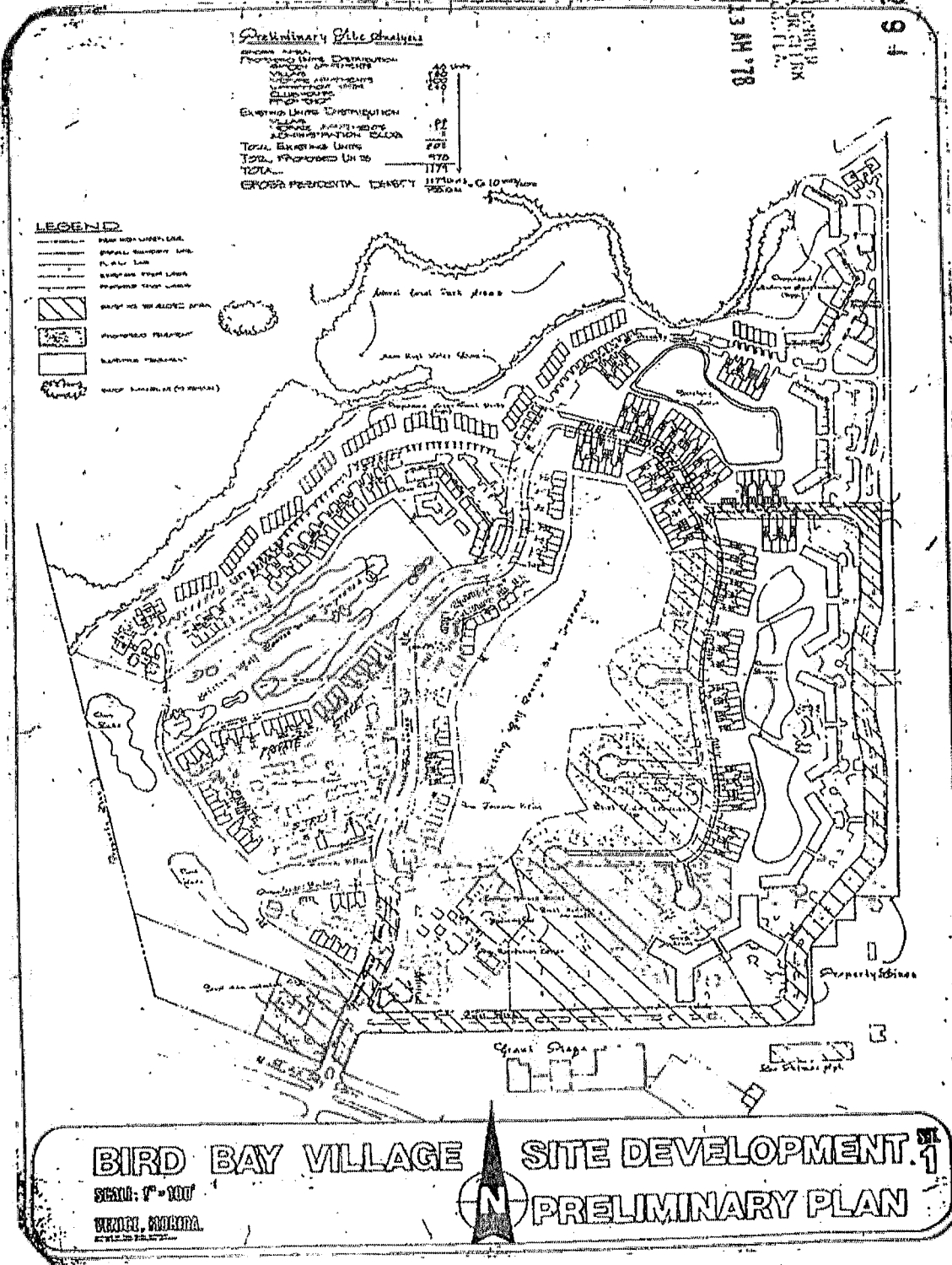
James U. Wade
Notary Public
My commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 10, 1981
BONDED BY U.S.F. & G.

RECORDER'S MEMO: Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

FILED AND RECORDED
R. H. BACKUS
SARASOTA, FLORIDA
FEB 13 10 23 AM '78

8-17-29-1



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215.P

DEVELOPER'S AGREEMENT

MICROFILMED
ROLL

THIS AGREEMENT, made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morris, Jr. and Jaime S. Carrion, hereinafter referred to as "Owner", and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City".

W I T N E S S E T H:

WHEREAS, Owner has acquired rights to properties described in Annexation Agreement recorded in O.R. Book 977, Page 1373, as amended in document recorded in O.R. Book 999, Page 2130, and as further amended by document recorded in O. R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, and

WHEREAS, certain questions have arisen as to the interpretation of the Agreements referred to above, the City Zoning Code, the City Subdivision Ordinance and other ordinances of the City, and

WHEREAS, it is the intent of the Owner and City to clarify certain items pertaining to the above,

NOW, THEREFORE, it is agreed as follows:

1. The Owner has assured the City the implementation of the development as proposed in the new master plan approved by City Council on the 21st day of December, 1977, and recorded in O.R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, does not constitute a development of regional impact or constitute a retriggering of a development of regional impact as provided in Chapter 380, Florida Statutes, and Owner has further agreed to take immediate steps to make application under Chapter 380 for a letter of determination. Owner agrees that it will not request the City to issue building permits or entertain planning procedures for more than the first 133 units of its development until said letter of determination is furnished to the City or until it complies with subparagraphs 1 or 2 of the following sentence. Furthermore, if it is found that the project is not vested or a substantial change has occurred which would trigger a DRI classification, Owner agrees either:

(1) to amend its master plan to reduce the total density of the units it intends to build to 798 units or to take whatever action is necessary to take the project out of a Development of Regional Impact, or

(2) secure a Development of Regional Impact determination by the appropriate governmental authority and follow the process outlined in Chapter 380 for a Development of Regional Impact if so required by that authority.

2. The Owner has determined that it will not make an application to rezone the project under the Planned Unit Development zoning category as provided in Chapter 20-A of the Code of Ordinances of the City of Venice, and therefore acknowledges that Owner must comply with the requirement of the particular zoning which is placed upon the property at this time (primarily R-3 except for a small portion that is zoned B-1). Owner does hereby agree to develop its property in accordance with Chapter 20A of the Code of the City.

3. Each time the Owner intends to develop another phase of its project, it will follow the subdivision regulations of the City and each time it is ready to start construction on condominiums or other dwellings in a new phase, Owner will file a site plan with the City of Venice for its approval, said site plan containing the information outlined in site plan approval check-off list attached hereto as Exhibit A and made a part hereof. The City shall not make unreasonable demands for material furnished under the site plan if said material has already been furnished to the City in the subdivision procedure.

4. It is agreed the master plan referred to in paragraph 1 above is conceptual in nature and the Owner and the City acknowledge the golf course lines will have to be amended so that any development or construction of buildings will fall outside the golf course, and the Owner will be permitted within reason to alter the location of buildings so as to conform to natural terrain and preserve trees.

5. The owner has previously submitted a dedication to open space to the City of Venice which has not been accepted by the City at this time. It is agreed that Owner will resubmit a dedication

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within thirty (30) days of today's date using new legal descriptions which take into consideration the set-back requirements of R-3 zoning as it pertains to the golf course boundaries.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this agreement by its duly authorized general partner and City has executed this agreement by its duly authorized officials and its corporate seal affixed hereto, the day and year first above written.

Witnesses:
Norma J. Dillon
John W. Gardiner

BIRD BAY ASSOCIATES
By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
A General Partner

CITY OF VENICE
By: Harry E. Case
Mayor

(SEAL)

ATTEST:
By: [Signature]
City Clerk

C O N S E N T

The undersigned hereby consent to the foregoing Developer's Agreement effective the day and year first above written.

Witnesses:
Norma J. Dillon
John W. Gardiner

BIRD BAY GOLF CLUB, INC.
By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

Norma J. Dillon
John W. Gardiner

BIRD BAY REALTY COMPANY
By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

[Signature]
Margie M. [Signature]

VENICE PROPERTIES, INC.
By: James U. Wade
James U. Wade
As its President



Memorandum

TO: Roger Clark, Planning Director.
FROM: Robert Lincoln, Esq.
DATE: August 31, 2022
RE: Application 22-26RZ – Bird Bay PUD – Comments on First Resubmittal

On August 12, 2022, Hawk’s Run Development submitted a First Resubmittal to Application 22-26RZ, which seeks to amend the Bird Bay PUD Master Plan to allow residential development on portions of the existing golf course/open space. Please see the following comments on the First Resubmittal.

Comments on the Rezoning Standards in Sec. 86-47

General Comments: First, the Applicant asserts that the proposed amendments to the Master Plan do not constitute a change in zoning. That is not correct. In a PUD, the graphic component of the Master Plan and other descriptions/limitations on the development approved are integral components of the zoning and zone district specifically tailored to the specific property/development project. Any change to the location or amount of open space, or the location of development areas, is a change to the PUD zoning.

Second, the Applicant claims it can rely on the density approved in the 1977 Amended Annexation Agreement and the Master Plan that was approved with that Amendment, without also complying with the development areas and open space designations that were set out in that Master Plan. The Applicant’s position is internally inconsistent and should be rejected: to the extent that there is any previously approved “unused density”, that density can only be used in the previously approved development areas and not in the designated open space areas.

1.a – The Application is NOT in compliance with the Comprehensive Plan.

Specifically:

- 1) The Application does not comply with Strategy LU 1.2.16.3 because it does not provide the required housing types/development standards, including lot sizes, lot widths, setbacks, lot coverage, and height.**



2) The Application does not comply with Strategy LU 1.2.16.5 for a “previously approved PUD” because it violates the established and approved open space percentage, the development standards for open space, and the approved location and types of development.

3) The Application does not comply with Strategies LU 1.2.16.4 and 1.12.16.7 because the density exceeds 5 dwelling units per acre and the Application does not comply with Strategy 1.2.16.5.

4) The Application does not comply with the 50% open space requirement of Strategies LU 1.2.16.6(c) and 1.2.16.7. Prior measurements of open space areas were inaccurate and included areas not meeting the definition of open space (in 1977 or today). Prior measurements of the open space did not evaluate the 5% limit on impervious areas, which appear to be violated by the existing Clubhouse Area, boardwalk, golf course structures and parking – and which would be exacerbated by a larger clubhouse/restaurant and additional parking, and also by the proposed standalone miniature golf/putting course attraction, that would be constructed on impervious surfaces and covered with artificial turf. (see Popstroke Sarasota, www.popstroke.com for the example that has been cited by the golf course manager). The 50% open space requirement appears to be violated today and the Application would further reduce the open space below 50%.

5) The Application does not comply with the compatibility requirements of Strategy LU 8.2 because the character and design of this infill project are not compatible with the existing neighborhood and the established plan of development for the Bird Bay PUD.

a) The Application puts new residential units in close proximity to existing residential units (particularly those in Unit 4) and deprives those unit owners of their longstanding, vested, and protected open space and buffering. The Application also puts a new and undefined pro shop/restaurant in close proximity to existing residences on White Pine . The relocated pro shop and new restaurant are associated with the new miniature golf/putting attraction use.

b) The Application eliminates golf course open space that was integral to the approval of the overall project density and which the original developer promised, and was required, to protect in perpetuity. Furthermore, the proposed (but not depicted) development of a miniature golf/putting attraction use, along with the relocated pro shop and new restaurant and required parking for those uses, will create additional impervious surface and further reduce the approved open space.

c) The Application alters the internal pattern of development, open space and buffering within the community in a manner that is not consistent with the existing development.

d) The Application and Amended Plan do not describe or limit the type, height, setbacks, or other characteristics of the residential uses as necessary to analyze their impacts on other nearby residential uses, which will be in close proximity.

e) The Application asserts there will be a new and expanded pro shop and restaurant, and relocates the existing pro shop, but does not establish standards

for their lighting setbacks, hours of operation, outdoor entertainment, and parking. Those uses therefore cannot be considered compatible or buffered from the nearby residential uses.

f) The Applicant is pursuing a separate and distinct miniature golf/putting attraction to be carved out of part of the golf course but which has not been included in the Master Plan. That use will create new compatibility issues related to noise, lighting, hours, and proximity, as well parking, and drainage issues that cannot be addressed because they are not included.

1.b – The Application would change the land use pattern and create additional adverse impacts. Any change to an established PUD is a change in zoning, and any change not expressly contemplated at the time of its initial approval may change the existing land use pattern. In this case, approval of the 1977 Developer Agreement and changes to the Annexation Agreement was specifically conditioned on the developer’s promise that the golf course would be protected. The proposed Master Plan amendment is a change in the Bird Bay PUD that will adversely alter the existing land use pattern because

1) It places residential development with the established golf course/open space area within the approved PUD, which is required to remain intact as part of the original terms of the approval. The proposed residential development will be located in close proximity to the existing residential uses, eliminating the existing pattern of large open space buffers.

2) It changes the original, approved pattern and location of residential development areas within the approved PUD.

3) It proposes a new commercial restaurant within the PUD with no provisions or limits on size, setbacks, buffering or parking. The Applicant has suggested that a restaurant could be accessory to the pro shop or golf course but has not provided sufficient information to demonstrate that this new use would in fact be accessory.

4) In addition, the Applicant is proposing – but not in the Application – to convert portions of the golf course to a distinct miniature golf/putting attraction. Even if considered a permissible use, it is a new and distinct use and conversion of the golf course open space and should be included in the Master Plan amendment. A miniature golf/putting attraction would have its own compatibility, drainage, parking, and related issues that must be addressed in the Master Plan.

1.c – The Application changes the relationship between the Bird Bay PUD and adjacent uses by lessening the open space and adding new development areas, though it does not turn the Bird Bay PUD into an isolated district. No buffering appears to be proposed to protect the new residences from the adjacent commercial development to the south.

1.d – The Application proposes development of “approved units” which will result in increased impacts to public facilities because (i) any units beyond what has been constructed were waived and abandoned, and (ii) the proposed single family uses have greater impacts than the multi-family units originally approved. Both will result in greater loads on schools, utilities and streets which the Applicant has neither calculated nor addressed.

1.e – **The current boundaries of development areas and open space within the PUD, which the Applicant seeks to change, are not illogically drawn.** The proposed changes are inconsistent with the logic and design of the entire Bird Bay PUD.

1.f – **Changed conditions do not make the proposed change necessary.** The application simply reflect the prior and current owner’s desire to make a windfall profit by radically altering the established plan of development to develop residential units on planned, committed, and protected open space within the Bird Bay PUD.

1.g – **The proposed change will adversely affect living conditions in the neighborhood,** particularly for all the residential units near the two development pods by eliminating open space and locating residential structures in close proximity, and will adversely affect the entire Bird Bay neighborhood by eliminating open space and violating the original development design with single-family homes

1.h – **The Applicant has not shown there will be no adverse impact to public safety** because the Application does not include a traffic circulation, parking or other study of how the increased trips from the residential and restaurant uses will affect safety, particularly because Bird Bay has no sidewalks along Bird Bay Drive.

1.i – **The Applicant has not demonstrated the proposed change will not create a drainage problem.** The Bird Bay stormwater system is a pre-regulatory system with no existing SWFWMD or FDEP permit and therefore the entire system will have to obtain a Environmental Resource Management Permit (ERP). The Application will add undefined impervious surface to the existing drainage system from the new residential areas alone – more, when the miniature golf/putting attraction use and the increased footprint and parking for the pro shop/restaurant is considered. The Applicant has provided no analysis or information demonstrating how and whether runoff from the development will be managed, and whether the means for managing it will create adverse impacts on the existing community. Furthermore, it is clear that the Applicant does not intend the HOA to own the golf course, which leaves open the question of who will serve as the responsible party/operating and management entity for the revised/permitted surface water management system.

1.j – **The Applicant has not demonstrated that the change will not reduce light and air to adjacent areas** because it has not provided any development standards for the residential units and pro shop/restaurant that will be in close proximity to existing residences. A two-story structure at the proposed location could have significant adverse impacts to light and air to the nearby residential units.

1.k – **The Application will adversely affect property values within Bird Bay,** particularly for those existing units which will have golf course views replaced with new residential or commercial buildings.

1.l – **The change will be a deterrent to the improvement of adjacent properties,** particularly those units adversely affected by their loss of golf course views.

1.m – **The change will constitute a grant of special privilege to the Applicant,** because it completely alters the established plan of development and converts portions of the protected open space to residential uses for the sole benefit and profit of the Applicant.

1.n – **There Applicant DOES propose a change in the existing Bird Bay PUD zoning** by modifying the Master Plan and the established, vested, and protected plan of

development. **The applicant has provided no evidence establishing substantial reasons why the golf course cannot be used in accord with the existing zoning,** and the golf course is protected open space that cannot be developed.

1.o – **The change is out of scale with the needs of the neighborhood** because it converts existing, protected open space into residential development, creates new development areas within the PUD, and violates the established and approved plan of development.

1.p – **There are areas within the city already zoned for the proposed residential uses.** There is no need for this development.

Comments on Critical Substantive and Procedural Provisions of the Land Development Regulations.

1) The Applicant has not demonstrated unified control or a development agreement covering the entire Bird Bay PUD, as required by LDR Sec. 86-130(k). Unified control or consent from the entire PUD is required because the Application seeks to alter the entire approved and established scheme of development and eliminate required and protected open space and therefore amends the entire Bird Bay PUD.

2) The Application would result in the Bird Bay PUD exceeding the maximum density of 4.5 dwelling units per acre, in violation of LDR Sec. 86-130(j)(1) and is not otherwise grandfathered under the Comprehensive Plan.

3) The Application converts and eliminates existing, approved open space that must be restricted for at least 99 years pursuant to LDR Sec. 86-130(j)(3), as was promised by the developer when obtaining the Annexation Agreement and Master Plan approval in 1977, and also when the deed to the golf course was recorded in 1983.

4) The Applicant has not demonstrated that there is, or will be, at least 50% open space, as required by LDR Sec. 86-130(j)(1).

5) The Applicant has not demonstrated that the impervious areas within the open space in the PUD will not violate the 5% limit imposed in the LDR definition.

6) The Application’s Amendment Plan does not depict lot lines/footprint designations, parking areas, residential and commercial uses, and use/development standards for the proposed new residential units or for the proposed new pro shop/restaurant within the golf course, as required by LDR Sec. 86-130(t)(3)(c)(4), and inherent in the definition of Planned Unit Development set out in Sec. 86-570.

7) The Application has not analyzed the sufficiency of the existing water and sewer infrastructure to handle the increased loads of the proposed residential and pro shop/restaurant uses, as required by LDR Sec. 86-130(m) and (s).

8) The Application does not demonstrate that the proposed residential, miniature golf/putting attraction and pro shop/restaurant uses will comply with the City’s parking standards and codes, as required by LDR Sec. 86-130(q). The Application’s Amendment Plan does not include accurate or complete tabulations of acreages for different uses within the Bird Bay PUD, as required by LDR Sec. 86-130(t)(3)(c)(6), and therefore does not include accurate or complete tabulations of the relationship of the Bird Bay PUD land use intensity and the numbers and types of development, as required by LDR Sec. 86-130(t)(3)(c)(6). The open space in the PUD is NOT 109.9 acres, as stated in the 1992 DMP and the Amended Plan. The impervious areas within the existing open space appear to exceed 5%, and the removal of additional open space would make that violation worse.

9) The Application does not put the Golf Course into common ownership, as required for Open Space by the definition of open space set out in LDR Sec. 86-570, and does not restrict the golf course to open space use as required by LDC Sec. 86-130(j)(1) and (3).

10) The Declaration of Covenants provided is clearly inadequate and inapplicable to demonstrate how open space, recreational areas, and infrastructure will be protected, operated and managed, as required by LDR Sec. 86-130(k)(2):



LAW OFFICE OF ROBERT K. LINCOLN, P.A.

LAND USE AND LOCAL GOVERNMENT LAW AND LITIGATION

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By email: kmichaels@venicefl.gov

November 7, 2022

City of Venice Planning Commission
c/o Kelly Michaels, City Clerk
401 W. Venice Ave.
Venice, FL 34285

RE: Bird Bay Community Association, Inc. Objections to Application 22-26 RZ
(Bird Bay PUD/Hawks Run Development).

Dear Planning Commissioners:

I represent the Bird Bay Community Association, Inc. (“BBCA”), which owns property within the Bird Bay PUD and represents all of the residential unit owners within the PUD. BBCA objects to the amendment to the Bird Bay PUD proposed by Hawks Run Development, LLC (“Hawks Run” or the “Applicant”) in Petition 22-26 RZ (the “Application”). For the reasons set forth below, the Planning Commission must recommend the City Council deny the Application.

I. Legal Standards Applicable to the Application

The Application seeks a “development order” amending the Bird Bay PUD Master Plan. There is a binding statutory requirement for any development order approved by the City to be consistent with the City’s adopted Comprehensive Plan pursuant to § 163.3194, Florida Statutes. This requirement is further recognized and adopted in Venice Land Development Code (“LDC”), which states:

No development order shall be issued under the provisions of the LDC unless determined to be consistent with the comprehensive plan.

In recognition that the LDC has been and shall continue to be a major tool for the implementation of land use and development policies, land development applications requiring public hearing before the city council or planning commission shall be required to affirmatively establish the manner in which the development proposal and/or requested change in land use is consistent with the comprehensive plan.

LDC § 86-32.

Therefore, the Application must comply with all applicable Objectives and Strategies set out in the Comprehensive Plan, and the burden is on Hawks Run to prove the Application is consistent with the Comprehensive Plan. In addition, the Application must meet the procedural and substantive requirements in § 86-130 of the LDC for a PUD or an amendment to a PUD.



Finally, Florida courts have established standards for the amendment of a previously approved PUD. The most important case identifying those requirements is *City of New Smyrna Beach v. Andover Development Corporation*, 672 So. 2d 618 (Fla. 5th DCA 1996). The court states:

It is important to emphasize the distinction between a PUD classification and the normal zoning districts. Unlike a normal construction project which is designed to fit within the fixed parameters (setbacks, maximum lot coverage, height limitations, etc.) of a normal zoning classification, the PUD concept is flexible and permits the developer to present a plan covering a large tract (fifty-five acres in this case) which is unique and which meets the developer's concept of the best use of the particular area. The developer may suggest high-rise buildings in order to permit greater open space. But in any event, the height of the buildings must be in harmony with the rest of the proposed development and the surrounding area. ***The plan submitted incorporates the developer's recommendation as to what the setbacks, the percentage of open space, the height of buildings, etc. should be and, once accepted by the governmental agency, these recommendations become fixed as the PUD classification is molded over and around the approved plan.*** The PUD classification, therefore, although flexible in concept, becomes rigid in application.

And because of this distinction, unlike a normal zoning classification, there remains no “unused” development authority in the PUD. For example, if one builds a home twenty-five feet high in a residential zone that permits thirty-five foot structures, such owner may expect to be able to “add on” at a later date up to the height limitation. But once a PUD is approved, there remains no unused authority. Therefore, ***if the plan is to be subsequently amended, the PUD classification, by necessity, must also be amended. In order to justify such amendment, the plan as modified must remain compatible with the balance of the project and the surrounding area. It should be the type of amendment, taking into account the changing conditions, that would have been approved in the first instance.***

Andover Dev. Corp., 672 So. 2d at 620 (emphasis added).

The Hawks Run Application is ***not*** consistent with the Comprehensive Plan, does ***not*** meet the requirements of the LDC, and does ***not*** meet the *Andover* test. The Planning Commission’s recommendation to the City Commission must be to deny the Application.

II. The Proposed Reduction/Elimination of Golf Course Open Space Is Inconsistent with the Comprehensive Plan and Fails the Court’s Test

Hawks Run relies on the Master Plan approved in 1977, and as later amended through 1992, and the “previously approved PUD” provisions of Strategy LU 1.2.21 to erroneously assert (1) that the Bird Bay PUD has unused and available residential units and density and (2) that Hawks Run can convert parts of the golf course to residential use. However, the Application fails to meet the court’s requirement that an amendment to a PUD must be the type of amendment that would have originally been approved, misapplies Comprehensive Plan Strategy LU 1.2.21, and is inconsistent with the applicable Comprehensive Plan Strategies for the Pinebrook Neighborhood.

To obtain approval of the 1977 Master Plan, the developer specifically promised the entire golf course would be protected from future development. *See* Planning Commission Meeting Minutes, October 17, 1977 (Exhibit 1: pp. 1-2); Planning Commission Meeting Minutes, November 14, 1977 (Exhibit 2: pp. 3-4).¹ The “Developer’s Agreement” adopted along with the 1977 Master Plan and Amended Annexation Agreement specifically required the developer to record an agreement applicable to the revised (current) golf course boundaries restricting the golf course as open space. (Exhibit 4: pp. 11-13).²

The 1977 Master Plan approves a golf course use within the current boundaries, and also depicts the boundaries of all the proposed residential uses in the development. (Exhibit 5: p. 14). As later amended and approved through 1992, the Master Plan specifically includes the entire acreage of the Golf Course within the PUD open space. (Exhibit 6: p. 33).

Hawks Run’s proposal to convert approximately 15% of the golf course to residential use directly violates the specific promises and agreement to preserve the golf course in perpetuity that the original developer made in order to obtain approval of the 1977 Master Plan. **The Application’s conversion of Golf Course open space to residential use is not the type of change that would have been considered or approved “in the first instance,” and therefore fails the court’s *Andover* test for amending a PUD.**

Hawks Run’s request to eliminate golf course/PUD open space also violates the Comprehensive Plan. Bird Bay lies within the Pinebrook Neighborhood established in the Comprehensive Plan and is subject to the Land Use Element strategies applicable to the Pinebrook Neighborhood. Strategy LU-PB 1.1.1 states:

The City shall require that functional and conservation open spaces within existing residential developments including those zoned Planned Unit Development (PUD) be protected from redevelopment and infill development which may negatively affect their use. Reduction and or elimination of open spaces developed consistent with the underlying PUD zoning shall not be supported by the City.

The proposed residential development constitutes “redevelopment and infill” of portions of the open space. The residential development area consists of PUD open space that was “developed consistent with the underlying PUD zoning.” Therefore, the Application’s proposed residential development is directly and fatally inconsistent with Strategy LU-PB 1.1.1.

Finally, Hawks Run’s reliance on Strategy LU 1.2.21 is misplaced. That strategy states:

Previously approved Planned Developments including PUD and CMU developments exceeding the standards of this Strategy shall be permitted to retain their currently approved

¹ Attached are bookmarked Exhibits 1-13, consecutively paginated (e.g. Bates Stamped) in a single document for ease of reference.

² The 1983 Deed to John Robertson for the Golf Course property included a specific restriction that limited the property to golf course uses. (Exhibit 7: p. 17). Hawks Run has stated that it will not respect or be bound by that limitation. Hawks Run refuses to respect the promises of the original developer or the longstanding provisions of the applicable codes that require the restriction of PUD open for 99 years.

land uses(s), density and intensity, open space percentage provisions, and other previously approved development standards.

Hawks Run incorrectly argues there are unused units approved in 1977 that it may utilize today under Strategy LU 1.2.21. However, all of the residential units were approved within specific residential development areas depicted on the Master Plan. Moreover, the Golf Course use was approved in the specific boundaries of the Golf Course, and the open space percentage provision included the entire Golf Course (including the areas proposed for residential development). Nothing in Strategy LU 1.2.21 suggests that Hawks Run can take advantage of previous density while not respecting the boundaries of the previously approved uses, or the total open space percentage that was associated with the approved density. **In other words, if Hawks Run wants to “live by the sword” with respect to the previously approved density, then it must “die by the sword” of the previously approved use boundaries and open space percentage.** The Application’s proposed conversion of golf course uses and open space acreage to residential use is therefore not authorized by or consistent with Strategy FU 1.2.21.

For all of these reasons, any conversion of Golf Course/Open Space use and acreage within the Bird Bay PUD to residential uses is inconsistent with the Comprehensive Plan and fails the court’s standard established in *Andover* for amending an existing PUD.

III. The Proposed Residential Development is Inconsistent with the Comprehensive Plan and the LDC, and Fails to Comply with Florida Caselaw

Hawks Run proposes a new residential and “residential amenity” area of approximately 5.28 acres (over 15% of the Golf Course). Much of that area, including the proposed amenity area, lies directly behind existing residential units in Bird Bay Phase IV; others lie close to existing residential units in Bird Bay Phase I. Much of the area lies within platted drainage ponds and easements that are dedicated to the City and the County.

A. The Application Fails to Include Information Regarding the Proposed Residential Development Required by the Comprehensive Plan or the LDC

The Application depicts a proposed change to the Master Plan “density/use” chart showing the development to include 45 single family residences. The Application Narrative states the golf course will be redeveloped “with up to forty-five (45) residential villas....” The Application provides no “bulk standards” for the residential uses, meaning no minimum lot size or width, no maximum lot coverage, no maximum impervious coverage, no minimum setbacks, and no height restriction for the residential units.

Strategy LU 1.2.16.3 states, with respect to PUD developments, that “development standards including bulk development standards and housing types are designated at the PUD Zoning level.” Under LDC § 86-130(t)(3)(c)(4) a PUD master plan must include “locations of the different uses proposed, by dwelling types, open space designations, recreational facilities, commercial uses, other permitted uses, and off-street parking and off-street loading locations.” **Hawks Run’s complete and intentional refusal to identify the proposed housing types with any specificity or to provide any lot, setback or height standards is not consistent with the requirements of Strategy LU 1.2.16.3 and LDC § 86-130(t)(3)(c)(4).**

B. The Proposed Residential Development Is Not Compatible with Existing Residential Uses in Phase I and Phase IV, and the Balance of the Project Violates the Comprehensive Plan and Florida Caselaw

Hawks Run falsely asserts the Application is “consistent and compatible with the existing neighborhood with respect to density, building heights, setbacks and character of use....” The Application and facts directly contradict that self-serving assertion.

