

**CITY OF SANIBEL
RESOLUTION 13-044**

**A RESOLUTION APPROVING AN AGREEMENT AND LEASE BETWEEN
SANIBEL-CAPTIVA ISLANDS CHAMBER OF COMMERCE, INC. AND CITY
OF SANIBEL; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the Sanibel-Captiva Islands Chamber of Commerce, Inc. (hereinafter referred to as “Chamber”) and the City of Sanibel (hereinafter referred to as “City”) have been parties to an Agreement and Lease for over thirty (30) years through which the City has leased to the Chamber a parcel of property adjacent to the Chamber of Commerce building, 1159 Causeway Boulevard, Sanibel, for a parking lot and related uses; and

WHEREAS, the Chamber and the City wish to continue the lease arrangement through the attached Agreement and Lease which provides for a thirty (30) year term;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel:

SECTION 1. The Agreement and Lease between the Chamber and the City, a copy of which is attached hereto and incorporated herein as Exhibit “A” to this Resolution, is hereby approved and the City Manager is hereby authorized to execute said document on behalf of the City.

SECTION 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this 7th day of May, 2013.

AUTHENTICATION:

Kevin Ruane, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM: _____
Kenneth B. Cuyler City Attorney Date

Vote of Council members:

Ruane _____
Congress _____
Denham _____
Harrity _____
Jennings _____

Date filed with City Clerk: _____

**AGREEMENT AND LEASE
BETWEEN
SANIBEL-CAPTIVA ISLANDS
CHAMBER OF COMMERCE, INC.
AND
CITY OF SANIBEL**

THIS AGREEMENT AND LEASE, is made and entered into this ___ day of _____, 2013 (hereinafter referred to as the "Effective Date"), by and between the SANIBEL-CAPTIVA ISLANDS CHAMBER OF COMMERCE, INC., a non-profit Florida corporation, 1159 Causeway Road, Sanibel, Florida, 33957, (hereinafter referred to as "Chamber") and the CITY OF SANIBEL, a municipal corporation, (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the Chamber and the City have been parties to an Agreement and Lease for over 30 years (the "1981 City/Chamber Agreement") relating to two parcels of property located on the west side of Causeway Boulevard near the entrance to Sanibel Island and more particularly described as follows:

- (a) A parcel of property, Lee County Property Appraiser Strap #20-46-23-T1-00002.2020 as depicted on Exhibit "A", attached hereto (hereinafter referred to as the "Chamber Parcel"); and
- (b) A portion of an adjacent parcel of property owned by the City of Sanibel, Lee County Property Appraiser Strap #20-46-23-T1-00002.2060, approximately 31,182 square feet in size as depicted on Exhibit "A", attached hereto (hereinafter referred to as the "City Parcel"); and

WHEREAS, the Chamber owns and operates the Chamber Parcel for purposes of a Chamber of Commerce Visitors Center and offices, together with a public restroom facility constructed by the City with public funds in the early 1980's; and

WHEREAS, the City has leased the City Parcel to the Chamber on a long-term basis for use as a parking lot for members of the public visiting the Chamber's Visitor Center, Chamber facilities and restroom facility, with a portion of such City Parcel designated for parking by visitors to the City's Pond Apple Park and trail; and

WHEREAS, the City and the Chamber wish to enter into this Agreement and Lease to replace and supersede the currently effective 1981 City/Chamber Agreement made and entered into by the Chamber and the City on August 11, 1981;

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, acknowledged by the parties to be sufficient and to have been received, the City and the Chamber hereby agree as follows:

