IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

CAPTIVA CIVIC ASSOCIATION, INC.

Plaintiff,

v. Case No.:

LEE COUNTY, FLORIDA, a political subdivision of the State of Florida,

Defendant.
_____/

COMPLAINT

Plaintiff, CAPTIVA CIVIC ASSOCIATION, INC. ("CCA"), by and through the undersigned counsel, files this, its Complaint against the Defendant, LEE COUNTY, FLORIDA (the "County"), and in support thereof alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Captiva Civic Association, Inc., is a not-for-profit corporation with its principal place of business in Lee County, Florida.

2. Defendant, Lee County, Florida is a political subdivision of the State of Florida.

3. Jurisdiction is proper in this Court pursuant to Section 26.012(2) and Section 86.011, Florida Statutes.

4. Venue is appropriate in Lee County, because the causes of action set forth herein accrued in Lee County, Florida and the agreement that is the subject of this lawsuit was executed in Lee County, Florida.

GENERAL ALLEGATIONS

5. Captiva Island is a barrier island comprised of approximately 725 acres. A single narrow, two-lane road, Captiva Drive, provides access to the mainland.

6. CCA is a not-for-profit corporation created in 1936 and incorporated in 1959 for the benefit of the citizens of Captiva. CCA's mission is to "defend and preserve our comprehensive land use policy" and to "protect our residents' safety, the island ecology, and the unique island ambiance…."

7. CCA has approximately 400 members, of whom approximately 45 are property owners on South Seas Island Resort. The 2020 census reported the Captiva population as 318, but the seasonal population of Captiva increases to approximately 3000 residents.

8. Captiva has a total of approximately 1650 hotel and residential dwelling units consisting of 887 units on South Seas Island Resort and approximately 760 units on the rest of Captiva Island.

9. South Seas Island Resort ("South Seas") is a 304-acre resort at the north end of Captiva Island in the unincorporated area of Lee County, Florida.

10. On November 20, 1973, a petition was filed by the then owner/developer of South Seas to voluntarily "down-zone" the density on the South Seas property from 3,900 units to 912 units, in return for small-scale clustering and site flexibility. The County adopted Resolution Z-73-202 (the "Resolution"), which rezoned South Seas to a 304-acre special zoning district, using a planned unit development ("PUD") concept plan, with the special limitation that South Seas' density was specifically limited to three (3) units per acre. The Resolution limited the number of units at South Seas to 912, inclusive of hotel room units.

11. Since adoption of the Resolution in 1973, for more than 50 years of development and redevelopment, the County's zoning for South Seas has continuously and consistently limited the maximum number of units at South Seas to 912.

12. On July 30, 2002, the County issued Administrative Interpretation #2002-0098 (the "Administrative Interpretation") to document the "as built – as approved" status of development at South Seas and to clarify and serve as the zoning regulation controlling future development at South Seas. The Administrative Interpretation expressly states that "current and future development" within South Seas will be limited to a "carefully planned and tightly controlled" development density of 912 units.

13. On August 28, 2002, CCA filed suit against the County and the developer of South Seas in Lee County Circuit Court (Case No. 02-CA-009598), seeking a declaration of rights with respect to the Administrative Interpretation.

14. On February 27, 2003, CCA, the County, and the developer of South Seas entered into a Mediation Agreement (the "Settlement Agreement"). A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**.

15. Under the 1973 Resolution and Administrative Interpretation #2002-0098, South Seas' maximum density is capped at 912 units. South Seas had 887 of the 912 units constructed, but recently demolished 247 units, leaving no more than 272 units for which South Seas can obtain building permits to construct.

16. Paragraph 3 of the Settlement Agreement provides in relevant part the following: "The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by [Lee] County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time…."

17. Despite the density restriction of 912 units and the restriction on the County's authority to issue building permits under Paragraph 3 of the Settlement Agreement, the County on September 5, 2023 adopted county-initiated Land Development Code ("LDC") amendments by Ordinance No. 23-22 which would permit an increase in the number of dwelling units on South Seas beyond the 912 density-limit (the "Amendments").