With 45 units in 5.28 acres, the net density of the proposed residential area is 8.5 units per acre. Bird Bay Phase IV, with 9 units in 1.4 acres, has a net density of 6.5 units per acre. The existing units in Bird Bay Phase IV are no more than two stories, and those buildings have 8’ ceilings, leaving them less than 25’ in height. With no height limitation, the new units in the proposed residential area could be three stories and 35’ tall; with no setbacks, the Application would allow the developer to locate buildings within 5-10’ of the Phase IV property line.

This impact is exacerbated by the narrowness of the area south of Phase IV, which is only 100’-125’ wide. A standard-width street requires a 52’ right-of-way. That means any lots south/west of Phase IV are limited to a depth of 50-75’, resulting in tall, wide new residential units built in that area, pressed all the way back to the rear of Phase IV. Hawks Run’s failure to include any lot dimensions, footprints, or other information about the type, placement, size, and height means the new units could span the entire width of the area behind Phase IV, *creating a solid wall of development 35’ high*. Likewise, the portions of the residential area behind the existing Phase I units (also one and two stories), could be highly incompatible due to the complete absence of bulk controls and their proximity to the existing units.

Historically, Bird Bay’s residential development areas were laid out to provide most units with golf course, pond or other open space views from their rear windows. (See 1977 Master Plan, Exhibit 5: p. 14; 1992 Master Plan, Exhibit 10: p. 33). This is certainly true of the existing units in Phase I and Phase IV that would be adversely affected by the developer’s proposed Residential Area. The developer proposes modifying the Master Plan to eliminate the views from those units, blatantly contravening the historic community design that provided those views. In addition, the Master Plan, as originally approved and as amended throughout the years, has always depicted the general footprint (or lots) of the approved units. Hawks Run refuses to provide that detail for its proposed Residential Area. **The Master Plan, as modified by the Application, does not “remain compatible with the balance of the project and the surrounding area” and therefore fails to meet Florida’s caselaw requirements.**

The proposed Residential Area constitutes an “infill” development, and is subject to Comprehensive Plan Strategy LU 1.3.7, which states:

Infill Development – Compatibility. New buildings and development shall relate to the context of the neighborhood and community with regard to building placement, height and design.

Because the Residential Area breaks up and removes existing open space vistas and does not respect the overall design intent within Bird Bay that residential units have broad open space vistas, it does not relate to the context of the community with respect to building placement. Because Hawks Run refuses to identify and stipulate to any “bulk standards,” the Residential Area cannot be found compatible

or related to the existing neighborhood (Bird Bay Phase IV and I) with respect to building height or design. The Planning Commission must assume, in the absence of contrary information, that any new residences would be taller, wider, and inconsistent with, the design and configuration of the existing buildings, particularly those in Bird Bay Phase IV. Therefore, **the proposed Residential and Residential Amenity areas are not consistent with Comprehensive Plan Strategy LU 1.3.7.**

IV. The Proposed “Golf Course Renovation” and Clubhouse/Pro Shop/Restaurant Site is Inconsistent with the Comprehensive Plan, the LDC, and Florida Caselaw

The developer asserts the Applicant “proposes to redevelop the existing golf course with...a redesigned twelve (12) hole golf course, and updated golf course amenities including a new clubhouse with pro shop and restaurant.” The Application demonstrates nothing of the sort, but only eliminates the long-standing plan for the golf course and replaces it with nothing. The Application asserts there will be a new Clubhouse but fails to provide for the parking (as required) and there are no “bulk standards” for the development of the Clubhouse.

A. The Developer Fails to Prove it Will Protect and Restrict the Golf Course Open Space as Required by the LDC

Hawks Run must not be allowed to redevelop the Golf Course. The developer was required to expressly restrict the entire Golf Course property to golf course uses and open space for 99 years. The Golf Course is not **absolutely** protected from redevelopment only because the original developer broke its promises, breached its agreements, and violated the Zoning Code. Hawks Run refuses to respect and honor the original promises, agreement and the Zoning Code, not only because it seeks to convert 5.28 acres of the Golf Course to residential uses, but because it refuses to protect the remainder. Because the Golf Course is not subject to the protective covenants required by the Zoning Code and promised by the original developer, the residents of Bird Bay must look to the City to enforce and protect those rights under the LDC and Comprehensive Plan.

Even today, the Application fails to comply with either LDC § 86-130(j)(3) (requiring the protection of the open space for 99 years) or LDC § 86-130(k)(3), which requires an applicant for a PUD to provide “written, signed, and notarized documents” that will “bind successors in title to any commitments” necessary to satisfy the LDC. Hawks Run has failed to provide any written documentation or affidavit that would restrict the Golf Course Open Space (as currently configured or as amended) as open space for 99 years. Section LDC § 86-130(k)(3) further states that “no PUD shall be adopted without certification by the city attorney that such agreements and evidence of unified control meet the requirements of this chapter.” The City attorney cannot certify such non-existent agreements, and the Planning Commission cannot find those requirements have been met.

While the City could require the recording of the restriction with any approved replat or site plan, the PUD procedures clearly require the developer to provide the necessary documents *as part of the PUD application*. **Hawks Run’s failure to provide the required documents protecting the Golf Course as Open Space means the Application fails to comply with LDC § 86-130(j)(3) and § 86-130(k)(3).**

B. The Proposed Clubhouse is Not Consistent with the Comprehensive Plan, LDC, or Florida Caselaw

The Application proposes a new Clubhouse in close proximity to residences along White Pine Circle, in the middle of what is now Golf Course open space. The City cannot approve the Clubhouse for several reasons.

First, a clubhouse is not open space, and the conversion of Golf Course Open Space to a clubhouse is prohibited by Comprehensive Plan Strategy LU-PB 1.1.1, as described above.

Second, Strategy LU 1.2.16.3 requires the PUD Zoning to establish bulk standards for the uses. The Application completely fails to provide any setbacks, height, or other limitations on the proposed clubhouse building. LDC § 86-130(t)(3)(c)(4) requires the Master Plan to identify the location of off-street parking, and though the proposed Clubhouse would require off-street parking, no such location is depicted. **The Clubhouse therefore is inconsistent with Comprehensive Plan Strategy LU 1.2.16.3 and LDC § 86-130(t)(3)(c)(4).**

As discussed further below, the Application locates and configures the Clubhouse to accommodate and support a proposed 18-hole “putting course” that would displace additional area from the existing golf course and be separately open to the public (See Exhibit 13: p. 42). The putting course is proposed in close proximity to existing residential units. The placement and impacts of the Clubhouse must be considered in the context of the Applicant’s proposed putting course, even though the developer conveniently chose not to disclose those plans in its Application.³

The new Clubhouse would constitute “infill” development and be subject to Strategy LU 1.3.7. Given its location near existing residential uses, the total absence of height, setback, and other standards, and the complete lack of design information about the proposed building means the Application fails to demonstrate the Clubhouse will relate positively to the neighborhood and community with respect to its placement, height and design. **Therefore, the Application is not consistent with Strategy LU 1.3.7 with respect to the developer’s proposed Clubhouse.**

While a Golf Course (but not a miniature golf course) is permitted in a PUD zone district, and while a pro shop and a restaurant may be accessory to a golf course, an accessory use must be “customarily accessory and clearly incidental and subordinate” to the golf course and must not involve operations that are not in keeping with the district pursuant to LDC § 86-130(c). Because the developer fails to state any information on the intended size and scope of the restaurant, it cannot demonstrate that any restaurant will be clearly incidental or subordinate to the Golf Course use – particularly a smaller, twelve-hole golf

³ Hawks Run’s intentions are not speculative. Hawks Run submitted a “grading plan to the City” depicting the putting course, in an attempt to convince the City to waive approvals and permitting. (Exhibit 13: p. 42). Before submitting that plan, Hawks Run installed pre-construction silt fencing around the area where it wants to locate the putting course, without obtaining permits or approval from the City. The City issued multiple code enforcement citations against Hawks Run for that activity, but Hawks Run has refused to remove the silt fencing and continues to insist it has the right to construct the putting facility without any approvals from the City.

course. **Hawks Run cannot demonstrate the Clubhouse will comply with the use limitations in LDC § 86-130(c).**

Considering all of these issues, Hawks Run’s Application fails to establish that the Master Plan, as amended to include the Clubhouse in the proposed location, with no limitations on its size or use, will remain “compatible with the balance of the project and the surrounding area” and certainly cannot demonstrate that the change is one “that would have been approved in the first instance.” The proposed Clubhouse therefore fails the Florida court’s *Andover* test and must not be approved.

C. Hawks Run Seeks to Change the Approved Golf Course Configuration and Add a New Putting Course Without Providing Necessary Information in the Application.

The Application asserts the developer “proposes to redevelop the existing golf course with...a redesigned twelve (12) hole golf course...” While the approved 1977 through 1992 Master Plans included a specific golf course design and layout, the proposed Master Plan in fact eliminates the approved golf course design and replaces it with...**nothing**. Given the Application’s complete absence of any design for the “redeveloped” Golf Course, no covenant or restriction that the Golf Course will remain a golf course and open space, and no plan whatsoever to provide parking or other support for the Golf Course (other than providing a space for a “Clubhouse” that may in fact be only a commercial restaurant), the Application completely fails to provide any evidence that any such Golf Course redevelopment will occur – or that it would be designed as represented in the Narrative.

Critically, the Applicant proposes locating the new Clubhouse in the middle of what is now the first hole specifically to accommodate the planned putting course. (See Exhibit 13: p. 42). The putting course would not be a “practice green” used by golfers but would consist of a distinct 18-hole course that would separately be “open to all” – that is, offered as a distinct and separate use. The City Staff has already determined the putting course use requires separate designation as either a distinct golf course use or a commercial recreation use. In reality, the proposed course would function as an outdoor recreation attraction (a miniature golf course). Based on the statements on its website, Hawks Run wants the putting course to attract a distinct and separate set of patrons to use the putting course and the proposed (but not defined) restaurant in the Clubhouse. The putting course would require additional parking, which is not located or depicted on the amended Master Plan, failing to comply with the requirements of LDC § 86-130(t)(3)(c)(4).

Without disclosing its plans for redevelopment of the Golf Course, Hawks Run cannot establish its proposed changes to Master Plan and PUD comply with Strategies FU 1.2.16.3, FU 1.3.17, or FU-PB 1.1.1 or with LDC § 86-130(t)(3)(c)(4). Just as important, absent full disclosure, Hawks Run cannot establish the “redevelopment” of the Golf Course is compatible with the community and the neighborhood, and would be the type of change that would have originally been considered, and therefore fails to meet the Florida court’s *Andover* test for an amendment to an existing PUD.

V. The Application Creates and Fails to Address Drainage Issues

The 1985 Plat for the Golf Course dedicates all of the drainage ponds, ditches and easements to the City and County. (Exhibit 8; p. 22). The proposed Residential Area is overlaid on platted and dedicated ponds and easements. (See Application Master Plan; see also Golf Course Plat, Exhibit 8: p. 24-25). Hawks Run provides no information demonstrating it can vacate those dedicated easements, or how it proposes to relocate and reconfigure the ponds and drainage facilities. While “adequate drainage” is an issue that is usually left to the development stage (preliminary plat or site plan) and primarily addressed by SWFWMD review of the project, here the proposed reconfiguration of the PUD open space would directly and adversely affect the City’s interest in the existing ponds and ditches, mandating that drainage must be addressed.

LDC § 86-130(n) states:

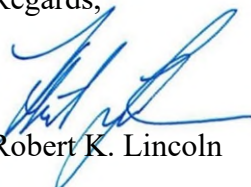
Physical character of site. The site of a PUD shall be suitable for development in the manner proposed, without hazards to person or property, on or off the tract, from probability of flooding, erosion or other dangers, annoyances or inconveniences. Condition of soil, groundwater level, drainage and topography shall all be appropriate to both the kind and pattern of use intended.

The Master Plan, as modified, creates a facial probability of flooding because it eliminates existing, necessary parts of lakes, ditches and facilities without demonstrating how they will be replaced. **The Application therefore does not show that the drainage of the site is appropriate to the pattern of use suggested and does not meet the requirements of LDC § 86-130(n).** Hawks Run must not be allowed to proceed with an application that fails to address the post-development stormwater management system.

VI. Conclusion

The Application fails to meet Florida’s test for approving a change to a PUD as set out in the court’s decision in *Andover*, is not consistent with the Comprehensive Plan, and fails to meet the requirements of the LDC for approving or changing a PUD. The Planning Commission must recommend the City Commission deny the Application.

Regards,



Robert K. Lincoln

adr/RKL

Encs. Composite Exhibits 1-13

cc: Roger Clark
Kelly Fernandez
Jeff Boone
Dan McBride

MINUTES
VENICE PLANNING COMMISSION
OCTOBER 17, 1977 7:30 PM

Meeting was called to order by the Chairman, Frank Proctor, at 7:30 P.M.

Present: Frank Proctor, William Schmelzer, John Sleasman, Eric Edgerton, Dr. Saunders, Howard Stemm and ex-officio member, Robert Becker.
Absent: Robert Hamilton and ex-officio members, John Vickers and W. G. Bally.

Minutes of October 3, 1977 were discussed. Mr. Stemm questioned if the application for a grant for State funds for the Comprehensive Plan was sent in. Mr. Proctor confirmed that it was. Mr. Proctor stated Mr. Reith approved Mr. Becker for the contact person for Mr. Wilkison's office. Mr. Wilkison informed Mr. Proctor that the Sarasota Planning Commission's orientation meeting probably will not be held until the middle of November. Venice Planning Commission's orientation meeting will probably be held the first part of December.

Motion was made by Mr. Stemm to approve the minutes of October 3, 1977. Seconded by Mr. Schmelzer. All voted aye. Motion carried.

Next order of business, was request for approval of a site plan change for Bird Bay. At this point, Mr. Becker asked to be excused from the meeting. He informed the Commission, he had been over the plan with Mr. Yeatts and Mr. Morris and no objections to this plan. He felt it was a good plan, better than the one that is existing and would like to see the Planning Commission approve this concept.

Mr. Robert Morris, architect, developer and owner came before the Commission. Mr. Proctor informed the commission, that Mr. Morris is also vice chairman of the Sarasota Planning Commission. Mr. Morris stated that being a member of the Commission is irrelevant to this presentation. Mr. Morris showed the Commission, a colored picture of the site plan, which showed the concept of his development for this area. He stated, that in mid-summer, he purchased from the lender, who had foreclosed on this property, forty acres of land. He has the right to purchase an additional forty acres. The changes that will be made are in the expansion of open spaces, through improvement of the golf course. They also plan to build low rise houses along the waterfront and three story buildings along Albee Farms Road. They are planning an additional 1000 units, which will be a reduction of 400 units under the existing annexation agreement. There are 201 condominium units built there now, and he has no connection whatsoever with them. The existing annexation agreement goes with the land but it will be modified under the new sub-division ordinance and the present city PUD ordinance. This plan will take approximately seven to eight years. First construction will be the club facilities and a model center and approximately 126 units. The golf course will be redesigned.

Mr. Schmelzer questioned the dedication of streets. Mr. Morris said he will put in and dedicate a boulevard, that will hook up to what

is already there. The only responsibility the city will have, is for the road through the property. Private roads will be to specifications except for swale and percolation. There will be pedestrian ways on the private side of the buildings instead of sidewalks. Mr. Yeatts said the sub-division ordinance addresses itself to sidewalks on public streets. Mr. Morris said that when the preliminary plats are presented, specifics will be outlined. This plan is for concept only. Mr. Proctor asked the selling prices for the units. Mr. Morris thought, at the present time, from the low thirtys to the high sixtys and seventies, for two bedrooms, two bath units.

Mr. Morris stated he does not own the golf course but has an option to buy, at some future time. Mr. Edgerton's concern was that the golf course should remain open space for ever and not be built on at some future time. Mr. Morris said the banks owns the golf course and he has an agreement with the bank to buy it in the future. He can provide the city with a document that will make sure that it will be forever more a golf course.

Mr. Sleasman made a motion that the Planning Commission instruct the Chairman to inform City Council that we conceptionally approve the proposed revised site plan for Bird Bay Village. Mr. Stemm seconded. Discussion. Mr. Edgerton wanted an assurance that the golf course would remain open space forever more. Mr. Morris stated he could provide the city with such a document. Mr. Sleasman added to his motion, "conditioned upon the presentation to Council of a document proving the golf course as it exists, remain as it appears on the conceptual plan." Roll Call. Mr. Proctor, Mr. Schmelzer, Mr. Sleasman, Mr. Edgerton, Dr. Saunders and Mr. Stemm, YES. Motion carried.. Mr. Proctor initialed the colored site plan. Mr. Morris will bring in other copies for the Commission.

Short discussion on the zoning code meetings. Meetings have been postponed due to work being done in Council chambers. Chairman will let the Commission know when the meetings resume.

Meeting adjourned at 9 P.M.

MINUTES
VENICE PLANNING COMMISSION
NOVEMBER 14, 1977 7:30 PM

Meeting was called to order by the Chairman, Frank Proctor, at 7:30 P.M.

Roll Call: Present, Frank Proctor, William Schmelzer, Eric Edgerton, Howard Stemm, Robert Hamilton, Dr. Lewis Saunders and Robert Becker and W. G. Bally, ex-officio members. Absent: John Sleasman and John Vickers, ex-officio member.

Motion was made by Mr. Edgerton that the minutes of October 17, 1977, be approved as submitted. Seconded by Dr. Saunders. All present voted aye. Motion carried.

Review of the preliminary plat of the first phase of Bird Bay Village began. Mr. Robert Morris, architect, developer and builder came before the Board. Also in attendance was Ted Yeatts, City Engineer.

Mr. Morris stated that this preliminary plat conforms with the site plan that was conceptually approved by the Planning Commission and the City Council. City Council approved 128 units plus four models and the recreation center. All the legal requirements have not been completed between the City attorney and their attorney. It consists of an amendment to the annexation agreement so that the City attorney will feel he is on firm ground before the City Council gives their final approval on a building permit. At this time, they are asking for approval from the Planning Commission on the preliminary plat so that they may approach City Council for their approval.

Mr. Edgerton questioned who owned the properties in Bird Bay. Mr. Morris stated all the associations were made as a method of financing the project. They have options to purchase all of the properties in Bird Bay that are not developed. Venice Properties is First City Federal Savings & Loan. First City Federal and Mr. Morris gave City Council a document, notarized and recorded, stating the golf course would forever be open space. Bird Bay Assoc. is a general partnership between Jimmy Carrion and Robert Morris.

Mr. Becker read a memo from Fire Chief Ted Deming. Chief Deming suggested an eight inch main instead of a six inch main and also requested fire hydrants spacing should not exceed 500 feet. Mr. Morris agreed to comply with these requests.

Discussion was held on whether the property is to be developed under a PUD or under an amended annexation agreement. The property is now zoned R-3. Mr. Bally questioned why the annexation agreement cannot be voided and the property be zoned as a PUD. Mr. Morris said it is a legal matter for the attorneys to decide.

Exhibit 2

Mr. Becker read a report from Mr. Heath, Director of Public Works, as follows:

Listed are my comments on the above referenced subject.

1. Sheet (1) of plans - Does not show all the City's R/W's; two (2) cul-de-sacs have not been located east of White Pine Tree Road.
2. Sheet (2) of plans - The enclosed drainage pipe from Bird Bay Drive west running westerly to an existing lake should not be the City's maintenance responsibility.
3. Sheets (2) and (3) of plans - Lakes and/or drainage areas need to be restrained or restricted for those purposes only. This would prevent the drainage areas from being changed or reduced in the future causing problems to the City or residents in the Bird Bay area.
4. Sheet (3) of plans - I do not approve the utilization of curb and gutters plus drainage swales within the same R/W's.

Mr. Yeatts said he agreed with item four of the report. Mr. Morris felt his system was a better one but if the City did not want to maintain the swale, he would be willing to keep all the maintenance on the ROW's. Mr. Yeatts said they are not in agreement with the sub division ordinance or the city regulations.

Mr. Wilson, Water Department, did not have his water and sewer report ready for the meeting. Mr. Becker said his only concern was the zoning on the property.

Mr. Hamilton said he did not think you could draw lines so near the house along the golf course, even though the lines are arbitrary. If something goes sour again, the people then will not be jeopardized. Mr. Morris said there is no problem in changing the lines and will do so. Mr. Yeatts felt the city should have a public thoroughfare in a development of that size. Mr. Yeatts also said he understood City Council gave permission for Mr. Morris to build the first phase, even though a DRI will not be determined for another 90 days. The Council agreed only, if in the meantime Mr. Morris would go through the steps in Tallahassee for a DRI. If Tallahassee says they would need a DRI, Mr. Morris would reduce the number of units in the development.

Dr. Saunders said that the planning commission is charged with the obligation that a development will be built in the right way. He felt there are too many questions that cannot be answered. Mr. Morris stated he would be willing to accept any stipulations the Planning Commission requires, as he is trying to get to City Council and the City Attorney for final approval.

Mr. Yeatts' concern was with the set backs and the dedicated thoroughfare in the property. At this point it is a public ROW and he would not like to see swales in there. He suggested a temporary turnaround in one of the streets. Streets are not named and need approval from the Post Office. He also felt their engineer should have a statement on the preliminary plat stating the land is suitable for development. He felt the legal problems need to be straightened out and that the items he has mentioned are minor and can be changed easily. Mr. Morris agreed to each stipulation and felt the unresolved issues are with the attorneys.

Mr. Stemm made a motion that the Planning Commission approve the preliminary plat, providing it conforms with all of the requirements of the City Engineer and the City Building Official, as outlined in the meeting of November 14, 1977. Mr. Edgerton seconded. Roll Call: Mr. Pre ^{#004}, Mr.

Schmelzer, Dr. Saunders, Mr. Edgerton, Mr. Stemm and Mr. Hamilton all voted YES. Motion carried.

Old Business. Mr. Proctor read a letter from Mr. Reith stating the City has received a \$9566 grant applicable to the City's Comprehensive Planning Program.

A Notice was put in the newspapers for the orientation meeting to be held on November 21, 1977 for the Local Government Comprehensive Plan. One hundred thirty nine letters were sent to various organizations requesting their attendance.

New Business. Letter was received from the Zoning Board of Appeals asking for recommendation on an owner initiated petition for the rezoning of Lots 9 and 10 in the Venezia Park section of Venice, from R-1 to R-3, within Block 88, Nokomis Avenue. A Dr. Morrison initiated the petition. The Commission felt it would be spot zoning to change the zoning on these two lots within that block.

Mr. Stemm made a motion that the Planning Commission is not in favor of "spot zoning" and therefore did not feel they could approve this type of zoning request. Mr. Edgerton seconded. Roll Call: Mr. Proctor, Mr. Schmelzer, Mr. Edgerton, Mr. Stemm and Mr. Hamilton voted YES. Dr. Saunders abstained and will file the proper papers. He owns three pieces of property in that section. Motion carried.

Dr. Saunders questioned the status of the zoning code. Mr. Proctor informed the Commission there will be no further workshop sessions on the code until after the first of the year.

Meeting adjourned at 9:35 P.M.

AMENDMENT TO ANNEXATION AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morfitt, Jr. and Diane S. Carrion, hereinafter referred to as "Owner," and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, City and Amalgamated Transit Union, Trustees, and Valencia Development Corporation entered into an Agreement dated August 21, 1972, recorded in Official Records Book 977 at page 1373 of the Public Records of Sarasota County, Florida, in which certain properties more particularly described therein were annexed to the City of Venice pursuant to the terms and provisions of that Agreement; and

WHEREAS, City and Charles F. Schiear, Jr. as Trustee U/A dated October 24, 1970, entered into an Agreement dated February 15, 1973, recorded in Official Records Book 997, page 1510 of the Public Records of Sarasota County, Florida, in which land contiguous to the above described lands were annexed to the City of Venice pursuant to the terms and provisions of that Agreement; and

WHEREAS, City and Valencia Development Corporation entered into an Amendment to the above Agreement dated April 24, 1973, recorded in Official Records Book 999, page 2130 of the Public Records of Sarasota County, Florida; and

WHEREAS, a portion of said lands have heretofore been developed by Valencia Development Corporation and submitted to condominium ownership as portions of Bird Bay Village Unit One, and

WHEREAS, the remainder of the annexed lands have been conveyed by Valencia Development Corporation to Venice Properties, Inc. a Florida corporation hereinafter called "Properties;" and

WHEREAS, Properties has conveyed a portion of the remaining undeveloped lands to the City with a deed dated June 14, 1977, recorded in

Exhibit 3

Official Records Book 1177, page 1912 of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties has granted to Owner and Jaime S. Carrion and Robert A. Morris, Jr. options to purchase the remainder of the undeveloped lands as evidenced by various Memorandum and Notice of Option to Purchase dated June 14, 1977, and recorded respectively in Official Records Book 1218, beginning at pages 689, 694 and 697, Public Records of Sarasota County, Florida; and

WHEREAS, Properties has leased with an option to purchase the golf course portion of said lands to Bird Bay Golf Club, Inc., a Florida corporation owned and controlled by Robert A. Morris, Jr. and Jaime S. Carrion, as is more particularly described in the Memorandum and Notice of Lease Agreement with Option to Purchase dated March 2, 1977, recorded in Official Records Book 1177, page 1935 of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties has leased with an option to purchase the Administration Building and Model Center site to Bird Bay Realty Company, a Florida corporation owned and controlled by Robert A. Morris, Jr. and Jaime S. Carrion, as is more particularly described in the Memorandum and Notice of Lease Agreement with Option to Purchase dated June 14, 1977, recorded in Official Records Book 1177, page of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties, Bird Bay Golf Club, Inc. and Bird Bay Realty Company are executing this Agreement for the purpose of evidencing their consent hereto; and

WHEREAS, Owner desires to modify the original Annexation Agreements as Amended, altering the land use plan for the Planned Residential Community and City desires to modify the Agreement by providing for the application of certain provisions from the Code of the City of Venice to the future development of said undeveloped lands.

NOW THEREFORE, in consideration of the mutual agreements herein undertaken, the parties hereto agree that the above described Annexation Agreement be amended and modified as follows:

1. Paragraph 1 is hereby amended to read as follows:

1. LAND USE:

Owner will develop the lands in a planned residential community substantially in accordance with the land use Master Plan thereof prepared by Robert A. Morris, Jr., AIA, initialed by Owner and City and attached hereto as Exhibit "A" and by this reference made a part hereof providing for a maximum density of 998 units in addition to the existing units in Bird Bay Village Unit One. The Planned Unit Development portion of said lands shall be developed in accordance with the portions of Chapter 20A of the Code of the City of Venice which are applicable to existing Planned Unit Developments. No building or occupancy permit shall be issued by the City with respect to any portion of said lands unless the same shall be embraced within the intent of said Master Plan or such modification of substitution thereof as may hereafter be approved by the City Council.

2. Paragraph 3 a) is hereby amended to read as follows:

a) A preliminary subdivision plat or condominium plat, as appropriate, has been submitted to and approved by the City Council.

3. Paragraph 11(d) is hereby amended to read as follows:

(d) The Subdivision Regulations of the City of Venice shall apply where such regulations are appropriate and applicable and are not inconsistent with the Annexation Agreements as amended hereby. The maximum density for the development of the remaining undeveloped lands shall be reduced to 998 units as shown on the Master Plan attached.

This Agreement shall run with the land as described above and shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this Agreement by its duly authorized general partner and City has executed this Agreement by its duly authorized officials and its corporate seal affixed hereto effective the day and year first above written.

partnership, and as Vice President of HIBB BAY GOLF CLUB, INC. and HIBB BAY REALTY COMPANY, a Florida corporations, on behalf of the corporations.

Norma J. Wilson
Notary Public
My commission expires:

Notary Public, State of Florida at Large
My Commission Expires May 2, 1979
Bonded By American Fire & Casualty Co.

STATE OF FLORIDA)
COUNTY OF SARASOTA)

The foregoing instrument was acknowledged before me this 8th day of February, 1978, by HARRY E. CASE, Mayor of the CITY OF VENICE, and by STEVE ALBEE, JR., City Clerk of the City of Venice, a municipal corporation in the County of Sarasota, State of Florida, on behalf of the corporation.

Norma J. Wilson
Notary Public
My commission expires:

STATE OF FLORIDA)
COUNTY OF SARASOTA)

Notary Public, State of Florida at Large
My Commission Expires July 10, 1981
Bonded By U S F & G

The foregoing instrument was acknowledged before me this 3rd day of January, 1978, by JAMES U. WADE, President of VENICE PROPERTIES, INC., a Florida corporation, on behalf of the corporation.