1. The above recitals are true and correct and are hereby incorporated in this Agreement and Lease as if fully set forth in this section.
2. With respect to the public restrooms that were constructed pursuant to the 1981 City/Chamber Agreement, the City hereby releases and abandons all ownership, right and title in the public restroom facilities located on the Chamber Parcel and hereby grants any rights or ownership interest that it has or may have in such restroom facilities to the Chamber. The City has determined that the public restroom facilities located on the Chamber Parcel are surplus property and facilities and are no longer necessary or useful for City operations.
3. The Chamber hereby accepts the ownership, control and responsibility for the restroom facilities originally constructed by the City and located on the Chamber Parcel and understands and agrees that the Chamber shall be solely responsible for any and all maintenance, improvements, costs, insurance, liability, additions to the restroom facilities, removal of the restroom facilities and any other matter relating to the restroom facilities located on the Chamber Parcel.
4. As of the Effective Date of this Agreement, the Chamber does hereby covenant and agree to indemnify, save and hold harmless the City against any and all claims arising from the conduct, management, operation, use by the Chamber or public, construction or maintenance of the Chamber buildings and facilities, specifically including the restroom facilities located on the Chamber Parcel, or any matters arising therefrom or in any way associated therewith. In the event any claim, lawsuit, cause of action or demand is made against the City in any way arising from the Chamber Parcel or any facilities thereon, the Chamber does hereby agree to indemnify, save and hold harmless the City and shall defend against all claims and lawsuits and pay for the cost of defense and investigation of same, including reasonable attorney's fees and in the event judgment is entered against the City, will pay said judgment promptly and upon written demand by the City. The Chamber acknowledges that separate consideration has been paid and received for this provision.
5. The City hereby leases to the Chamber and the Chamber hereby leases from the City, the City Parcel to be used solely as a parking lot, with associated uses, for purposes of parking for the Chamber Parcel and Chamber of Commerce Visitor Center uses. The Lease payment shall be \$1.00 annually. A legal description of the City Parcel which is leased hereunder is as follows:

See Attached Exhibit "B"

6. As additional conditions of this Agreement and Lease it is agreed as follows:
 - (a) 10 parking spaces, including 1 handicapped parking space, located along the southern boundary of the City Parcel shall be reserved for citizens and visitors to park and access Pond Apple Park and trail. The reserved parking spaces and the trailhead for Pond Apple Park (said trailhead located on City-owned preserve land not leased under this Agreement) are depicted on attached Exhibit "A".

- (b) The City, as Lessor, reserves the right to access the City Parcel at all reasonable times for any safety or other public purposes including, but not limited to, maintenance of the trailhead for Pond Apple Park and maintenance for the pathway to Bailey Road located at the western boundary of the City Parcel.
 - (c) The Chamber, as Lessee, shall be responsible at all times for any and all applicable Development Permits for development or redevelopment of parking spaces, landscaping, drainage and water retention facilities, and any other development matter requiring a permit from the City in its regulatory capacity. The City hereby authorizes the Chamber to be the applicant with respect to any such Development Permits provided the permit application is in conformance with the authority and purposes set forth in this Agreement and Lease. The Chamber is subject to all applicable land development regulations and all applicable local, state and federal regulations with respect to development and use of the City Parcel.
 - (d) The Chamber shall be solely responsible for all costs of parking lot improvements, costs of operations, costs of compliance with development standards and any and all costs which result from the use and operation of the City Parcel by the Chamber as a parking area.
- 7. The term of this Agreement and the lease of the City Parcel to the Chamber shall be thirty (30) years from the Effective Date of this Agreement, unless this Agreement is terminated at an earlier date pursuant to Section 8 of this Agreement.
- 8. Notwithstanding the thirty (30) year term of this Agreement, this Agreement shall be terminated upon any of the following events:
 - (a) In the event that the Chamber sells, leases or otherwise conveys or alienates its ownership interest in the Chamber Parcel to another person or entity, this Agreement and Lease shall immediately terminate upon such sale, conveyance or other alienation of the Chamber's property interest.
 - (b) In the event that the Chamber ceases to actively use the Chamber Parcel for Chamber of Commerce purposes for a period of one (1) year, this Agreement and Lease shall terminate at the conclusion of such time period.
 - (c) Upon the material breach of any of the terms and conditions of this Agreement and Lease by the Chamber, provided, however, the City shall be required to provide written notice of said breach and the Chamber shall have thirty (30) days to cure such breach or, in the alternative, to provide a schedule for curing such breach which is accepted and approved by the City in writing and to thereafter cure said breach as scheduled. Absent a cure of the breach, this Agreement and Lease shall terminate at the conclusion of the notice period(s) described in this Section.

