



Planning & Economic Development Dept.
Christy Fischer, Planning Director
City Hall
2240 Minton Road
West Melbourne, FL 32904
Phone: (321) 837-7778
Fax: (321) 768-2390
www.westmelbourne.gov

MEMORANDUM

TO: Christy Fischer, Planning and Economic Development Director

FROM: Cyndi Snay, Planner

SUBJECT: **Legacy West Melbourne SIT-2021-14**

DATE: April 12, 2023

Summary of City Council Hearing May 3, 2022

Per your request please find a summary of the May 4, 2022, City Council hearing regarding the 2-acre site owned by the developer but still remaining in Unincorporated Brevard County.

The attorney for the developer, Kim Rezanka, presented the following information at the quasi-judicial hearing:

- Declaration of Covenant will be executed by the developer to put on the front 2 -acres of the development. The Declaration of Covenant will be recorded. Becomes binding on the developers and run with the land.(see Attachment 1)
- The developer does not plan to ever develop the property, the plan is to use it for amenities for the development. (see Attachment 2)
- They are developers who plan to develop and keep the project. They will not be selling the development.
- Concept plan submitted to the board indicating the potential amenities for the 2-acre site (dog park, benches, part of owner's recreational facilities for the project).
- No trips would be generated from the 2-acres.
- Developers indicated that they would be willing to annex the property.
- The City granted recreational impact fee credits for the proposed park amenities.
- The Council brought up the issue regarding the 200 trips for 2 accesses.
- The Board's approval was subject to the Declaration of Covenant subject to City Attorney approval.

On February 7, 2023, a Recreation Impact Fee Credit Agreement was executed and subsequently recorded on February 15, 2023 (see Attachment 3). Clause #5, of this agreement, provides for the recording of a restrictive covenant which was attached as Exhibit B. This restrictive covenant describes the 2-acre site and runs with the land. In addition, this clause also indicates that the restrictive covenant can not be defeated or eliminated without the consent of the City.

Not recorded
Attachment 1

Prepared by: Kimberly Bonder Rezanka, Esquire
LACEY LYONS REZANKA
Address: 1290 U.S. Hwy 1, Ste. 201
Rockledge, FL 32955

Declaration of Restrictions

THIS DECLARATION OF RESTRICTIONS is made as of April 20, 2022, by LEGACY WEST MELBOURNE, LLC, a Florida Limited Liability Company ("Declarant"), address of 3850 Bird Road, Ste 800, Miami, FL 33146.

WHEREAS, Declarant owns property (hereinafter referred to as the "Property") located in Brevard County, Florida, Parcel Id: 27-36-35-00-264, more particularly described in **Exhibit "A"**; and

WHEREAS, Declarant also owns the property adjacent and to the west, in the City of West Melbourne, identified as Parcel Id: 27-36-35-00-260 ("Adjacent Property"), upon which Declarant is constructing an apartment complex; and

WHEREAS, Declarant wishes to set forth herein a declaration of intentions with reference to the Property, to limit the uses of the Property to satisfy traffic concurrency requirements of the City of West Melbourne and of Brevard County, Florida.

NOW, THEREFORE, the Declarant hereby declares as follows:

1. The use of the Property shall be limited to amenities and site plan requirements for the amenities for the apartment complex on the Adjacent Property and shall be solely for the use of the tenants, tenants' guests and the Declarant.
2. No parking of motor vehicles will be allowed on the Property except as provided in paragraph 3, below.
3. There shall be no motor vehicles permitted on the Property except during construction of the Adjacent Property's apartment complex and amenities, and for maintenance or inspection by Declarant, Brevard County, City of West Melbourne or other regulatory agencies.
4. Pedestrian access for use of the Property shall be allowed only from and through the Adjacent Property's apartment complex parking lot.

5. The Property and Adjacent Property shall be held under single ownership and shall not be transferred or conveyed other than together in their entirety.
6. This Declaration shall be binding and shall inure to the benefit of the successors or assigns of the Declarant, shall run with the subject Property and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property.

IN WITNESS THEREOF, Declarant has executed this Declaration of Restrictions as of the date and year first written above.

LEGACY WEST MELBOURNE LLC

WITNESSES:

(Witness Name typed or printed)

Tomas Cabrerizo, Manager

(Witness Name typed or printed)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2022, by Tomas Cabrerizo, Manager of LEGACY WEST MELBOURNE, LLC , who is personally known to me or who has produced as identification.

My commission expires
SEAL
Commission No.:

Notary Public
(Name typed, printed or stamped)

EXHIBIT A

Legal Description of Property

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows:

Commence at the Southwest corner of the Northwest one-quarter of said Section 35; thence N. 89 degrees 37'47" E., along the South line of said Northwest one-quarter, a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N. 00 degrees 06'31" E., 26.00 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence N. 89 degrees 37'47" E., along said North right of way line 997.11 feet to the Point of Beginning of the herein described parcel; thence N. 00 degrees 04'53" W., parallel to and 200 feet West of the West right of way line of John Rhodes Boulevard, as presently occupied, a distance of 602.89 feet to the North line of the South one-half of the Southwest one-quarter of the Northwest one-quarter of said Section 35; thence N. 89 degrees 38'56" E., along said North line 200.00 feet to the Westerly right of way line of said John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said Westerly right of way line 92.50 feet to the North line of said lands described in Official Records Book 2390, Page 2859, Public Records of Brevard County, Florida; thence S. 89 degrees 38'56" W., along said North line 115.00 feet to the West line of said lands described in Official Records Book 2390, Page 2859; thence S. 00 degrees 04'53" E., along said West line 92.50 feet to the South line of said lands described in Official Records Book 2390, Page 2859; thence N. 89 degrees 38'56" E. along said South line 115.00 feet to the said West right of way line of John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said West right of way line 417.83 feet to the said North right of way line of Crane Creek Drainage District Canal No. L-14; thence S. 89 degrees 37'47" W. along said North right of way line 200.00 feet to the Point of Beginning.

AND

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commencing at the Northwest corner of said Section 35; thence S. 00 degrees 20'58" W., along the West line of said Section 35 for a distance of 1890.32 feet, more or less, to the Northwest corner of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35; thence N. 89 degrees 37'25" E., along the North line of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35 for a distance of 1318.67 feet, more or less, to a point on the West right of way line of Rhodes Boulevard; thence South along said West right of way line of Rhodes Boulevard for a distance of 92.50 feet to the Point of Beginning of that certain parcel hereinafter described; thence continue South along an extension of the last described course for a distance of 92.50 feet; thence S. 89 degrees 37'25" W., for a distance of 115 feet; thence North for a distance of 92.50 feet; thence N. 89 degrees 37'18" E., for a distance of 115 feet to the Point of Beginning.