James U. Wade
Notary Public
My commission expires:

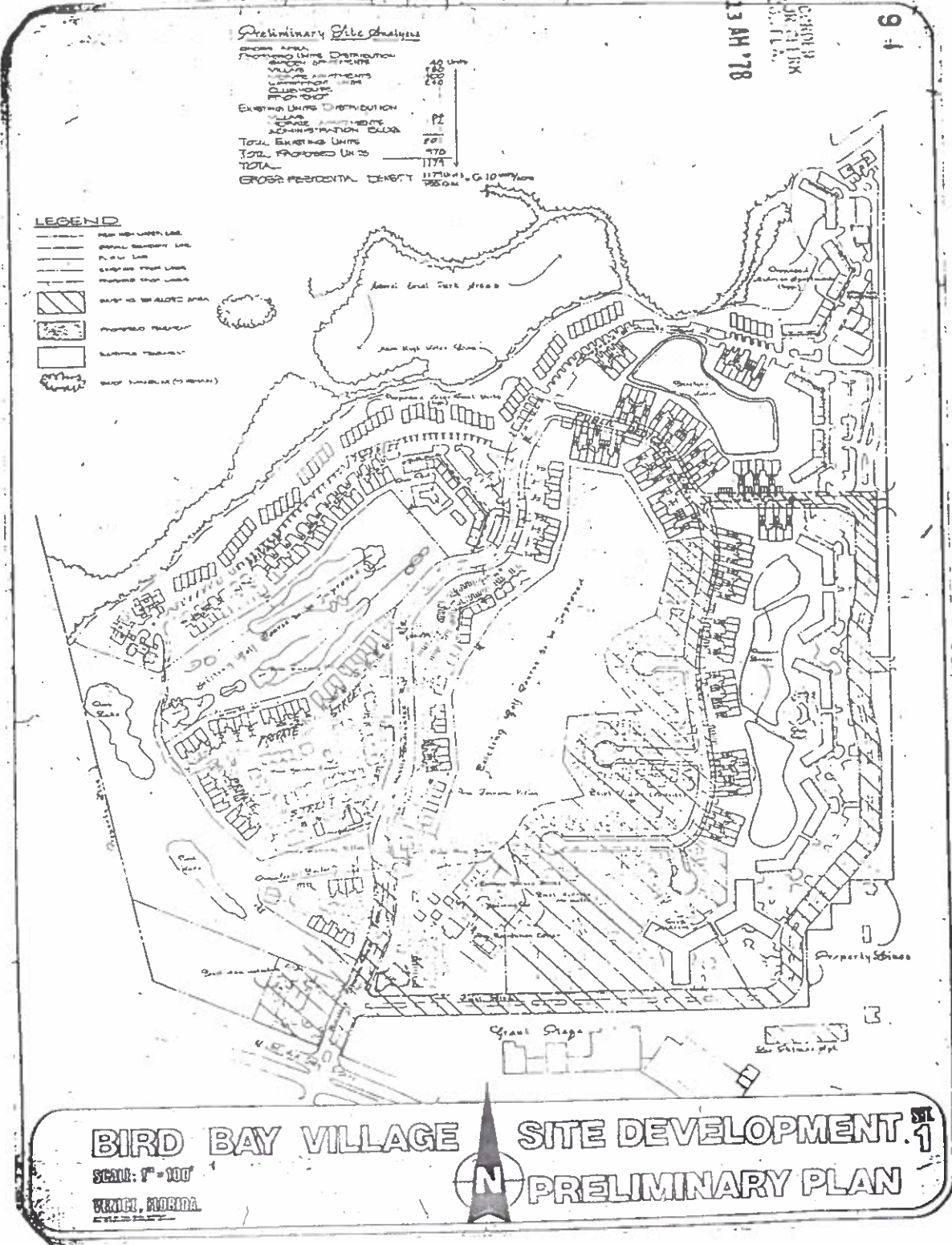
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JULY 10, 1981
BONDED THROUGH U.S.F. & G. INSURERS

RECORDER'S MEMO: Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

FEB 13 10 13 AM '78

FILED AND RECORDED
PLATTEAU COUNTY CLERK
SARASOTA, FLA.

8-17-78



215.C
215.P

DEVELOPER'S AGREEMENT

MICROFILMED
ROLL _____

THIS AGREEMENT, made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morris, Jr. and Jaime S. Carrion, hereinafter referred to as "Owner", and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City".

W I T N E S S E T H:

WHEREAS, Owner has acquired rights to properties described in Annexation Agreement recorded in O.R. Book 977, Page 1373, as amended in document recorded in O.R. Book 999, Page 2130, and as further amended by document recorded in O. R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, and

WHEREAS, certain questions have arisen as to the interpretation of the Agreement's referred to above, the City Zoning Code, the City Subdivision Ordinance and other ordinances of the City, and

WHEREAS, it is the intent of the Owner and City to clarify certain items pertaining to the above,

NOW, THEREFORE, it is agreed as follows:

1. The Owner has assured the City the implementation of the development as proposed in the new master plan approved by City Council on the 21st day of December, 1977, and recorded in O.R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, does not constitute a development of regional impact or constitute a retriggering of a development of regional impact as provided in Chapter 380, Florida Statutes, and Owner has further agreed to take immediate steps to make application under Chapter 380 for a letter of determination. Owner agrees that it will not request the City to issue building permits or entertain planning procedures for more than the first 133 units of its development until said letter of determination is furnished to the City or until it complies with subparagraphs 1 or 2 of the following sentence. Furthermore, if it is found that the project is not vested or a substantial change has occurred which would trigger a DRI classification, Owner agrees either:

Exhibit 4

(1) to amend its master plan to reduce the total density of the units it intends to build to 798 units or to take whatever action is necessary to take the project out of a Development of Regional Impact, or

(2) secure a Development of Regional Impact determination by the appropriate governmental authority and follow the process outlined in Chapter 380 for a Development of Regional Impact if so required by that authority.

2. The Owner has determined that it will not make an application to rezone the project under the Planned Unit Development zoning category as provided in Chapter 20-A of the Code of Ordinances of the City of Venice, and therefore acknowledges that Owner must comply with the requirement of the particular zoning which is placed upon the property at this time (primarily R-3 except for a small portion that is zoned B-1). Owner does hereby agree to develop its property in accordance with Chapter 20A of the Code of the City.

3. Each time the Owner intends to develop another phase of its project, it will follow the subdivision regulations of the City and each time it is ready to start construction on condominiums or other dwellings in a new phase, Owner will file a site plan with the City of Venice for its approval, said site plan containing the information outlined in site plan approval check-off list attached hereto as Exhibit A and made a part hereof. The City shall not make unreasonable demands for material furnished under the site plan if said material has already been furnished to the City in the subdivision procedure.

4. It is agreed the master plan referred to in paragraph 1 above is conceptional in nature and the Owner and the City acknowledge the golf course lines will have to be amended so that any development or construction of buildings will fall outside the golf course, and the Owner will be permitted within reason to alter the location of buildings so as to conform to natural terrain and perserve trees.

5. The owner has previously sub vitted a dedication to open space to the City of Venice which has not been accepted by the City at this time. It is agreed that Owner will resubmit a dedication

215.4
215-C

within thirty (30) days of today's date using new legal descriptions which take into consideration the setback requirements of R-3 zoning as it pertains to the golf course boundaries.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this agreement by its duly authorized general partner and City has executed this agreement by its duly authorized officials and its corporate seal affixed hereto, the day and year first above written.

Witnesses:

Norma J. Dillon
John W. Gardiner

BIRD BAY ASSOCIATES

By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
A General Partner

CITY OF VENICE

By: Harry E. Case
Mayor

(SEAL)

ATTEST:

By: [Signature]
City Clerk

C O N S E N T

The undersigned hereby consent to the foregoing Developer's Agreement effective the day and year first above written.

Witnesses:

Norma J. Dillon
John W. Gardiner

BIRD BAY GOLF CLUB, INC.

By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

Norma J. Dillon
John W. Gardiner

BIRD BAY REALTY COMPANY

By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

[Signature]
Margie M. [Signature]

VENICE PROPERTIES, INC.

By: James U. Wade
James U. Wade
As its President

RECORDER'S MEMO: Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

FEB 13 10 13 AM '78

FILED AND RECORDED
R.H. HARRIS, JR., CLERK
SARASOTA CO., FLA.

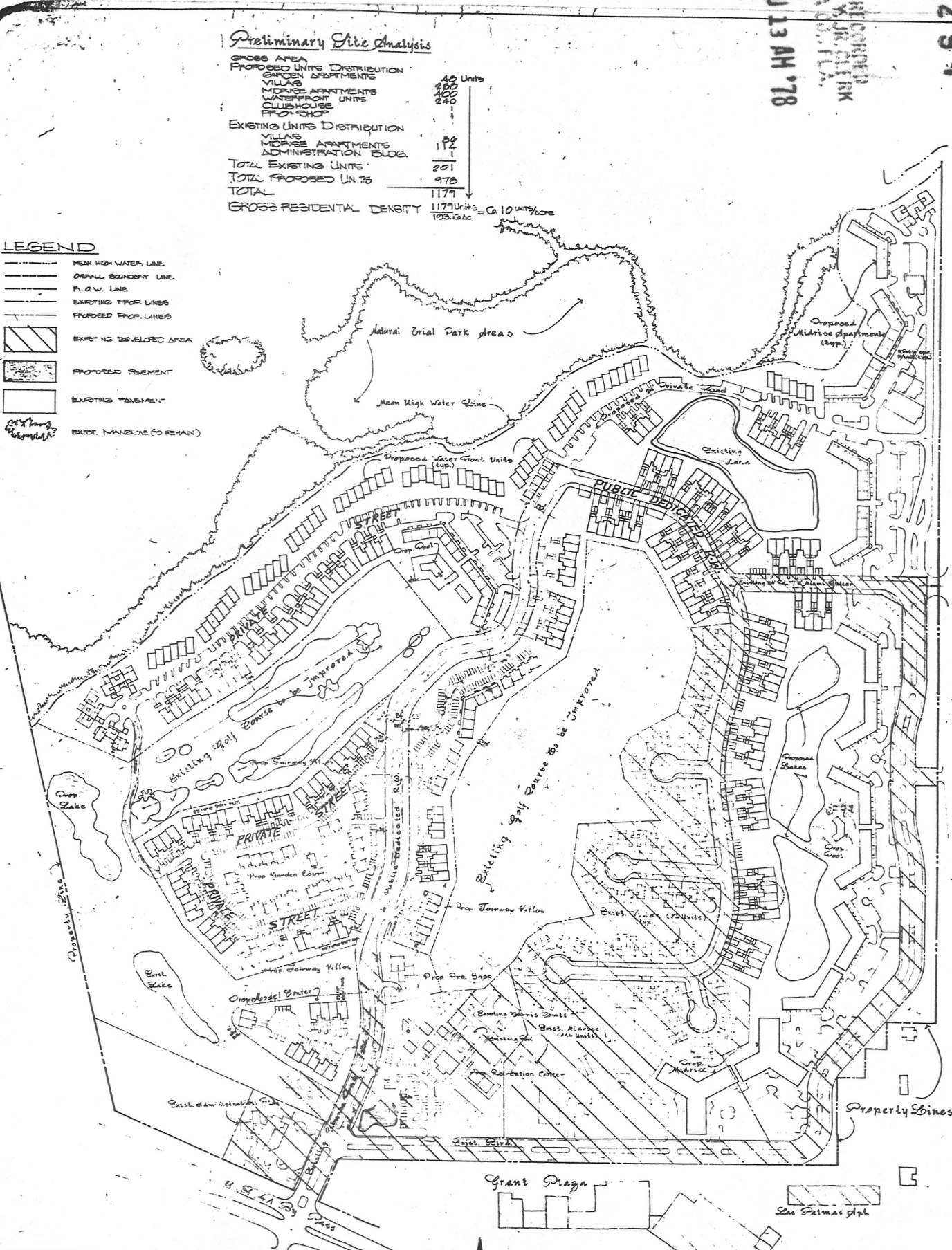
817291

Preliminary Site Analysis

GROSS AREA	
PROPOSED UNITS DISTRIBUTION	
GARDEN APARTMENTS	40 Units
VILLAS	200
MIDRISE APARTMENTS	400
WATERFRONT UNITS	240
CLUBHOUSE	1
PRO SHOP	1
EXISTING UNITS DISTRIBUTION	
VILLAS	82
MIDRISE APARTMENTS	112
ADMINISTRATION BLDG.	1
TOTAL EXISTING UNITS	195
TOTAL PROPOSED UNITS	678
TOTAL	873
GROSS RESIDENTIAL DENSITY	1179 Units = G. 10 Units/Acre 100,000 sq. ft.

LEGEND

- MEAN HIGH WATER LINE
- OFFICIAL BOUNDARY LINE
- P.L.G.W. LINE
- EXISTING PROP. LINES
- PROPOSED PROP. LINES
- [Hatched Box] EXISTING DEVELOPED AREA
- [Dotted Box] PROPOSED PAVEMENT
- [White Box] EXISTING TOWNHOMES
- [Dashed Box] EXIST. MANHOLE (TO REMAIN)



BIRD BAY VILLAGE

SITE DEVELOPMENT **SET 1**

SCALE: 1" = 100'
VENICE, FLORIDA.



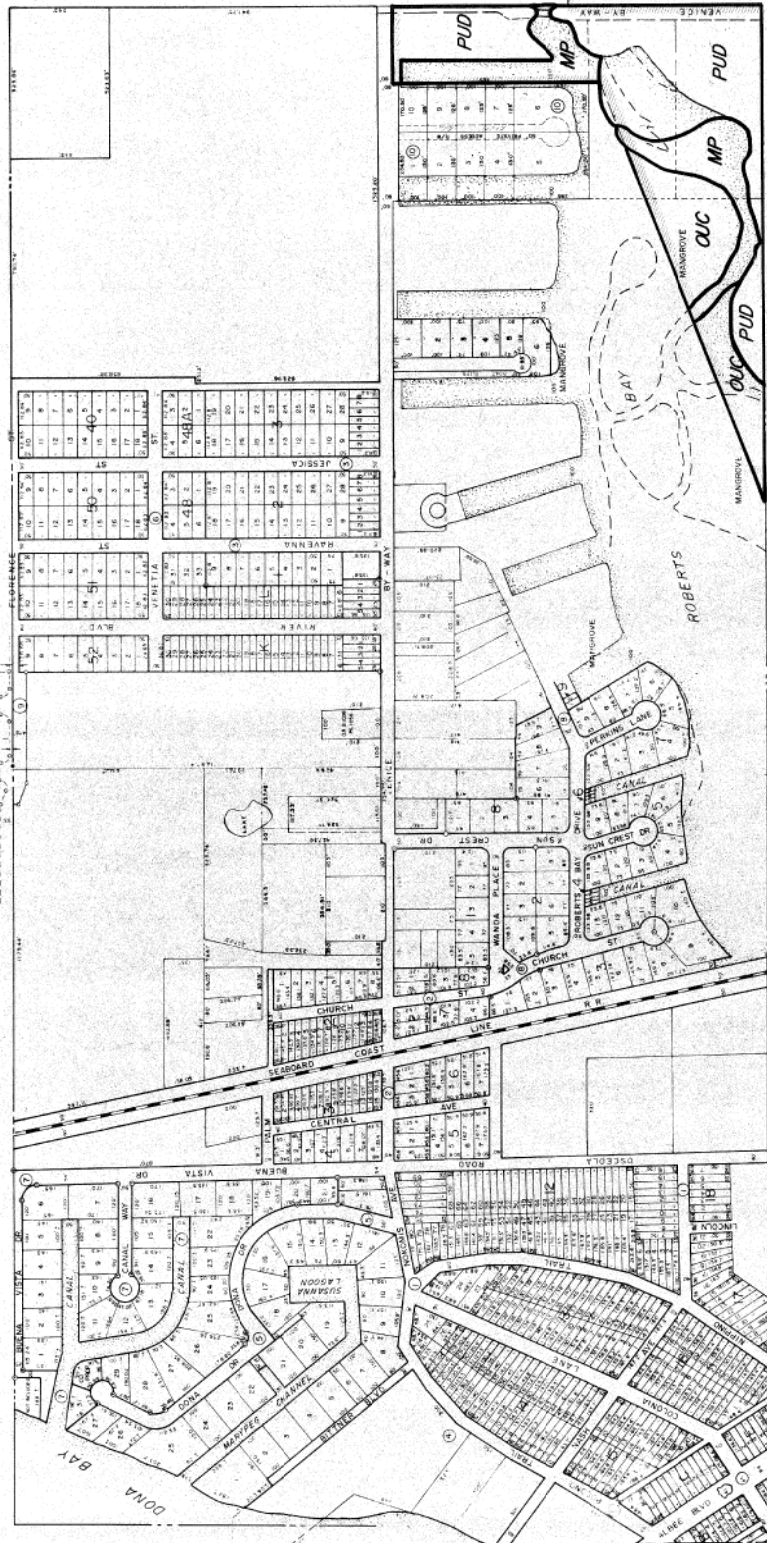
PRELIMINARY PLAN

Exhibit 5

EXHIBIT A

S 1/2 35-19-19 SHT NO 394

N 1/2 1-39-18 SHT NO 172



S 1/2 6-39-19 SHT NO 406

SUBDIVISION INDEX

- No Name
- 1 HENRISS HOMESITE A/36
- 2 VENICE HOMESITE A/36
- 3 HERNDON HEIGHTS 2/132
- 4 HERNDON HEIGHTS 2/132
- 5 HERNDON HEIGHTS 2/132
- 6 HERNDON HEIGHTS 2/132
- 7 HERNDON HEIGHTS 2/132
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- LEGEND**
- MONITOR (Shaded)
 - CONC MON
 - IRON PIPE
 - CO. BEANCH MARK

NOTE: This sheet covers the "range" portion only. Dimensions shown here are for legal descriptions, and not for zoning. Dimensions are for zoning purposes only. Dimensions are for zoning purposes only.

SHT NO 405

N 1/2 SECTION 6
TWP. 39 S. RNG. 19 E

SARASOTA COUNTY FLORIDA
JULY 1984
SCALE 1" = 200'

Exhibit 6

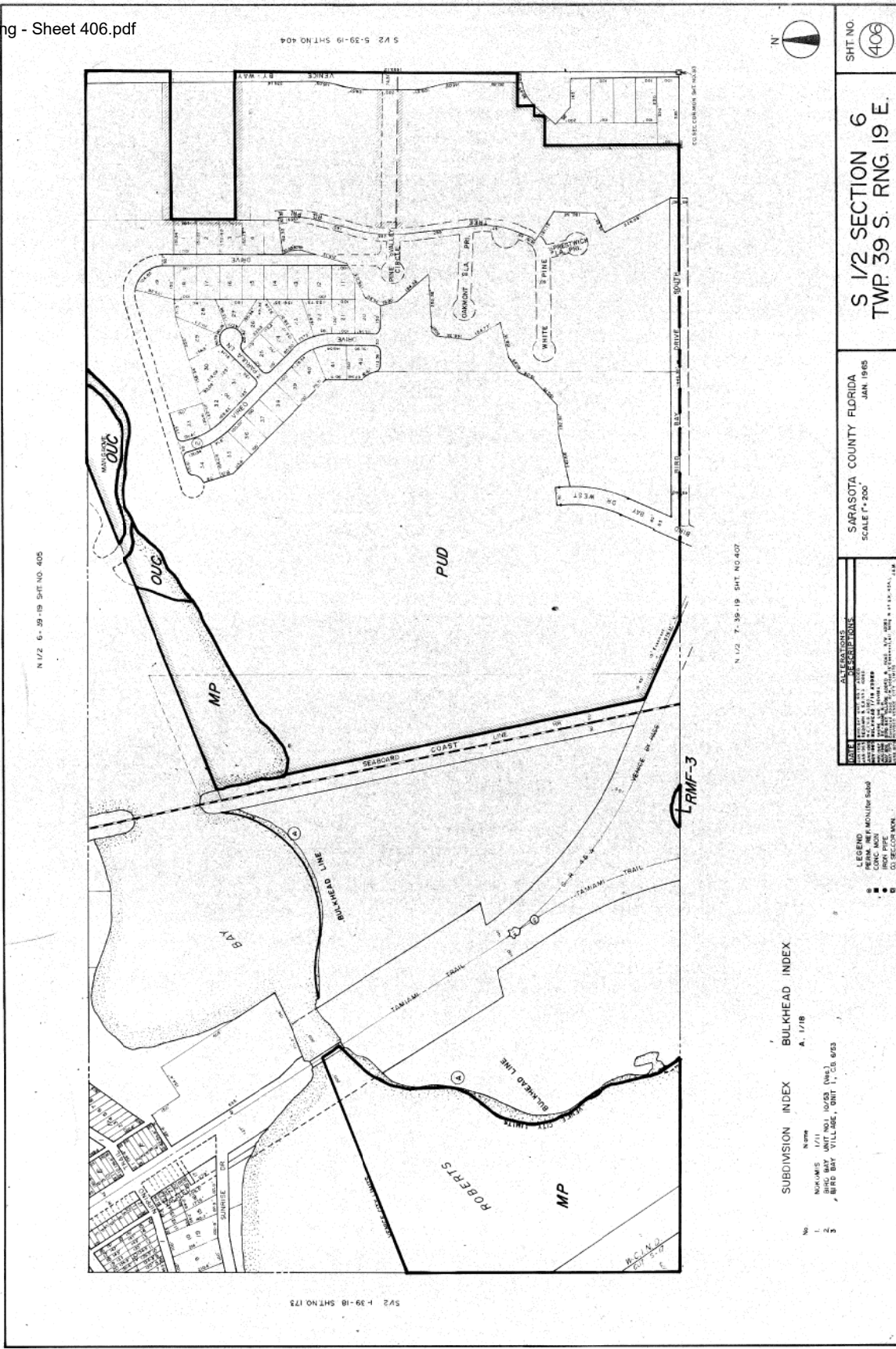


Exhibit 6

Record at 10:30
the day 10/12/83

4

RECORDED BY STATE TREASURER
SARASOTA COUNTY, FLORIDA
1000 MAIN STREET
SARASOTA, FLORIDA 33578

WARRANTY DEED

251758

GRANTOR: FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION,
a Corporation organized and existing under the laws
of the United States of America.

DS PAID 10/12/83
R H PROPERTY CO
SARASOTA, FL
COUNTY CLERK
By: [Signature]
Deputy Clerk

GRANTEE: JOHN T. ROBERTSON

Grantee's Post Office Address: 2323 Teal Avenue
Sarasota, Florida 33582

O. R. 1562 PG 0183

Grantor, for and in consideration of the sum of one dollar, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's heirs and assigns forever, the following described land, to wit:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is subject to the following:

a. Long-Term and Non-Exclusive Use Agreement dated November 30, 1977, and recorded in O.R. Book 1215, Page 2126, Public Records of Sarasota County, Florida.

b. Annexation Agreement with the City of Venice dated August 21, 1972, recorded in O.R. Book 977, Pages 1373, thru 1387, as amended in O.R. Book 997, Page 1510, O.R. Book 999, Page 2130, and O.R. Book 1219, Page 1414, and Resolutions and Petitions for Annexation in connection therewith recorded in O.R. Book 977, Page 1368, and O.R. Book 997, Page 1506, Public Records of Sarasota County, Florida.

c. Articles of Incorporation and Bylaws of BIRD BAY COMMUNITY ASSOCIATION, INC., recorded in O.R. Book 1269, Pages 640 thru 659, Public Records of Sarasota County, Florida.

d. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the City of Venice dated July 23, 1981 recorded in O.R. Book 1456, Pages 158 thru 165 of said records.

e. Sanitary Sewer Easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the CITY OF VENICE recorded in O.R. Book 1456, at Page 156 of said records.

f. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for ingress, egress and parking, recorded in O.R. Book 1562, Page 174 of the Public Records of Sarasota County, Florida.

g. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for irrigation, recorded in O.R. Book 1562, Page 176 of the Public Records of Sarasota County, Florida.

h. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for drainage, recorded in O.R. Book 1562, Page 180 of the Public Records of Sarasota County, Florida.

i. Property Taxes for 1983 and subsequent years.

By this conveyance and Grantee's acceptance of it the parties covenant and agree that the property may be used for Golf Course purposes and related uses only. This restriction shall constitute a covenant running with the land and shall be binding upon the parties hereto, their successors and assigns, and shall be enforceable by Grantor, its successors and assigns, and third parties benefiting from this covenant.

Exhibit 7

Dated: January 27, 1983.

O. R. 1562 PG 0184

Witnesses:

[Signature]
[Signature]

FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America

By: [Signature]
Its Executive Vice President

STATE OF FLORIDA
COUNTY OF ~~STATE~~ MANATEE

The foregoing instrument was acknowledged before me this 27th day of January, 19 83, by James U. Wade as Exec. Vice President of FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America, on behalf of the corporation.

[Signature]
NOTARY PUBLIC

My Commission Expires:

Notary Public, State of Florida at large
My Commission Expires January 27, 1984.

O.R. 1562 PG 0185

Commence at the Southwest corner of Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., run N89° 31'14"W, 661.50 feet along the Southerly line of said Section 6; thence N23°55'00"E, 250.80 feet; thence by a curve to the left Radius 610.71 feet, Arc 291.22 feet, Chord N10°16'21"E, 288.46 feet for a Point of Beginning. Thence continue along said curve to the left, Radius 610.71 feet, Arc 22.71 feet, Chord N04°27'12"W, 22.71 feet; thence by a curve to the right, Radius 305.00 feet, Arc 119.77 feet, Chord N05°43'53"E, 119.01 feet; thence N16°58'53"E, 75.26 feet to a point on the Southerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Southerly and Easterly boundary line of said Bird Bay I A Condominium by the following seven courses: S73°01'07"E, 129.13 feet; thence N76°44'55"E, 46.65 feet, thence N12°49'07"E, 180.71 feet; thence N55°59'07"E, 42.13 feet; thence N04°55'16"E, 143.08 feet; thence N66°28'25"W, 74.02 feet; thence N10°16'12"E, 234.73 feet to the most Southerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Pages 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Easterly boundary line of said Bird Bay II A Condominium by the following seven courses: N12°56'43"E, 121.28 feet; thence N27°36'33"E, 196.36 feet; thence N71°25'08"E, 247.92 feet; thence N40°20'30"E, 95.78 feet; thence N06°51'02"W, 259.85 feet; thence N41°29'47"E, 69.43 feet; thence East 10.00 feet; thence leaving said Easterly boundary line run N85°11'47"E, 156.81 feet; thence S53°55'53"E, 43.99 feet; thence S25°36'40"E, 284.87 feet to the Northwest corner of Bird Bay Village Condominium Unit 1, as recorded in Condominium Plat Book 6, Pages 53 thru 53I, Public records of Sarasota County, Florida; thence traverse along the Westerly boundary line of said Bird Bay Village Condominium Unit 1 by the following seventeen courses: S25°37'32"E, 33.93 feet; thence S03°41'20"E, 49.09 feet, thence S16°33'54"W, 215.13 feet; thence S60°45'36"W, 175.03 feet; thence S30°46'43"W, 75.80 feet; thence S12°57'23"E, 76.90 feet; thence S40°47'12"E, 184.39 feet; thence S86°52'06"W, 252.36 feet; thence S46°55'26"W, 30.67 feet; thence S06°58'55"W, 148.32 feet; thence S27°54'34"E, 154.77 feet; thence S76°39'26"W, 158.15 feet; thence S56°54'34"W, 80.99 feet; thence S25°42'06"W, 75.08 feet; thence S47°14'03"W, 150.75 feet; thence S86°31'17"W, 132.91 feet; thence S77°28'40"W, 207.18 feet to the Point of Beginning. Said tract contains 15.07 Acres more or less.

June 2, 1982

D.A. 1562 PG 0186

From the Southwest corner of the Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., Sarasota County, Florida, run N89°31'14"W, 698.77 feet along the South line of the Southeast 1/4 of said Section 6; thence S23°56'00"W, 146.33 feet to the Northeasterly R/W line of Venice By-Pass (State Road No. 45-A, 200 foot R/W at this point); thence N66°04'00"W, along said Northeasterly R/W line 5.81 feet; thence N23°56'00"E, 250.00 feet; thence N66°04'00"W, 40.00 feet to the Westerly R/W of Bird Bay Drive West for a Point of Beginning. Thence N66°04'00"W, 848.51 feet to a point on the Easterly R/W line of Seaboard Coastline Railroad (100 foot R/W); thence N11°50'34"W, 975 feet more or less along said Easterly R/W line to the Mean High Water line of Curry Creek; thence Northeasterly along said Mean High Water line 55 feet more or less to the most Westerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Page 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Southerly boundary of said Bird Bay II A Condominium by the following nine courses: S59°21'45"E, 255.41 feet more or less; thence S52°11'29"E, 81.56 feet; thence N86°46'08"E, 62.10 feet; thence N36°01'39"E, 170.02 feet; thence N53°48'01"E, 171.01 feet; thence N55°21'49"E, 184.74 feet; thence N60°00'22"E, 226.64 feet; thence N85°07'05"E, 197.53 feet; thence S73°06'25"E, 114.42 feet to a point on the Westerly R/W line of said Bird Bay Drive West; thence run along said Westerly R/W line by a curve to the left, Radius 270.00 feet, Arc 136.96 feet, Chord S23°50'48"W, 135.50 feet; thence S09°18'53"W, 147.33 feet to a point a point of intersection with said Westerly R/W line Bird Bay Drive West and the Northerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Northerly, Westerly and Southerly boundaries of said Bird Bay I A condominium by the following fifteen courses: N56°56'08"W, 121.64 feet, thence S38°51'02"W, 190.45 feet; thence N77°45'43"W, 30.00 feet; thence S36°48'18"W, 106.43 feet; thence S70°12'25"W, 193.25 feet;

O.R. 1562 PG 0187

thence S68°55'08"W, 222.28 feet; thence S55°06'44"W, 148.54 feet; thence S34°20'53"E, 157.51 feet; thence S26°01'06"E, 167.22 feet; thence S44°03'15"E, 38.16 feet, thence S38°07'39"E, 120.66 feet; thence S63°23'51"E, 106.11 feet; thence N73°39'10"E, 177.00 feet; thence N75°00'42"E, 153.00 feet; thence S73°01'07"E, 52.35 feet to a point on said Westerly R/W line Bird Bay Drive West; thence by a curve to the left, Radius 385.00 feet, Arc 151.19 feet, Chord S05°43'53"W, 150.22 feet along said Westerly R/W line; thence continue along said Westerly R/W line by a curve to the right, Radius 530.71 feet, Arc 164.40 feet, Chord S03°21'21"W, 163.75 feet; thence leaving said Westerly R/W line run N 79°34'26"W, 50.65 feet; thence N41°27'56"W, 15.93 feet; thence N81°58'01"W, 40.85 feet; thence N07°30'19"E, 41.32 feet; thence N85°30'41"W, 81.17 feet; thence N04°31'32"E, 37.98 feet; thence N23°04'31"E, 49.27 feet; thence S76°00'18"W, 217.21 feet; thence by a curve to the left, Radius 43.00 feet, Arc 95.91 feet, Chord S12°06'33"W, 77.23 feet; thence S51°47'21"E, 142.85 feet; thence S70°25'45"E, 233.38 feet to point on said Westerly R/W line of Bird Bay Drive West; thence S23°56'00"W, 124.31 feet along said Westerly R/W line to the Point of Beginning. Said tract contains 18.25 Acres more or less.

