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Certified Article Number
9314 8699 0430 0036 1492 65
SENDERS RECORD

June 28, 2017

Via E-mail (JLeatherman@leegov.com) and Certified Mail

Jessica K. Leatherman, Planner
Lee County Community Development Department
1500 Monroe Street
Fort Myers, FL 33901

Re: Case No.: SEZ2017-00003
Olde Hickory Golf & Country Club
14670 Old Hickory Boulevard, Fort Myers, FL 33912
STRAP No.: 27-45-25-02-0000D.00CE
Consumption on Premises Outside Clubhouse
Our File No.: 91874.001

Dear Ms. Leatherman:

As you are aware, our office represents Dr. Mitchell Lasoff, a resident in the Olde Hickory community. A private settlement was executed on May 26, 2017 between our client and the Olde Hickory Golf & Country Club Master Association, Inc. (the conditions of which the applicant has today requested the County to incorporate into any approval of a special exception (SEZ2017-00003) for outdoor alcohol consumption). Our client agreed to withdraw his earlier concerns with respect to this proposal. Accordingly, please accept this letter as a formal request to withdraw the previous concerns that were detailed in the letter to you from Kathleen Berkey dated April 4, 2017 related to this special exception (SEZ2017-00003).

Thank you. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Steven C. Hartsell

SCH/sbm
Enclosure(s) *Recorded Agreement*
cc: Client (*via e-mail*)
Audra Ennis, Zoning Manager (*aennis@leegov.com*)
Joseph Madden, Esq. *(jamadden@myfloridaattorney.com)*

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SEZ 2017-00003

INSTR # 2017000129736, Doc Type AGR, Pages 9, Recorded 06/14/2017 at 10:33 AM, Linda Doggett, Lee County Clerk of Circuit Court, Rec. Fee $78.00 Deputy Clerk ERECORD

Prepared by and to be returned to:
Kathleen O. Berkey, Esq.
Pavese Law Firm
P.O. Drawer 1507
Fort Myers, FL 33902-1507

STRAP No.:
27-45-25-02-0000A.00CE

AGREEMENT

THIS AGREEMENT is made this 26th day of May 2017 by and between The Olde Hickory Golf & Country Club Master Association, Inc., a Florida not for profit corporation, whose address is 14670 Old Hickory Boulevard, Fort Myers, Florida 33912 ("Association") and Dr. Mitchell Lasoff, whose address is 14600 Old Hickory Boulevard, Fort Myers, Florida 33912, together with several other owners ("Lasoff").

RECITALS

WHEREAS, Peter Tschernitz ("General Manager"), as General Manager on behalf of Association, applied to Lee County, Florida for a special exception (Case No. SEZ2017-00003) in the Residential Planned Development zoning district to allow an amendment to the existing consumption on premises ("COP") license to allow outdoor consumption on premises by the existing Association pool ("Special Exception") on property located at 14670 Old Hickory Boulevard, Fort Myers, Florida 33912 further identified by STRAP No. 27-45-25-02-0000A.00CE and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Association is the record title owner of the Property and Lasoff owns a lot that is approximately 100-feet from the Property, as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference; and

WHEREAS, Lasoff's lot contains his primary residence; and

WHEREAS, Lasoff has concerns about the impacts of the proposed outdoor COP use on his residence; and

WHEREAS, Association and Lasoff have agreed to certain conditions of approval to be made part of the Special Exception approval, and which conditions will help to address Lasoff's concerns.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by both parties, Association and Lasoff agree as follows:

1. The above recitals are true and correct and incorporated herein by this reference.

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2. Association shall request that Lee County incorporate the following conditions ("Conditions") into any approval of the Special Exception:

1) The Association shall advertise that daily phone and walk-up outdoor COP service and sales shall only be from 11:00 a.m. to 5:00 p.m. and enforce said hours.
2) The Association shall advertise that outdoor COP service for special events, defined as those events held outside when the Association closes its indoor facilities for another function ("Special Events"), and private outdoor events requested by members or individual homeowners' associations ("Private Events") shall only be from 4:00 p.m. to 8:30 p.m., with all patrons and staff leaving the premises and lights out by 9:00 p.m., and enforce said hours.
3) In October, November, and December there shall be no more than two (2) Special Events per month. In January, February, March, and April there shall be no more than four (4) Special Events per month. Additionally, individual homeowners' associations may hold no more than one (1) private event each, between October 1st and April 30th, and there shall be no more than one (1) private homeowners' association event per month between October 1st and April 30th. There shall be no more than two (2) Special or Private Events in a given week between October 1st and April 30th. Allocations for Special Events or Private Events cannot be carried over from a given week or month.
4) The use of animated signs (defined as those that are composted of moving parts or lights or lighting devices that change color, flash, alternate illumination, show motion, movement or otherwise change appearance) and neon signs are prohibited. Any signs that are back-lit for display at night shall be oriented to the west away from adjacent residences.
5) There shall be no amplified music.
6) Should the Association utilize a permanent or temporary structure ("Structure") for outdoor COP service, the Structure shall not be located in the northeast corner of the pool deck.