(Attachment 2)

**CITY COUNCIL
CITY OF WEST MELBOURNE, FLORIDA
ZONING DEVELOPMENT ORDER**

In Re: Initial Site Plan Application # 2021-14
Legacy Apartments (west side of John Rodes Blvd. and east of I-95)

DEVELOPMENT ORDER

UPON CONSIDERATION of the above styled proceeding to consider a site plan approval in the R-3 zoning districts, the West Melbourne City Council enters this order:

On May 3, 2022, following due public notice, the City Council conducted a public hearing to consider the Initial Site Plan No. 2021-14, a request to permit a multiple family development (initial site plan is attached). Said property is legally described as follows:

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the Northwest One-quarter of said Section 35; thence N 89° degrees 37'41" E along the South line of said Northwest One-quarter a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N 00° degrees 06'31" E 26.00 feet to the Point of Beginning of the herein described parcel; thence continue N 00 degrees 06'31" E along the East line of said canal right of way 603.24 feet to the North line of South One-half of the Southwest One-quarter of the Northwest One-quarter of said Section 35; thence N 89 degrees 38'56" E along said North line 995.11 feet; thence S 00 degrees 04'53" E parallel to and 200 feet West of the West right of way line of John Rodes Boulevard, as presently occupied, a distance of 602.89 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence S 89 degrees 37'47" W along said North line 997.11 feet to the Point of Beginning.

Together with: A 60' wide ingress/egress, public utility and drainage easement: A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the Northwest One-quarter of said Section 35; thence N 89 degrees 37'41" E along the South line of said Northwest One-quarter a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N 00 degrees 06'31" E 26.00 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence N 89 degrees 37'47" E along said North right of way line 997.11 feet to the Point of Beginning of the herein described parcel; thence N 00 degrees 04'53" W parallel to and 200 feet West of the West right of way line of John Rodes Boulevard, as presently occupied, a distance of 60.00 feet; thence N 89 degrees 37'47" E 200.00 feet to the Westerly right of way line of said John Rodes Boulevard; thence S 00 degrees 04'53" E along said Westerly right of way line 60.00 feet to the said North right of way line of Crane Creek Drainage District Canal No. L-14; thence S 89 degrees 37'47" W along said North right of way line 200.00 feet to the Point of Beginning.

The Legacy Apartments initial plan is APPROVED WITH THE FOLLOWING CONDITIONS for a period of 18 months (December 3, 2023) from the approval date of May 3, 2022:

- 1) Obtain outside agency permits from the Florida Department of Environmental Protection (FDEP), St. Johns River Water Management District (SJRWMD), and Brevard County prior to final site plan approval.
- 2) Pay the fee in lieu of public recreation dedication and record the required recreation agreement.
- 3) Record a deed restriction or covenant on the adjacent former strawberry farm limiting use of that property to amenities and site plan requirements in support of the Legacy apartments project.

SO ORDERED.

Dated this 3rd day of May 2022.



CITY OF WEST MELBOURNE,
FLORIDA, CITY COUNCIL

Hal J. Rose, Mayor

ATTEST:

City Clerk

CERTIFICATE OF FILING AND MAILING

I, Cynthia Hanscom, City Clerk, City of West Melbourne hereby certify that this ORDER was rendered by the City Council on the 3rd day of May, 2022 and is maintained in the Public Records of the City of West Melbourne, Florida, and a copy thereof was mailed to:

Mr. Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Suite H
Melbourne, FL 32935

On the 1st day of June 2022.

City Clerk

Attachment Initial Site Plan

CITY OF WEST MELBOURNE ZONING
M-2 GENERAL INDUSTRIAL

CANAL

CITY OF WEST
MELBOURNE CANAL
SR 604

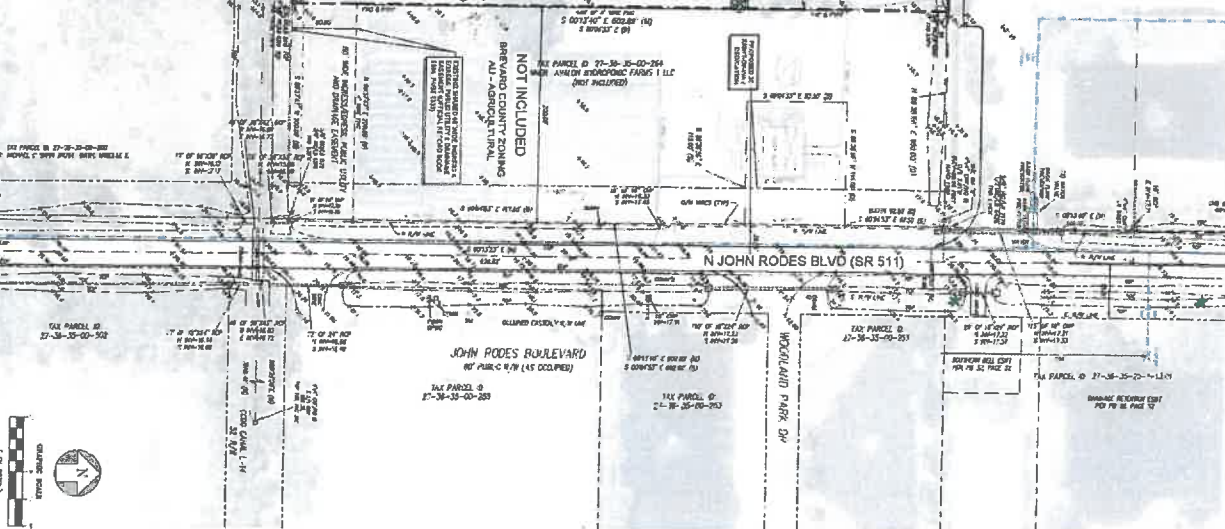
EXISTING TREE LEGEND		
DESCRIPTION	QUANTITY	TOTAL
1.0' - 1.9' DBH	10	10
2.0' - 2.9' DBH	40	40
3.0' - 3.9' DBH	34	34
4.0' - 4.9' DBH	71	71
TOTAL	155	155

BREVARD COUNTY ZONING
AU-AGRICULTURAL

PROJECT SITE

CITY OF WEST MELBOURNE ZONING
M-1 LIGHT INDUSTRIAL & WAREHOUSING

ENVIRONMENTAL IMPACT ASSESSMENT
PROJECT: LEGACY AT WEST MELBOURNE APARTMENTS
LOCATION: 11.000 AC - 1.000 AC
TOTAL: 11.000 AC - 1.000 AC
DATE: 11/11/2022
BY: J. L. LEE
The enclosed drawings are prepared in accordance with the requirements of the Florida Department of Environmental Protection (FDEP) and the Florida Department of Agriculture and Consumer Services (FDACS). The drawings are not to be used for any other purpose without the written consent of the engineer.