June 2, 1982

Together with that certain access easement dated November 17, 1982 recorded in O.R. Book 1548, Page 672 of the Public Records of Sarasota County, Florida.

FILED AND RECORDED
 CLYDE W. ASHLEY JR., CLERK
 SARASOTA CO., FLA.
 JUN 13 06 PM '82
 251758

Plat Book 30
 Page 42A
 Sheet 2 of 4 Sheets

BIRD BAY GOLF COURSE

Section 6, Township 39 South, Range 19 East
 City of Venice - County of Sarasota - State of Florida

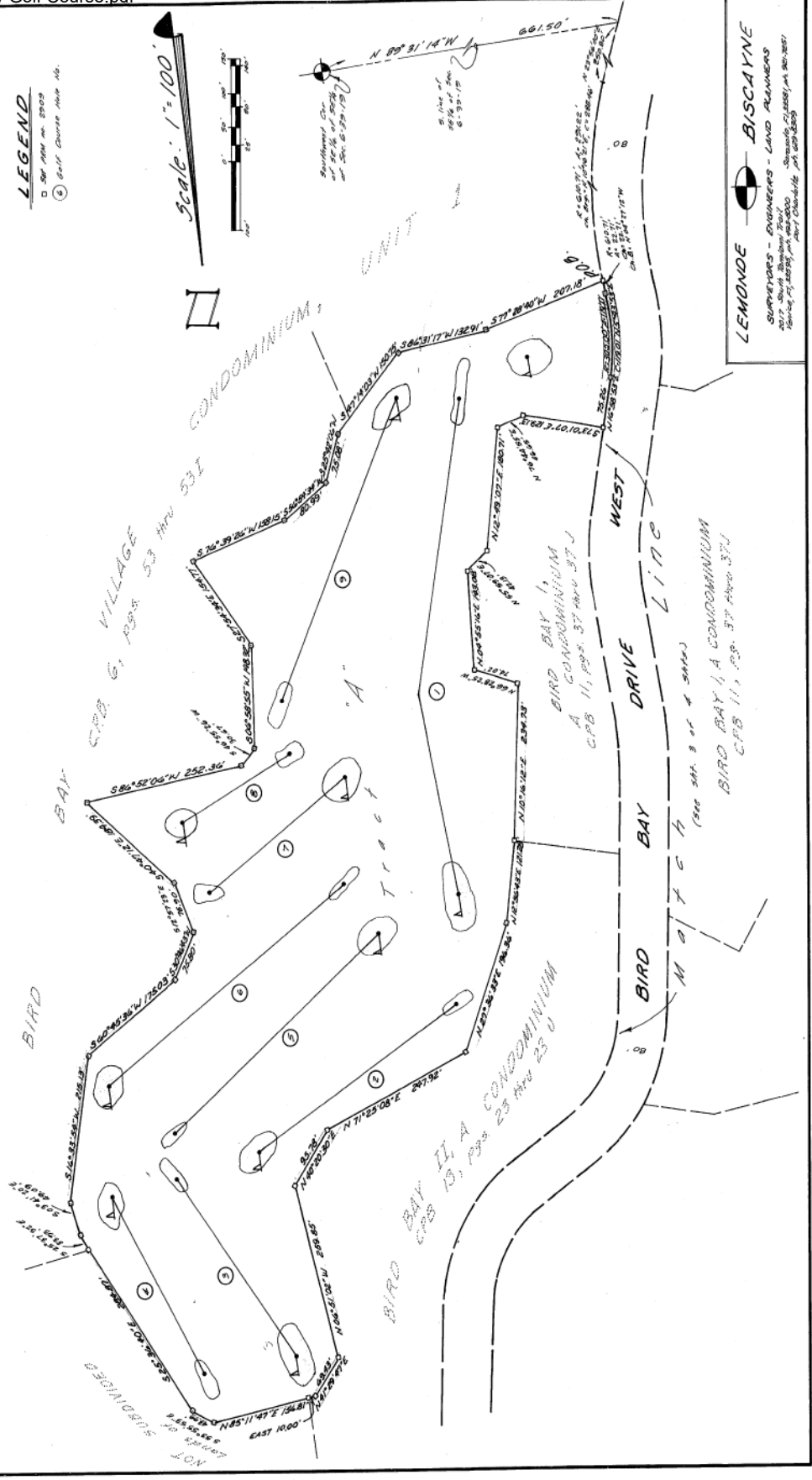
NOTES:

1. Boundary not shown on this plat.
 2. Boundary not shown on this plat.
 3. Boundary not shown on this plat.
 4. Boundary not shown on this plat.
 5. Boundary not shown on this plat.
 6. Boundary not shown on this plat.
 7. Boundary not shown on this plat.
 8. Boundary not shown on this plat.
 9. Boundary not shown on this plat.
 10. Boundary not shown on this plat.

LEGEND

- BAY AREA NO. 1983
- GOLF COURSE HOLE NO.

Scale: 1" = 100'

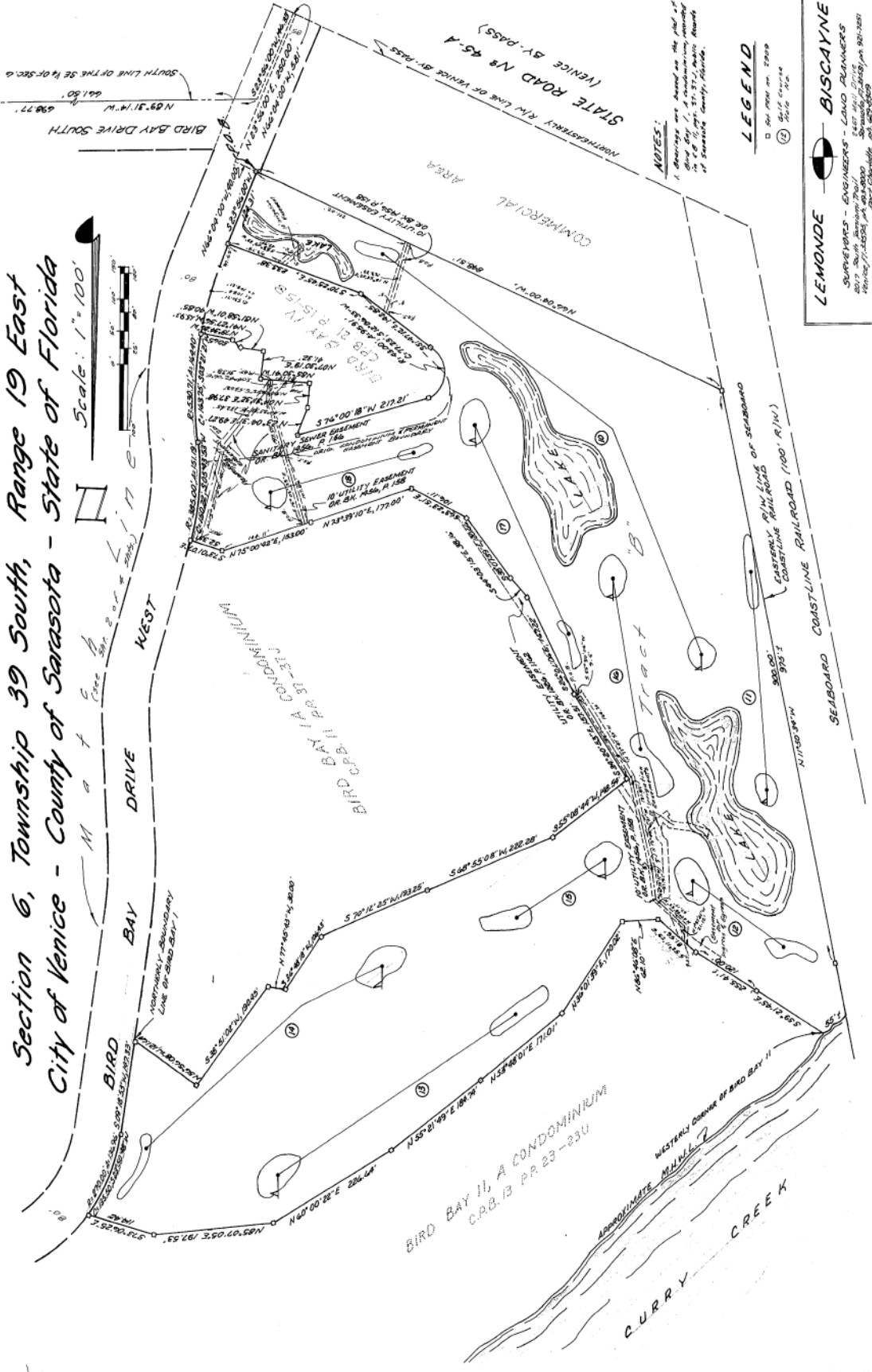
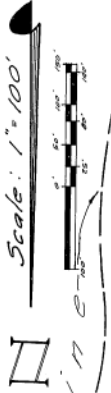


LEMONDE & BISCAZYNE
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Plat Book 30
Page 48-B
Sheet 3 of 4 Sheets

BIRD BAY GOLF COURSE

Section 6, Township 39 South, Range 19 East
City of Venice - County of Sarasota - State of Florida



NOTES:
1. Bearings are based on the plat of Bird Bay I, 23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000

LEGEND
□ 1/4" = 100' Scale
○ 1/4" = 100' Scale

LEMONDE - BISCAYNE
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Plot Book 30
Page 42C
Sheet 4 of 4 Sheets

BIRD BAY GOLF COURSE

Section 6, Township 39 South, Range 19 East
City of Venice - County of Sarasota - State of Florida

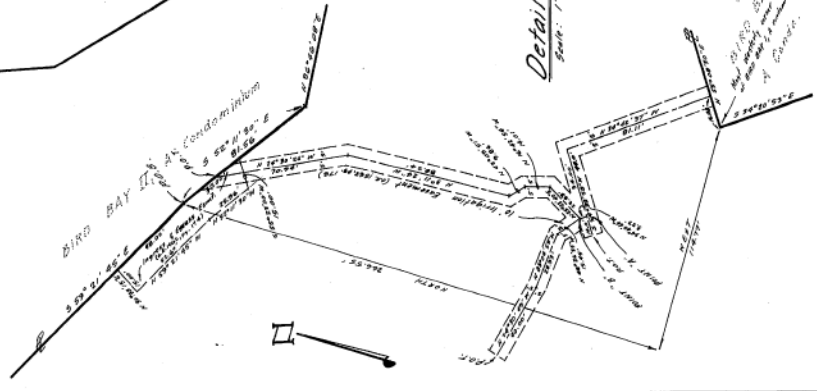
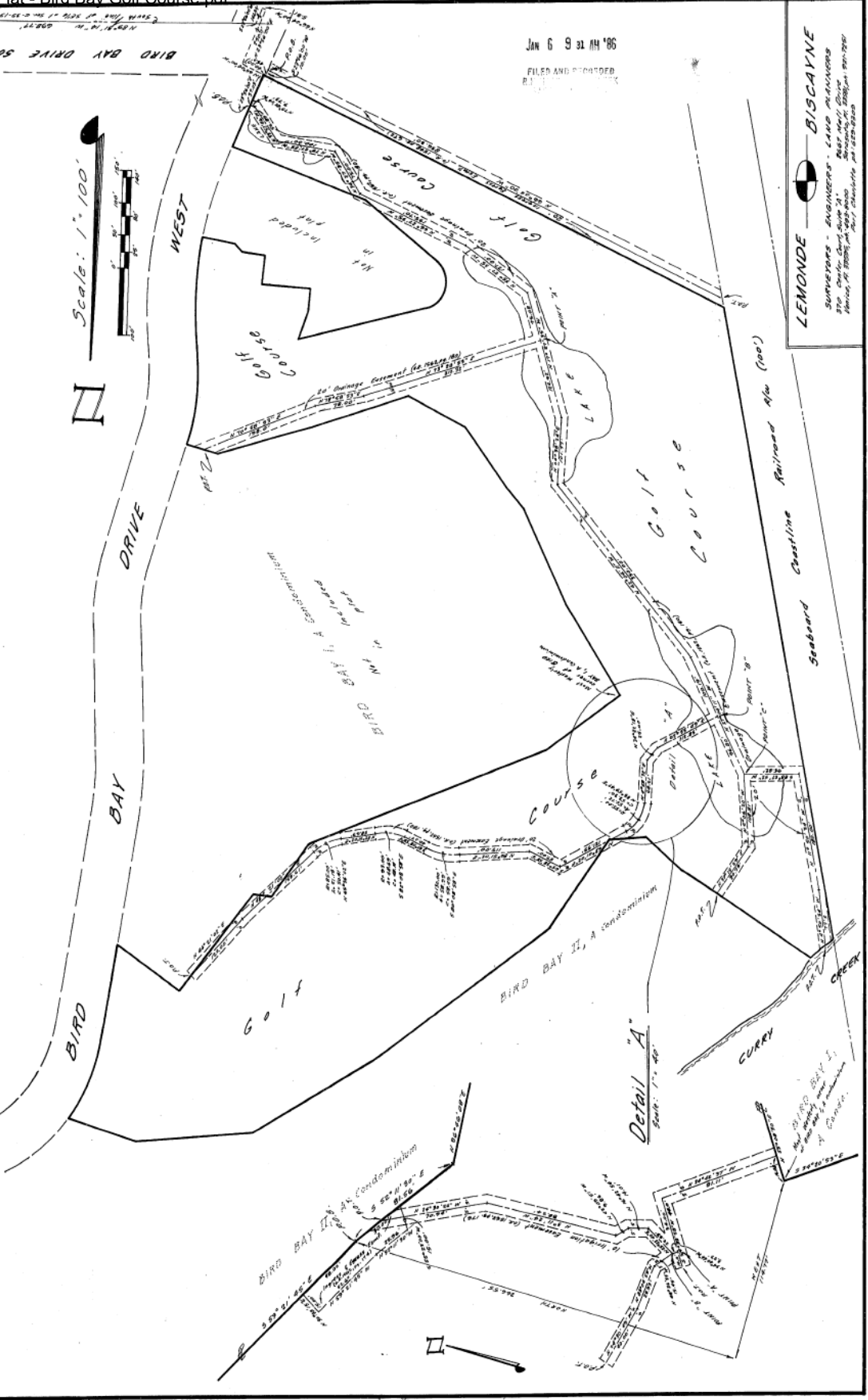


JAN 6 9 31 AM '86
FILED AND RECORDED
BIRCHMOUNT RECORDS

LEMONDE BISCAYNE

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1100 W. WASHINGTON AVE. SUITE 100
VENICE, FL 33596
PH: 813-981-7878
FAX: 813-981-7879



PLANNING COMMISSION

CITY HALL
COUNCIL CHAMBERS

June 5, 1990
1:00 P.M.

AGENDA

NOTES:

ROLL CALL

APPROVAL OF MINUTES

May 1, 1990

PUBLIC HEARING

None

SCHEDULED PRESENTATIONS

1. Site and Development Plan 90-5SP; Bird Bay III; Philip Palmer, Agent
2. Master Plan 90-IMP; Bird Bay III; Philip Palmer, Agent
3. Site and Development Plan 90-6SP; Brighton Gardens; Karl Kokomoor, Engineer, DMK Group, Inc.

OLD BUSINESS

1. Concurrency - Status of Utilities System; John Lane, Director of Utilities
2. Request for Reconsideration: Site and Development Plan 90-2SP; Mobil Oil Corporation; Ron Baker, MDM Engineering

NEW BUSINESS

None

AUDIENCE PARTICIPATION

(Five Minute Limit)

ADJOURNMENT

Exhibit 9

MINUTES
VENICE PLANNING COMMISSION
June 5, 1990 - 1:00 P.M.

The meeting was called to order by Chairman Jerrel Towery.

Present: Chairman Jerrel Towery, Vice-Chairman Gregory Staudt, Secretary Jeffery Boone, Thomas Connolly; John Rector; Howard Smith; Tim Gaus; and ex-officio members James Bogen and Paul Moseley. Also present was Director of Planning H.M. Place, III, Planner Don Caillouette, Director of Utilities John Lane, and City Attorney Steven DeMarsh. Thomas Alexsy was absent.

Minutes: Mr. Smith moved to approve the minutes of May 1, 1990. The motion was seconded by Mr. Rector. By voice vote, the motion passed unanimously.

SCHEDULED PRESENTATIONS

1. Master Plan 90-1MP; Bird Bay III; Philip Palmer, Agent

Introduction: Mr. Place stated that this is the second request from Bird Bay within a short number of months. There was a request to change all of Phase VI and part of Phase III from multi-family to single-family. That Master Plan amendment was approved by the Planning Commission and City Council, but a request by the applicant ensured that if circumstances change, the applicant would not be prohibited from filing for a Master Plan amendment to regain some of the deleted units. Bird Bay was deleting these units because of marketing considerations, not because of capacity or concurrency. Since that time there has been a proposed sale of the portion of Bird Bay Phase III, that was changed to single-family and the purchaser desires to go back to the same type of multi-family project that was originally approved.

Presentation: Mr. Palmer, agent for Ramar, requested returning to the Master Plan, which was approved last October. Steve Lattmann, representative for the current owner, Ramar Group Companies, stated that the purchaser would like to convert back to 36 units, but the developer intends to develop approximately 34 sites as single-family residences.

Staff Report: Mr. Place reported the staff's comments and recommendations. All departments stated they have no objections to this Master Plan amendment.

Mr. Place reported that a traffic study, prepared by Gordon Ziencina, Inc., of Sarasota, was submitted as part of the previous plan amendment and site and development plans, dated February 1990. The applicant has submitted a letter from Mr. Ziencina, which states that the traffic report indicates that the additional traffic from the 36 condominiums will not change the LOS on Bird Bay Drive or Albee Farm Road. Bird Bay Estates is in compliance with the transportation element of the City of Venice's Comprehensive Plan.

Action: Mr. Gaus moved that the Planning Commission, sitting as the Local Planning Agency, finds request for Master Plan 90-1MP, to be consistent with the City's Comprehensive Plan and in accordance with the affirmative findings of fact, and recommends to City Council approval of the Master Plan amendment. Mr. Connolly seconded the motion.

Roll Call: Mr. Gaus, YES; Mr. Staudt, YES; Mr. Connolly, YES; Mr. Rector, YES; Mr. Towery, YES; Mr. Smith, YES; Mr. Boone, YES.

2. Site and Development Plan 90-5SP, Bird Bay III; Philip Palmer, Agent

Introduction: Mr. Caillouette reported that this is the same piece of property that the Planning Commission just approved for a Master Plan amendment. The property is located on Bird Bay Drive North and consists of 2.79 acres. The property is zoned PUD and is a residential development consisting of 36 multi-family units with three 2-story buildings with 6 units per floor.

Presentation: Mr. Palmer reported that this plan is an update of a site plan which was originally approved approximately 4-1/2 years ago. Mr. Palmer explained that the developer had complied with all requests that were made at the DRC meeting.

Mr. Caillouette reported the staff's comments and recommendations. The Utilities Department stated in a memorandum that the developer will maintain the 8-inch sanitary sewer line as shown on the approved drawings and service laterals to one-half foot below the edge of the pavement. A clean-out is required to be placed at that location. The City will not maintain any of the house service line beyond that point. All other departments had no objections. All concurrency elements, which consists of drainage, parks and recreation, solid waste, transportation, wastewater, and water, have been reviewed and a determination made that this project will not impact the minimum level of service for the City of Venice.

Mr. Caillouette stated that the building elevations are on file in the Planning Department and that these units do match the appearance of the existing structures.

Action: Mr. Staudt moved that the Planning Commission, sitting as the Local Planning Agency, finds the site and development plan for Bird Bay III to be in conformance with the Comprehensive Plan and the staff findings and, therefore, approves Site and Development Plan No. 90-5SP, revised May 25, 1990 subject to City Council's approval of the amended Master Plan. Mr. Connolly seconded the motion.

Roll Call: Mr. Towery, YES; Mr. Smith, YES; Mr. Boone, YES; Mr. Gaus, YES; Mr. Staudt, YES; Mr. Connolly, YES; Mr. Rector, YES. Chairman Towery informed the applicant that the site and development plan has been approved subject to City Council's approval of the amendment to the Master Plan.

3. Site and Development Plan 90-6SP - Brighton Gardens, Karl Kokomoor, Engineer, DMK Group, Inc.

Introduction: Mr. Caillouette stated that this property is located at the northwest corner of Pinebrook Road and Ridgewood Avenue and is zoned OPI (Office, Professional, Institutional). The developer is proposing a residential development consisting of 98 ACLF units, with a 30-bed nursing home. The property is approximately 5.31 acres and the proposed development will be operated, owned, and managed by the Marriott Corporation.

Staff Report: Mr. Caillouette reported the staff's comments and recommendations. The Utilities Department stated that the developer has agreed to insert language in the turnover package whereby the developer will be responsible for any damage to the golf course property as a result of maintenance being required on the 8-inch gravity sewer in the area of Lift Station #30 covered by the 20-foot utility easements. All concurrency elements, which consists of drainage, parks and recreation, solid waste, transportation, wastewater, and water, have been reviewed and a determination made that this project will not impact the minimum level of service for the City of Venice.

Mr. Caillouette stated that the building elevations are on file in the Planning Department.

Action: Mr. Rector moved that the Planning Commission, sitting as the Local Planning Agency, finds the Site and Development Plan for Brighton Gardens to be in conformance with the Comprehensive Plan

and the staff findings and, therefore approves the Site and Development Plan No. 90-6SP. Mr. Smith seconded the motion.

Roll Call: Mr. Smith, YES; Mr. Boone, YES; Mr. Gaus, YES; Mr. Staudt, YES; Mr. Connolly, YES; Mr. Rector, YES; Mr. Towery, YES. Chairman Towery advised Mr. Kokomoor that the site and development plan has been approved.

OLD BUSINESS

1. Concurrency – Status of Utilities System; John Lane, Director of Utilities

Mr. Lane reported on the status of the utilities system and relevance to concurrency. In 1987 City Council authorized a 20-year planning document to be done by Camp, Dresser & McKee to study wastewater needs for the City of Venice. Subsequent to that approval, City Council also authorized a 20-year study for the City's domestic water needs. As a result of those planning efforts, the City has engaged upon a very active and aggressive expansion project.

The City is in the process of constructing a 3 million gallons per day (MGD) wastewater facility in the eastern portion of the City on a 25-acre site located east of I-75. The substantial completion date of this eastside project is February 11, 1991, with the final completion on May 12, 1991. Westra Construction is building the eastside pump stations and force mains that are running concurrently with the construction of the eastside plant. The substantial completion date of this project is November 15, 1990, with the final completion date of January 14, 1991. There are no anticipated delays in the completion of the pump stations/force mains project.

The City of Venice is expanding the R.O. plant from a 2 MGD to a 4 MGD facility. Expansions have been provided in the plant construction, such as larger pipes, so that in later years two additional expansions could be made in one MGD increments bringing the total plant capacity to 6 MGD. The R.O. plant was expected to be substantially completed on April 12, 1990 with the final completion on May 12, 1990, but there will probably be a 40-day delay for the final completion. The raw water and distribution pipelines that have run concurrently with the R.O. plant was substantially completed on April 7, 1990, with the final completion on May 7, 1990. Five new wells are being constructed, of which three have been installed, on the eastern portion of the City along Pinebrook Avenue and the Waterford development. An aquifer performance test has been completed, which clearly indicates that the City will not be impacting the City or area water supplies. SWFWMD will be receiving this information and will hopefully give the City permission to use that aquifer which will allow the City to construct the last two wells.

City Council has approved the master reuse plan which is intended to further distribute the treated wastewater to the Phase 1 area of the plan, essentially the eastern portion of the City. In later years, Phase 2 and 3 would bring the reuse water across the Intracoastal to the island portions of the City. This will be a tremendous conservation tool and method for the City to protect the potable water supply. The City is on the funding list for Basin Board funding from SWFWMD for a portion of the construction of reuse mains and is also possibly eligible for a loan from the State Revolving Fund low interest loan program.

Several questions and comments were presented to Mr. Lane by the Planning Commission regarding the availability of water and its effect on the City of Venice. Mr. Lane stressed the fact that when the planning was being done for these improvements, studies were done based on the existing zoning potential of land, including the enclaves. Several large developments in the area have since reduced the density from what was originally approved. Mr. Place stated that three major developments will be approximately 2500 units less than the approved amount, which would extend the buildout several years beyond the original projected date. The building moratorium, if passed, could also extend the length of time for the buildout.

In response to Mr. Gaus' question, Mr. Lane stated that the gulf-front wastewater plant will remain in operation and will treat 400,000 to 500,000 gallons per day and the City will still accommodate the needs of the golf course's irrigation.

Mr. Lane stated that the wastewater facility at the new eastside plant will be 3 MGD and can easily be doubled to 6 MGD. There is an agreement with the County that when the County needs capacity for County developments, an additional 3 MGD would be provided by the County to expand that facility, with the original 3 MGD available to the City in its entirety.

In response to Mr. Rector's question, Mr. Lane stated that the City has not looked into reserving some of the rain water that is being lost in runoff because current and expanded facilities will accommodate the City of Venice. Mr. Lane also stated that in the event a hurricane would eliminate service to the island, there is no interconnector between the Island and Eastside Plants in this phase of construction.

Wastewater treatment should be sufficient for the City of Venice until 2007, which is the end of the 20-year planning period and population projections indicate that water will be sufficient for the City until 1994 or later. To implement Phase 3 a 1 MGD increment may be constructed. This implementation would depend on the City's rate of growth, but the 6 MGD would take the City to buildout, within the City limits, which includes enclaves, and beyond.

Mr. Boone was concerned that the City should address the affordable housing issue because if any kind of restriction is going to cause the cost of living to increase, people on a fixed income would be in danger.

Mr. Gaus suggested getting the information and formulas from the Directors of Utilities and Planning, putting these together and arriving at a more accurate projection. Mr. Lane is confident that these expansions will bring the City through the 2007 building period for sewer and water. Mr. Place doesn't believe the City is any kind of danger of running out of utility capacity any time in the near future.

The Planning Commission extended their thanks to Mr. Lane for his presentation.

2. Request for Reconsideration; Site and Development Plan 90-2SP; Mobil Oil Corporation; Ron Baker, MDM Engineering

Action: Mr. Smith moved that the Planning Commission reconsider the motion made at the previous meeting. Mr. Rector seconded the motion.

Mr. DeMarsh stated that the Commission will have to start at the beginning, as if the site plan had never been heard before. Mr. Connolly expressed his feeling that the setbacks were thoroughly discussed at the last meeting and doesn't feel that these setbacks should be discussed again.

Roll Call: Mr. Rector, YES; Mr. Towery, YES; Mr. Smith, YES; Mr. Boone, YES; Mr. Gaus, YES; Mr. Staudt, YES; Mr. Connolly, NO. Chairman Towery announced that the site and development plan will be reconsidered.

Presentation: Sue Murphy, Director of Planning for the legal firm of Rudnick & Wolfe, stated that the developer did not have a chance at the last meeting to study the results of the stipulated setbacks and were not allowed any discussion before the vote was taken. Ms. Murphy demonstrated the differences in the required, proposed and approved setbacks and also relayed the results of a traffic count done on the site. If the pump islands are moved back seven feet, there is no provision for additional stacking, but a problem is created elsewhere on the site. The developer is requesting that the setback be put back at 41.9 feet, which is twice the City's zoning code requirements. Ms. Murphy submitted pictures of the existing Mobil station and the Mobil and Shell stations across the street, which show various lesser setbacks. Ms. Murphy was unsuccessful in contacting the County to see if there have been any problems with these other station's setbacks.

Ms. Murphy pointed out that if a traveler needs gas and there are 30 cars at the station, that traveler will go to the next station. Ms. Murphy feels there is more of a hazard created by the traffic flow near the building. There is 35 feet between the building and the pump islands and there is 41.9 feet between the pump islands and the property line.

Mr. Gaus was not as concerned about the total number of cars allowed to park on the site at one time as he was of cars being able to maneuver properly on the site. Mr. Gaus pointed out that the other stations shown have their pump islands parallel to U.S. 41, which makes entering and exiting much easier. Ron Baker, MDM Engineering, stated that if the pump islands were turned around, the site would not be able to accommodate as many vehicles and there wouldn't be as much mobility for the vehicles. David Steffey, Mobil Oil, stated that the site has four existing pumps with a proposed five pumps and the developer would hope that sales would increase. Mr. Steffey is not aware of any other Mobil station in the surrounding counties that has ever had 30 cars on a site at a given time. The purpose of this project is to increase the business and improve the image of what is on the site at the present time.

Mr. Staudt pointed out that the developer had submitted a plan, which was signed off by all department heads and met the City's codes and the Planning Commission then decided to redesign the plan. Mr. Gaus brought up the fact that concurrency, especially transportation, is a major issue of the Planning Commission.

Mr. Place explained that the sidewalk issue has been resolved and that the original plan, with the addition of the sidewalk, is the plan that is being presented to the Planning Commission. The Building Department and Fire Marshall have indicated that relocating the three parallel parking spaces on top of the tanks is not permissible. These three spaces were requested next to the building by the Building and Zoning Department because people tend to park as close to the building as possible.

Action: Mr. Staudt moved that the Planning Commission, sitting as the Local Planning Agency, finds the site and development plan for Mobil Oil Corporation, to be in conformance with the Comprehensive Plan and staff findings and, therefore, approves the Site and Development Plan No. 90-2SP, dated May 29, 1990. Mr. Smith seconded the motion.