3. Regardless of whether Lee County incorporates the Conditions into an approval of the Special Exception, if the Special Exception is approved and/or the Association's existing COP license (BEV4602220) is amended or expanded by the State of Florida, the Association and its agents and representatives shall adhere to the Conditions as though they were a part of the Special Exception approval and/or the State of Florida's approval of an amendment to or expansion of the Association's existing COP license (BEV4602220).

4. Lasoff. as well as other owners that are concerned about the outdoor COP service, including the Postlers, Barkers and Connors, shall not object to the Special Exception at the Lee County Hearing Examiner public hearing scheduled for July 13.

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2017, and shall instruct Pavese Law Firm to send a letter withdrawing earlier concerns sent to Lee County Zoning.

5. Simultaneously with the execution and delivery of this Agreement, the Association shall transmit to Lee County an amended outdoor COP Special Exception Plan and a corresponding narrative which explains that the approximately 8-foot tall sound barrier to be located between the pool and Lasoff's lot is no longer a part of its Special Exception application.

6. Association represents and warrants to Lasoff that the execution and delivery of this Agreement has been duly approved by all requisite corporate or partnership action, as applicable, that is required to be taken.

7. Attorneys' Fees. In connection with any litigation, including appellate proceedings, arising out of this Agreement the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred by the enforcement of any of the obligations contained in this Agreement.

8. Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure monetary damages that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that in the event of any such failure, an aggrieved Person will be irreparably damaged and will not have an adequate remedy at law. Any such Person shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and the Association's successors in interest, heirs, and assigns.

10. Governing Law. This agreement shall be governed by, construed and interpreted under the laws of the State of Florida.

11. Venue and Jurisdiction. The venue and jurisdiction of any dispute relating to this Agreement shall be construed in accordance with the laws of Florida, and for the purposes of this contract, venue and jurisdiction for any litigation is construed to be in Lee County, Florida, and both parties waive any objection to said venue or jurisdiction.

12. Entire Agreement. This agreement contains the entire understanding of the parties hereto and supersedes any prior agreement. Neither party shall be bound by any terms, conditions, statements, or representations, oral or written, which are not contained in this Agreement. The parties hereby acknowledge they have not been induced, persuaded, or motivated by any promise or representation made by the other party in entering into this Agreement unless expressly set forth herein.

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13. Severability. The illegality, invalidity, or unenforceability of any provision of this agreement shall not affect the remainder of this agreement.

14. Time. Time is of the essence of each provision of this Agreement.

15. Successors and Assigns. All rights and liabilities herein given to, or imposed upon the Association hereto shall extend to and inure to the benefit of the Association's parties, agents, representatives, lessees, employees, heirs, executors, administrators, successors and assigns; and if more than one, shall all be bound jointly and severally by the terms, covenants and agreement herein contained.

16. Amendment. Except as otherwise provided herein, this Agreement may not be amended, altered, or modified except by writing executed by both parties hereto.

17. Section Headings. The section headings and captions in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

18. Executed Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered, shall constitute an original, but all counterparts shall together constitute one and the same instrument. The final executed instrument shall be recorded in the Public Records of Lee County at Association's sole expense.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of the date set forth above.

[Remainder of Page Intentionally Left Blank]

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1st Witness
Print Name: Sandra H. Saiz

2nd Witness
Print Name: Leslie Hutchinson

By: _____
Dr. Mitchell Lasoff

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25th day of May, 2017. The above-named person is personally known to me or has produced _____ as identification.

Signature of Notary Public
Sheldon B. Matzick
Printed Name of Notary Public
My commission expires on 7/25/2020

(Notary Seal)

Notary Public State of Florida
Sheldon B Matzick
My Commission FF 997346
Expires 07/25/2020

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_____ By: _____
1st Witness Dr. Mitchell Lasoff
Print Name: _____

_____
2nd Witness
Print Name: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of_____, 2017. The above-named person is personally known to me or has produced _____ as identification.

