



**City of Venice
Planning & Zoning Division**

MEMORANDUM

TO: Chairman Snyder

FROM: Christina Rimes, Administrative Coordinator

SUBJECT: Pre-Annexation Agreement for SHYD,LLC Petition No. 16-01AN

DATE: October 3, 2017

The pre-annexation agreement for SHYD,LLC was approved by City Council on August 22, 2017 . It is currently awaiting the mayor's signature, so I have attached a draft of the agreement for your review in regards to Annexation Petition No. 16-01AN.

File No. 16-01AN

PRE-ANNEXATION AGREEMENT

This Agreement is made this _____ day of _____, 2017 by and between the CITY OF VENICE, FLORIDA, a municipal corporation (hereinafter referred to as "City") and SHYD, LLC, a Florida limited liability company (hereinafter referred to as "Owner"),

WHEREAS, the Owner owns parcels of land comprising approximately 9.79 acres in total located in Sarasota County, Florida which are more particularly described by the legal descriptions and map attached hereto as Exhibit "A" (hereinafter referred to as the "Subject Property"); and

WHEREAS, the Owner has filed an annexation petition pursuant to Section 171.044, Florida Statutes, seeking to voluntarily annex and include the Subject Property within the corporate limits of the City; and

WHEREAS, in order to encourage the City to annex the Subject Property the Owner offers the provisions contained herein as a contractual inducement to the City to act favorably upon its petition; and

WHEREAS, this Agreement, if accepted by the City, is a contract between the parties and is not meant as nor shall it be construed as a development order or any form of development approval; and

WHEREAS, the City has determined that in the event the Subject Property is annexed into the City, it would best serve the public interest that it be annexed subject to the terms and conditions contained herein.

NOW, THEREFORE, for and in consideration of the terms, conditions, and mutual covenants contained herein, the City and Owner agree as follows:

1. INTRODUCTORY CLAUSES. The above Whereas clauses are ratified and confirmed as true and correct.
2. CONDITION PRECEDENT. This Agreement shall not be binding or enforceable by either party unless and until the City duly adopts an ordinance annexing the Subject Property into the corporate limits of the City.
3. COMPREHENSIVE PLAN AND ZONING. The Subject Property currently has a Sarasota County Future Land Use designation of Low Density Residential and a Sarasota County zoning designation of Open Use Estate -2 (OUE-2). The Owner shall petition the

City to redesignate the Subject Property to a City Future Land Use category and rezone the Subject Property to a district or districts under the City Zoning Code concurrent with the City's consideration and adoption of an ordinance annexing the property into the corporate limits of the City. No development orders shall be granted until the Subject Property is so redesignated and rezoned. Following annexation, the Subject Property shall be subject to all codes, laws, ordinances, and regulations in force within the City.

4. CONCURRENCY EVALUATION NOT MADE: NO RELIANCE OR, VESTED RIGHT. Nothing contained in this Agreement and no review of the impacts of the proposed development of the Subject Property upon public facilities and services which has occurred in the process of reviewing this annexation or in negotiating this Agreement shall be considered a determination that adequate public facilities will be available concurrent with the impacts of development of the Subject Property. The Owner acknowledges and agrees that any such review of the impacts of development of the Subject Property shall offer no basis upon which the Owner may rely or upon which the Owner can assert that a vested property right has been created. It is specifically understood and agreed that a determination that adequate public facilities and services are available concurrent with the impacts of any proposed development must be made before any development order is granted in connection with the Subject Property.
5. EXTENSION OF WATER AND SEWER UTILITY LINES. The Owner shall construct and pay the costs of extending and sizing all offsite and onsite water and sewer utility lines adequate to serve the Subject Property as determined by the Director of Utilities and the City Engineer. All such work shall be performed in accordance with plans and specifications approved by the Director of Utilities and the City Engineer. Fire flows shall be determined by the Fire Chief with the joint cooperation of the Utilities Director and City Engineer. Owner shall convey all such water and sewer utility lines and lift stations to the City together with such easements as may be required for access to and maintenance of said lines and appurtenances. Utilities conveyed to the City shall be accepted for maintenance in accordance with all applicable City codes and policies which shall be applied to both onsite and offsite utility improvements.
6. WATER AND SEWER UTILITY CHARGES. The Owner shall pay all water and sewer utility rates, fees, and charges, including any capital charges such as water plant capacity

charges and sewer plant capacity charges, as determined by the City Code of Ordinances in effect at the time a building permit is issued for improvements that will be connected to the City's water and sewer utility systems.