Roll Call: Mr. Staudt, YES; Mr. Connolly, YES; Mr. Rector, YES; Mr. Towery, YES; Mr. Smith, YES; Mr. Boone, YES; Mr. Gaus, YES. Chairman Towery informed the petitioner that the site and development has been approved.

NEW BUSINESS

1. Special Exception 90-2SE; St. Mark's Episcopal Church.

Mr. Place stated that the Planning Commission approved the special exception for St. Mark's Church for a parking lot. That approval was appealed to City Council by neighbors and the Commission's decision was overturned by City Council. St. Mark's is suing the City of Venice and the City is in the process of preparing the documentation for that suit.

2. Venetian Gateway Project.

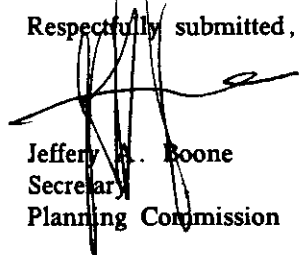
Mr. Staudt questioned Mr. Place and his feeling of what the County Commission has done with the Venetian Gateway project. Mr. Place stated that there will be a formative meeting of the Venice Gateway Advisory Committee next week. Mr. DeMarsh wondered if the City was contacted and asked for comment regarding the petition and Mr. Place doesn't recall the City being asked for any comments.

AUDIENCE PARTICIPATION - None

ADJOURNMENT

Mr. Stadt moved to adjourn the meeting. Mr. Connolly seconded the motion. The meeting was adjourned at 3:07 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey A. Boone", is written over the typed name and title.

Jeffrey A. Boone
Secretary
Planning Commission



DWELLING UNIT SUMMARY

PROPOSED UNITS	I	II	III	IV	V	VI
BIRD BAY VILLAGES						
Villas	80	78	9			44
Garden Apartments	48	110	36		268	40
Mid-Rise Units		85				
Single Family Lots						8
	128	273	45	9	268	112
TOTAL PROPOSED UNITS / RAMAR	625					
TOTAL APPROVED UNITS	938					
EXISTING UNITS / Prior to Bird Bay Villages						
Villas	86					
Mid-Rise Units	114					
	200					
OVERALL UNITS	1025					
OVERALL ACRES	198.6					

OPEN SPACE DATA

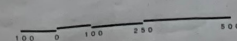
GOLF COURSE (Including Lakes w/in Golf Course)	34.0 Acres
OTHER LAKES	5.9 Acres
MISCELLANEOUS (Around Units, etc.)	25.4 Acres
CURRY CREEK, ROBERTS BAY & MANGROVE FLATS	44.6 Acres
TOTAL OPEN SPACE	109.9 Acres
TOTAL PROJECT AREA	198.6 Acres
OPEN SPACE PERCENTAGE	55.3%

BIRD BAY VILLAGE
MASTER SITE DEVELOPMENT PLAN

VENICE, FLORIDA

Ramar Group Holdings, Inc.

Developers



SEPTEMBER 1982

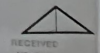


Exhibit 10

VENICE PLANNING COMMISSION

CITY HALL
COUNCIL CHAMBERS

AGENDA

MAY 5, 1992
1:00 P.M.

NOTES:

ROLL CALL

APPROVAL OF MINUTES

April 21, 1992

PUBLIC HEARING

SCHEDULED PRESENTATION

1. Bird Bay Waterside;
Master Plan 92-1MP;
Hendrik Ooms, P.E.
2. Bird Bay Waterside;
Site & Development Plan 92-1SP;
Hendrik Ooms, P.E.

OLD BUSINESS

NEW BUSINESS

AUDIENCE PARTICIPATION

(Five Minute Limit)

ADJOURNMENT

Exhibit 11

**MINUTES
VENICE PLANNING COMMISSION
MAY 5, 1992- 1:00 P.M.**

The meeting was called to order by Chairman Timothy Gaus.

Present: Chairman Timothy Gaus, Vice Chairman John Rector, Secretary Howard Smith, Jerrel Towery, Thomas Connolly, and Jeffery Boone. Also present were: Ex-Officio members Alan McEwen, City Councilman and Brad Nyhan, Building & Zoning Official as well as H.M. Place III, Director of Planning; Don Caillouette, Planner and Robert Anderson City Attorney. Absent from the meeting was Donald Murray.

Minutes: Mr. Towery moved to accept the minutes of April 21, 1992, with one exception. A discussion between Mr. Towery and Mr. Gaus concerning Amendment to the Zoning Code 91-1AM, Architectural control on East Venice Avenue, is to be added to the minutes.

After the ACTION taken on this amendment and before the ROLL CALL vote, Mr. Towery commented that this amendment was turned down last year, in so far as extending the VT District into the gateway area, but the portion adopting the code book guidelines was approved. Mr. Towery said he will be voting in support of the motion due to the fact that there was a workshop where the City Council spoke in favor of this. Mr. Towery said he remembered the planning commission voting to adopt the handbook, not the extension of the district. Mr. Towery said he recalls the Planning Commission voting against the extension of the VT district. It is therefore Mr. Towery's understanding that the reason this issue is before the Planning Commission on this date was largely to review the VT expansion.

Mr. Gaus said his personal recollection of the workshop clearly recalls City Council expressing a strong will to extend the VT out onto east Venice Avenue because it was perceived that control in that neighborhood is necessary and that type of control ought to be similar to the type of control that was currently being exercised in the VT district. Mr. Gaus said he does not recall in that discussion Council expressing dissatisfaction with the degree of control currently afforded in the VT district. Mr. Gaus said he felt Council was pleased with the way things were going in the VT district and therefore wanted to expand that sphere of influence in the form that it was presently in. The aspect of this that does not fit that logic is using this ordinance as the vehicle to specifically adopt that book. Mr. Gaus re-emphasized his comment saying, "I never recall City Council saying that the Architectural Review Board does not have sufficient vehicles or sufficient tools to control design. I clearly recall City Council wanting to expand a geographical area of control but not necessarily the tools of control". Mr. Gaus asked Mr. Place to comment.

Mr. Place said essentially what the Planning Commission did back in August of 1991 was to recommend to City Council that they adopt this ordinance which included the reference to the guideline handbook excluding the extension of the VT district to the East Venice Avenue area. Mr. Place said the handbook did not become a topic of discussion at the workshop session probably because no one felt the need to bring it up. This handbook was prepared under contract by the City Council who budgeted for and authorized the preparation of the handbook and eventually received and accepted the book.

Mr. Rector seconded the motion as amended. By voice vote, the motion passed unanimously.

SCHEDULED PRESENTATION
Bird Bay Waterside Master Plan 92-1MP;
Hendrik Ooms, P.E., Gee & Jenson, Inc.
Philip J. Palmer, Owner - Developer

Introduction: Mr. Place said this is the last undeveloped section of Bird Bay. Traditionally this has been known as Bird Bay Six. The property is no longer under the ownership of the Ramar Group who did most of the development in Bird Bay. Mr. Philip Palmer has purchased the property from Ramar and is planning on developing it himself. The original master plan was approved when Bird Bay was first accepted into the city and showed "multiple family" for all of Bird Bay Six. The most recent master plan change that has come before the Planning Commission has been a cluster villa type project which cut the density from that which was previously approved. This master plan has been in affect for a couple of years now. Mr. Palmer has re-accessed the market for multiple family units and is therefore requesting an increase in density to what was recently approved, but less than what was originally approved.

Presentation: Mr. Palmer said he had completed and sold out a thirty-six unit project of three buildings with twelve units per building in Bird Bay Three. The proposed buildings here have the same floor plan as the prior buildings.

Staff Report: Mr. Place informed the commission members that this project came before the DRC on two separate occasions. The over all approval was delayed because of specific questions. As of this time, there are no objections. A letter received on April 30, 1992, from Mark Schbeib (of the Sarasota-Manatee MPO) stating there is no objection from a traffic impact standpoint. Mr. Place said because this property is a PUD, the motion to City Council must reference the increase in density.

Discussion: Chairman Gaus asked if the master plan was ever approved at a density that was higher than 4.5 units per acre. Mr. Place said the original plan showed a density of 5.55, it was then lowered to 4.87 and now the request is 5.17 units per gross acre.

Mr. Gaus asked if, in the development of the projected build out population (which has been used in many calculations for sewer and water capacity), has the 13 units per gross acre from the future land use plan been utilized. Mr. Place said the figure that has always been used for Bird Bay is the figure that was originally approved. The original master plan was in affect when the calculations were done.

ACTION: Mr. Smith moved that the Planning Commission, sitting as the Local Planning Agency, finds the request for Amendment to Master Plan 92-1MP in conformance with the Comprehensive Plan and therefore, recommends to City Council approval of the amendment contingent upon the awareness that there will be an increase in density from 4.87 to 5.17 units per gross acre. Be it noted that the original plan in effect prior to October 1989, allowed a density of 5.55 units per acre. Mr. Rector seconded the motion.

ACTION: Mr. Boone made a motion to amend Mr. Smith's motion to include that the net affect will be a reduction in density from what was previously approved for this particular phase of Bird Bay. Mr. Smith seconded the motion as amended. By voice vote, the amended motion was approved unanimously.

Discussion: Chairman Gaus asked if there were any comments on the main motion.

Mr. Connolly asked if the Fire Department's concern regarding the flow of water to the project had been addressed.

Mr. Place said this item will be addressed at the site and development stage.

Mr. Palmer said that there was a meeting with the Fire Chief and there was an agreement that if it was possible to increase the flows this would be done, however, if this could not be accomplished, then the building would have sprinklers and a letter to the Fire Chief confirming this conversation was sent.

ROLL CALL: Mr. Towery, YES; Mr. Smith, Yes; Mr. Boone, YES; Mr. Gaus, YES; Mr. Connolly, YES; Mr. Rector, YES.

Bird Bay Waterside Site & Development 92-1SP
Hendrik Ooms, P.E., Gee & Jenson, Inc.
Philip J. Palmer, Owner - Developer

Introduction: Mr. Caillouette said this is a request to develop in accordance with the master plan that was just submitted to the Planning Commission.

This project is the Bird Bay Waterside and the zoning is PUD. It is located on Albee Farm Road and Bay Village. The proposal is for 60 dwelling units. The property consists of 6.7 acres and the plans are for a land condominium consisting of 5 two story buildings with twelve units in each building.

The Development Review Committee reviewed this project at two separate meetings, on February 10, 1992 and March 30, 1992.

Presentation: Mr. Ooms said the site and development plan reflects the storm water collection system for the site which is an existing condition. The storm water features are directed into the storm water pond that was constructed at a previous phase. The guidelines are being followed for the site elevations for the property, finished floor elevations, and looping the system.

Discussion: Mr. Connolly said he noticed a lot of discussion, (referring to the DRC minutes) about the shoreline near the creek and would there be any damage to plantings in this area.

Mr. Ooms said that SWFWMD requires a minimum of a 1' to 4' slope to any permanent body of water. Mr. Ooms said they are proposing to take this requirement down to the wetland boundary line. Wherever necessary along this line a railroad tie crib wall will be erected. Steep bluffs along the edge are going to be graded back for safety purposes. There is no intention of going into the jurisdictional areas other than to clean out the Brazilian peppers which have infested the area.

Mr. Connolly asked about the shore line in this area. Mr. Connolly said it is his understanding that this shore area has been used as a dumping ground with concrete blocks and organic material buried there.

Mr. Palmer said at one end of the site, there has apparently been some burying of construction material. The intent is to excavate the material from those portions in the site as needed and proceed with proper engineering of the soils and soil samplings.

Mr. Connolly asked if this was in the northern area near the Albee Farm Road and would this then affect the northern building rather than any of the other buildings.

Mr. Palmer said this was correct and that soil testing will be thoroughly done in this area.

Chairman Gaus asked for the report on the findings of facts from the DRC meeting.

Staff Report: Mr. Caillouette read into the record the findings of facts report as of April 29, 1992.

Discussion: Mr. Boone questioned the status of the proposed right of way line near Albee Farm Road.

Mr. Caillouette said the County has been contacted and they have submitted plans to show the proposed land acquisition. These plans were submitted to the developer. The developer has shown this on their plans and they indicate that none of the development is in the questionable area. The area where the proposed sidewalk is to be placed is one foot from the proposed new right of way on Albee Farm Road. The developer has worked with the department on this situation.

Mr. Connolly asked about the sidewalk and the fact that the county was first thought to be putting the sidewalk in and now there is talk about the city putting the sidewalk in.

Mr. Caillouette said the county is in the process of widening Albee Farm Road in the next several years. If this development takes place prior to the county reaching the area, then the developer would have to put the sidewalk in or contribute funds in lieu of construction. The developer has informed the department that they will be putting the sidewalks in.

Mr. Place said the county will put a sidewalk in if one does not exist but if a developer is building a project at a time when there is no county plan to come in within a reasonable period, then the developer will either contribute funds in lieu of construction or just put the sidewalk in and let the county work around it.

ACTION: Mr. Rector moved that the Planning Commission, sitting as the Local Planning Agency, finds the site and development plan for Bird Bay Waterside, 92-1SP, to be in conformance with the Comprehensive Plan and the staff findings and, therefore, approves Site and Development Plan 92-1SP, dated April 29, 1992, this to be contingent upon the City Council's approval of Master Plan 92-1MP. Mr. Connolly seconded the motion.

Discussion: There was no further discussion.

ROLL CALL: Mr. Gaus, YES; Mr. Connolly, YES; Mr. Rector, YES; Mr. Towery, YES; Mr. Smith, YES; Mr. Boone, YES.

OLD BUSINESS

Mr. Place said he has received comment from the Department of Community Affairs (DCA) and that they had found the amendment to the comprehensive plan lacking in four specific areas. The staff used Rule 9-15 as a guide but Rule 9-11 was being used by DCA and therefore some things were missing. All four items have been responded to and nothing of substance was wrong.

NEW BUSINESS

Mr. Place introduced Mr. Erik Bredfeldt, a planning student at the University of Florida, who will be interning with the department this summer. Mr. Place stated that there is a cooperative arrangement with the university system whereby the city supplies gainful projects for students. The principle project this summer will be a brand new land use inventory. A physical inventory has not been done in this city in probably fifteen to twenty years. There is now a land management system in place on the computer; this project will provide updated information that will keep us current.

Mr. Place said the Florida Planning & Zoning Association, Gulf Coast Chapter is having it's regular monthly meeting on May 15th, at Palm Air and the subject this particular month is code enforcement. Anyone wishing to attend is asked to contact the planning office.

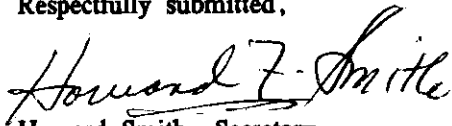
Mr. Caillouette announced the third annual Venice Historic Seminar at Eagle Point on May 13th. There are two prominent architects who will speak at the gathering.

AUDIENCE PARTICIPATION – none

ADJOURNMENT

Mr. Smith moved to adjourn the meeting at 1:45 p.m. Mr. Rector seconded the motion. By voice vote the motion passed unanimously.

Respectfully submitted,

A handwritten signature in cursive script that reads "Howard F. Smith". The signature is written in black ink and is positioned above the printed name.

Howard Smith, Secretary,
Planning Commission

3/1/2022 11:58 AM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
SIMPLIFILE Receipt # 2820425

Doc Stamp-Deed: \$7,700.00

Prepared by and return to:
This instrument prepared by: Reid McCullough
McCullough Legal Services
1630 Morrill Street
Sarasota, FL 34236
(941) 484-9714
File No.: 2021-709

[Space Above This Line For Recording Data]

WARRANTY DEED

This Warranty Deed Made this 28th day of February, 2022 by Bird Bay Executive Golf Club, Inc., a Florida Corporation hereinafter called the grantor, whose post office address is: 602 Bird Bay Dr W, Venice, FL 34285

to: Hawks Run Development, LLC, a Florida Limited Liability Company whose post office address is: One South School Ave Suite 500, Sarasota, FL 34237 hereinafter called the grantee,

WITNESSETH: That said grantor, for and in consideration of the sum of \$1,100,000.00 Dollars, and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situated in Sarasota County, Florida, viz:

Tract "A" and Tract "B" of Bird Bay Golf Course, according to the plat thereof as recorded in Plat Book 30, pages 42, 42A, 42B and 42C, of the Public Records of Sarasota County, Florida.

Parcel Identification Number: 0406070001

This property is not the homestead of the Grantor (s).

THIS CONVEYANCE IS SUBJECT TO THE PROVISIONS CONTAINED IN THAT POST CLOSING LAND RECONVEYANCE AGREEMENT AS EXECUTED BETWEEN THE PARTIES.

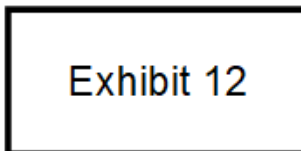
TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to 12/31/2021, reservations, restrictions and easements of record, if any.

(The terms "grantor" and "grantee" herein shall be construed to include all genders and singular or plural as the context indicates)

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.



Signed, Sealed and Delivered in Our Presence:

Witness
Printed Name: Reid McCullough

Witness
Printed Name: Hillary McCullough

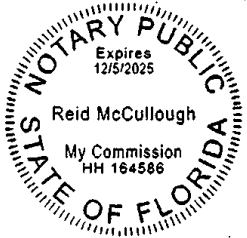
Bird Bay Executive Golf Club, Inc.
John T Robertson
John T Robertson, President

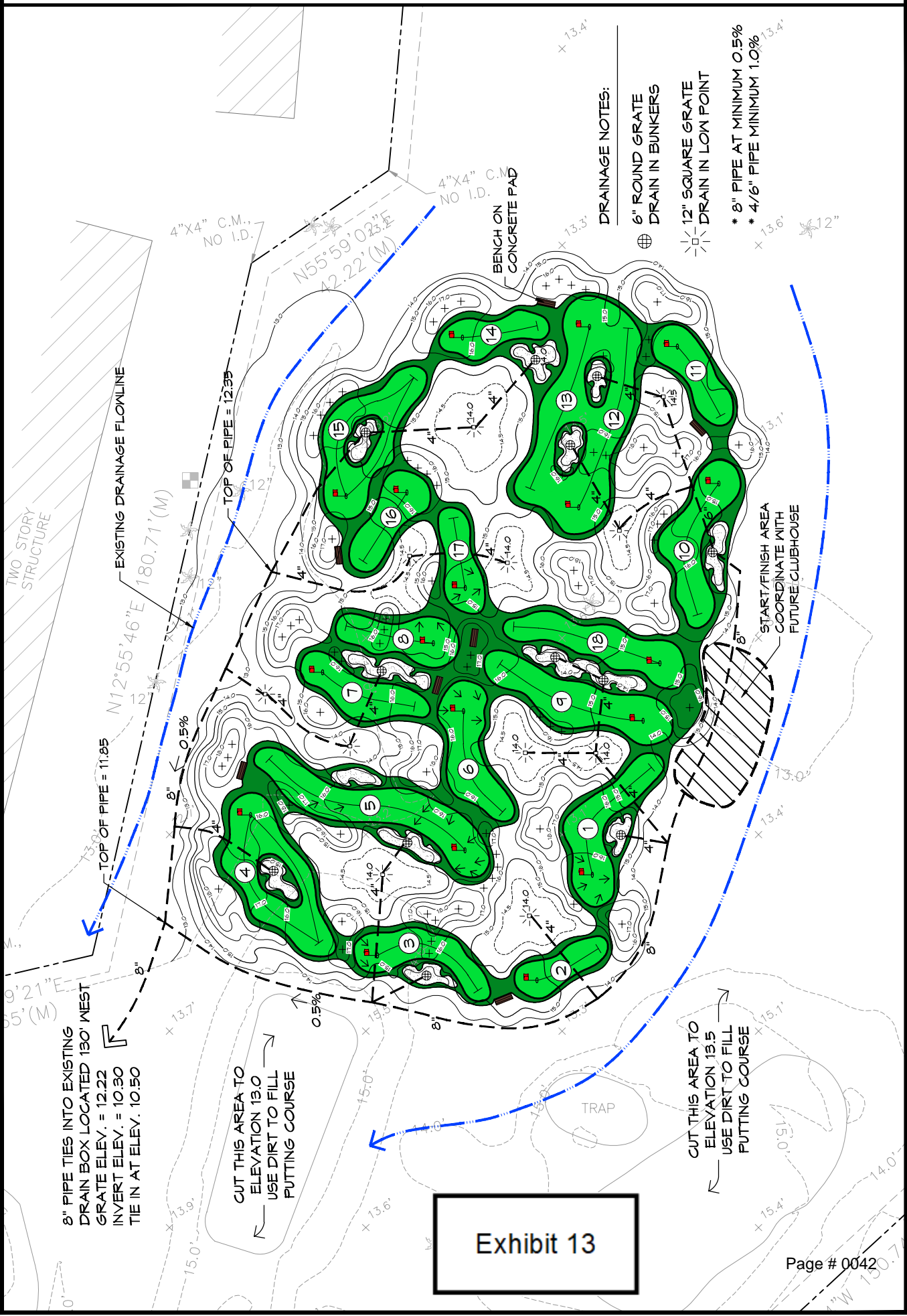
State of Florida
County of Sarasota

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 28th day of February, 2022 by John T Robertson, President of Bird Bay Executive Golf Club, Inc., a Florida Corporation, on behalf of said corporation who is personally known or has produced a driver's license as identification.

[Seal]

[Signature]
Notary Public
Print Name: _____
My Commission Expires: _____





8" PIPE TIES INTO EXISTING DRAIN BOX LOCATED 130' WEST GRATE ELEV. = 12.22 INVERT ELEV. = 10.30 TIE IN AT ELEV. 10.50

CUT THIS AREA TO ELEVATION 13.0 USE DIRT TO FILL PUTTING COURSE

CUT THIS AREA TO ELEVATION 13.5 USE DIRT TO FILL PUTTING COURSE

DRAINAGE NOTES:

- 6" ROUND GRATE DRAIN IN BUNKERS
- 12" SQUARE GRATE DRAIN IN LOW POINT
- * 8" PIPE AT MINIMUM 0.5%
- * 4/6" PIPE MINIMUM 1.0%

Exhibit 13

OFF REC

977 PG 1373

AGREEMENT

THIS AGREEMENT, made and entered into this 21ST day of August, 1972, by and between GENE L. GREEN, Attorney in fact, under "Power of Attorney", dated May 19th, 1972 of the AMALGAMATED TRANSIT UNION, Trustees, "Owners" of the below described real estate and the VALENCIA DEVELOPMENT CORPORATION, a Florida Corporation, purchaser of the same, hereinafter collectively designated as "Owners", and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter called the "City";

WITNESSETH:

WHEREAS, the Owners, being owners of the hereinbelow described property, have petitioned the City, pursuant to applicable provisions of its Charter, to annex and include within its corporate limits the following described property in Sarasota County, Florida, lying contiguous thereto, to wit:(see Exhibit "A-1" attached):

PARCEL NO. 1:

Beginning at an iron pipe at the SE corner of SW¼; thence N. 1985.8 ft. to the waters of Curry Creek; thence S 66 deg. 31 min. West along the waters of Curry Creek, 550.2 ft. to the Easterly line of the existing S.A.L.R.R. R/W; thence S 14 deg. 08 min. East along the said Easterly line of the S.A.L.R.R. R/W, 1823.5 ft. to the S line of Sec. 6-39-19; thence N 88 deg. 13 min. E along the S line of Sec. 6-39-19 East, 60.0 ft. to the P.O.B.; together with riparian rights and water privileges thereunto belonging or in anywise appertaining; being in the U.S. Gov't. Lot 3, Section 6, Township 39 South, Range 19 East, LESS that portion thereof condemned and taken for Venice-By-Pass, State Road 45A Right-of-Way purposes.

PARCEL NO. 2:

The W½ of SE¼ and the W½ of NE¼ of SE¼ of Section 6, Township 39 South, Range 19 East; together with any and all riparian rights thereunto belonging; LESS Right-of-way for U.S. 41 By-Pass (SR45A).

ALSO: The North 66 feet of the NE¼ of the SE¼ of the SE¼ of Section 6, Township 39 South, Range 19 East.

EXCEPTING THEREFROM, that portion of the parcel lying Easterly, of the West line of the Westerly ditch of the Venice By-Way, a non-dedicated road, used by right of prescription.

This Instrument prepared by:
Paul A. Youngberg, Sr., for:
City of Venice
401 West Venice Avenue
Venice, Florida 33595

OFF REC

977 PG 1373

PARCEL NO. 3:
 Commencing at the NE corner of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 6, 39-19E, as a P.O.B.; run thence Southerly, 1325.64 ft. along the Easterly boundary of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Sec. 6, to the SE corner of the NE $\frac{1}{4}$ of said Sec. 6; thence Westerly, 2640 ft. m/1, along the Southerly boundary of the said NE $\frac{1}{4}$ of Sec. 6 to the SW corner of the said NE $\frac{1}{4}$ of Sec. 6; thence Northerly, 700 ft. M/L along the Westerly boundary of the said NE $\frac{1}{4}$ of Sec. 6, to a point on the N boundary of Roberts Bay Drive as shown on Plat of Mobile City Estates, Unit No. 8 and recorded in Plat Book 9, Page 92, Public Records of Sarasota County, Florida; thence Easterly along said Northerly boundary of Roberts Bay Drive, 98. ft. m/1, to the SE corner of Lot 7, Block 8, of said Mobile City Estates, Unit No. 8; thence North-easterly along said Northerly boundary of Roberts Bay Drive, 154.5 ft. to the SE corner of Lot 9, said Block 8, Mobile City Estates Unit 8; thence Northeasterly along the Northeasterly extension of the Northerly boundary of Roberts Bay Drive extended, 540. ft. the same being the Southerly boundaries of those lands described in O.R. Book 278, Page 183, O.R. Book 303, Page 232, O.R. Book 467, Page 265, O.R. Book 548, Page 763, O.R. Book 571, Page 694, O. R. Book 571, Page 692, ALL being recorded in Public Records of Sarasota County, Florida; thence by a curve to the right, radius 115. ft. N 31 deg. 44 min. 24 sec. West, 121.52 ft. along the Easterly boundary of said lands described in O. R. Book 467, Page 265, Public Records of Sarasota County, Florida, to the NE corner of said lands; thence N 0 deg. 09 min. 10 sec. west 221. ft. M/1, along the Easterly boundary of lands described in O. R. Book 285, Page 306, Public Records of Sarasota County, Florida, the same being the Westerly boundary of the proposed Roberts Bay Drive extended, to the North boundary of the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 6-39S-19E; thence Easterly, 1865.89 ft. along the said North boundary of the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Sec. 6 to the Point of Beginning; But EXCEPTING THEREFROM the following described lands: In O. R. Book 256, Page 723, to Orville Brown and Cecilia M. Brown; in O. R. Book 376, Page 496, to Harley N. Beaugrand and Eleanor C. Beaugrand, in O. R. Book 216, Page 588, to Ve-No-La Developing Company; O. R. Book 572, Page 566, to S. W. Jarret, ALL being recorded in the Public Records of Sarasota County, Florida, AND ALSO EXCEPTING that part of Mobile City Estates, Unit No. 8, as recorded in Plat Book 9, Page 92, Public Records of Sarasota County, Florida, lying therein; this included 15 x 50' boat slip already deeded out to Plant 1968; AND ALSO EXCEPTING the tract described as: BEGIN at the SE corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 6, and run West along the South line of the N $\frac{1}{2}$ of the NE $\frac{1}{4}$, 1805.40 ft. to its intersection with the Easterly R/W of Roberts Bay Drive extended; thence S 0 deg. 19 min. East, 22.36 ft. to the South R/W line of Venice By-Way for a P.O.B.; thence S 89 deg. 51 min. 45 sec. East on the South R/W line of Venice-By-Way, 150. ft; thence South 0 deg. 19 min. East, 186.67 ft.; thence North 85 deg. 20 min. West, passing over a Canal to the Easterly R/W of said Roberts Bay Drive extended; thence North 0 deg. 19 min. West, 175.2 ft. to the Point of Beginning.

EXCEPTING THEREFROM those two fingers of land, containing approximately 5 acres altogether, lying Easterly of the East line of Mobile City Estates, Unit #8 Subdivision, lying Southerly and Easterly of the Northerly boundary of Roberts Bay Drive, as extended to the intersection with the South R.O.W. line of Colonia Lane, a 50 foot, street, and lying Westerly of the property conveyed in O. R. Book 572, Page 566, to S. W. Jarret, and also lying Westerly of the tract herein above last excepted, abutting and lying immediately North of the S.W. Jarret parcel, aforementioned.

ALSO EXCEPTING THEREFROM, that portion of the East 1325.64 feet of the SE¼ of the NE¼ of said Section, lying Easterly of the West line of the Westerly ditch, of the Venice By-Way, a non-dedicated road, used by right of prescription. ALL lying within Section 6, Township 39 South, Range 19 East.

PARCEL NO. 4:

That part of the NW¼ of the SE¼ of the SE¼ and the S½ of the SE¼ of the SE¼ of Section 6, Township 39 S Range 19 East, more particularly described as follows:

BEGIN: at the SE corner of said Section 6, and run N 89 degrees 51'35" W 320 feet for a point of beginning: Thence continue N 89 degrees 51'35" W on the South line of said Section 6, 998.32 feet to the SW cor. of SE¼ of the SE¼ thence N 0 degrees 08 min. 20 sec. W 1320.58 feet to the NW cor. SE¼ of the SE¼, thence S 89 degrees 55'25" E. 660.76 feet thence S 0 degrees 04' 10" E 660.66 feet, thence S 89 degrees 53 min. 30 sec. E 659.96' feet to the East line of said Section 6, thence South on said sec. line 261.04 feet; thence N 89 degrees 51'35" W 230 feet, thence South 100 feet, thence N 89 degrees 51' 35" W 95 feet, thence South 200 feet, thence S 89 degrees 51' 35" E. 5.0 feet, thence South 100 feet to the point of beginning, LESS parcel to Carol Ann Wolfgang in O. R. 775, Pg. 536 described as follows:

BEGIN: at the SE corner of Section 6, Township 39 South, Range 19 East, thence West along the South line of Section 6, to a point, which is 230 feet West from the East Section line; thence North, parallel with the East Section line, 400 feet; thence East, parallel with the South Section line, 68.2 feet for a Point of Beginning; thence continue along said line, 161.8 feet to the intersection with the East line of Section 6; thence North along the East line of Section 6, 90 feet; thence West, Parallel with the South line of Section 6, 163 feet; thence South, parallel with the East line of Section 6, 90 feet to the Point of Beginning.