C-101

LEGACY AT WEST MELBOURNE
APARTMENTS

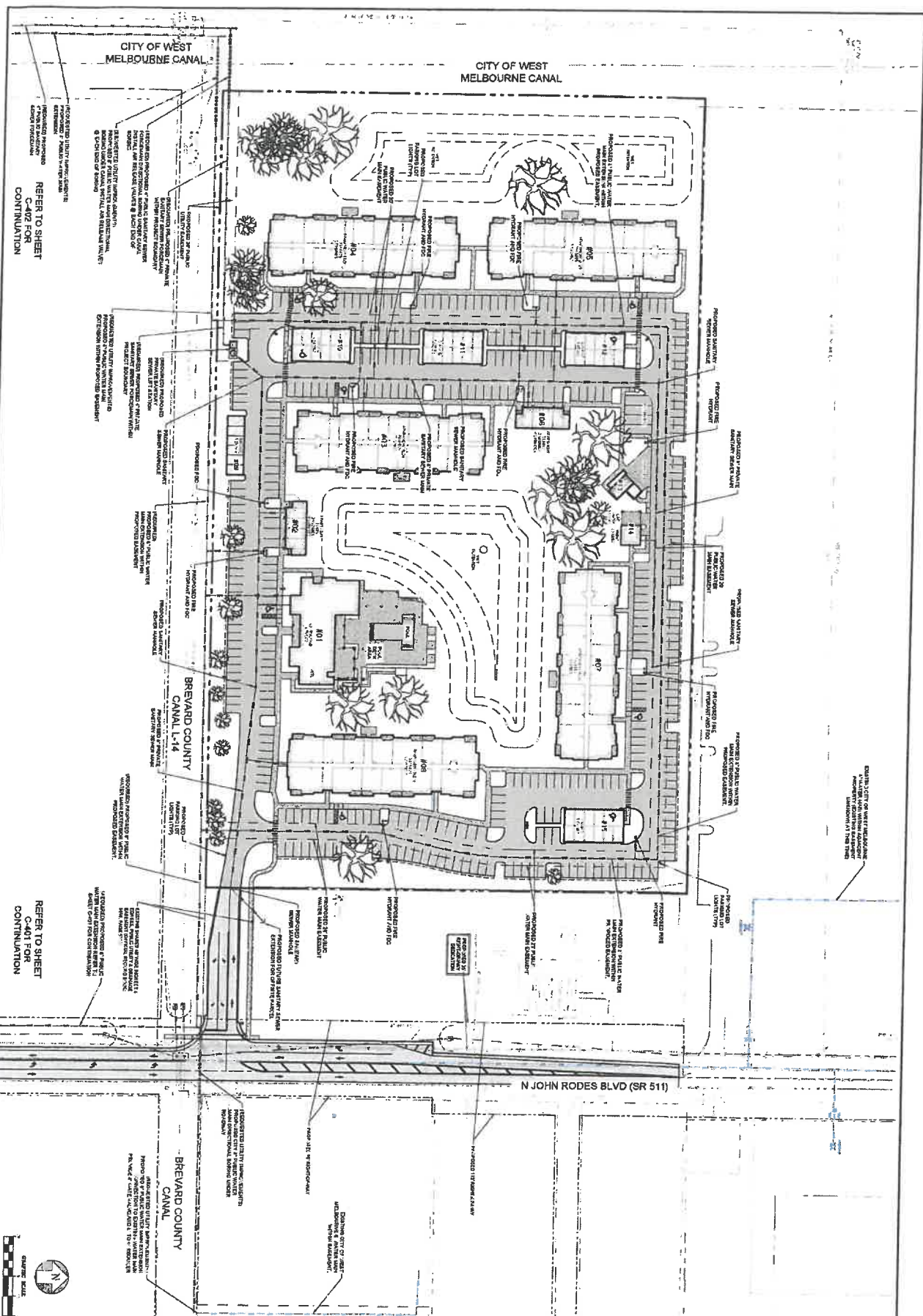
EXISTING CONDITIONS

JMBV
ENGINEERING, INC.
1000 N. W. 10th Ave., Suite 100
West Melbourne, FL 32909
Tel: 321.939.1111
Fax: 321.939.1112

JOB NO. 21-1051
DESIGNED BY JLD
DRAWN BY JLD
DATE JANUARY 2022
CHECKED BY JLD
DATE 06/08/22

DATE 06/08/22 A 16702





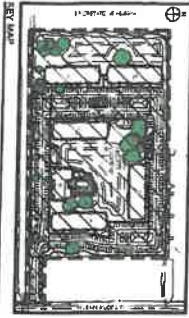
CITY OF WEST
 MELBOURNE CANAL
 REFER TO SHEET
 C-402 FOR
 CONTINUATION

REFER TO SHEET
 C-401 FOR
 CONTINUATION



C-400 SHEET PRELIMINARY SET	LEGACY AT WEST MELBOURNE APARTMENTS WEST MELBOURNE, BREVARD COUNTY FLORIDA	UTILITY SITE PLAN	EMBV ENGINEERING, INC. CIVIL & STRUCTURAL ENGINEERS 10000 W. STATE ROAD 1 MELBOURNE, FLORIDA 32901 TEL: 321.484.4444	REVISIONS NO. DATE 1 11/11/2022 2 11/11/2022 3 11/11/2022 4 11/11/2022 5 11/11/2022	DATE
	21-001				