18. The Amendments radically change the long-established density restrictions on South Seas and allow for significantly more units than permitted under the 1973 Resolution, the Administrative Interpretation #2002-0098 and the Settlement Agreement.

19. The relevant Amendments, set forth below, also specifically exempt South Seas Island Resort from the hotel room density limits that would continue to apply to other properties and resorts on Captiva.

a. Section 33-1611(e). Applicability.

> Unless specifically provided herein, development within the area defined as South Seas Island Resort, as defined herein, is exempt from this article~~, so long as the development complies with the Administrative Interpretation, ADD2002-00098, adopted by the Board of County Commissioners in 2002~~.

b. Section 33-1614. Definitions.

South Seas Island Resort means certain land generally lying north of Captiva Drive and bounded by the Gulf of Mexico, Red Fish Pass, and Pine Island Sound, commonly known as South Seas Island Resort, along with certain parcels lying south of and fronting Captiva Drive as depicted in Appendix I, Map 18.

c. Section 33-1627(a). Height Restrictions on Captiva Island.

(a) The height of buildings and structures is subject to the requirements of section 34-2175. ~~may not exceed the least restrictive of the two following options:~~

~~(1) Thirty five feet above the average grade of the lot in question or 42 feet above mean sea level measured to the peak of the roof, whichever is lower; or~~
~~(2) Twenty eight feet above the lowest horizontal member at or below the lawful base flood elevation measured to the mean level between eaves and ridges in the case of gable, hop and gambrel roofs. If the lowest horizontal member is set above the base flood elevation, the 28 foot measurement will be measured starting from the base flood elevation. Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may extend an additional four feet above the roof peak or eight feet above the mean height level in the case of gable, hip, and gambrel roofs, whichever is lower, so long as these elements equal 20 percent of the total roof area.~~

d. Section 34-1805. Density Limitation for Captiva Island

The permitted density for hotels and motels as set forth in this division will not apply to any hotel or motel units on Captiva Island. With the exception of the South Seas Island Resort, ~~T~~the maximum permitted density for hotels or motels on Captiva Island may not exceed three units per gross acre. The redevelopment of nonconforming hotels or motels on Captiva Island will be governed by the provisions of section 33-1628(b). That section will be interpreted to prohibit an increase in the number of rental units and to establish a maximum average unit size of 550 square feet.

e. Section 34-2175(a)(2). Height Limitations for Special Areas and Lee Plan Land Use Categories.

The following areas have special maximum height limitations applicable to all conventional and planned development districts.

Captiva Island, except South Seas Island Resort. ~~No~~ The height of a building or structure may not ~~be erected or altered so that the peak of the roof~~ exceed~~s~~ 35 feet ~~above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower~~. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted; provided however, one communication tower, not to exceed 170 feet in height, may be constructed in accord with section 33-1627 ~~Lee Plan Policy 23.2.3.~~

> Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may extend an additional four feet above the roof peak ~~or eight feet above the mean height level in the case of gable, hip, and gambrel roofs, whichever is lower, so long as~~ provided that the total area dedicated to the exceedance of these elements, as measured by drawing a rectangle around the perimeter of the area(s) of the exceedances, equals 20 percent or less of the total roof area.

20. The changes to the Lee County Land Development Code, as adopted by the Amendments, authorize an increase in density and specifically an increase in hotel unit density, for the express and sole benefit of South Seas. Specifically, the LDC Amendment:

a. Exempts development on South Seas from all provisions of Chapter 33 of the Land Development Code (the "Captiva Code"), including Section 33-1628(c) which limits both dwelling and hotel units to three units per acre.

b. Exempts South Seas from the Captiva Island density cap of three hotel units per acre from Chapter 34 (Section 34-1805) of the Land Development Code, thereby eliminating the 912-unit density limit; and

c. Exempts South Seas from any density limitation on hotel units whatsoever.