ALSO EXCEPTING THEREFROM, that portion of the North 171.04 feet of the SE¼, of the SE¼ of said Section, lying Easterly of the West line of the Westerly ditch, of the Venice By-Way, a non-dedicated road, used by right of prescription.

PARCEL NO. 5:

Begin at the NE corner of the NW¼ of the NE¼ of Section 7, Township 39 South, Range 19 East; thence South 0° 25' 17" West, 464.35 feet to the Northerly right-of-way of State Road No. 45 By-Pass (200' R/W); thence North 66° 04' 00" West, along said North R/W 1160.68'; thence South 89° 38' 58" East, 1064.03' to the P. O. B. all lying and being in Section 7, Township 39 South, Range 19 East, Sarasota County, Florida.

LESS THE FOLLOWING:

THAT PART OF N½, NW¼, NE¼, Section 7-T39S-R19E described as follows: COMMENCE at the NW corner NE¼, NE¼, Sec. 7, thence South 0 deg. 25 min 17 sec. West. 464.35 feet; thence Northwesterly along the North R/W line of S. R. 45A, VENICE BY PASS, North 66 deg. 04 min. 00 sec. West, 825.48 feet; thence North 23 deg. 56 min. 00 sec. East, 146.33 feet; thence South, 89 deg. 38 min. 58 sec. East, 698.28 feet to the Point of Beginning.

PARCEL NO. 6:

The N $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 6, Township 39 South, Range 19 East.

EXCEPTING THEREFROM, that portion of the parcel lying Easterly, of the West line of the Westerly ditch of the Venice By-Way, a non-dedicated road, used by right of prescription.

WHEREAS, in consideration of the covenants herein contained, the City is disposed to accept and approve said Petition to the end that said lands may be incorporated within its limits.

NOW, THEREFORE, for and in consideration of the premises and annexation of the above described lands by the City of Venice, the Owners do hereby covenant to and with the City as follows:

1. LAND USE:

That the Owners will develop the lands as a planned residential community substantially in accordance with the land use plan thereof as contained in drawings prepared by Lane L. Marshall and Associates, Land Planners and Land Use Consultants, dated June 26, 1972, marked Exhibit "A-2" attached hereto and made a part hereof.

It is the intention of the "Owners" and the "City", by this agreement, and the applicable city ordinances, to provide for, require, and permit the development of the property, herein to be annexed, within the broad framework of, and so as to accomplish the purposes of, the Planned Unit Development (P.U.D.) regulations of the County of Sarasota, as adopted May 9, 1972.

It is understood that a portion of the property herein, a part of Parcel 2, Exhibit "A-1", is now subdivided under the regulations of Sarasota County, as Bird Bay, Unit No. 1, and the plat therefor has been recorded in Plat Book 10, Page 53, of the Public Records of Sarasota County. None of the lots, designated therein, are owned by parties other than the "Owners" herein. The "Owners", with the cooperation of the "City", will undertake to vacate, annul and expunge this plat from the records, through action of the appropriate Sarasota County authorities.

It is further agreed that no building or occupancy permit shall be issued by the City in respect to any portion of said lands unless the same shall be embraced within the intent of said plan, or such modification or substitution thereof as may be hereafter approved by the City Council.

2. ZONING:

That the lands hereinabove described are now zoned by the County of Sarasota as R-1, R-3 and Agricultural and that it is anticipated said lands will be zoned by the City so as to permit their use as a planned residential community as follows:

Parcels A, B, C, D and E (as indicated on said Exhibit "A-2") to be zoned so as to be included in Residence District Number 3.

Parcels F and G (as indicated on said Exhibit "A-2") to be zoned so as to be included in Business District Number 1.

3. SUBDIVIDING - PLATTING - CONVEYING:

That from and after the inclusion of said lands within the City no portion thereof shall be conveyed by metes and bounds or otherwise, except by reference to a subdivision plat, which shall include the same and which shall have been approved by the City Council under applicable ordinances in that regard, and recorded in the office of the Clerk of the Circuit Court of Sarasota County.

It is agreed by the parties hereto that development of the Parcels may be done in phases, or sub-phases, at the Owners' discretion, provided, nevertheless, no permit will be issued for any development of any such phase or sub-phase unless and until the following conditions have been met:

- a) A Subdivision Plat of the lands to be included in such phase of sub-phase has been submitted to and approved by the City Council, as aforementioned, and has been duly recorded in the office of the Clerk of the Circuit Court of Sarasota County.
- b) A bond, with responsible Surety, in form satisfactory to the City and in an amount equal to 110% of the estimated cost of the construction of streets, roads, drainage facilities and water

distribution and sewer collection facilities for such lands, to be so subdivided, to guarantee to the City that such improvements will be completed.

- c) The Owners pay to the City for water plant and sewer plant capacities, at the time and in the amounts, as hereinafter provided for each dwelling unit, or other unit within the lands so subdivided.

It is further agreed by the parties hereto that, upon submission of the first plat for approval of the City Council, the Owners will also submit a master plan, for the entire project indicating thereon the number and type of units to be constructed. Owners will thereafter adhere substantially to such master plan, or such substitutions thereof as may, thereafter, be approved by the City Council.

It is further agreed that the location of the golf course, as shown on said Exhibit "A-2", is approximate and that minor changes may be made during construction. The exact location and inclusion in subdivision platting of the golf course will be accomplished in order of platting of lands abutting thereon.

4. EXTENSION OF WATER AND SEWER:

That the Owners will pay to the City at the time of Petitioning for Annexation, for water main and sewer force main extension to said Parcels the sum of Fourteen Thousand Eight Hundred (\$14,800.00) Dollars, which represents the cost of materials for such extensions (installation to be at City expense).

The City agrees that upon receipt of said sum, it will commence installation of City water lines to points at the Southwest corner of Parcel A on the By-Pass and at the intersection of the By-Way and Bird Bay Boulevard in Parcel B, and also commence installation of sewer force mains to the South East corner of Parcel B on the By-Pass. The sewer force main shall be of sufficient size and design to handle effluent from the sewage lift stations as set forth in Paragraph 5 of this Agreement. The water lines are to be of a size adequate to provide full service to the project as a whole.

5.

6.

5. COST OF PUBLIC IMPROVEMENTS:

That the Owners agree to install at their expense, within the hereinabove described lands, all sewer gravity and force mains and sewage lift stations; all water distribution and fire protection mains and hydrants; and all roads, streets, bridges and drainage facilities. The above to be properly engineered and installed to City specifications and in conformance to all laws, rules and regulations of all governmental agencies having jurisdiction over same.

6. TITLE TO PUBLIC IMPROVEMENTS:

That the Owners agree to convey title to all the above described improvements to the City upon completion and acceptance together with all such easements as are necessary and proper that may not have been dedicated to the public on the aforementioned subdivision plat or plats, in return for which the City will thereafter operate and maintain same.

7. WATER AND SEWER PLANT CAPACITY COST:

That the Owners will pay to the City for water and sewer treatment plant capacity expansions that will be necessary because of the inclusion of the hereinabove described lands within the City limits, the sum of Four Hundred Fifty (\$450.00) dollars for each and every unit constructed on said lands in accordance with the following:

- a) Five thousand (\$5,000.00) dollars at the time of submission of Petition for Annexation.
- b) At the time application is made to the "City" for a water tap connection on any building constructed on lands within an approved subdivision plat of any parcel as shown on Exhibit "A-2", a sum equal to Four hundred fifty (\$450.00) dollars, per unit, for each unit to be constructed on the lands embraced within such subdivision plat.
- c) No capacity unit payment shall be made until the credit of Five Thousand (\$5,000.00) Dollars paid, for that purpose, per sub-paragraph a) above, shall have been entirely used up, by credit.

8. WATER TAP FEES AND METER DEPOSITS:

It is understood and agreed that water and sewer tap fees, meter deposits and fire protection taps, as now constituted, are not included in any of the above costs and must be paid for separately by owners prior to such taps being made.

9. PROVIDING CERTAIN ROAD RIGHTS-OF-WAY:

That the "Owners" will provide road rights-of-way, sixty (60) feet wide for general roads and eighty (80) feet wide for boulevards, as minimums, dedicated to public use, as shown on Exhibit "A-2" (subject to alignment changes as may occur as a result of changes shown on the subdivision plat as finally approved by the Council), and construct paved roads thereon to "City" specifications of a minimum width of twenty-four (24) feet for general roads and twenty (20) feet for boulevards, one way.

10. WATER RIGHTS:

That the Owners agree to permit the City to drill water wells in or adjacent to Parcels A, B and C, Exhibit "A-2", within all dedicated roads or street rights-of-way, as described on Exhibit "A-2", when such are dedicated on the various subdivision plats to be hereafter approved. Such wells to be used as a part of the City's water source. It is agreed that the wells will be located, drilled and maintained so as to be esthetically complementary to the development and so as to provide a minimum of interference with the use of the land and the orderly development of these Parcels, the adjoining Parcels or of the entire project.

The City agrees that the Owners shall have the right to construct irrigation wells and install distributive systems therefor, limited to non-potable water uses, provided they are drilled under County Permit and in conformance to all County and State regulations.

11. OTHER RESERVATIONS AND RESTRICTIONS:

In addition to the now existing or hereafter enacted City Codes and Regulations, including, but not limited to, those concerning zoning, building,

plumbing, electrical, subdivision, and public improvements, the Owners hereby agree to the following additional restrictions as to construction on said Parcels:

- a) It is agreed that Parcel A, Exhibit A-2, comprising 30 acres and designated for use as a cemetery, not be counted as a part of the planned residential community in the calculation of acreage density. On this basis the project comprises approximately 150 acres.
- b) Over all density for living units, related to the remainder of the project, will be limited to 10 units per project acre, and the open space ratio will be 56%.
- c) It is agreed that upon failure of the Owners, within a reasonable time, to obtain the requisite license for the cemetery, that Parcel A, Exhibit (A-2) be, then, deemed wholly a part of the planned residential community herein; that the master plan be amended by petition and that the Council, then, modify the uses permitted and the density to be allowed thereon, in a manner reasonably related to the overall project density and use.

12. INGRESS AND EGRESS:

Ingress and egress shall be allowed at all times to the proper City officials over the common roads, lanes and alleys within the land for the purpose of policing said area, the collection of garbage and performance of other municipal functions in connection therewith.

13. ADDITIONAL COVENANTS:

- a) It is agreed that this planned residential community be developed by the Owners, under their unified control in accordance with a comprehensive Master Plan, and with responsibility in the Owners for the maintenance and operation of the common use areas, improvements, activities and services, except those assumed by the City, or other agency.

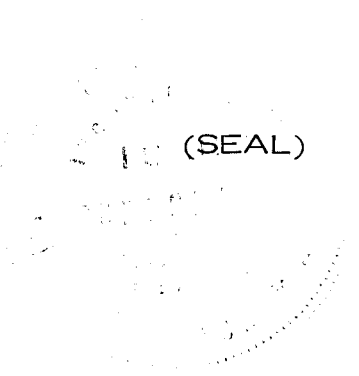
215.9

- b) It is further agreed that if the City shall accept and include the Owners' lands for inclusion within its corporate limits pursuant to this Petition for Annexation, the Owner shall and will indemnify and save the City harmless of and from all costs, including reasonable attorneys' fees, that may be incurred by it in defending any and all litigation involving the validity of such annexation proceedings. The Owners further covenant and agree to and with the City that if the contemplated annexation shall ultimately be held invalid by Court proceedings, or excluded from the City Limits by future legislation, then if and to the extent that the City shall continue to supply water, sewer, and other utility services to the affected area, it shall be entitled to charge therefore at such rates as may be prescribed from time to time by the City Council for comparable services outside the City Limits. The Owners further covenant and agree, jointly and severally, to waive any claim for refund of advalorem taxes levied by and paid to the City of Venice on property contained in the affected area for any period subsequent to the acceptance by the City of the Owners' Petition for Annexation and prior to the establishment of the invalidity thereof in the manner aforesaid.
- c) Each of the several covenants herein contained shall run with the land above described and shall enure to the benefit of and be binding upon the respective successors and assigns of the parties first above named.

IN WITNESS WHEREOF, the City has caused this instrument to be executed by its proper officials thereunto duly authorized and its corporate seal hereunto affixed, and the Owners have hereunto set their hands and seals the day and year first above mentioned.

CITY OF VENICE, FLORIDA

BY: Donald W. Humphris
MAYOR



Attest: [Signature]
City Clerk

WITNESSES:

Caroline M. Koos
Diane G. McKeane

OWNERS:

Gene L. Green L.S.
AMALGAMATED TRANSIT UNION,
TRUSTEES, By Gene L. Green,
Attorney-in-fact, under Power of
Attorney dated May 19, 1972.

WITNESSES:

Caroline M. Koos
Diane G. McKeane

PURCHASER:

VALENCIA DEVELOPMENT CORP.
BY: John S. [Signature] L.S.
President

215P

OFF REC 977 PG 1384

STATE OF FLORIDA)
: SS
COUNTY OF SARASOTA)

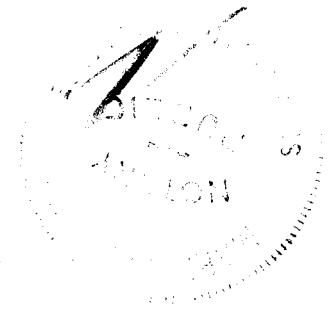
I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared THOMAS HUMPHRIS and STEPHEN ALBEE, JR. respectively Mayor and City Clerk of the City of Venice, a municipal corporation in the County of Sarasota, State of Florida, to me personally known, and who executed the foregoing Agreement in the name of and for that corporation, affixing the Corporate Seal of that corporation thereto.

WITNESS my hand and official seal in the County and State last aforesaid

this 23rd day of AUGUST, 1972

Marion S. Mayo
Notary Public State of Florida at Large

My commission expires: Notary Public, State of Florida at Large
My Commission Expires May 21, 1976
Bonded by U. S. F. & G.



STATE OF FLORIDA)
: SS
COUNTY OF SARASOTA)

I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgments, personally appeared GENE L. GREEN, Attorney in fact, for AMALGAMATED TRANSIT UNION, Trustees, to me personally known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid

this 21st day of AUGUST, 1972

Diane G. McGuane
Notary Public State of Florida at Large

My commission expires: Notary Public, State of Florida at Large
My Commission Expires Mar. 20, 1976
Bonded by U. S. F. & G.

STATE OF FLORIDA)
: SS
COUNTY OF SARASOTA)

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared JOHN S. BOOTH to me personally known to be the President of VALENCIA DEVELOPMENT CORPORATION, a Florida corporation, and who executed the foregoing instrument and acknowledged before me that he executed the same for and on behalf of the corporation.

WITNESS my hand and official seal in the County and State last aforesaid

this 21st day of AUGUST, 1972

Diane G. McGuane
Notary Public State of Florida at Large

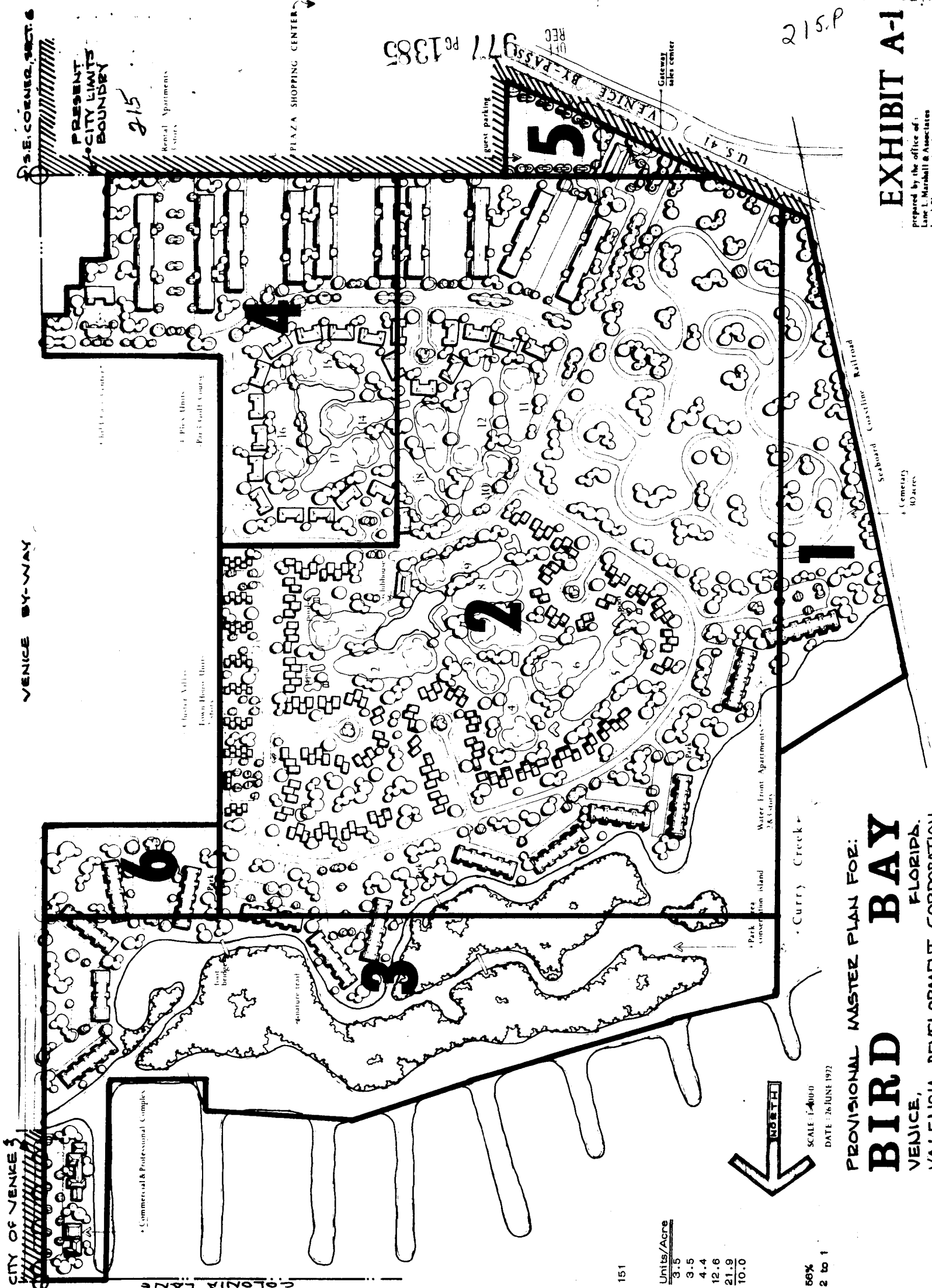
My commission expires: Notary Public, State of Florida at Large
My Commission Expires Mar. 20, 1976
Bonded by U. S. F. & G.

RECORDER'S MEMO: Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

977 Pg 1385
REC 101

BIRD BAY PROVISIONAL DESIGN DATA

Total Acreage	151	Units/Acre	3.5
Residential	146.9		
Commercial	3.9		
Living Units			
Cluster Villas	143.0		
Town Houses	42.0		
4-Plex Units	88.0		
Water Front Apts.	576.0		
Rental Apartments	588.0		
Total	1,437		
Open Space			
Park Area	53.5 Ac.		
Par 3 Golf Course	21.4 Ac.		
General	10.1 Ac.		
Total	85.0 Ac.	56%	
Parking Ratio Unit		2 to 1	



PROVISIONAL MASTER PLAN FOR:

BIRD BAY

FLORIDA
VALENCIA DEVELOPMENT CORPORATION

EXHIBIT A-1

Prepared by the office of:
Luc L. Marshall & Associates
Land Planners & Land Use Consultants

215.P

REC 101 Pg 1385

- ZONING NOTES:**
1. PARCELS A, B, C, D, E ZONED R-2-B
 2. PARCELS F, G-1, G-2 ZONED B-1
 3. PARCELS G-1, G-2 ZONE B-1 AS PER THIS CONTRACT.

RECORDER'S MEMO: Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

977 Pg 1386 REC DEF

BIRD BAY PROVISIONAL DESIGN DATA

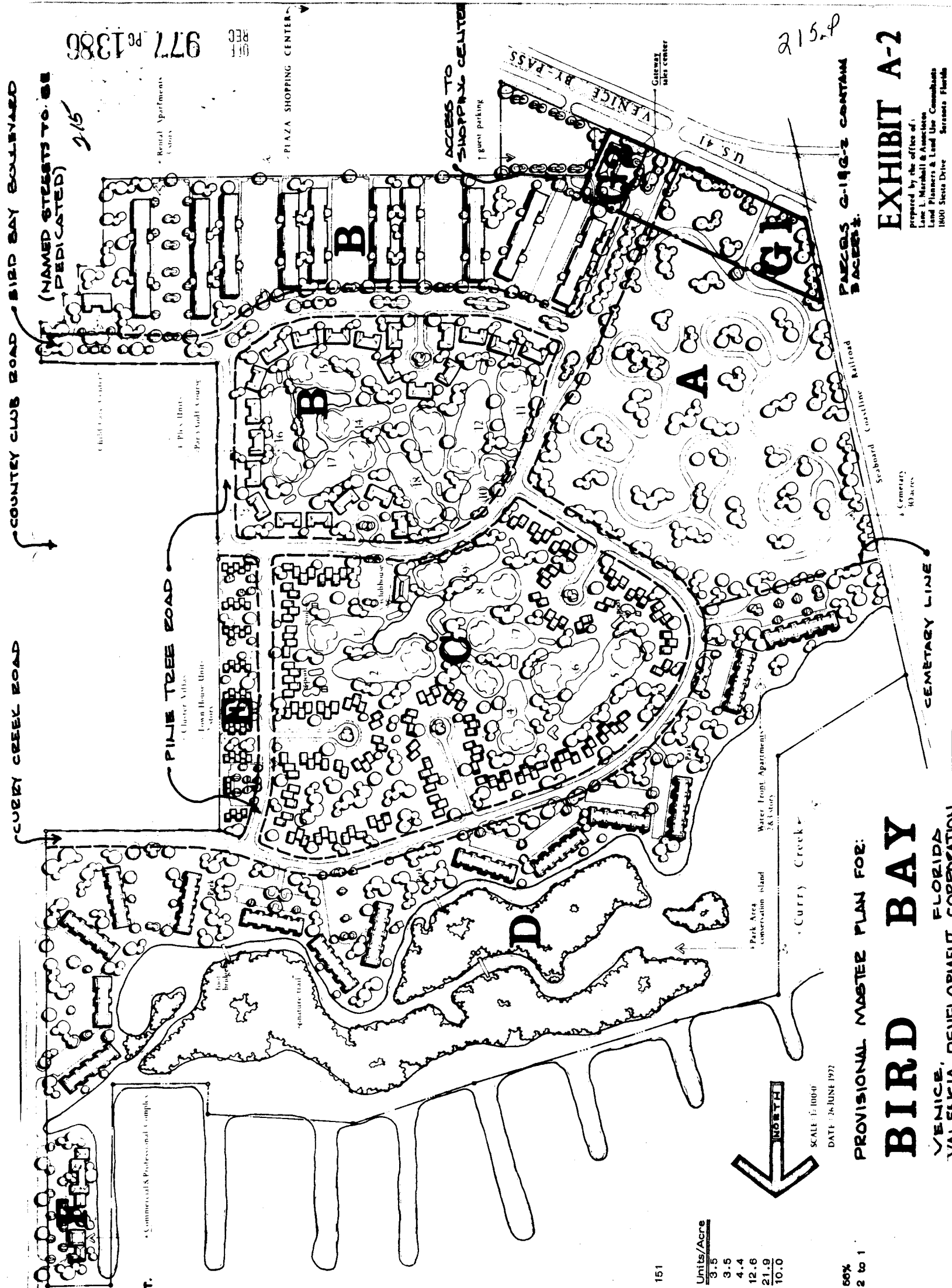
Total Acreage	146.9	151
Residential	146.9	
Commercial	3.9	
Living Units		Units/Acre
Cluster Villas	143.0	3.5
Town Houses	42.0	3.5
4-Plex Units	88.0	4.4
Water Front Apts.	576.0	12.6
Rental Apartments	588.0	21.9
Total	1,437	10.0
Open Space		
Park Area	69.5 Ac.	
Par 3 Golf Course	21.4 Ac.	
General	10.1 Ac.	
Total	86.0 Ac.	60%
Parking Ratio Unit		2 to 1

SCALE: 1" = 100'±
DATE: 26 JUNE 1977

PROVISIONAL MASTER PLAN FOR:

BIRD BAY

VENICE, FLORIDA DEVELOPMENT CORPORATION



977 Pg 1386 REC DEF

215.4

EXHIBIT A-2

Prepared by the office of:
Lawrence I. Marshall & Associates
Land Planners & Land Use Consultants
1890 Stearns Drive
Beverly Hills, California

AMENDMENT TO AGREEMENT

*Cemetery 215.B
215.P*
MICRO FILMED
ROLL.....

THIS AGREEMENT, entered into this 24th day of April, 1973, by and between JOHN S. BOOTH and FRANK E. COWAN, as TRUSTEES of the Bird Bay Village Trust with full power to sell, convey, hypothecate, lease, encumber, mortgage, lien and otherwise deal with said property, herein referred to as "Owners", and to the CITY OF VENICE, a municipal corporation, in the County of Sarasota, Florida, herein referred to as the "City."

WITNESSETH:

WHEREAS, the Owners have, by warranty deed from the Venice Memorial Park, Inc., a Florida Corporation, dated April 12, 1973 and filed on April 16, 1973 in the Office of the Clerk of Courts, Sarasota County in O.R. Book 988, Page 144 et seq., become owners of the herein described property, and successors in interest under the agreement, dated August 21, 1972 of the prior owners with the City and,

WHEREAS, by petition of Valencia Development Corporation, a Florida Corporation, as Owner then, and by agreement of August 21, 1972, with the City, and by City Resolution #363-72, dated August 23, 1972, all of which instruments were filed for record in the Office of the Clerk of Courts, Sarasota County, on October 25, 1972, in O.R. Book 977, Pages 1368 seq., and in O.R. Book 977, Pages 1373 et seq., the property, described therein, was annexed to the City of Venice, for use (except as to the cemetery area) as a planned residential community and,

WHEREAS, the cemetery area, comprising 30 acres, not then a part of the planned residential development, is described as follows:

Commence at the NW Corner of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 7, Twp. 39 S, Rge. 19 E, Sarasota County, Florida; thence N 89 deg. 31' 14" W along the N line of said Sec. 7, a distance of 655.17'; thence N 23 deg. 56' E 86.21; thence

N 66 deg. 04' W 75.81' to the POB; thence N 23 deg. 56' E 303.95' ; thence N 5 deg. 35' W 853.23'; thence N 359.27'; thence W 15.00'; thence S 84 deg. 00' W 430.00'; thence S 69 deg. 30' 40" W, 607.9' to the easterly R/W of Seaboard Coastline Railroad (100' Wide); thence S 11 deg. 57' 40" E, along said R/W, 1208.06' to the northerly R/W of U/S #41; thence S 66 deg. 04' E along said R/W, 475.19'; thence N 23 deg. 56' E 250.00'; thence S 66 deg. 04' E 203.18 ' to the POB and containing 30.00 acres of land; said property being and lying in Sec. 6 & 7, Twp. 39 S, Rge. 19 E, Sarasota County, Florida.

and which parcel appeared as Parcel A on Exhibit (A-2) attached to the agreement of August 21, 1972, and,

WHEREAS, the August 21, 1972 agreement, provided, in Paragraph 11.-(b), entitled, "Reservations and Restrictions" as follows: "It is agreed that upon failure of the Owners, within a reasonable time, to obtain the requisite license for the cemetery, that Parcel A, Exhibit (A-2) be, then, deemed wholly a part of the planned residential community herein; that the master plan be amended by petition and that the Council, then, modify the uses permitted and the density to be allowed thereon, in a manner reasonably related to the overall project density and use." and,

WHEREAS, a reasonable time, has now elapsed, within which the license for the cemetery was to have been obtained, and the Owners having now petitioned the City, pursuant to the terms of the agreement's Paragraph 11-b, and the cemetery being now deemed a part of the planned residential community, and the agreement further requiring, thereupon, that the master plan for the community, as expanded, be amended and that the uses and density to be permitted thereon be redetermined, "in a manner reasonably related to the overall project density, and use." and,

WHEREAS, the Owners and the City, by agreement, dated February 15, 1973, filed in O.R. Book 997, Pages 1506 et seq., on April 11, 1973, which filing included the petition and the Resolution of the City Council, annexed to the City of Venice a 19 acre parcel, contiguous to the heretofore annexed Bird Bay Village, and which agreement, of April 11, 1973, amended the agreement of August 21,

20000

1972 and modified the master plan of Lane L. Marshall Associates, dated June 26, 1972, attached thereto as Exhibit A-2, by substituting therefor a revised master plan (designated "site plan"), as prepared by James C. Padgett, A.I.A., dated February 1, 1973, as the basis for development of the extended planned residential community and,

WHEREAS, the Owners have, by warranty deed from Valencia Development Corporation, a Florida Corporation, dated April 12, 1973, and filed on April 16, 1973, in the Office of the Clerk of Courts, Sarasota County, in O.R. Book 998, Page 142 et seq., become owners of all the property comprising the planned residential community now known as, Bird Bay Village and,

WHEREAS, by virtue of these conveyances and by reason of covenants running with the land contained in the agreement with the City, the Owners are in unified control of all the property comprising the planned residential community, known as Bird Bay Village.