7. EXTRAORDINARY MITIGATION FEE. In order to mitigate the effects of the proposed development upon the City, the Owner shall pay at the time of issuance of a Certificate of Occupancy an extraordinary mitigation fee, in the amount of \$2,225.23 per equivalent residential unit ("ERU"). The extraordinary mitigation fee shall be adjusted each fiscal year by an amount based on the fluctuations of the Consumer Price Index, subject to certain limitations and requirements as set forth in Exhibit "B" to this Agreement. For purposes of this Agreement, "equivalent residential unit" is defined as the average increment/amount of demand for applicable public facilities associated with a typical single-family detached residential dwelling unit.
8. SARASOTA COUNTY IMPACT FEES. The City collects certain impact fees enacted by Sarasota County within the City. Development of the Subject Property shall be subject to such impact fees and may also become subject to additional impact fees adopted by Sarasota County or the City in the future.
9. ATTORNEY FEE REIMBURSEMENT. The Owner shall reimburse the City all monies paid by the City to the City Attorney for services rendered concerning this annexation and all related matters.
10. INDEMNITY. It is agreed that if the City shall accept and include the Owner's lands for inclusion within its corporate limits pursuant to the petition for annexation, the Owner shall and will indemnify and save the City harmless 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 proceeding

The Owner further covenants and agrees 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 Subject Property, it shall be entitled to charge at such rates as may be prescribed from time to time by the City for comparable services outside the corporate limits.

The Owner further covenants and agrees, jointly and severally, to waive any claim for a

refund of ad valorem taxes levied by and paid to the City on the Subject Property for any periods subsequent to the acceptance by the City of the Owner's petition for annexation and prior to the establishment of the invalidity thereof in the manner aforesaid.

11. DEFAULT. Upon the breach by either party of any term or condition of this Agreement, and upon the failure to cure same after thirty (30) days written notice from either party, then the non-defaulting party shall have the right to enforce same or to perform any such term or condition and recover the costs of same from the defaulting party.
12. ATTORNEY'S FEES. In the event of any default pursuant to the terms of this Agreement, the prevailing party shall be entitled to recover all attorney's fees and costs from the other party, whether the same be incurred for negotiation, trial or appellate proceedings.
13. BINDING ON SUCCESSORS. The covenants contained herein shall run with the Subject Property and shall inure to the benefit of and be binding upon the respective successors, heirs, legal representatives and assigns of the parties to this Agreement.
14. ENTIRE AGREEMENT. This document constitutes the entire agreement of the parties and cannot be changed or modified except by instrument in writing duly approved by both parties,
15. INCORPORATION INTO ORDINANCE. This Agreement shall be incorporated into and shall become a part of the ordinance annexing the Subject Property into the City.
16. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, any and all actions by the City in reliance upon this Agreement may be voidable as determined by the City after notice to the Owner and public hearing.

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IN WITNESS WHEREOF, the City and the Owner set their hands and seals hereto on the day and year first above written.

CITY OF VENICE, FLORIDA

ATTEST:

John W. Holic, Mayor

Approved By City Council

Date: _____

APPROVED AS TO FORM:

City Attorney

WITNESSES:

Nan Briley
Print Name: NAN BRILEY

Gregory C. Roberts
Print Name: GREGORY C. ROBERTS

OWNER
SHYD, LLC, a Florida limited liability company

Mary Young
MARY YOUNG, Manager

EXHIBIT "A"

SUBJECT PROPERTY LEGAL DESCRIPTION

Parcel A:

Commence at the Southwest corner of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Southwest $\frac{1}{4}$ of Section 5, run East along the Section line a distance of 118.1 feet to a point, thence turn at an angle of North $00^{\circ}01'$ East a distance of 70.76 feet to a point; thence turn West at an angle of South $89^{\circ}58'$ West and run 118.07 feet to a point on the $\frac{1}{4}$ Section line; thence turn South $0^{\circ}01'$ West and run 70.72 feet to the Point of Beginning, which is the said Southwest corner of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 5, Township 39 South, Range 19 East, Sarasota County, Florida.

Parcel ID No.: 0404050002

Parcel C:

The South $\frac{1}{2}$ of the North $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 5, Township 39 South, Range 19 East, Sarasota County, Florida, LESS Albee Farm Road right of way in RPB 3 page 31, also LESS Westerly 58.75 feet for additional right of way for Albee Farm Road as described in O.R. Book 2623, Page 197, Public Records of Sarasota County, Florida.