PRELIMINARY SET



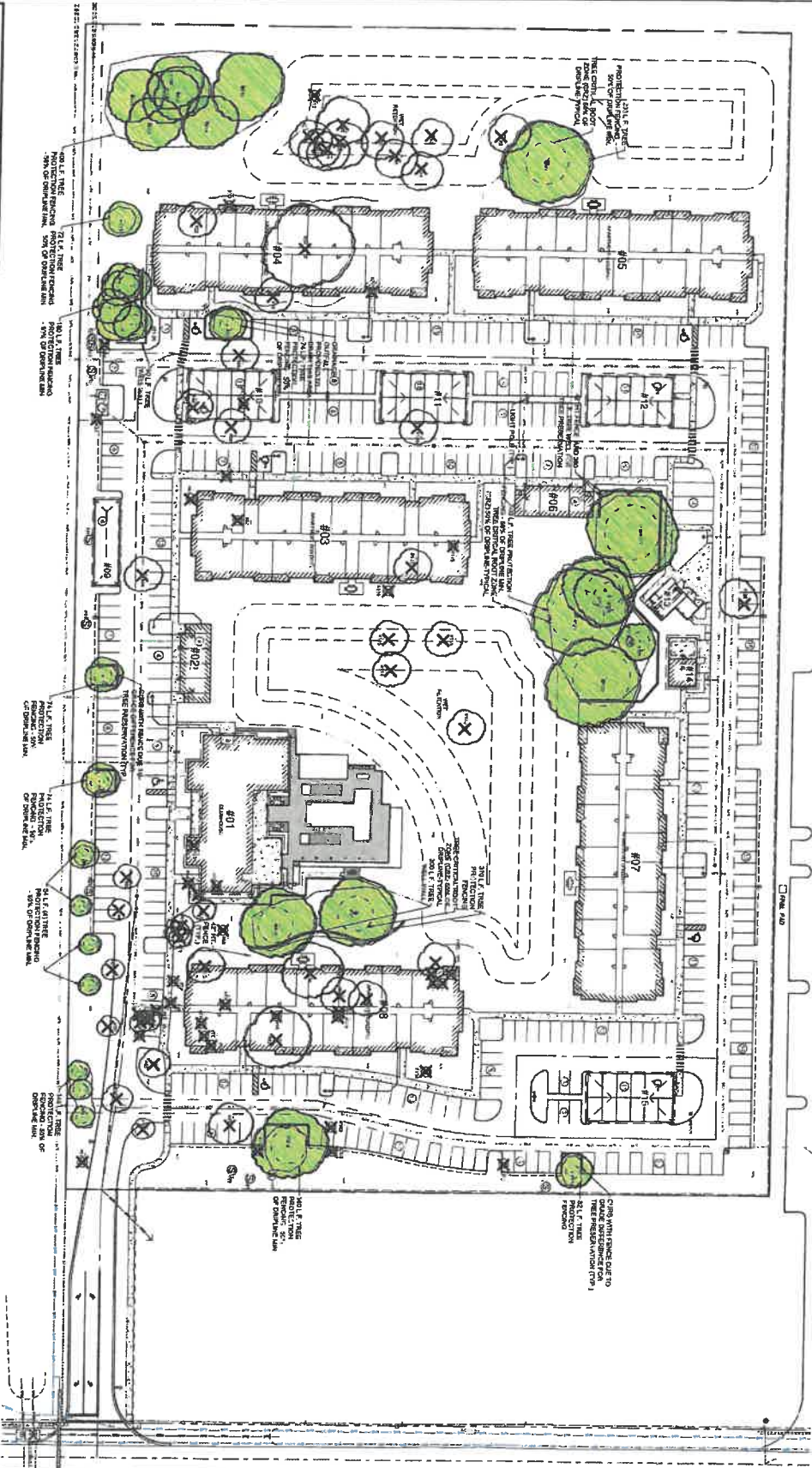
EXISTING TREE LEGEND		
SYMBOL	CITY	TOTAL
①	10	50
②	40	35
③	35	70
④	44	129

IF ANY OF THE EXISTING TREES PRESENT IN THE SITE ARE TO BE REMOVED, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE RELOCATION OF THE TREES TO THE CITY'S TREE MITIGATION FUND.

NOTE TO CONTRACTOR:

THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE RELOCATION OF THE TREES TO THE CITY'S TREE MITIGATION FUND.

50% SUBMITTAL



LEGACY AT WEST MELBOURNE John Rodes Boulevard West Melbourne, FL

Rusan Hall, ASLA
Landscape Architecture
3440 Westside Blvd., Suite 200
West Melbourne, FL 32909
Phone: 321.464.5790
Fax: 321.464.5791
www.rusanhall.com



100

[illegible]

Susan Hall, Assistant
LANDSAFE ASSISTANT
1000 20th St.
344 McLEOD STREET
HERBERT ISLAND FI 32924
PHONE (423) 449-0296
Fax (423) 443-1200
www.hall-fla.com

CITY OF WEST MELBOURNE ZONING: M-1
LIGHT INDUSTRIAL & WAREHOUSINGBREVARD COUNTY ZONING
ALL AGRICULTURE

BREVARD COUNTY DRAINAGE CANAL 1-14

(52' R.O.W.)