NOW THEREFORE, in consideration of the mutual understanding and by mutual agreement of the Owners and the City, the agreements dated August 21, 1972, and February 15, 1973, are amended and modified in the following manner, to-wit:

1. Paragraph 1 "Land Use", is amended by deleting the phrase "Lane L. Marshall and Associates, Land Planners and Consultants, dated, June 26, 1972" and substituting therefor, the following phrase, "James C. Padgett, A.I.A., dated April 13, 1973."
2. Paragraph 11 "Other Reservations and Restrictions" is amended, by deleting, entirely, the sub-paragraphs (a), (b) and (c) and substituting therefor the following sub-paragraphs (a), (b), (c) and (d):
 - (a) It is agreed that Parcel A, Exhibit A-2 comprising 30 acres be and is, a part of the planned residential community. On this basis, the project now comprises 195.6 acres.
 - (b) That the description of the area added herein to the planned residential community, known as Bird Bay Village is as follows:

Commence at the NW corner of the NE ¼ of the NE ¼ of Sec. 7, Twp. 39 S, Rge. 19E, Sarasota County, Florida; thence N 89 deg. 31' 14" W along the N line of said Sec. 7 a distance of 655.17'; thence N 23 deg. 56' E 86.21'; thence N 66 deg. 04' W 75.81' to the POB; thence N 23 deg.

56' E 303.95'; thence N 5 deg. 35' W 853.23';
thence N 359.27'; thence W 15.00'; thence S
84 deg. 00' W 430.00'; thence S 69 deg. 30'
40" W 607.9' to the easterly R/W of Seaboard
Coastline Railroad (100' Wide); thence S 11
deg. 57' 40" E, along said R/W, 1208.06' to
the Northerly R/W of U.S. #41; thence S 66 deg.
04' E along said R/W, 475.19'; thence N 23 deg.
56' E 250.00'; thence S 66 deg. 04' E 203.18'
to the POB and containing 30.00 acres of land
said property being and lying in Sec. 6 & 7,
Twp. 39 S, Rge. 19 E, Sarasota County, Florida.

(c) It is agreed that, of the 30 acres referred to
in subparagraph (a) immediately above, 4 acres,
already zoned B-1 Business, lying along the
Venice By-Pass, be used for business purposes,
and that the remaining 26 acres already zoned
R-3 Residential, be used for residential pur-
poses.

(d) Overall density for living units for the entire
project will be limited to 8.4 units per acre,
and the open space ratio will be a minium of
73%.

3. In all other respects the terms of the agreement of
August 21, 1972, (except as modified by the agreement
dated February 15, 1973) are confirmed and re-adopted
as a part hereof, as though fully set forth herein.

IN WITNESS WHEREOF, the City has caused this instrument to be
executed by its proper officials thereunto duly authorized and
its corporate seal hereunto affixed, and the Owners have hereunto
set their hands and seals the day and year first above mentioned.

CITY OF VENICE, FLORIDA

BY: Thomas W. Humphreys
MAYOR

Attest: Alvin J. [Signature]
City Clerk

OWNERS:
BYRD BAY VILLAGE TRUST

John S. Booth
John S. Booth
As Trustee U/A

Frank E. Cowan
Frank E. Cowan
As Trustee U/A

WITNESSES:

Diane L. McGuane

Kathy Kall
As to both Trustees

STATE OF FLORIDA)
 : SS
COUNTY OF SARASOTA)

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared THOMAS HUMPHRIS and STEPHEN ALBEE, JR. respectively Mayor and City Clerk of the City of Venice, a municipal corporation in the County of Sarasota, State of Florida, to me personally known, and who executed the foregoing Agreement in the name of and for that corporation, affixing the Corporate Seal of that corporation thereto.

WITNESS my hand and official seal in the County and State last aforesaid this 30th of April, 1973.

Marion S. Mayo
Notary Public, State of Florida at Large

My commission expires: Notary Public, State of Florida at Large
My Commission Expires May 21, 1976
Bonded by U. S. F. & C.

STATE OF FLORIDA)
 : SS
COUNTY OF SARASOTA)

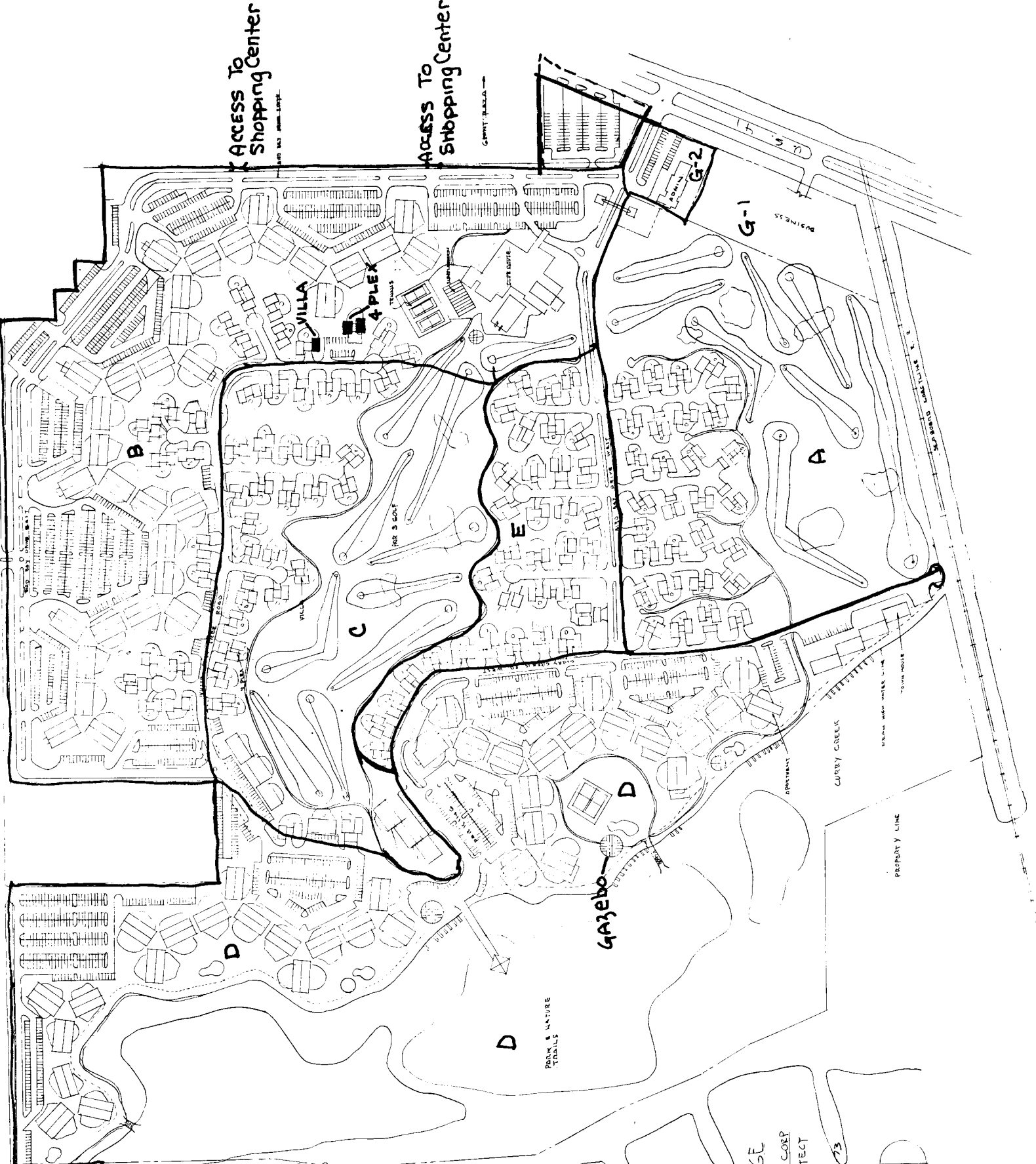
I HEREBY CERTIFY that on this day, before me, an officer duly qualified to take acknowledgments, personally appeared JOHN S. BOOTH and FRANK E. COWAN, Trustees of Bird Bay Village Trust, to me personally known to be the persons described in and who executed the foregoing instrument and acknowledged before me that, they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid. this 24th of April, 1973.

Deane S. McGuane
Notary Public, State of Florida at Large

-My commission expires: Notary Public, State of Florida at Large
My Commission Expires Mar. 20, 1976
Bonded by U. S. F. & C.

215 B
215.P



SUBJECT: BIRD BAY VILLAGE REDEVELOPMENT PLAN AREA
 PROJECT: VILLAGE DEVELOPMENT CORPORATION
 DATE: APRIL 18, 1977

I. LEGS AREA CALCULATIONS

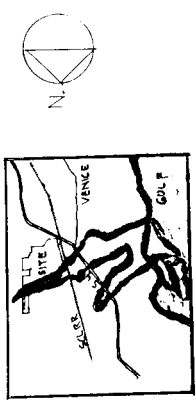
NO.	NO. UNITS	AREA (S.F.)	AREA (AC.)
1. VILLAGE	128	1,280,000	29.07
2. TERRAZZAS	128	1,280,000	29.07
3. GARAGE	128	1,280,000	29.07
4. PARKING	128	1,280,000	29.07
5. TOTAL	512	5,120,000	117.28

II. TOTAL AREA CALCULATIONS

NO.	NO. UNITS	AREA (S.F.)	AREA (AC.)
1. VILLAGE	128	1,280,000	29.07
2. TERRAZZAS	128	1,280,000	29.07
3. GARAGE	128	1,280,000	29.07
4. PARKING	128	1,280,000	29.07
5. TOTAL	512	5,120,000	117.28

III. CROSS REGULATORY DENSITY - 1.875 D.F. 8.40 D.F. AC.
 * AS PER C.O.P. ZONING REGULATIONS, SHERIDAN COUNTY, IOWA
 ** RECALCULATED BY THE ARCHITECT

BIRD BAY VILLAGE
 VENCE, IOWA
 VALENCIA DEVELOPMENT CORP.
 JAMES C. PADGETT, ARCHITECT
 SADDLEBROOK, IOWA



AREA MAP

215B
215P

JAMES C. PADGETT, ARCHITECT
 2051 MAIN STREET • SARASOTA • FLORIDA 33577
 SUITE 113 • TELEPHONE NUMBER 955-8370
 MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS

SUBJECT: "BIRD BAY" SITE DEVELOPMENT PLAN DATA.*

FOR: VALENCIA DEVELOPMENT CORPORATION

DATE: APRIL 13, 1973**

I. GROSS AREA TABULATIONS

A - Residential 188.46 ac. 195.6 ac. - (Gross)
 B - Commercial 7.14 ac.

II. % OF GROSS ACREAGE FOR:

ITEM	NO. UNITS	NO. ACRES	% OF GROSS ACREAGE
A - Villas	158	3.98	2.04
B - 4 Plex	128	1.61	.82
C - Townhouses	78	1.07	.55
D - Apartments	1279	10.00	5.11
E -			
F - Clubhouse		1.15	.59
G -			
H - Administration		.14	.07
	1643 du	17.95	9.18 - SUB TOTAL (1)
J - Parking (2:1)	3226	26.40	13.50
K - Roads		8.22	4.20
		34.62	17.70 - SUB TOTAL (2)
L - Open space (gross ac. minus sub totals (1) and (2))		183.03	73.12
		195.60	100.00 - TOTALS

III. GROSS RESIDENTIAL DENSITY = $\frac{1643 \text{ du}}{195.6 \text{ ac.}} = 8.40 \text{ du/ac.}$

Residential Units By August 21, 1972 Agreement 1643
 New Residential Units From Cemetery 30 Ac. + Scheiar 19 Ac. 1437
 Density For New Area = $206 \div 49 \text{ Ac.} = 4.20 \text{ Per Ac.}$ 206
 * As per P.U.D. zoning regulations, Sarasota County, Florida
 Density For New Residential Area = $206 \div 26 \text{ Ac.} = 7.92 \text{ Per Ac.}$

** Revised as per new site plan (4/13/73)

PETITION FOR INCORPORATION OF CERTAIN PROPERTY, AS PART OF THE PLANNED RESIDENTIAL COMMUNITY, KNOWN AS BIRD BAY VILLAGE IN THE CITY OF VENICE AND FOR MODIFICATION OF THE AGREEMENTS RELATING THERETO:

TO: THE HONORABLE MAYOR AND CITY COUNCIL CITY OF VENICE, FLORIDA

COMES NOW, JOHN S. BOOTH and FRANK E. COWAN, as TRUSTEES, of the Bird Bay Trust with full power to sell, convey, hypothecate, lease, encumber, mortgage, lien and otherwise deal with the property herein described, representing that the following information, including that contained in the attached exhibit is true and correct to the best of their knowledge and belief, and they respectfully request that:

- 1. The boundaries of the planned residential community now known as Bird Bay Village, as established in the annexation agreement, dated August 21, 1972, and as extended by the annexation agreement dated February 15, 1973, now be extended further, so as to include the cemetery area (originally excluded) described as follows:

Commence at the NW Corner of the NE 1/4 of the NE 1/4 of Sec. 7, Twp. 39 S, Rge 19 E, Sarasota County, Florida; thence N 89 deg. 31' 14" W along the N line of said Sec. 7, a distance of 655.17'; thence N 23 deg. 56' E 86.21'; thence N 66 deg. 04' W 75.81' to the POB; thence N 23 deg. 56' E 303.95'; thence N 5 deg. 35' W 853.23'; thence N 359.27'; thence W 15.00'; thence S 84 deg. 00' W 430.00'; thence S 69 deg. 30' 40" W 607.9' to the easterly R/W of Seaboard Coastline Railroad (100' Wide); thence S 11 deg. 57' 40" E, along said R/W, 1208.06' to the Northerly R/W of U.S. #41; thence S 66 deg. 04' E along said R/W, 475.19'; thence N 23 deg. 56' E 250.00'; thence S 66 deg. 04' E 203.18' to the POB and containing 30.00 acres of land; said property being and lying in Sec. 6 & 7, Twp. 39 S, Rge. 19 E, Sarasota County, Florida, which deemed wholly a part of the planned residential community.

- 2. The master plan of the planned residential community known as Bird Bay Village, be amended accordingly and the agreements, creating the planned residential community, be modified and amended so as to establish the uses and density permitted within the new addition in a manner reasonably related to the overall project density and use.

- 3. Exhibit A, attached hereto and made a part hereof shows, (a) The boundaries of the planned residential community, as extended, (b) The extent of the new area added herein, (c) Indicates the existing zoning categories, and (d) Dates of OFFICIAL RECORD DATA.

- 4. Title to the property, described herein, is in the names of the petitioners, who own in their names, jointly as Trustees, all the remaining property comprising the planned residential community, now known as Bird Bay Village.

215-P

215-B

WHEREFORE, the undersigned request that the City Council take the action necessary to implement the integration of the property herein, described, as part of the planned residential community, now known as Bird Bay Village, all in accordance with the provisions for such action, as set forth above, and in the agreements creating and modifying the planned residential community.

SIGNED, SEALED AND DELIVERED:
In the Presence of:

Diane G. McGuane

Kathy Kall

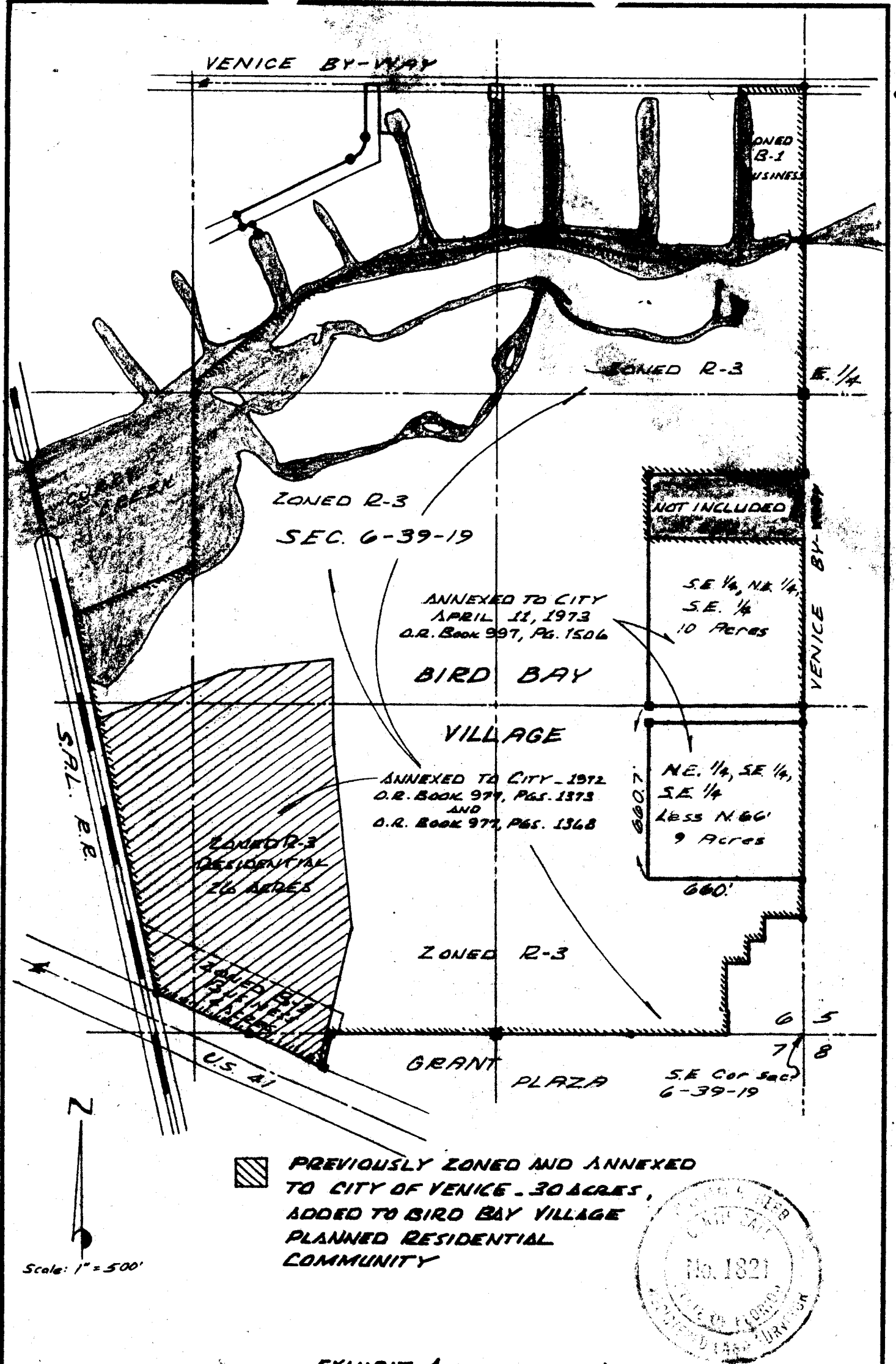
(As to All Signatories)

OWNERS:
TRUSTEES OF BIRD BAY TRUST

John S. Booth

Frank E. Cowan
Frank E. Cowan

215B



PREVIOUSLY ZONED AND ANNEXED TO CITY OF VENICE - 30 ACRES, ADDED TO BIRD BAY VILLAGE PLANNED RESIDENTIAL COMMUNITY

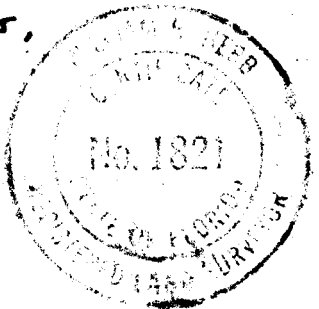


EXHIBIT-A

APRIL 20, 1973

LEGEND:

- I. P. ● IRON PIPE
- C. M. ■ CONCRETE MONUMENT
- P. R. M. — PERMANENT REFERENCE MONUMENT
- P. O. B. — POINT OF BEGINNING

MEMBER:
 FLA. SOCIETY OF PROFESSIONAL LAND SURVEYORS
 MANASOTA CHAPTER OF THE FLA. SOCIETY
 AMERICAN CONGRESS ON SURVEYING & MAPPING

633 EAST VENICE AVENUE
 MAIL: P. O. BOX 752
 VENICE, FLORIDA 33595
 PHONE: 488-7759

COBIA & HEBB, INC.
 PROFESSIONAL LAND SURVEYORS

BY: *William H. Hebb*

WILLIAM H. HEBB, LICENSE NO. 1821
 ARCHIE B. BROWN, ASSOCIATE

JAMES C. PADGETT, ARCHITECT

2051 MAIN STREET • SARASOTA • FLORIDA 33577
SUITE 113 • TELEPHONE NUMBER 955-8370
MEMBER OF THE AMERICAN INSTITUTE OF ARCHITECTS

215.B

SUBJECT: "BIRD BAY" SITE DEVELOPMENT PLAN DATA.*
FOR: VALENCIA DEVELOPMENT CORPORATION
DATE: APRIL 13, 1973**

I. GROSS AREA TABULATIONS

A - Residential 188.46 ac. 195.6 ac. (Gross)
B - Commercial 7.14 ac.

II. % OF GROSS ACREAGE FOR:

ITEM	NO. UNITS	NO. ACRES	% OF GROSS ACREAGE
A - Villas	158	3.98	2.04
B - 4 Plex	128	1.61	.82
C - Townhouses	78	1.07	.55
D - Apartments	1279	10.00	5.11
E -			
F - Clubhouse		1.15	.59
G -			
H - Administration		.14	.07
	1643 du	17.95	9.18 - SUB TOTAL (1)
J - Parking (2:1)	3286	26.40	13.50
K - Roads		8.22	4.20
		34.62	17.70 - SUB TOTAL (2)
L - Open space (gross ac. minus sub totals (1) and (2))		143.03	73.12
		195.60	100.00 - TOTALS

III. GROSS RESIDENTIAL DENSITY = $\frac{1643 \text{ du}}{195.6 \text{ ac.}} = 8.40 \text{ du/ac.}$

Residential Units By August 21, 1972 Agreement 1643
New Residential Units From Cemetery 30 Ac. + Scheiar 19 Ac. 1437

* Density For New Area = $206 \div 49 \text{ Ac.} = 4.20 \text{ Per Ac.}$
As per P.U.D. zoning regulations, Sarasota County, Florida
Density For New Residential Area = $206 \div 26 \text{ Ac.} = 7.92 \text{ Per Ac.}$
** Revised as per new site plan (4/13/73)



April 7, 1973

The Honorable Mayor and Members
of the Venice City Council
City Hall
Venice, Florida 33595

Gentlemen:

You will recall that Bird Bay Village, a planned residential community, was annexed to the City in October, 1972. It was the first Planned Unit Development project in Sarasota County. There is now pending before the Council our request for inclusion within this project, approximately 20 acres, located along Venice By-Way, contiguous to the eastern boundary of Bird Bay. Since no increase in the overall residential units to be constructed was sought, the project density was voluntarily reduced to 8-3/4 per acre. Re-zoning on the new parcel to R-3 was recently approved and completion of the annexation is scheduled for the Council meeting to be held on April 10, 1973.

In the course of preparing the changes in the master plan, so as to accommodate this added area, and also, in the preparation of the subdivision plats and their detail for advance approval of the Council, so as to permit the start of our actual construction, we found that the area designated for the golf course in the original master plan was woefully inadequate, even with the added 20 acres above. Regretfully, we find that our only solution, consistent with our promised objective of making Bird Bay Village "the finest Planned Unit Development in Florida," is to abandon the plans for a cemetery. The cemetery 30 acres is shown on the original master plan, but, by the agreement (paragraph II-A), was excluded from the planned residential community as such. The agreement does provide for the inclusion of this area as part of the Bird Bay community, in the event it is not used as a cemetery.

The Honorable Mayor and Members
of the Venice City Council

April 7, 1973
page 2

215B

It is my purpose in writing this letter, to advise you in advance, of our problem and our proposed solution. Under normal circumstances, where land areas are re-adjusted to changed use requirements, this particular problem would not arise. The difficulty here results from State of Florida requirement of a minimum permitted area for cemeteries, of 30 acres. We had made plans for this bare minimum and now find we must use a part of that. Ergo, we will be unable to meet the cemetery requirements. I need not point out that the usual solution - acquisition of an adjoining parcel - is not available to us. We can only go west and there we are blocked by the Seaboard Coastline RR right of way.

I am therefore, calling to your attentions, that under the provisions of paragraph II-C of our original agreement, dated August 21, 1972, that we, as owners, have failed, "within a reasonable time, to obtain the requisite license for a cemetery," and that, Parcel A, Exhibit A-2 (the cemetery), be "deemed wholly a part of the planned residential community." I further ask that "the master plan be amended by petition and the Council, then, modify the uses permitted and the density to be allowed thereon, in a manner reasonably related to the overall project density and use." I propose further, that this petition be presented for consideration of the Council at its meetings scheduled for April 23rd and 24th, 1973.

In anticipation, a revised master plan of Bird Bay Village, with the cemetery area included as part of the planned residential community, has been prepared, together with a re-computation of overall density and that attributable to the newly added community area. This data will, among other things, demonstrate the following:

1. The addition of 206 residential units within the added area zoned R-3, at a density of less than 8 units per acre.
2. The business use of approximately 4 acres along the By-Pass, already zoned B-1.
3. The reduction overall of density for residential use to less than 8 1/2 units per acre. (10 units per acre permitted by original agreement).
4. Buffering the residential usage from the By-Pass by utilizing the established business use on the highway.

The Honorable Mayor and Members
of the Venice City Council

April 7, 1973
page 3

215B

In my own, and all my associates' considered judgments, the proposal, though sacrificing the cemetery, an admitted community need, will immeasurably improve the Bird Bay Village and its amenities. You may rest assured that we will endeavor to seek an alternative site in the area for a cemetery. Finally, you know we are anxious to get into the construction phase of Bird Bay.

Your prompt action will quicken us to this goal. It is the feeling of all of us, that with your cooperation now, and the prompt establishment of this final master plan, we can avoid bothering you in the future with the amendments that would otherwise be likely.

Respectfully submitted,

VALENCIA DEVELOPMENT
CORPORATION



John S. Booth, President

JSB:w

629 Alhambra Road

Venice, Florida 33595



A CONDOMINIUM ON THE GULF OF MEXICO

215-B

BIRD BAY PROVISIONAL DESIGN DATA

Total Acreage

151

Residential	146.9
Commercial	3.9

Living Units

Units /Acre

Cluster Villas	143.0	3.5
Town Houses	42.0	3.5
4-Plex Units	88.0	4.4
Water Front Apts.	576.0	12.6
Rental Apartments	588.0	21.9
<u>Total</u>	<u>1437</u>	<u>10.0</u>

Open Space

Park Area	53.5 ac.
Par 3 Golf Course	21.4 ac.
General	10.1 ac.
<u>Total</u>	<u>85.0 ac.</u>

56%

PARKING RATIO UNIT

2 to 1

OCT 25 3 27 PM '72

FILED AND RECORDED
ROBERT H. ZIMM, CLERK
SARASOTA COUNTY, FLA.

483394

AMENDMENT TO ANNEXATION AGREEMENT

THIS AMENDMENT TO ANNEXATION AGREEMENT made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morris, Jr. and Jaime S. Carrion, hereinafter referred to as "Owner," and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City."

W I T N E S S E T H :

WHEREAS, City and Amalgamated Transit Union, Trustees, and Valencia Development Corporation entered into an Agreement dated August 21, 1972, recorded in Official Records Book 977 at page 1373 of the Public Records of Sarasota County, Florida, in which certain properties more particularly described therein were annexed to the City of Venice pursuant to the terms and provisions of that Agreement; and

WHEREAS, City and Charles F. Schiear, Jr. as Trustee U/A dated October 24, 1966, entered into an Agreement dated February 15, 1973, recorded in Official Records Book 997, page 1510 of the Public Records of Sarasota County, Florida, in which land contiguous to the above described lands were annexed to the City of Venice pursuant to the terms and provisions of that Agreement; and

WHEREAS, City and Valencia Development Corporation entered into an Amendment to the above Agreement dated April 24, 1973, recorded in Official Records Book 999, page 2130 of the Public Records of Sarasota County, Florida; and

WHEREAS, a portion of said lands have heretofore been developed by Valencia Development Corporation and submitted to condominium ownership as portions of Bird Bay Village Unit One; and

WHEREAS, the remainder of the annexed lands have been conveyed by Valencia Development Corporation to Venice Properties, Inc. a Florida corporation hereinafter called "Properties;" and

WHEREAS, Properties has conveyed a portion of the remaining undeveloped lands to Owner by warranty deed dated June 14, 1977, recorded in

Official Records Book 1177, page 1912 of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties has granted to Owner and Jaime S. Carrion and Robert A. Morris, Jr. options to purchase the remainder of the undeveloped lands as evidenced by various Memorandum and Notice of Option to Purchase dated June 14, 1977, and recorded respectively in Official Records Book 1218, beginning at pages 689, 694 and 697, Public Records of Sarasota County, Florida; and

WHEREAS, Properties has leased with an option to purchase the golf course portion of said lands to Bird Bay Golf Club, Inc., a Florida corporation owned and controlled by Robert A. Morris, Jr. and Jaime S. Carrion, as is more particularly described in the Memorandum and Notice of Lease Agreement with Option to Purchase dated March 2, 1977, recorded in Official Records Book 1177, page 1935 of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties has leased with an option to purchase the Administration Building and Model Center site to Bird Bay Realty Company, a Florida corporation owned and controlled by Robert A. Morris, Jr. and Jaime S. Carrion, as is more particularly described in the Memorandum and Notice of Lease Agreement with Option to Purchase dated June 14, 1977, recorded in Official Records Book 1177, page of the Public Records of Sarasota County, Florida; and

WHEREAS, Properties, Bird Bay Golf Club, Inc. and Bird Bay Realty Company are executing this Agreement for the purpose of evidencing their consent hereto; and

WHEREAS, Owner desires to modify the original Annexation Agreements as Amended, altering the land use plan for the Planned Residential Community and City desires to modify the Agreement by providing for the application of certain provisions from the Code of the City of Venice to the future development of said undeveloped lands.