21. Prior to adoption of the Amendments, South Seas was exempt from Chapter 33 of the LDC under Section 33-1611(e) so long as development on South Seas complied with Administrative Interpretation #2002-0098. Both Chapter 33 of the LDC and the Administrative Interpretation #2002-0098 set the cap for dwelling and hotel units at three units per acre. .

22. The deletion of the Administrative Interpretation compliance requirement by the Amendments, which amended Section 33-1611(e), coupled with Section 34-1805, as amended, which eliminated the three hotel units per acre cap on South Seas, means South Seas now has ***no*** density limitation on hotel units and therefore no cap of 912 units.

23. In an effort to take immediate advantage of the LDC Amendments, on December 18, 2023, South Seas submitted a Rezoning Application to the County, which seeks approval to construct 707 new units, thereby increasing density on South Seas from 912 units to 1,347 units. The application is pending and under review by Lee County staff.

24. The construction of the 707 new units would constitute a forty-eight percent (48%) increase in density on South Seas.

25. The County's adoption of the LDC Amendments presents an imminent risk that the number of dwelling units on South Seas will significantly exceed 912.

26. As such, CCA requires a declaration of rights with respect to the County's obligations under Paragraph 3 of the Settlement Agreement.

27. All conditions precedent to the filing of this lawsuit have been performed, waived, or excused.

COUNT I – DECLARATORY JUDGMENT

28. CCA hereby re-alleges and incorporates paragraphs 1 through 27, above, as if fully set forth herein.

29. This is an action for declaratory relief brought pursuant to Chapter 86, Florida Statutes.

30. The County's adoption of the LDC Amendments presents an imminent risk that: (a) the overall number of dwelling units on South Seas will exceed 912; (b) the units for which building permits could be issued by Lee County at South Seas is increased from 272 to 707 units, in breach of Paragraph 3 of the Settlement Agreement.

31. As such, there is an actual and justiciable controversy between the County and CCA.

32. CCA has a bona fide, present, and actual need for a declaration of rights as to the County's obligations under the Settlement Agreement, and the restriction on the County not to issue building permits for more than 912 units on South Seas.

33. An immunity, power, privilege, or right of CCA depends on the facts or the law that applies to the facts. Specifically, without an order declaring that the Settlement Agreement bars the County from issuing building permits on any and all units that would exceed increasing the 912-unit density limit on South Seas, CCA will be harmed and the County will be in violation of Paragraph 3 of the Settlement Agreement.

34. The County has an actual, present, adverse, and antagonistic interest in this matter adverse to CCA.

35. All parties having an antagonistic and adverse interest in this controversy are named parties to this action. Specifically, the County and CCA.

36. The relief sought in this Complaint does not amount to mere legal advice.

WHEREFORE, CCA requests that this Court enter an Order (a) declaring that the Settlement Agreement bars the County from issuing any building permits that would exceed the 912-unit density limit that included hotel rooms on South Seas; and (b) awarding such further and additional relief as this Court deems appropriate.

Respectfully submitted this 2nd day of April 2024.

HAHN LOESER & PARKS LLP
2400 First Street, Suite 300
Fort Myers, FL 33901
Phone: (239) 337-6700
Facsimile: (239) 337-6701

By: /s/*Michael R. Whitt*
MICHAEL R. WHITT, ESQ.
Florida Bar No. 725020
mwhitt@hahnlaw.com
kzamzow@hahnlaw.com
FL-eservice@hahnlaw.com
THEODORE L. TRIPP, ESQ.
Florida Bar No. 221856
ttripp@hahnlaw.com
tvonschmittou@hahnlaw.com
GABRIEL ARBOIS, ESQ.
Florida Bar No. 1031204
garbois@hahnlaw.com
mhawkins@hahnlaw.com

Exhibit “1”

TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
MEDIATOR'S REPORT
CIRCUIT MEDIATION

CAPTIVA CIVIC ASSOCIATION, INC. & MICHAEL F. KELLY vs LEE COUNTY, FLORIDA & PLANTATION DEVELOPMENT

02-9598-CA-JSC
Court Case No.