9. As of the date of this Agreement, the Chamber does hereby covenant and agree to indemnify, save and hold harmless the City against any and all claims arising from the conduct, management, operation, use, construction or maintenance of the parking lot located on the City Parcel, or any matters arising therefrom or in any way associated therewith. In the event any claim, lawsuit, cause of action or demand is made against the City, the Chamber does hereby agree to indemnify, save and hold harmless the City and shall defend against all claims and lawsuits and pay for the cost of defense and investigation of same, including reasonable attorney's fees and in the event judgment is entered against the City, will pay said judgment promptly and upon written demand by the City. The Chamber acknowledges that separate consideration has been paid and received for this provision.
10. In the event that the City Parcel is determined to be subject to real estate taxes as a result of the use of such parcel by the Chamber, the Chamber shall be responsible for the payment of all such taxes and shall pay such taxes in a timely manner.
11. The Chamber shall not substantially alter the use, configuration or access to the City Parcel without prior written approval from the City.
12. The Chamber and City agree that the use of the City Parcel is non-exclusive and may be used for City vehicles provided, however, the City agrees that it shall not make use of the City Parcel for any purpose inconsistent with the Chamber's parking lot use. However, notwithstanding any other provision of this Agreement and Lease, the City shall be entitled pursuant to a Declaration of Emergency, including but not limited to a hurricane-related emergency, to (1) use the City Parcel for parking or staging of vehicles or equipment during the declared emergency, and/or (2) use the City Parcel for the deposit and storage of any type of disaster or storm debris. The City shall endeavor to remove such debris in as reasonable a timeframe as possible, taking into account such emergency and resulting conditions as determined by the City.
13. In the event of an eminent domain action by any lawful entity other than the City for any interest in the City Parcel, the City is hereby authorized to negotiate and settle the eminent domain action with respect to the City Parcel and the City shall be entitled to any award in such eminent domain proceeding. In the event of an eminent domain action by the City for road right-of-way purposes, there shall not be any award to the Chamber for the taking of any portion of the City Parcel for such road right-of-way purposes by the City.
14. The Chamber shall carry comprehensive general liability insurance with limits of liability thereunder of not less than \$1,000,000 combined single limit for bodily injury and/or property damage together with an endorsement for contractual liability. Such insurance shall name City as an additional insured, shall be issued by an insurance company authorized to do business in the State of Florida, and

shall provide thirty (30) days prior written notice to City of any cancellation of such policy. Chamber shall deliver to City a certificate evidencing that such insurance is in effect, and, thereafter, within ten (10) business days of City's request for any such certificate.

15. Except as provided herein, no assignment of this Agreement shall be made in whole or in part by any party without the express written consent of the other party, which may be withheld in their sole discretion.
16. If any section, subsection, sentence, clause, phrase or portion of this Agreement, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.
17. This Agreement, and the rights and obligations of the City and the Chamber hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year written above.

WITNESS:

**SANIBEL-CAPTIVA ISLANDS
CHAMBER OF COMMERCE, INC.,
a Florida non-profit corporation**

Witness #1 Signature

Witness #1 Printed Name

Witness #2 Signature

Witness #2 Printed Name

By: _____
Print Name: _____
Title: _____
Date: _____

**CITY OF SANIBEL, a Florida
municipal corporation**

ATTEST:

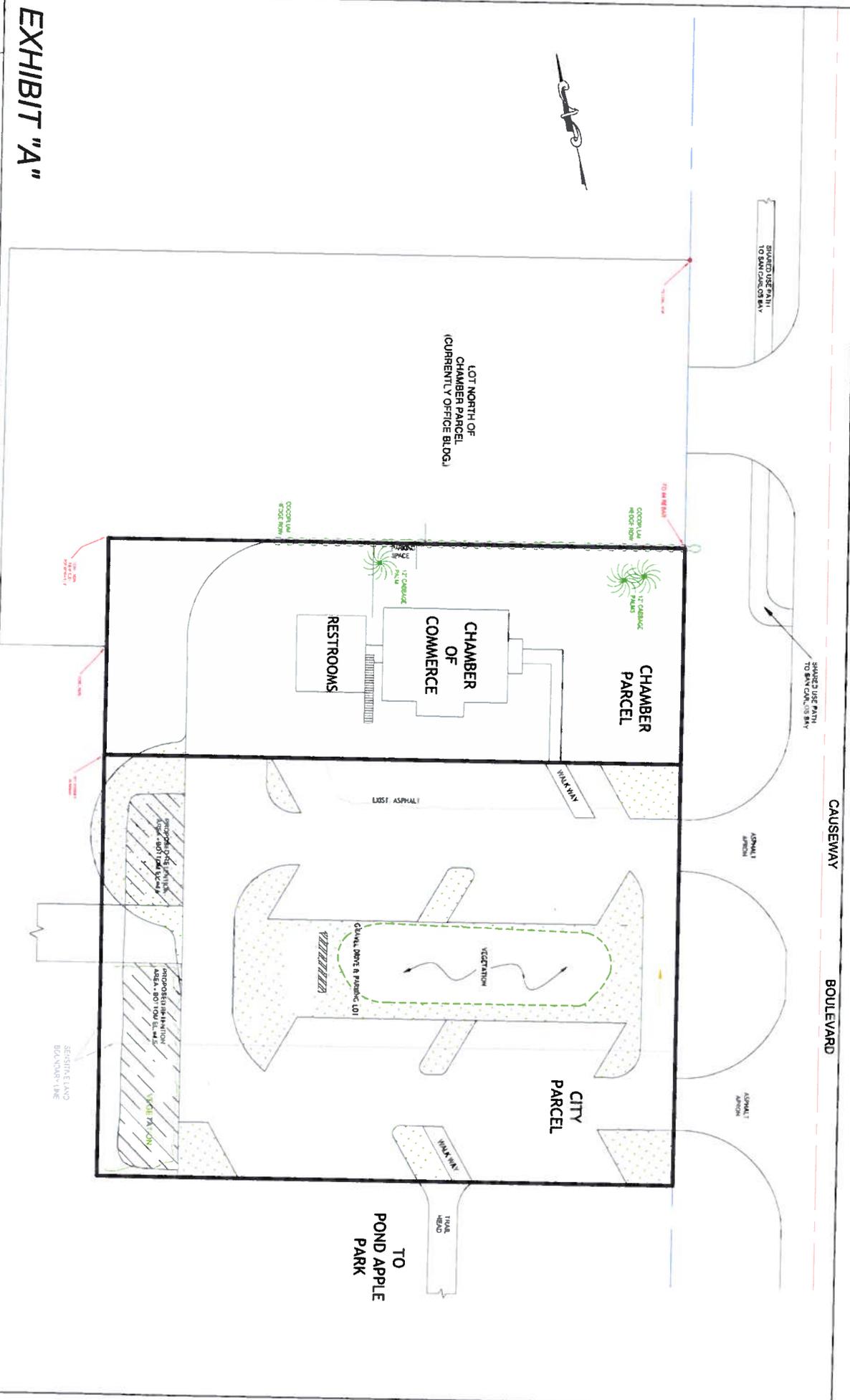
Pamela Smith, City Clerk

By: _____
Judith A. Zimomra,
City Manager
Date: _____

Approved as to form and legality:

Kenneth B. Cuyler, City Attorney

EXHIBIT "A"