ENTRANTS

5" CAL, 5' SETBACK MIN. FROM ROAD

cal

CAL

5 A MINIMUM OF FIVE FEET FROM THE

REPORTED AT 100% COVERAGE WITH A

WILL BE COMPACTED TO NO MORE THAN

COMPACTED CONCURRENT WITH CDN

LOOSENED SO AS NOT TO EXCEED 15

1

ION, 4.0 FEET OF FILL DIRT WILL BE R

AS TO PRESERVE LARGE TREES ON SITE
IF REQUIRED,

1

CODE REQUIREMENTS

CEMENT TREE EACH) = 36 TREES

310 TREES
366 TREES

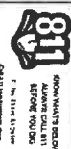
366 IRRES

1

SEE PROPOSED
DECLARATION OF
RESTRICTIONS

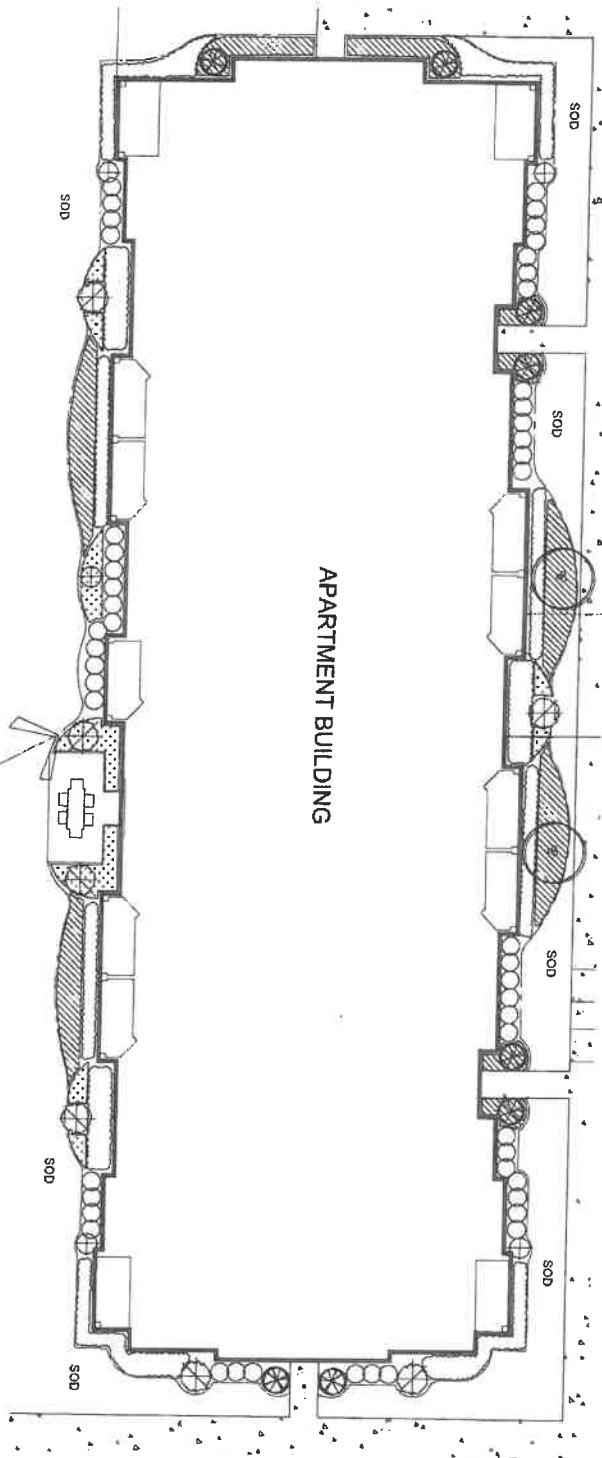
John Rodes Boulevard
West Melbourne, FL

50% SUBMITTAL



KNOW WHAT'S BELOW
ALWAYS CALL 811
BEFORE YOU DIG





* LANDSCAPE CONTRACTOR TO CONTACT SUSAN HALL
LANDSCAPE ARCHITECT, PRIOR TO COMMENCING LANDSCAPE
WORK FOR EACH BUILDING SO FIELD ADJUSTMENTS CAN BE
MADE BY THE LANDSCAPE ARCHITECT. IT IS IMPORTANT THAT
WE ARE CONTACTED PRIOR TO THE PURCHASE OF ANY PLANT
MATERIALS FOR THE INDIVIDUAL BUILDINGS. CONTACT SUSAN
HALL AT 385-798-2574. THANK YOU.

THIS IS NOT REPRESENTATIVE OF ANY SINGLE BUILDING BUT A TYPICAL PROTOTYPE
FOR BUILDING LANDSCAPE. LANDSCAPE DESIGN, LANDSCAPE FOR THE INDIVIDUAL
BUILDINGS WILL VARY DEPENDING ON BUILDING ORIENTATION, SUN EXPOSURES, ETC. THIS SHEET
IS TO SERVE AS AN EXAMPLE OF WHAT A TYPICAL BUILDING LANDSCAPE WILL
INCLUDE.

50% SUBMITTAL



LEGACY AT WEST MELBOURNE
John Rodes Boulevard
West Melbourne, FL

SUSAN HALL, AIA
LANDSCAPE ARCHITECT
10100 N. US HWY 1
SUITE 200
WEST MELBOURNE, FL 32903
PHONE (321) 443-2720
FAX (321) 443-2721
WWW.SUSANHALL.COM

TYPICAL
BUILDING
LANDSCAPE
PLAN

04-25-22

S.H.

D.F.

1" = 10'-0"

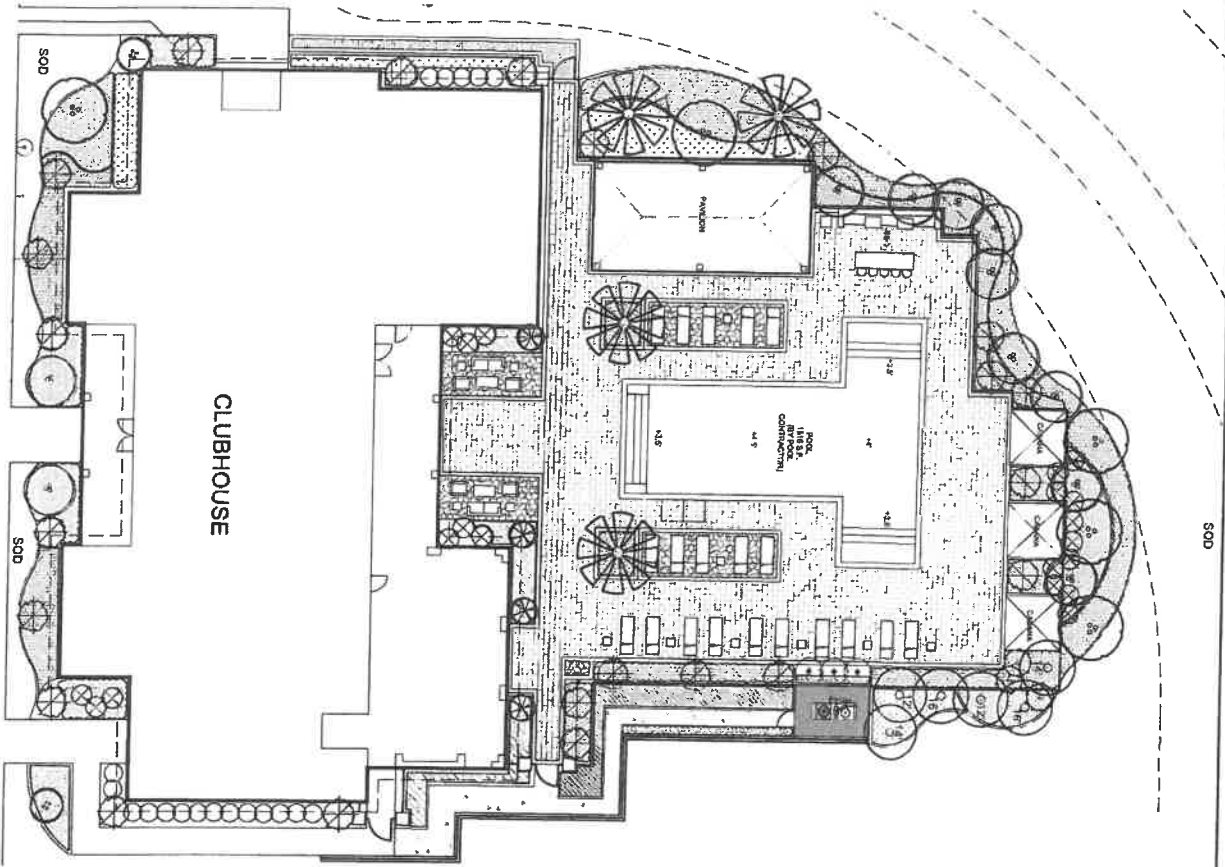
1" = 10'-0"