CM02-7913
Mediation No.

Judge JOHN S. CARLIN

Hours

TYPE OF CASE:

_____ Breach of Contract
_____ Construction
_____ Corporate
_____ Labor & Materials
_____ Goods Sold/Delivered
_____ Personal Injury
_____ Probate
_____ Product Liability
_____ Malpractice
_____ Real Estate
_____ Real Property
_____ Services Performed

Other (specify) ZONING

PARTIES:

The following were present:

X All plaintiffs and plaintiff trial counsel.

_____ If plaintiff is not an individual, the representative who appeared had total authority.

X All defendants and defendants trial counsel.

_____ If defendant is not an individual, the representative who appeared had total authority.

FILED LEE CO. FLORIDA
CLERK OF COURTS
2003 MAR 27 AM 11:43
BY _____ D.C.

DISPOSITION:

X The conflict has been completely resolved. AGREEMENT TO BE DELIVERED & Subject to County Commission Approval

_____ The conflict has been partially resolved. Some issues require court resolution.

_____ The parties have reached a total impasse.

_____ The matter has been continued until _____ at _____ am/pm for further mediation.

_____ Other

Dated February 20, 2003
bil.frm (12/96)

ROBERT T. MAHER MEDIATOR

MAR 26 2003

CLERK OF THE COURT & COMPTROLLER
KEVIN C. FANNING
LEE COUNTY FLORIDA

TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
MEDIATION DIVISION
RECORD OF AGREEMENT
CIRCUIT MEDIATION

CAPTIVA CIVIC ASSOCIATION, INC. & MICHAEL F. KELLY vs. LEE COUNTY, FLORIDA & PLANTATION DEVELOPMENT

02-9598-CA-JSC
Court Case No.

CM02-7913
Mediation No.

THE PARTIES AND COUNSEL HAVING MET THIS 20TH DAY OF FEBRUARY 2003, AGREE AS FOLLOWS:

SEE ATTACHED MEDIATION AGREEMENT

*THE COURT RETAINS JURISDICTION OVER THE PARTIES TO ENFORCE THE TERMS OF THIS AGREEMENT.

CAPTIVA CIVIC ASSOCIATION, INC.
Plaintiff

MICHAEL F. KELLY
Plaintiff

MATTHEW UHLE
Attorney for Plaintiff

LEE COUNTY, FLORIDA
Defendant

THOMAS WRIGHT
Attorney for Lee County

PLANTATION DEVELOPMENT, LTD.
Defendant

STEVEN HARTSELL
Attorney for Plantation Development

ROBERT T. MAHER MEDIATOR

Mar., 2003.

The above agreement is approved by me this 20 day of

JOHN S. CARLIN
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA **CIVIL ACTION**

CAPTIVA CIVIC ASSOCIATION, INC., and MICHAEL F. KELLY,

Plaintiffs,

v. **CASE NO: 02-9598-CA-JSC**

LEE COUNTY, FLORIDA, a political subdivision of the State of Florida, and PLANTATION DEVELOPMENT, LTD.,

Defendants.
_____/

MEDIATION AGREEMENT

Plaintiffs, CAPTIVA CIVIC ASSOCIATION, INC. ("CCA") and MICHAEL F. KELLY, ("Kelly") and Defendants, LEE COUNTY, FLORIDA ("County") and PLANTATION DEVELOPMENT, LTD. ("Plantation"), hereby agree as follows:

1. From March 1, 2003, until February 28, 2013, Plantation or its successors and assigns, or their agents and representatives, within 10 days after submittal, will provide counsel of record for CCA with written notice of any development order applications to Lee County on the five (5) parcels currently described by Lee County STRAP Numbers 22-45-21-00-00005.0000, 00006.0000, 00006.0250, and 23-45-21-00-00001.0000, and the parcel located East of Plantation Beach Club III and south and west of the main road (and more particularly shown on Exhibit A attached), regardless of whether the property is owned by Plantation on the date of application. This requirement may be waived in writing by CCA.