NOW THEREFORE, in consideration of the mutual agreements herein undertaken, the parties hereto agree that the above described Annexation Agreement be amended and modified as follows:

1. Paragraph 1 is hereby amended to read as follows:

1. LAND USE:

Owner will develop the lands in a planned residential community substantially in accordance with the land use Master Plan thereof prepared by Robert A. Morris, Jr., AIA, initialed by Owner and City and attached hereto as Exhibit "A" and by this reference made a part hereof providing for a maximum density of 998 units in addition to the existing units in Bird Bay Village Unit One. The Planned Unit Development portion of said lands shall be developed in accordance with the portions of Chapter 20A of the Code of the City of Venice which are applicable to existing Planned Unit Developments. No building or occupancy permit shall be issued by the City with respect to any portion of said lands unless the same shall be embraced within the intent of said Master Plan or such modification or substitution thereof as may hereafter be approved by the City Council.

2. Paragraph 3 a) is hereby amended to read as follows:

- a) A preliminary subdivision plat or condominium plat, as appropriate, has been submitted to and approved by the City Council.

3. Paragraph 11(d) is hereby amended to read as follows:

(d) The Subdivision Regulations of the City of Venice shall apply where such regulations are appropriate and applicable and are not inconsistent with the Annexation Agreements as amended hereby. The maximum density for the development of the remaining undeveloped lands shall be reduced to 998 units as shown on the Master Plan attached.

This Agreement shall run with the land as described above and shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this Agreement by its duly authorized general partner and City has executed this Agreement by its duly authorized officials and its corporate seal affixed hereto effective the day and year first above written.

215.P

Witnesses:

Norma J. Dillon

Dianna L. Reid

BIRD BAY ASSOCIATES

By: Robert A. Morris, Jr.
Robert A. Morris, Jr.,
A General Partner

CITY OF VENICE

By: Harry E. Case
Mayor

(SEAL)

ATTEST:

By: [Signature]
City Clerk

C O N S E N T

The undersigned hereby consent to the foregoing Amendment to Annexation Agreement effective the day and year first above written.

Witnesses:

Norma J. Dillon

Dianna L. Reid

BIRD BAY GOLF CLUB, INC.

By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

BIRD BAY REALTY COMPANY

By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

Norma J. Dillon

Dianna L. Reid

VENICE PROPERTIES, INC.

By: James U. Wade
James U. Wade
As its President

Helene Reid

Georgia K. Sherer

STATE OF FLORIDA)
COUNTY OF SARASOTA)

The foregoing instrument was acknowledged before me this 6th day of January, 1978, by ROBERT A. MORRIS, JR., a general partner of BIRD BAY ASSOCIATES, a Florida General Partnership, on behalf of the

partnership, and as Vice President of BIRD BAY GOLF CLUB, INC. and BIRD BAY REALTY COMPANY, a Florida corporations, on behalf of the corporations.

Norma J. Dillon
Notary Public
My commission expires:

Notary Public, State of Florida at Large
My Commission Expires May 2, 1979
Bonded by American Fire & Casualty Co.

STATE OF FLORIDA)
COUNTY OF SARASOTA)

The foregoing instrument was acknowledged before me this 8th day of February, 1978, by HARRY E. CASE, Mayor of the CITY OF VENICE, and by STEVE ALBEE, JR., City Clerk of the City of Venice, a municipal corporation in the County of Sarasota, State of Florida, on behalf of the corporation.

Norma J. Bradford
Notary Public
My commission expires:

Notary Public, State of Florida at Large
My Commission Expires July 10, 1981
Bonded By U S F & G

STATE OF FLORIDA)
COUNTY OF SARASOTA)

The foregoing instrument was acknowledged before me this 3rd day of January, 1978, by JAMES U. WADE, President of VENICE PROPERTIES, INC., a Florida corporation, on behalf of the corporation.

Helena A. Read
Notary Public
My commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT 2 1981
BONDED THROUGH GENERAL INS. UNDERWRITERS

RECORDER'S MEMO Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

FILED AND RECORDED
R. H. HACKNEY, CLERK
SARASOTA COUNTY, FLA.
FEB 13 10 13 AM '78

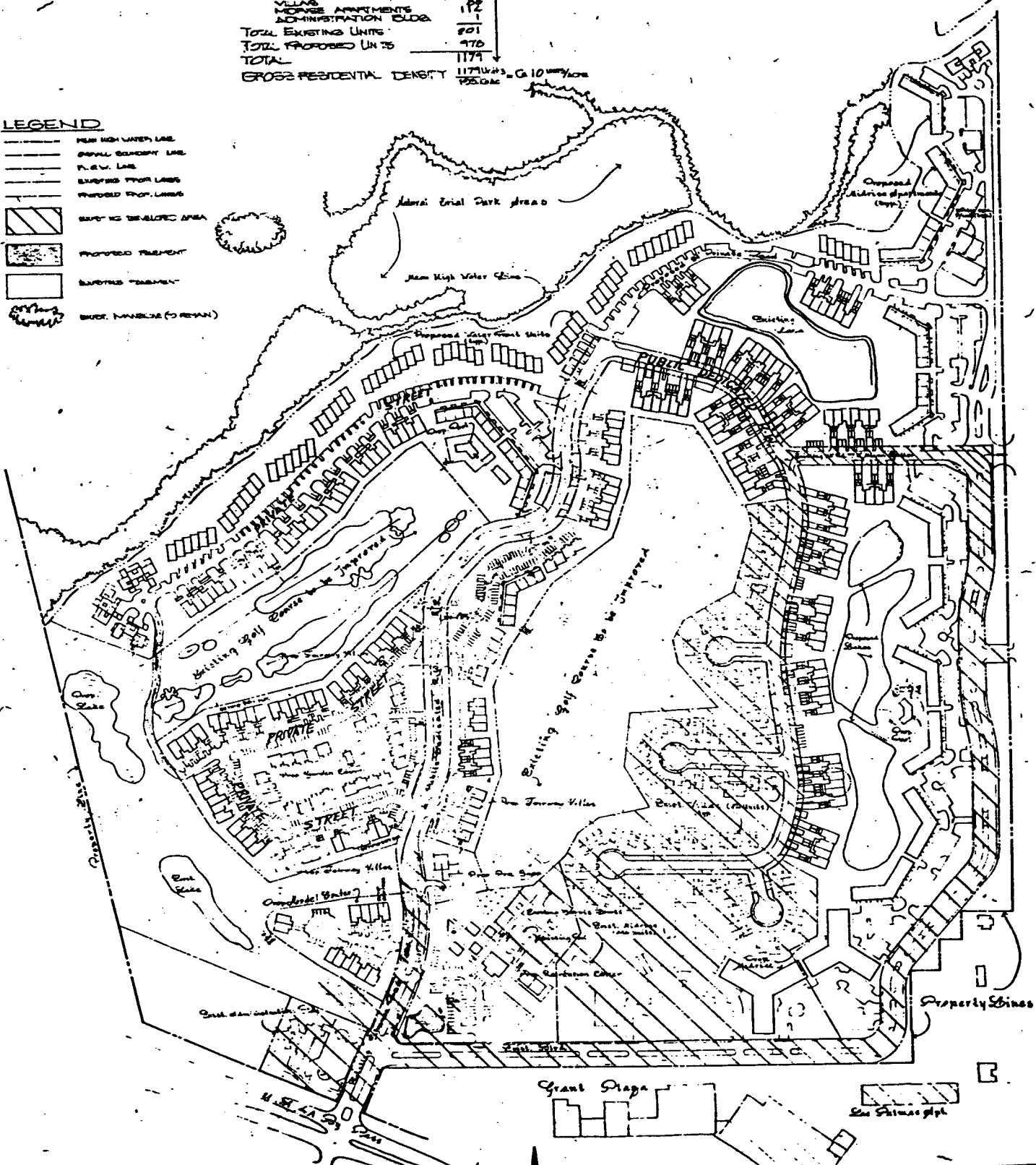
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Preliminary Site Analysis

GROSS AREA	
PROPOSED UNITS DISTRIBUTION	40 Units
VILLAGES	180
INDUSTRY APARTMENTS	240
WATERFRONT UNITS	
CLUBHOUSE	
PRO SHOP	
EXISTING UNITS DISTRIBUTION	
VILLAGES	192
INDUSTRY APARTMENTS	
ADMINISTRATION BLDG.	
TOTAL EXISTING UNITS	192
TOTAL PROPOSED UNITS	470
TOTAL	1174
GROSS RESIDENTIAL DENSITY	1174 UNITS / 100 ACRES = 11.74 UNITS/ACRE

LEGEND

- NEAR HIGH WATER LINE
- PARCEL BOUNDARY LINE
- P.E.W. LINE
- EXISTING PROP. LINES
- PROPOSED PROP. LINES
- EXISTING DEVELOPED AREA
- PROPOSED TREES
- EXISTING "TERRACE"
- BRICK MANHOLE (TO REMAIN)



BIRD BAY VILLAGE SITE DEVELOPMENT #1

SCALE: 1" = 100'

VENICE, FLORIDA

PRELIMINARY PLAN

DEVELOPER'S AGREEMENT

MICROFILMED
ROLL215. C
215. P

THIS AGREEMENT, made and entered into this 21st day of December, 1977, by and between BIRD BAY ASSOCIATES, a Florida general partnership comprised of Robert A. Morris, Jr. and Jaime S. Carrion, hereinafter referred to as "Owner", and CITY OF VENICE, a municipal corporation in the County of Sarasota, State of Florida, hereinafter referred to as "City".

W I T N E S S E T H:

WHEREAS, Owner has acquired rights to properties described in Annexation Agreement recorded in O.R. Book 977, Page 1373, as amended in document recorded in O.R. Book 999, Page 2130, and as further amended by document recorded in O. R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, and

WHEREAS, certain questions have arisen as to the interpretation of the Agreement's referred to above, the City Zoning Code, the City Subdivision Ordinance and other ordinances of the City, and

WHEREAS, it is the intent of the Owner and City to clarify certain items pertaining to the above,

NOW, THEREFORE, it is agreed as follows:

1. The Owner has assured the City the implementation of the development as proposed in the new master plan approved by City Council on the 21st day of December, 1977, and recorded in O.R. Book 1219, Page 1414, of the Public Records of Sarasota County, Florida, does not constitute a development of regional impact or constitute a retriggering of a development of regional impact as provided in Chapter 380, Florida Statutes, and Owner has further agreed to take immediate steps to make application under Chapter 380 for a letter of determination. Owner agrees that it will not request the City to issue building permits or entertain planning procedures for more than the first 133 units of its development until said letter of determination is furnished to the City or until it complies with subparagraphs 1 or 2 of the following sentence. Furthermore, if it is found that the project is not vested or a substantial change has occurred which would trigger a DRI classification, Owner agrees either:

(1) to amend its master plan to reduce the total density of the units it intends to build to 798 units or to take whatever action is necessary to take the project out of a Development of Regional Impact, or

(2) secure a Development of Regional Impact determination by the appropriate governmental authority and follow the process outlined in Chapter 380 for a Development of Regional Impact if so required by that authority.

2. The Owner has determined that it will not make an application to rezone the project under the Planned Unit Development zoning category as provided in Chapter 20-A of the Code of Ordinances of the City of Venice, and therefore acknowledges that Owner must comply with the requirement of the particular zoning which is placed upon the property at this time (primarily R-3 except for a small portion that is zoned B-1). Owner does hereby agree to develop its property in accordance with Chapter 20A of the Code of the City.

3. Each time the Owner intends to develop another phase of its project, it will follow the subdivision regulations of the City and each time it is ready to start construction on condominiums or other dwellings in a new phase, Owner will file a site plan with the City of Venice for its approval, said site plan containing the information outlined in site plan approval check-off list attached hereto as Exhibit A and made a part hereof. The City shall not make unreasonable demands for material furnished under the site plan if said material has already been furnished to the City in the subdivision procedure.

4. It is agreed the master plan referred to in paragraph 1 above is conceptional in nature and the Owner and the City acknowledge the golf course lines will have to be amended so that any development or construction of buildings will fall outside the golf course, and the Owner will be permitted within reason to alter the location of buildings so as to conform to natural terrain and perserve trees.

5. The owner has previously sub vitted a dedication to open space to the City of Venice which has not been accepted by the City at this time. It is agreed that Owner will resubmit a dedication

within thirty (30) days of today's date using new legal descriptions which take into consideration the setback requirements of R-3 zoning as it pertains to the golf course boundaries.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, Owner has executed this agreement by its duly authorized general partner and City has executed this agreement by its duly authorized officials and its corporate seal affixed hereto, the day and year first above written.

Witnesses:
Norma J. Dillon
John W. Gardiner

BIRD BAY ASSOCIATES
By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
A General Partner

CITY OF VENICE
By: Harry E. Case
Mayor

(SEAL)

ATTEST:
By: [Signature]
City Clerk

C O N S E N T

The undersigned hereby consent to the foregoing Developer's Agreement effective the day and year first above written.

Witnesses:
Norma J. Dillon
John W. Gardiner

BIRD BAY GOLF CLUB, INC.
By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

Norma J. Dillon
John W. Gardiner

BIRD BAY REALTY COMPANY
By: Robert A. Morris, Jr.
Robert A. Morris, Jr.
As its Vice President

[Signature]
Margie M. [Signature]

VENICE PROPERTIES, INC.
By: James U. Wade
James U. Wade
As its President

RECORDER'S MEMO: Legibility of writing, typing, or printing for reproductive purpose may be unsatisfactory in this document when received.

FEB 13 10 13 AM '78

FILED AND RECORDED
R.H. HARRIS, CLERK
SARASOTA CO., FLA.

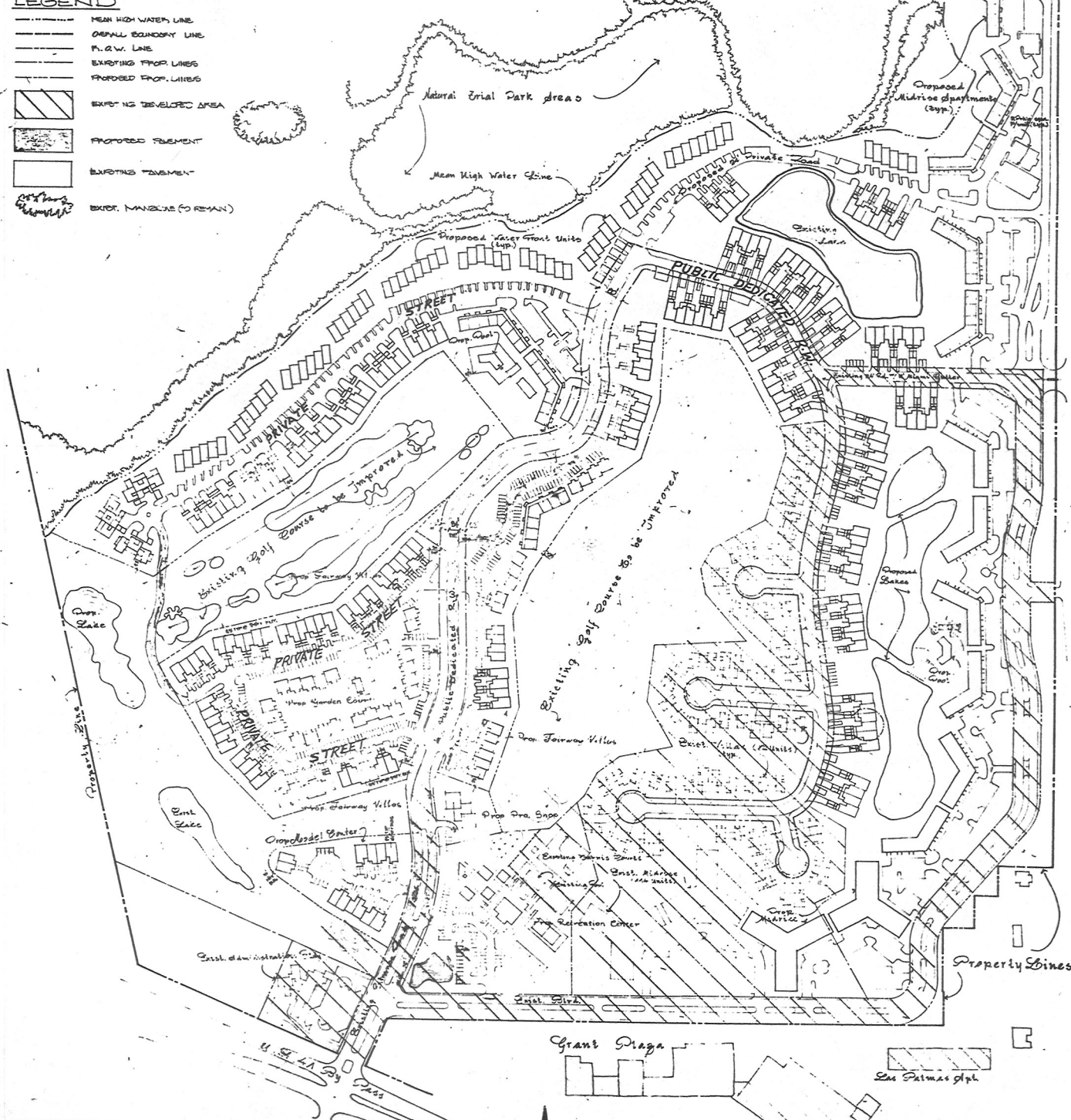
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Preliminary Site Analysis

GROSS AREA	
PROPOSED UNITS DISTRIBUTION	
GARDEN APARTMENTS	40 Units
VILLAGES	200
WATERFRONT UNITS	200
CLUBHOUSE	240
PRO SHOP	
EXISTING UNITS DISTRIBUTION	
VILLAGES	82
WATERFRONT UNITS	112
ADMINISTRATION BLDG.	117
TOTAL EXISTING UNITS	311
TOTAL PROPOSED UNITS	970
TOTAL	1281
GROSS RESIDENTIAL DENSITY	$\frac{1281 \text{ Units}}{105.0 \text{ ac}} = 12.2 \text{ units/acre}$

LEGEND

- MEAN HIGH WATER LINE
- OFFICIAL BOUNDARY LINE
- P.L.G.W. LINE
- EXISTING PROP. LINES
- PROPOSED PROP. LINES
- [Hatched Box] EXISTING DEVELOPED AREA
- [Dotted Box] PROPOSED PAVEMENT
- [White Box] EXISTING PAVEMENT
- [Cross-hatched Box] EXIST. MANHOLES (TO REMAIN)



BIRD BAY VILLAGE SITE DEVELOPMENT **SET 1**
 SCALE: 1" = 100'
 VENICE, FLORIDA.
PRELIMINARY PLAN



Record 21.20
the day 10/12/83

4

RECORDED BY STATE TREASURER
SARASOTA COUNTY, FLORIDA
SARASOTA COUNTY CLERK
SARASOTA, FLORIDA 33578

WARRANTY DEED

251758

GRANTOR: FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION,
a Corporation organized and existing under the laws
of the United States of America.

DS PAID 10/12/83
R H PROCTOR JR
SARASOTA
COUNTY CLERK
By: M. J. Wilkes
Deputy Clerk

GRANTEE: JOHN T. ROBERTSON
Grantee's Post Office Address: 2323 Teal Avenue
Sarasota, Florida 33582

O. R. 1562 PG 0183

Grantor, for and in consideration of the sum of one dollar, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to Grantee, and Grantee's heirs and assigns forever, the following described land, to wit:

SEE ATTACHED LEGAL DESCRIPTION

This conveyance is subject to the following:

a. Long-Term and Non-Exclusive Use Agreement dated November 30, 1977, and recorded in O.R. Book 1215, Page 2126, Public Records of Sarasota County, Florida.

b. Annexation Agreement with the City of Venice dated August 21, 1972, recorded in O.R. Book 977, Pages 1373, thru 1387, as amended in O.R. Book 997, Page 1510, O.R. Book 999, Page 2130, and O.R. Book 1219, Page 1414, and Resolutions and Petitions for Annexation in connection therewith recorded in O.R. Book 977, Page 1368, and O.R. Book 997, Page 1506, Public Records of Sarasota County, Florida.

c. Articles of Incorporation and Bylaws of BIRD BAY COMMUNITY ASSOCIATION, INC., recorded in O.R. Book 1269, Pages 640 thru 659, Public Records of Sarasota County, Florida.

d. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the City of Venice dated July 23, 1981 recorded in O.R. Book 1456, Pages 158 thru 165 of said records.

e. Sanitary Sewer Easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to the CITY OF VENICE recorded in O.R. Book 1456, at Page 156 of said records.

f. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for ingress, egress and parking, recorded in O.R. Book 1562, Page 174 of the Public Records of Sarasota County, Florida.

g. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for irrigation, recorded in O.R. Book 1562, Page 176 of the Public Records of Sarasota County, Florida.

h. Permanent easement from FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION to BIRD BAY CONDOMINIUM ASSOCIATION, INC. for drainage, recorded in O.R. Book 1562, Page 180 of the Public Records of Sarasota County, Florida.

i. Property Taxes for 1983 and subsequent years.

By this conveyance and Grantee's acceptance of it the parties covenant and agree that the property may be used for Goli Course purposes and related uses only. This restriction shall constitute a covenant running with the land and shall be binding upon the parties hereto, their successors and assigns, and shall be enforceable by Grantor, its successors and assigns, and third parties benefiting from this covenant.

Dated: January 27, 1983.

O. R. 1562 PG 0184

Witnesses:

[Signature]
[Signature]

FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America

By: [Signature]
Its Executive Vice President

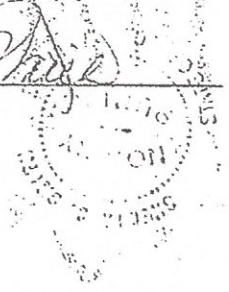
STATE OF FLORIDA
COUNTY OF ~~STATE~~ MANATEE

The foregoing instrument was acknowledged before me this 27th day of January, 19 83, by James U. Wade as Exec. Vice President of FIRST CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a Corporation organized and existing under the laws of the United States of America, on behalf of the corporation.

[Signature]
NOTARY PUBLIC

My Commission Expires:

Notary Public, State of Florida at large
My Commission expires January 27, 1984.



O.R. 1562 PG 0185

Commence at the Southwest corner of Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., run N89° 31'14"W, 661.50 feet along the Southerly line of said Section 6; thence N23°55'00"E, 250.80 feet; thence by a curve to the left Radius 610.71 feet, Arc 291.22 feet, Chord N10°16'21"E, 288.46 feet for a Point of Beginning. Thence continue along said curve to the left, Radius 610.71 feet, Arc 22.71 feet, Chord N04°27'12"W, 22.71 feet; thence by a curve to the right, Radius 305.00 feet, Arc 119.77 feet, Chord N05°43'53"E, 119.01 feet; thence N16°58'53"E, 75.26 feet to a point on the Southerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Southerly and Easterly boundary line of said Bird Bay I A Condominium by the following seven courses: S73°01'07"E, 129.13 feet; thence N76°44'55"E, 46.65 feet, thence N12°49'07"E, 180.71 feet; thence N55°59'07"E, 42.13 feet; thence N04°55'16"E, 143.08 feet; thence N66°28'25"W, 74.02 feet; thence N10°16'12"E, 234.73 feet to the most Southerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Pages 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Easterly boundary line of said Bird Bay II A Condominium by the following seven courses: N12°56'43"E, 121.28 feet; thence N27°36'33"E, 196.36 feet; thence N71°25'08"E, 247.92 feet; thence N40°20'30"E, 95.78 feet; thence N06°51'02"W, 259.85 feet; thence N41°29'47"E, 69.43 feet; thence East 10.00 feet; thence leaving said Easterly boundary line run N85°11'47"E, 156.81 feet; thence S53°55'53"E, 43.99 feet; thence S25°36'40"E, 284.87 feet to the Northwest corner of Bird Bay Village Condominium Unit 1, as recorded in Condominium Plat Book 6, Pages 53 thru 53I, Public records of Sarasota County, Florida; thence traverse along the Westerly boundary line of said Bird Bay Village Condominium Unit 1 by the following seventeen courses: S25°37'32"E, 33.93 feet; thence S03°41'20"E, 49.09 feet, thence S16°33'54"W, 215.13 feet; thence S60°45'36"W, 175.03 feet; thence S30°46'43"W, 75.80 feet; thence S12°57'23"E, 76.90 feet; thence S40°47'12"E, 184.39 feet; thence S86°52'06"W, 252.36 feet; thence S46°55'26"W, 30.67 feet; thence S06°58'55"W, 148.32 feet; thence S27°54'34"E, 154.77 feet; thence S76°39'26"W, 158.15 feet; thence S56°54'34"W, 80.99 feet; thence S25°42'06"W, 75.08 feet; thence S47°14'03"W, 150.75 feet; thence S86°31'17"W, 132.91 feet; thence S77°28'40"W, 207.18 feet to the Point of Beginning. Said tract contains 15.07 Acres more or less.

June 2, 1982

D.A. 1562 PG 0186

From the Southwest corner of the Southeast 1/4 of the Southeast 1/4 of Section 6, Township 39S., Range 19E., Sarasota County, Florida, run N89°31'14"W, 698.77 feet along the South line of the Southeast 1/4 of said Section 6; thence S23°56'00"W, 146.33 feet to the Northeasterly R/W line of Venice By-Pass (State Road No. 45-A, 200 foot R/W at this point); thence N66°04'00"W, along said Northeasterly R/W line 5.81 feet; thence N23°56'00"E, 250.00 feet; thence N66°04'00"W, 40.00 feet to the Westerly R/W of Bird Bay Drive West for a Point of Beginning. Thence N66°04'00"W, 848.51 feet to a point on the Easterly R/W line of Seaboard Coastline Railroad (100 foot R/W); thence N11°50'34"W, 975 feet more or less along said Easterly R/W line to the Mean High Water line of Curry Creek; thence Northeasterly along said Mean High Water line 55 feet more or less to the most Westerly corner of Bird Bay II A Condominium as recorded in Condominium Plat Book 13, Page 23 thru 23U, Public records of Sarasota County, Florida; thence traverse along the Southerly boundary of said Bird Bay II A Condominium by the following nine courses: S59°21'45"E, 255.41 feet more or less; thence S52°11'29"E, 81.56 feet; thence N86°46'08"E, 62.10 feet; thence N36°01'39"E, 170.02 feet; thence N53°48'01"E, 171.01 feet; thence N55°21'49"E, 184.74 feet; thence N60°00'22"E, 226.64 feet; thence N85°07'05"E, 197.53 feet; thence S73°06'25"E, 114.42 feet to a point on the Westerly R/W line of said Bird Bay Drive West; thence run along said Westerly R/W line by a curve to the left, Radius 270.00 feet, Arc 136.96 feet, Chord S23°50'48"W, 135.50 feet; thence S09°18'53"W, 147.33 feet to a point a point of intersection with said Westerly R/W line Bird Bay Drive West and the Northerly boundary line of Bird Bay I A Condominium, as recorded in Condominium Plat Book 11, Pages 37 thru 37J, Public records of Sarasota County, Florida; thence traverse along the Northerly, Westerly and Southerly boundaries of said Bird Bay I A condominium by the following fifteen courses: N56°56'08"W, 121.64 feet, thence S38°51'02"W, 190.45 feet; thence N77°45'43"W, 30.00 feet; thence S36°48'18"W, 106.43 feet; thence S70°12'25"W, 193.25 feet;

O.R. 1562 PG 0187

thence S68°55'08"W, 222.28 feet; thence S55°06'44"W, 148.54 feet; thence S34°20'53"E, 157.51 feet; thence S26°01'06"E, 167.22 feet; thence S44°03'15"E, 38.16 feet, thence S38°07'39"E, 120.66 feet; thence S63°23'51"E, 106.11 feet; thence N73°39'10"E, 177.00 feet; thence N75°00'42"E, 153.00 feet; thence S73°01'07"E, 52.35 feet to a point on said Westerly R/W line Bird Bay Drive West; thence by a curve to the left, Radius 385.00 feet, Arc 151.19 feet, Chord S05°43'53"W, 150.22 feet along said Westerly R/W line; thence continue along said Westerly R/W line by a curve to the right, Radius 530.71 feet, Arc 164.40 feet, Chord S03°21'21"W, 163.75 feet; thence leaving said Westerly R/W line run N 79°34'26"W, 50.65 feet; thence N41°27'56"W, 15.93 feet; thence N81°58'01"W, 40.85 feet; thence N07°30'19"E, 41.32 feet; thence N85°30'41"W, 81.17 feet; thence N04°31'32"E, 37.98 feet; thence N23°04'31"E, 49.27 feet; thence S76°00'18"W, 217.21 feet; thence by a curve to the left, Radius 43.00 feet, Arc 95.91 feet, Chord S12°06'33"W, 77.23 feet; thence S51°47'21"E, 142.85 feet; thence S70°25'45"E, 233.38 feet to point on said Westerly R/W line of Bird Bay Drive West; thence S23°56'00"W, 124.31 feet along said Westerly R/W line to the Point of Beginning. Said tract contains 18.25 Acres more or less.

June 2, 1982

Together with that certain access easement dated November 17, 1982 recorded in O.R. Book 1548, Page 672 of the Public Records of Sarasota County, Florida.

FILED AND RECORDED
JUN 13 06 PM '82

FILED AND RECORDED
CLIFFORD J. O'LEARY
SARASOTA CO. FLA.

251758