L-4 6

LANDSCAPE CLUBHOUSE TREES - LEGEND

QTY	SYMBOL	BOTANICAL / COMMON NAME
4	🌴	WILD DATE PALM (PHOENIX SYLVESTRI)
4	🌳	TRIPLÉ CHANE AMTLE TREE (LACERDIA PROBYNA ANICA)
6	🌴	SHAW PALM (CASCAL PALMETTO)
9	🌳	CHRISTMAS PALM (VICTORIA REGINIA)
2	🌴	TRIPLÉ PRICAT DATE PALM (PHOENIX ROBERTSON)
12	🌳	HEBECUS STD.
1	🌳	CANDIDOR PLANT
1	🌳	CLYNN SHUB
1	🌳	CRONON OR. HAWAIIAN TI PLANT



LEGACY AT WEST MELBOURNE
John Rhodes Boulevard
West Melbourne, FL

SUSAN HALL, AIA, ASLA
LANDSCAPE ARCHITECT
2400 WEST 10TH AVENUE
WEST PALM BEACH, FL 33411
PHONE: (561) 835-2126
www.hallhills.com

POOL DECK
CONCEPT
PLAN

04-25-22

S.H.

D.F.

1"=10'-0"

50% SUBMITTAL



L-5 6

This Agreement prepared by:

CFN 2023030232, OR BK 9717 PAGE 2449,
Recorded 02/15/2023 at 09:16 AM, Rachel M. Sadoff,
Clerk of Courts, Brevard County
Pgs:10

(Attachment 3)

After recording return to:
City Attorney
City of West Melbourne
2240 Minton Road
West Melbourne, FL 32904

Parcel ID: 27-35-35-00-260

RECREATION IMPACT FEE CREDIT AGREEMENT

THIS AGREEMENT, made effective as of the 7th day of February, 2023 by and between the City of West Melbourne, Florida, a Florida municipal corporation, whose address is 2240 Minton Road, West Melbourne, Florida 32904 ("City"), and Legacy West Melbourne, LLC, a Florida limited liability company, whose address principal address is 3850 Bird Road, Suite 800, Miami, FL 33146 ("Developer"), is based on the following premises.

RECITALS:

WHEREAS, Developer is fee simple owner of certain real property located in West Melbourne, Brevard County, Florida, and legally depicted and described on **Exhibit A**, attached hereto and incorporated herein; and,

WHEREAS, Developer desires to construct a 199 multifamily dwelling unit residential apartment project known as Legacy at West Melbourne (the "Project"); and,

WHEREAS, §86-64 of the City's Code of Ordinances (the "Code") requires the dedication of land to the city for use as park or recreation areas or, at the City's sole discretion, payment of a fee in lieu thereof as a condition of approval of a site plan for a multifamily residential development; and,

WHEREAS, the City has determined, as reflected in §86-64(e)(1) of the Code, that the average population generated by multi-family development within the City is 2.5 persons, thus resulting in an estimated population of 700 new residents generated by the Project; and,

WHEREAS, the City has also determined, as reflected in §86-64(e)(2) of the Code, that, on average, City residents require 0.005 acres of land per resident for recreation purposes; and,

WHEREAS, based on the projected population of the Project, developer is required to either dedicate 2.49 acres of suitable land to the City or, in accordance with §86-64(h) of the Code, pay a fee in lieu of One Hundred, Ninety-Nine Thousand, Two Hundred and No Cents (\$199,200.00) calculated as follows:

199 multi-family units x 2.5 persons per unit = 498 persons;

498 x 0.005 acres = 2.49 acres;

2.49 acres x \$80,000.00/acre = \$199,200; and,

WHEREAS, the Code recognizes that private recreation facilities provided by developers for new residents within their developments address and satisfy a portion of such new residents' demand for recreation facilities and lessen the impact of such new residents on public park and recreation land, thereby warranting a partial credit against the otherwise required dedication or fee in lieu; and,

WHEREAS, Developer shall provide certain recreational amenities within the Project which shall be available exclusively to Project residents including, but not necessarily limited to, a community pool, outdoor grill and fire pit areas, and other facilities, and wishes to avail itself of the partial credit available under §86-64(i) of the City Code; and

WHEREAS, the maximum credit available under §86-64(i) of the Code is the lesser of (a) the value of any recreation improvements constructed or installed on the Property (but not including the value of the underlying land) or (b) thirty-five percent (35%) of the recreation fee in lieu that would otherwise be imposed; and,

WHEREAS, the parties have agreed that, so long as the terms and conditions of this Agreement are satisfied, Developer shall be entitled to the maximum credit available under the Code, to wit, Ninety-Five Thousand, Eight Hundred Sixty-Five Dollars and No Cents (\$95,865.00) calculated as follows: 0.35 times \$199,200.00 equals \$69,720; and,

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

1. **Recitals and Exhibits.** The foregoing recitals are hereby ratified and approved and made a part of this Agreement. All exhibits to this Agreement are incorporated by reference and are deemed a part hereof.

2. **Base Recreation Fee.** The recreation fee in lieu for the Project shall be of One Hundred Ninety-Nine Thousand Two Hundred and No Cents (\$199,200.00)

3. **Recreation Fee Credit.** Developer is hereby awarded a 35% credit (the "Recreation Fee Credit") of Sixty-Nine Thousand, Seven Hundred and Twenty Dollars and No Cents (\$69,720.00) which shall be applied against the Fee in Lieu.

4. **Adjusted Recreation Fee.** The remaining balance of **One Hundred Twenty-Nine Thousand, Four Hundred, Eighty Dollars and No Cents (\$129,480.00)** shall be paid in a single, lump-sum payment on or before issuance of the first building permit for vertical construction of a residential apartment building on the Property.