_____
Signature of Notary Public

(Notary Seal)

_____
Printed Name of Notary Public
My commission expires on_____

The Olde Hickory Golf & Country Club Master Association, Inc.

Melanie Huh
1st Witness
Print Name: MELANIE Huh

By: _____
Gerald French, President

Pat Pacella
2nd Witness
Print Name: PETER ISGRIGNIZ

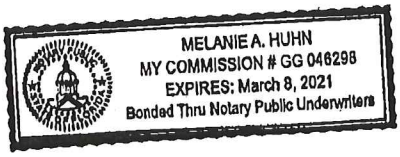
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 26 day of MAY, 2017 by Gerald French as President of The Olde Hickory Golf & Country Club Master Association, Inc. on behalf of the Florida not for profit corporation. The above-named person is personally known to me or has produced _____ as identification.

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(Notary Seal)



Melanie A. Huhn
Signature of Notary Public

MELANIE A. HUHN
Printed Name of Notary Public

My commission expires on 03/08/21

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EXHIBIT "A"

PROPERTY DESCRIPTION

A PORTION OF TRACT "F" OF THE OLDE HICKORY GOLF AND COUNTRY CLUB AS RECORDED IN PLAT BOOK 48, AT PAGES 86 THROUGH 114 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LYING IN SECTION 27, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF TRACT "H", THE OLDE HICKORY GOLF AND COUNTRY CLUB, PLAT BOOK 48, AT PAGES 86 THROUGH 114, LEE COUNTY, FLORIDA; THENCE RUN ALONG THE EAST LINE OF SAID TRACK "H" NORTH 00°56'53" WEST, FOR A DISTANCE OF 560.00 FEET; THENCE RUN NORTH 89°03'07" EAST, A DISTANCE OF 593.03 FEET TO A POINT ON THE WESTERLY LINE OF BLOCK 6 OF SAID PLAT; THENCE RUN ALONG SAID WESTERLY LINE SOUTH 19°29'28" WEST, FOR A DISTANCE OF 189.60 FEET TO THE SOUTHWEST CORNER OF LOT 26 OF SAID BLOCK 6; THENCE RUN ALONG THE SOUTH LINE OF SAID LOT 26 SOUTH 70°30'32" EAST, FOR A DISTANCE OF 140.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF TRACT "A", (OLD HICKORY BOULEVARD) OF SAID PLAT; THENCE RUN ALONG SAID WESTERLY RIGHT OF WAY LINE FOR THE FOLLOWING SIX (6) COURSES AND DISTANCES;

1. SOUTH 19°29'28" WEST, A DISTANCE OF 143.35 FEET TO A POINT ON A TANGENTIAL CIRCULAR CURVE TO THE RIGHT;
2. THENCE RUN ALONG THE ARC OF SAID CURVE 165.16 FEET, HAVING A RADIUS OF 160.00 FEET, A CENTRAL ANGLE OF 59°08'36", (CHORD, SOUTH 49°03'46" WEST, 157.92 FEET);
3. THENCE RUN SOUTH 78°38'04" WEST, FOR A DISTANCE OF 35.95 FEET TO A POINT ON A TANGENTIAL CIRCULAR CURVE TO THE RIGHT;
4. THENCE RUN ALONG THE ARC OF SAID CURVE 87.73 FEET, HAVING A RADIUS OF 482.50 FEET, A CENTRAL ANGLE OF 10°25'03", (CHORD, SOUTH 83°50'36" WEST, 87.61 FEET);
5. THENCE RUN SOUTH 89°03'07" WEST, A DISTANCE OF 54.82 FEET TO A POINT ON A TANGENTIAL CIRCULAR CURVE TO THE LEFT;
6. THENCE RUN ALONG THE ARC OF SAID CURVE 324.23 FEET, HAVING A RADIUS OF 617.50 FEET, A CENTRAL ANGLE OF 30°50'04", (CHORD, SOUTH 74°00'35" WEST, 320.52 FEET) TO THE POINT OF BEGINNING.

CONTAINING 6.57 ACRES, MORE OR LESS

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EXHIBIT B

LEGAL DESCRIPTION

Lot 24, Block 6, of The Olde Hickory Golf and Country Club, as per map or plat thereof recorded in Plat Book 48, Pages 86 through 114, inclusive, of the Public Records of Lee County, Florida.

STRAP Number 27-45-25-02-00006.0240

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