

2007-2741
06-7AN

PRE-ANNEXATION AGREEMENT

This agreement is made this 8th day of MAY, 2007, by and between the CITY OF VENICE, FLORIDA, a municipal corporation (hereinafter referred to as "City") and GATEWAY RESIDENTIAL LAND DEVELOPERS, L.L.C. (hereinafter referred to as "Owner").

WHEREAS, the Owner owns a parcel of land comprising approximately five acres (hereinafter referred to as the "Subject Property") located in Sarasota County, Florida which is more particularly described by the legal description attached hereto as Exhibit "A"; 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, the Owner has agreed to certain terms and conditions required by the City in order to gain approval of said petition and to adopt an ordinance annexing the Subject Property into the City; 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 to 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. **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.

2. LAND USE DESIGNATION. The Subject Property is designated Medium Density Residential on Sarasota County's Future Land Use Map. The Owner shall petition the City, within one year of the City's adoption of an ordinance annexing the Subject Property into the corporate limits of the City, for an amendment to the City's Comprehensive Plan to include the Subject Property in the Plan and to assign the Subject Property an appropriate land use designation. Within one year of completion of the above required Comprehensive Plan amendment, the Owner shall petition the City to rezone the Subject Property to a district or districts under the Venice Zoning Code. No development orders shall be granted until the Subject Property is so rezoned. Following annexation, the Subject Property shall be subject to all codes, laws, ordinances and regulations in force within the City

3. 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 pre-annexation 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.

4. EXTENSION OF WATER AND WASTEWATER UTILITY LINES. The Owner shall construct and pay the cost of extending and sizing all offsite and onsite potable water, reclaimed water, and wastewater utility pipelines adequate to serve the Subject Property as determined by the Utility Manager and the City Engineer. All such work shall be performed in accordance with

plans and specifications which have been approved through the City's construction permitting process. Fire flows shall be determined by the Fire Chief with the joint cooperation of the Utility Manager and the City Engineer. Owner shall convey all such potable water, reclaimed water and wastewater pipelines and lift stations to the City together with such easements as may be required for access to and maintenance of said pipelines and appurtenances. Utilities conveyed to the City shall be accepted for maintenance in accordance with all applicable state and city codes and policies which shall be applied to both offsite and onsite utility improvements.

5. WATER AND WASTEWATER UTILITY CHARGES. The Owner shall pay all potable water, reclaimed water and wastewater utility rates, fees, and charges, including any capital charges such as water plant capacity charges and wastewater 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 potable water, reclaimed water and wastewater utility systems.

6. DEVELOPMENT CONTRIBUTION NECESSARY TO MITIGATE THE IMPACTS OF DEVELOPMENT.

A. EXTRAORDINARY MITIGATION FEE EXTRACTION. In order to mitigate the impacts 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 \$1,829.00 per equivalent dwelling unit ("EDU"). 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, the definition of equivalent dwelling unit is the same as the definition contained within the City Comprehensive Plan.

B. DEDICATION OF RIGHT-OF-WAY. As per the City of Venice Comprehensive Plan to protect existing and future rights-of-way from building encroachment, the Owner shall dedicate to the City a thirty (30) foot wide right-of-way adjacent to the subject property's southern

boundary line from the eastern property line west to the western property line. Said dedication shall be accomplished by the execution and delivery of a warranty deed from the Owner to the City within 30 days from the adoption of an ordinance annexing the Subject Property into the corporate limits of the City.

7. SARASOTA COUNTY IMPACT FEES. The City has permitted Sarasota County to collect library, park, school, and road impact fees 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.
8. TRAFFIC STUDY. The Owner agrees to provide the City with a traffic study in accordance with the City's concurrency management regulations. The Owner shall pay the cost of any needed improvements identified by the traffic study or as determined by the City.
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 attorney's fees, that may be incurred by it in defending any and all litigation involving the validity of such annexation proceedings.

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 of Venice 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 of Venice.
16. SEVERABILITY. The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or unenforceable provisions are omitted.

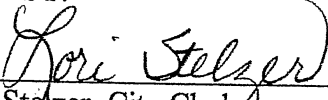
IN WITNESS WHEREOF, the City and the Owner set their hands and seals hereto on the day and year first above written.

CITY OF VENICE, FLORIDA

By: 

R. Fred Hammett, Mayor

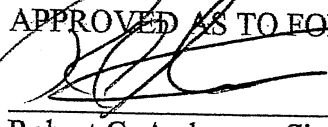
ATTEST:


Lori Stelzer, City Clerk

Approved By City Council

Date: 5-8-07

APPROVED AS TO FORM.


Robert C. Anderson, City Attorney

WITNESSES:

[Signature]
Irena Mandeville

OWNER: GATEWAY RESIDENTIAL
LAND DEVELOPERS, L.L.C.

By: William R. Dooley
William R. Dooley, Managing Member

STATE OF FLORIDA

COUNTY OF SARASOTA

Sworn to (or affirmed) and subscribed before me this 28 day of March, 2007,
by William R. Dooley, who is personally known to me or who has
produced _____ (type of identification) as identification and who did
take an oath.

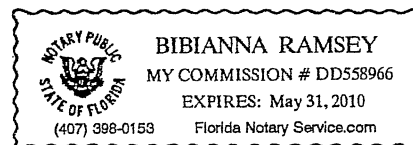
NOTARY PUBLIC

Bibianna Ramsey
Sign

Bibianna Ramsey
Print

State of Florida at Large

My Commission Expires: 5/31/07



SUBJECT PROPERTY LEGAL DESCRIPTION

Tract 8 of the unrecorded plat of KENT ACRES, more particularly described as follows: The West 304 feet of the East 2,465 feet of the North 726 feet of that part of Section 9, Township 39 South, Range 19 East, Sarasota County, Florida, lying South of the R.O.W. of Venice Avenue East, Sarasota County, Florida.

EXTRAORDINARY MITIGATION FEE EXTRACTION

The extraordinary mitigation fee payments provided for in paragraph 6 above, shall be subject to adjustment at the start of every fiscal year (October 1 through September 30) based on fluctuations in the revised Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-U) issued by the Bureau of Labor Statistics of the United States Department of Labor, effective November 1, 1978, said Index having a value of 100 for the year 1967, hereinafter referred to as the "Index."

The first adjustment shall be made on the first day of October following the commencement of the first extraordinary mitigation fee payment and shall be effective for the ensuing fiscal year. Additional annual adjustments shall be made on the first day of each subsequent fiscal year following the commencement of the first extraordinary mitigation fee payment and shall be effective for the ensuing fiscal year.

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 the month in which the adjustment is made and the denominator of which shall be the Index figure for the month one year preceding the month from which the Index used in the numerator was chosen.

Subject to the minimum two-percent (2%) increase each year, it is the intent of the parties that the extraordinary mitigation fee shall be increased by the same percentage amount as the percentage increase in the Index during the year preceding the adjustment. 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.