5. **Recordation of Restrictive Covenant.** In accordance with section 86-64(i)2.c of the City Code, the Developer shall ensure that recreation facilities with a value of no less than Sixty-Nine Thousand, Seven Hundred and Twenty Dollars and No Cents (\$69,720.00) and shall be constructed or installed on one or more areas of the Property and that the use of such areas shall

be restricted to park and recreation purposes by recording a restrictive covenant, substantially in the form of Exhibit B attached hereto, which shall run with the land and which cannot be defeated or eliminated without the consent of the City. It is anticipated that the restrictive covenant will be placed on the proposed community pool has an estimated cost in excess of One Hundred Eighty Thousand and No Cents (\$180,000.00), but in no event shall facilities worth less than \$69,720.00, excluding land value, be subjected to the restrictive covenant. Developer shall, upon request, provide City evidence of the actual cost of the recreation facility or facilities being subjected to the restrictive covenant prior to recording the same. Furthermore, the restrictive covenant shall be recorded no later than the sooner to occur of thirty (30) months from the Effective Date of this Agreement or the issuance of the first certificate of occupancy for an apartment building constructed within the Project.

6. **Permits.** Developer shall, at its sole expense, obtain all necessary permits required by the City and any other federal, state, regional, or other local governmental entity necessary to lawfully initiate any work on the Project, including on the community pool and related hardscape, and the execution and recording of this Agreement shall in no way be deemed a guarantee of the issuance of such permits.

7. **Default and Recoupment of Recreation Fee Credit.** Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party thirty (30) days from the date of its receipt of such notice within which to cure any such defaults or to commence and thereafter diligently pursue to completion good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such defaults. This Agreement is enforceable at law or in equity by the non-defaulting party including, but not limited to, the right of specific performance and the right of the City to recover from Developer, or Developer's successor in interest, the full amount of the Impact Fee Credit in the event that Developer fails to record the restrictive covenant as provided in paragraph 3 hereof.

8. **Use of Fee in Lieu.** Developer agrees that the City may utilize the fee in lieu paid by Developer in any manner City sees fit, subject to the limitations set forth in section 86-64(k) of the Code, and that the same might not ultimately directly benefit the Project or the residents thereof.

9. **Recording, Effective Date; Binding on Successors.** Within fourteen (14) days after this Agreement has been executed by all parties hereto, City, or at City's request the Developer, shall record this Agreement with the clerk of the circuit court of Brevard County. Said recording, whether done by City or Developer, shall be at the Developer's sole cost and expense. This Agreement shall become effective when it has been so recorded in the Public Records of Brevard County, Florida (the "Effective Date") and thereafter shall be binding upon and shall inure to the benefit of the Developer, City, and their respective successors and assigns, and shall run with the land for so long as enforceable by law or by limitation in this Agreement.

10. **Early Termination by Payment of Total Fee in Lieu.** Developer may terminate this Agreement at any time by notifying the City of such early termination in writing and paying any unpaid balance of the total fee in lieu to the City (i.e., \$385,000.00 less any portion thereof previously paid). Upon such termination the parties agree that they shall execute a suitable Notice of Termination of Recreation Fee Credit Agreement and Release of Restrictive Covenant which

Developer shall thereafter record at Developer's sole cost and expense. City shall be deemed to have consented to the release of the Restrictive Covenant immediately upon its receipt of the unpaid balance of the total fee in lieu.

11. Notices. All notices, demands and correspondence provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

If to Developer: Legacy West Melbourne, LLC
3850 Bird Road, Ste. 800
Miami, FL 33146
Telephone: 305-961-1054

And a copy to:

If to City: City of West Melbourne
Attn: City Manager
2240 Minton Road
West Melbourne, FL 32904-4928
Telephone: 321-727-7700
Facsimile: 321-768-2390

With a copy to: City Attorney
City of West Melbourne
2240 Minton Road
West Melbourne, FL 32904-4928
Telephone: 321-727-7700

12. Further Documentation. The parties agree that at any time following a request by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party to this Agreement.

13. Applicable Law and Jury Trial Waiver. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, with venue of any action relating to this Agreement being in Brevard County, Florida. The parties agree and are encouraged to submit any such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirement of such court, and they expressly waive the right to a jury trial. In the event either party sues the other to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

14. Entire Agreement. This Agreement and referenced Exhibits constitute the entire Agreement between Developer and City and supersedes all previous discussions, understandings, and other agreements between Developer and City relating to the subject matter of this Agreement.

15. **Amendments to Agreement.** Amendments to and waiver of the provisions herein shall be made by Developer and City in writing by a formal amendment process which shall be recorded in the Public Records of Brevard County, Florida, at Developer's expense.

16. **Counterparts.** This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.

17. **Condition Precedent.** This Agreement shall first be executed by Developer and submitted to City for approval by the City Council.

18. **Captions.** Headings of a particular paragraph of this Agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

19. **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's execution of this Agreement is deemed invalid for any particular purpose, the sections for which the execution is valid shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By: _____

Print Name: _____

Print Title: _____

STATE OF FLORIDA

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me
by means of ☐ physical presence or ☐ online
notarization, this 10th day of Jan, 2023,
by Thomas Cabaniz as

Manager for Legacy West Melbourne LLC

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Name of Notary Public)

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

CITY OF WEST MELBOURNE, a
chartered municipal corporation

Hal Rose

Hal Rose, Mayor

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me
by means of ☐ physical presence or ☐ online
notarization, this 7th day of February, 2023, by Tim Hal Rose as
Rhode as City Manager for City of West Melbourne. Mayor

Reviewed as to legal form and sufficiency:

John Cary, City Attorney

(Signature of Notary Public--State of Florida)

Christine D. Pennington

(Print, Type, or Stamp Name of Notary Public)

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

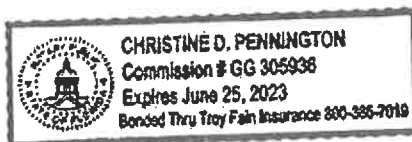


EXHIBIT A – legal description

Tax Parcel 27-35-35-00-260:

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows:
Commence at the Southwest corner of the Northwest One-quarter of said Section 35; thence N 89° degrees 37'41" E along the South line of said Northwest One-quarter a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N 00° degrees 06'31" E 26.00 feet to the Point of Beginning of the herein described parcel; thence continue N 00 degrees 06'31" E along the East line of said canal right of way 603.24 feet to the North line of South One-half of the Southwest One-quarter of the Northwest One-quarter of said Section 35; thence N 89 degrees 38'56" E along said North line 995.11 feet; thence S 00 degrees 04'53" E parallel to and 200 feet West of the West right of way line of John Rodes Boulevard, as presently occupied, a distance of 602.89 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence S 89 degrees 37'47" W along said North line 997.11 feet to the Point of Beginning.