Parcel ID No.: 0404120002

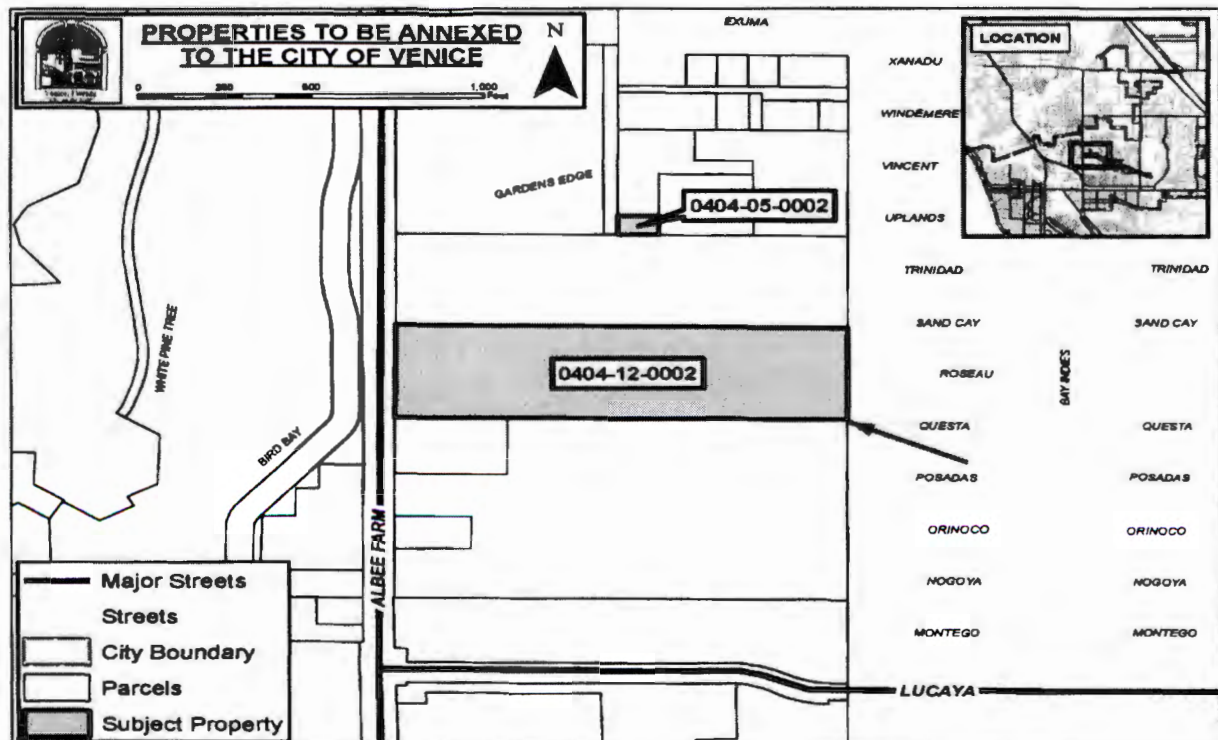


EXHIBIT "B"

EXTRAORDINARY MITIGATION FEE EXTRACTION

The extraordinary mitigation fee payments provided for in paragraph 7 of the Agreement shall be subject to adjustment at the start of every fiscal year (October 1) based on the Consumer Price Index for All Urban Consumers (CPI-U); U.S. City Average; All items, not seasonally adjusted, 1982-1984=100 reference base, issued by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter referred to as the "Index").

The first adjustment shall be effective the first day of October following the first extraordinary mitigation fee payment and shall be calculated using the August CPI. Thereafter adjustments shall be made each subsequent year, effective on the first day of October and calculated using that year's August CPI.

Each extraordinary mitigation fee adjustment shall be the result obtained by multiplying the then existing extraordinary mitigation fee amount by a fraction, the numerator of which shall be the Index for August of the year in which the adjustment is made and the denominator of which shall be the Index figure for August one year preceding the August from which the Index used in the numerator was chosen.

The adjustment for any single year shall be the greater of the CPI increase as calculated above or two-percent (2%). In no event shall the extraordinary mitigation fee decrease based upon fluctuations in the Index,

Should the Bureau of Labor Statistics change the manner of computing such Index, the Bureau shall be requested to furnish a conversion factor designed to adjust the new Index to the one previously in use, and adjustment to the new Index shall be made on the basis of such conversion factor. Should publication of such Index be discontinued by the Bureau of Labor Statistics, then such Index as may be published by the United States Government most nearly approximating such discontinued Index shall be used in making the adjustments herein provided for. If the United States Government discontinues the publication of any such Index, then the parties shall agree upon the fee adjustments for the ensuing one year term.