2. Amendments to the Master Development Plan for South Seas Resort and proposed reallocations of dwelling units pursuant to Condition 5.e. of the July 30, 2002 "Administrative Interpretation 2002-00098" may be considered for administrative approval

by the Director of County's Department of Community Development on a case-by-case basis pursuant to the requirements of LDC Section 34-1038. No other amendments to Determinations 1-9 of the "Administrative Interpretation" may be approved without a public hearing pursuant to LDC § 34-1038(b).

3. The total number of dwelling units on South Seas Resort is limited to 912. No building permits may be issued by County for dwelling units within South Seas Resort that will cause that number to be exceeded at any time. CCA and Kelly agree that the unit count in Determination #1 of the July 30, 2002 Administrative Interpretation will control and is the basis for future development of South Seas Resort. Specifically Bayside Villas will be counted as 102 units and Employee Housing as 140 units unless revised in the future.

4. County and Plantation acknowledge that CCA and Kelly are not waiving any right they might have to challenge applications for permits within South Seas Resort other than the following four documents:

a. Administrative Interpretation #2002-00098;

b. Compliance Agreement dated July 30, 2002 between Lee County, Plantation and MeriStar;

c. Administrative Amendment #ADD2002-00054 dated 08-09-02; and

d. Limited Review Development Order #LDO 2001-00399 for Harborview Villas;

that were specifically challenged in the Complaint in Case No. 02-9598 CA JSC. CCA and Kelly specifically waive the right to challenge any permits, including certificates of occupancy, related to the approval of Harborview Villas.

5. CCA and Kelly agree to voluntarily dismiss the Complaint in Case No. 02-9598 CA JSC with prejudice.

6. Plantation agrees to voluntarily dismiss the Counterclaim filed in Case No. 02-9598 CA JSC with prejudice.

CLERK OF THE COURT & COMPTROLLER KEVIN C. KARNES 1887 IN GOD WE TRUST LEE COUNTY FLORIDA

7. All of the parties to this agreement will pay their own fees and costs arising from the litigation in Case No. 02-9598 CA JSC.

8. The parties agree that this Mediation Agreement will be enforceable through application to the Court, notwithstanding the dismissals of the claims, and will prepare a proposed order for the Circuit Court jointly requesting it to enter a Final Judgment which incorporates the terms of this Mediation Agreement.

DATED this 27th day of February, 2003.

CAPTIVA CIVIC ASSOCIATION, INC.

By: _____
Sharon Brace, President

_____
Matthew D. Uhle, Esq.
Attorney for CCA and Kelly

_____
MICHAEL F. KELLY

LEE COUNTY, FLORIDA

By: _____

_____
Thomas L. Wright, Esq.
Assistant Lee County Attorney

PLANTATION DEVELOPMENT, LTD.
Mariner Group, Inc. General Partner

By: _____
Robert M. Taylor, Chairman

_____ for
Kenneth G. Oertel, Esq.
Attorney for Plantation

_____
Steven C. Hartsell, Esq.
Attorney for Plantation

F:\WPDATA\SCH\PlantationDev't\CCA vs. PDL and Lee Co\Mediation Agreement revised FINAL 2-26-03.wpd

JOHNSON ENGINEERING

SINCE 1946

March 3, 2003

EXHIBIT A-2 of 2

DESCRIPTION

PARCEL IN SOUTH SEAS PLANTATION
SECTION 22, TOWNSHIP 45 SOUTH, RANGE 21 EAST
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

A tract or parcel of land lying in Government Lot 3 and Government Lot 5, Section 22, Township 45 South, Range 21 East, Captiva Island, Lee County, Florida which tract or parcel is described as follows:

From an intersection of the south line of the lands described in deed recorded Official Record Book 209 at Page 71, Lee County Records with the curved westerly line of a Roadway Easement (South Seas Plantation) (50 Feet Wide) as described in Amended Grant of Easement recorded in Official Record Book 1806 at Page 3868, Lee County Records also being the northeasterly corner of South Seas Plantation Beach homesites as recorded in Plat Book 29 at Page 105, Public Records of Lee County, Florida run S 89° 27' 00" W along said south line and north line of said beach homesites for 138.71 feet; thence run N 07° 02' 29" E departing said line for 141.89 feet; thence run N 08° 52' 16" W for 218.60 feet to an intersection with the southerly curved line of said Roadway Easement; thence run the following courses and distances along said Roadway Easement southeasterly along the arc of said curve to the left of radius 131.00 feet (chord bearing S 79° 36' 43" E) (chord 29.15 feet) (delta 12° 46' 34") for 29.21 feet to a point of reverse curvature; thence run southeasterly along arc of said curve to the right of radius 113.00 feet (chord bearing S 42° 30' 00" E) (chord 155.57 feet) (delta 87° 00' 00") for 171.58 feet to a point of tangency; thence run S 01° 00' 00" W for 122.00 feet to a point of curvature; thence run southeasterly along arc of said curve to the left of radius 265.00 feet (chord bearing S 11° 38' 02" E) (chord 115.92 feet) (delta 25° 16' 05") for 116.86 feet to the Point of Beginning.

Parcel contains 0.86 acres, more or less.

SUBJECT TO easements, restriction and reservations of record.

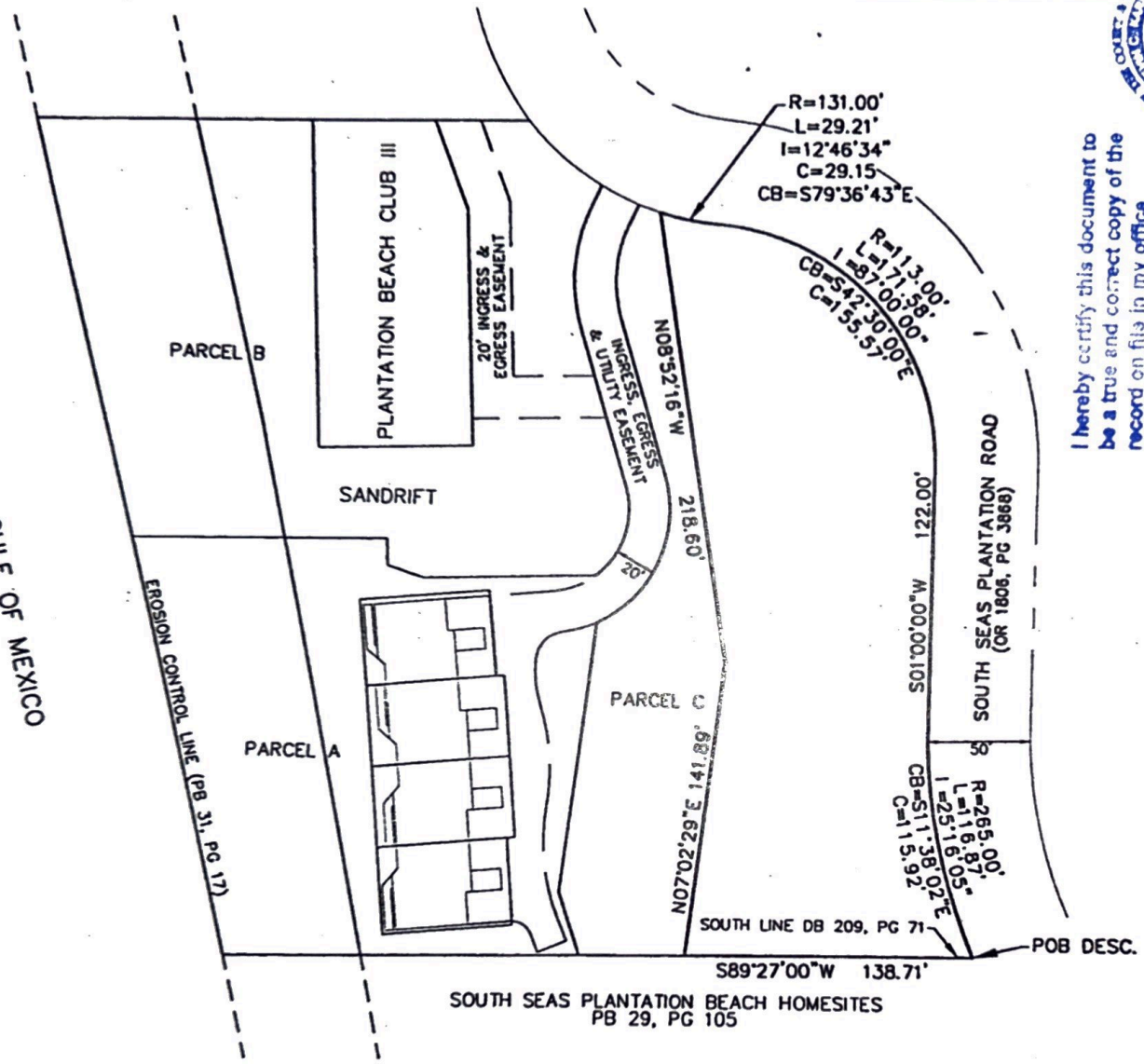
Bearings hereinabove mentioned are based on the north line of South Seas Plantation Beach Homesites as recorded in Plat Book 29 at Page 109, Public Records of Lee County, Florida also being the south line of the lands described in deed recorded in Deed Book 209 at Page 71, Public Records of Lee County, Florida wherein said line bears S 89° 27' 00" W.