EXHIBIT B
(form of future Restrictive Covenant)

WHEREAS, Legacy West Melbourne, LLC ("Developer") is fee simple owner of certain real property located in West Melbourne, Brevard County, Florida, and legally depicted and described on **Exhibit A**, attached hereto and incorporated herein (the "Property"); and,

WHEREAS, the Developer desires to construct a 199 multifamily dwelling unit residential apartment project know as Legacy at West Melbourne (the "Project"); and,

WHEREAS, §86-64 of the City's Code of Ordinances (the "Code") requires the dedication of land to the City for use as park or recreation areas or, at the City's sole discretion, payment of a fee in lieu thereof as a condition of approval of a site plan for a multifamily residential development; and,

WHEREAS, City and Developer have agreed that the appropriate fee in lieu is One Hundred, Ninety-Nine Thousand, Two Hundred and No Cents (\$199,200.00); and,

WHEREAS, the City Code recognizes that private recreation facilities provided by developers for new residents within their developments address and satisfy a substantial portion of such new residents' demand for recreation facilities and lessens the impact of such new residents on public park and recreation land, thereby warranting a partial credit against the fee in lieu; and,

WHEREAS, Developer has agreed that it shall provide certain recreational amenities within the Project which shall be available exclusively to Project residents and City has agreed that Developer shall, in accordance with §86-64(i)2.c of the City Code, receive a credit of Sixty-Nine Thousand, Seven Hundred and Twenty Dollars and No Cents (\$69,720.00) (hereafter referred to as the "Recreation Fee Credit"); and,

WHEREAS, because property purchased by the City with collected recreation fees would theoretically remain available for park and recreation purposes in perpetuity, the City requires that private recreation facilities that have been credited against the City's recreation fee likewise be restricted to recreation uses in perpetuity; and,

WHEREAS, Developer has agreed to restrict the use of that portion of the Property described or depicted in Exhibit "A" attached hereto and incorporated by reference herein (the "Recreation Property") to recreation purposes in perpetuity, or until such time as this Restrictive Covenant is cancelled or modified by agreement of the City and the then owner of the Recreation Property;

NOW THEREFORE, in consideration of the premises and the receipt of the Recreation Fee Credit, Owner hereby covenants and agrees that the Recreation Property shall be used solely for recreation purposes for the benefit of the tenants and future owners of the Property. Owner further covenants that this restriction shall run with the Recreation Property and be binding upon the Owner, its successors and assigns.

This Restrictive Covenant shall not be cancelled, released, amended or modified without the prior written consent of the City of West Melbourne. In the event of any violation of this covenant, the City of West Melbourne shall have the right to pursue all remedies available at law or in equity, including the right of specific performance and/or injunctive relief.

WHEREFORE, Owner has executed this Restrictive Covenant as of this _____, 20____.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

[Signature]
Witness 1
Nathan Vedram
Print Name of Witness 1

[Signature]
Witness 2
ALEX MOYA
Print Name of Witness 2

By: [Signature]
Print Name: Thomas Cabrera
Print Title: Manager

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me
by means of ☐ physical presence or ☐ online
notarization, this 10 day of Jan, 2023,
by Thomas Cabrera as Manager
Legacy West Melbourne LLC

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Name of Notary Public)

Personally Known ☐ OR Produced Identification ☐

Type of Identification Produced _____

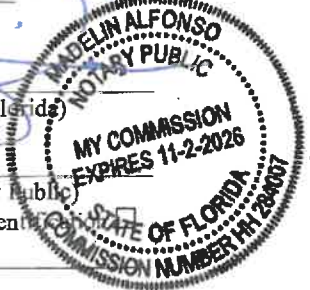


Exhibit A – legal description to Restrictive Covenant

Tax Parcel 27-35-35-00-264:

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows:
Commence at the Southwest corner of the Northwest one-quarter of said Section 35; thence N. 89 degrees 37'47" E., along the South line of said Northwest one-quarter, a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N. 00 degrees 06'31" E., 26.00 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence N. 89 degrees 37'47" E., along said North right of way line 997.11 feet to the Point of Beginning of the herein described parcel; thence N. 00 degrees 04'53" W., parallel to and 200 feet West of the West right of way line of John Rhodes Boulevard, as presently occupied, a distance of 602.89 feet to the North line of the South one-half of the Southwest one-quarter of the Northwest one-quarter of said Section 35; thence N. 89 degrees 38'56" E., along said North line 200.00 feet to the Westerly right of way line of said John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said Westerly right of way line 92.50 feet to the North line of said lands described in Official Records Book 2390, Page 2859, Public Records of Brevard County, Florida; thence S. 89 degrees 38'56" W., along said North line 115.00 feet to the West line of said lands described in Official Records Book 2390, Page 2859; thence S. 00 degrees 04'53" E., along said West line 92.50 feet to the South line of said lands described in Official Records Book 2390, Page 2859; thence N. 89 degrees 38'56" E along said South line 115.00 feet to the said West right of way line of John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said West right of way line 417.83 feet to the said North right of way line of Crane Creek Drainage District Canal No. L-14; thence S. 89 degrees 37'47" W. along said North right of way line 200.00 feet to the Point of Beginning.

AND

(Tax Account # 2704610)
A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:
Commencing at the Northwest corner of said Section 35; thence S. 00 degrees 20'58" W., along the West line of said Section 35 for a distance of 1890.32 feet, more or less, to the Northwest corner of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35; thence N. 89 degrees 37'25" E., along the North line of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35 for a distance of 1318.67 feet, more or less, to a point on the West right of way line of Rhodes Boulevard; thence South along said West right of way line of Rhodes Boulevard for a distance of 92.50 feet to the Point of Beginning of that certain parcel hereinafter described; thence continue South along an extension of the last described course for a distance of 92.50 feet; thence S. 89 degrees 37'25" W., for a distance of 115 feet; thence North for a distance of 92.50 feet; thence N. 89 degrees 37'18" E., for a distance of 115 feet to the Point of Beginning.