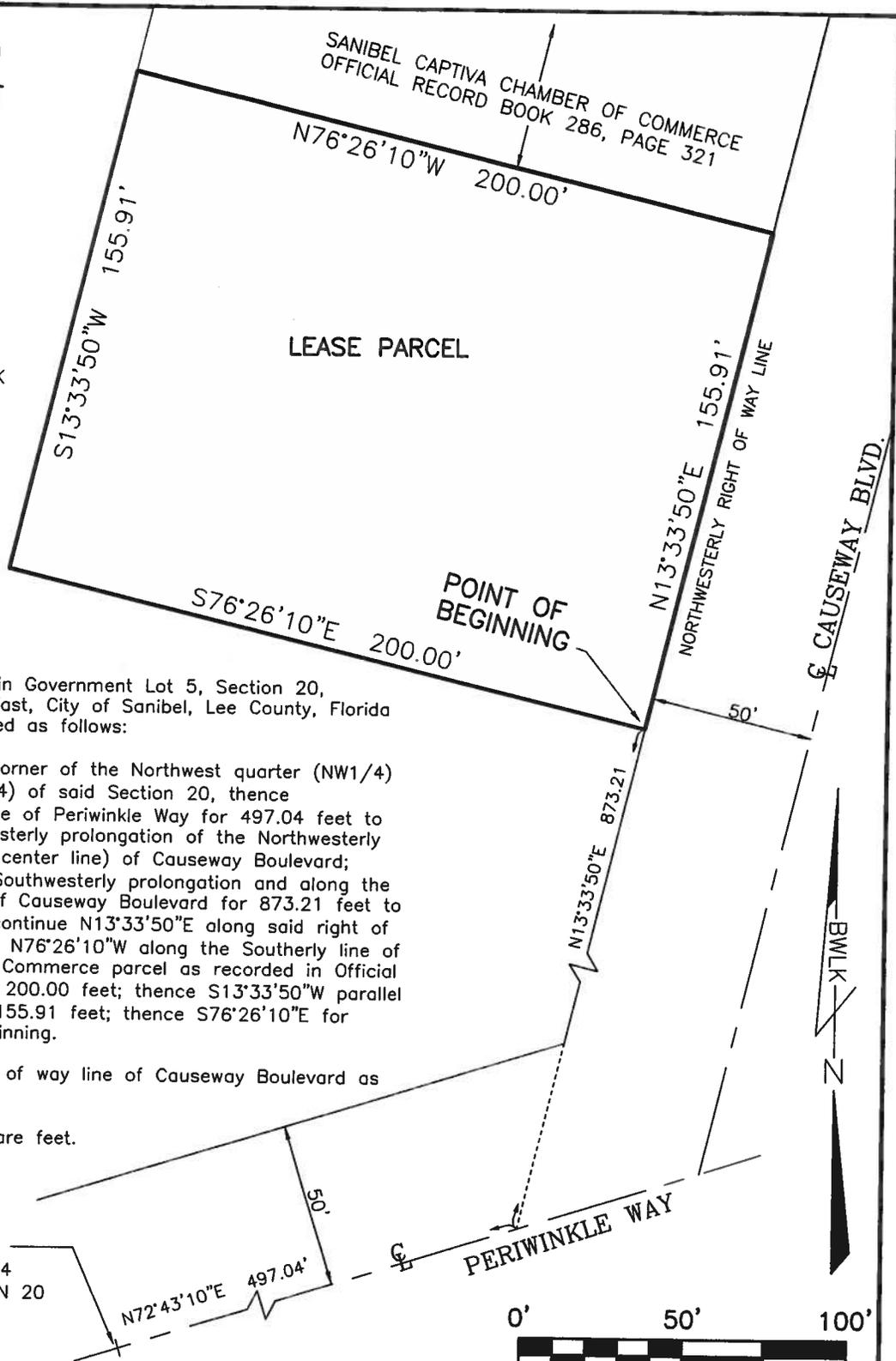


REVISION NO.	REVISION	DATE	BY	CHKD	APPROVED BY

<p>City of Sanibel 400 Dunlop Road Sanibel, FL 33957</p>	<p>DATE: _____</p> <p>SCALE: 1/8" = 1'-0"</p> <p>DRAWN BY: _____</p> <p>CHECKED BY: _____</p> <p>APPROVED BY: _____</p>	<p>SEC. - 109 - 063</p> <p>PROJECT FILE</p> <p>CHAMBER PARCEL AND CITY PARCEL</p>	<p>SHEET NUMBER</p> <p>1 OF 1</p>
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SKETCH AND DESCRIPTION

CITY OF SANIBEL
OFFICIAL RECORD BOOK
1396, PAGE 419



DESCRIPTION OF LEASE PARCEL

A tract or parcel of land lying in Government Lot 5, Section 20, Township 46 South, Range 23 East, City of Sanibel, Lee County, Florida which tract or parcel is described as follows:

Commencing at the Southwest corner of the Northwest quarter (NW1/4) of the Southwest quarter (SW1/4) of said Section 20, thence N72°43'10"E along the center line of Periwinkle Way for 497.04 feet to an intersection with the Southwesterly prolongation of the Northwesterly right of way line (50 feet from center line) of Causeway Boulevard; thence N13°33'50"E along said Southwesterly prolongation and along the Northwesterly right of way line of Causeway Boulevard for 873.21 feet to the Point of Beginning; thence continue N13°33'50"E along said right of way line for 155.91 feet; thence N76°26'10"W along the Southerly line of the Sanibel Captiva Chamber of Commerce parcel as recorded in Official Record book 286, page 321 for 200.00 feet; thence S13°33'50"W parallel with said right-of-way line for 155.91 feet; thence S76°26'10"E for 200.00 feet to the Point of Beginning.

Bearings are based on the right of way line of Causeway Boulevard as bearing N13°33'50"E.

Said parcel contains 31,182 square feet.

POINT OF COMMENCEMENT
SW CORNER OF THE NW 1/4
OF THE SW 1/4 OF SECTION 20



NOT A SURVEY

Joseph L. Lutz
JOSEPH L. LUTZ
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATION LS 3375
(FOR THE FIRM)

Bean, Whitaker, Lutz & Kareh, Inc. CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS 13041 MCGREGOR BLVD., SUITE 1, FORT MYERS, FL 33919 (239) 481-1331 AUTHORIZATION NUMBER: EB4919 AND LB4919		
DRAFTING BY: J.L.L.	SHEET No. 1 OF 1	SCALE 1"=50'
PROJECT NUMBER: 42316	DATE OF DRAWING 04-26-2013	DRAWING FILE NAME SK42318.DWG