Michael W. Norman (for The Firm LB-642)
Professional Land Surveyor
Florida Certificate No. 4500

STATE OF FLORIDA
NO. 4500
REGISTERED LAND SURVEYOR

20033824/Description 030303

2158 Johnson Street ▪ Post Office Box 1550 ▪ Fort Myers, Florida 33902-1550
(239) 334-0046 ▪ Fax (239) 334-3661



I hereby certify this document to be a true and correct copy of the record on file in my office
Kevin C. Karnes, Clerk of the Circuit Court, Lee County FL
Dated: 1-18-24
By _____ Deputy Clerk

NOTES:

1. BEARINGS SHOWN HEREON ARE BAS NORTH LINE OF SOUTH SEAS PLAN HOMESITES (PLAT BOOK 29, PAGE ALSO THE SOUTH LINE REFERENCED BOOK 209, PAGE 71, BEARING S89
2. THIS SKETCH DOES NOT MAKE ANY SENTATION AS TO ZONING OR DEVE RESTRICTIONS ON SUBJECT PARCEL.
3. POB = POINT OF BEGINNING
4. DESC. = DESCRIPTION
5. DESCRIPTION ATTACHED.

THIS IS NOT A

MICHAEL W. NORMAN (FOR THE FIR
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 4500

DATE SIGNED: _____
NOT VALID WITHOUT THE SIGNATURE AN SEAL OF A FLORIDA LICENSED SURVEYO

PARCEL IN
SOUTH SEAS PLANTATION
SECTION 22, TOWNSHIP 46 SOUTH, RANGE 24 EAST
CAPTIVA ISLAND, LEE COUNTY, FLORIDA

JOHNSON ENGINEERING

2158 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE (239) 334-0046
FAX (239) 334-3661
E.B. #642 & L.B. #642

SKETCH TO ACCOMPAN
EXHIBIT A-

DATE	PROJECT NO.	FILE NO.
03/03/03	20033824	22-45-21