



MEMORANDUM

DATE: October 3, 2008

TO: Sanibel City Council

FROM: Judie Zimomra, City Manager

SUBJECT: Supplemental Packet Information – October 7, 2008
City Council Meeting

Please find the following attached supplemental materials for the October 7, 2008 City Council Meeting:

- Agenda Item - 10(d) Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.

Please feel free to contact me with any questions regarding the above items.

JAZ/jkg

cc: Ken Cuyler, City Attorney
Pamela Smith, City Clerk

10. **OLD BUSINESS**

- 11:00 a. m. d. Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.
- i. Memorandum from City Attorney
 - ii. Draft Agreement from City Attorney
 - iii. Draft Agreement with comments, suggestions and revisions proposed by the Dog Club representative
 - iv. Draft Ballot questions
 - v. Aerial Map depicting the 1.46 acre burn site and 1.4 acre proposed Dog Park area within the burn site
 - vi. Public Works Department estimate of certain Dog Park costs
 - vii. Plat Map with Green highlighted parcels depicting City lands to be exchanged for SCCF lands
 - viii. Plat Map with Pink highlighted parcels depicting SCCF owned lands to be exchanged for City Lands, and Yellow highlighted parcels depicting current City owned lands
 - ix. Memo to City Council from Sanibel Dog Club, Inc., President Harvey Sugerman, M.D.
 - x. Proposed Dog Park Budget from Sanibel Dog Club, Inc.
 - xi. Proposed Dog Park Site Plan from Sanibel Dog Park Club, Inc.
 - xii. Florida Division of Corporation Registry of Sanibel Dog Club, Inc.
 - xiii. Direction from City Council

**INDEX TO DOCUMENTS
RELATING TO
DOG PARK ISSUE**

1. Memo from City Attorney relating to draft Agreements and draft Ballot questions
2. Draft Agreement from City Attorney
3. Draft Agreement with comments, suggestions and revisions proposed by the Dog Club Representative
4. Draft Ballot questions
5. Aerial Map depicting the 1.46 acre burn site and 1.14 acre proposed Dog Park area within the burn site
6. Public Works Department Estimate of certain Dog Park costs
7. Plat Map with Green highlighted parcels depicting City lands to be exchanged for SCCF lands
8. Plat Map with Pink highlighted parcels depicting SCCF owned lands to be exchanged for City lands, and Yellow highlighted parcels depicting current City owned lands
9. Memo to City Council from Sanibel Dog Club, Inc. President, Harvey Sugerman, M.D.
10. Sanibel Dog Park Draft Budget from Sanibel Dog Club, Inc.
11. Proposed Dog Park Site Plan from Sanibel Dog Club, Inc.
12. Florida Division of Corporations Registry of Sanibel Dog Club, Inc.

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- i. Memorandum from City Attorney

**CITY OF SANIBEL
LEGAL DEPARTMENT**



MEMORANDUM

TO: Members of City Council

FROM: Kenneth B. Cuyler *KBC*
City Attorney

DATE: October 1, 2008

RE: Dog Park Draft Agreement and Draft Ballot Questions

Enclosed in your October 7, 2008 Agenda Package will be two versions of a draft Agreement between the City of Sanibel and the Sanibel Dog Club, Inc. The first draft Agreement was prepared by my office and is in a "clean" format (i.e., no underlined or bolded language). This Agreement sets forth the provisions which Staff feel are necessary for the approval, planning, permitting, construction, operation and maintenance of the Dog Park.

The second version of the Agreement was also drafted by my office but sets forth the comments and proposed revisions by the representatives of the Dog Club. These comments relate primarily to notice from the City to the Dog Club prior to emergency use by the City, damage or destruction of facilities in the event of emergency use by the City, whether the City would be required to reconstruct the facilities if damaged or destroyed during emergency use, and related matters. This is only a brief summary and you should review the comments set forth in this version of the draft Agreement to fully understand the position of the representatives of the Dog Club.

Also enclosed in your Agenda Package are two draft Ballot questions. One question deals with the exchange of approximately .6 acres of Sanibel-Captiva Conservation Foundation land at the burn site location for approximately .6 acres of City land in other areas of the Sanibel Gardens Subdivision. The Charter requires referendum approval to sell, exchange or otherwise transfer ownership of City property located within the Environmentally Sensitive Lands Conservation District. The second Ballot question is necessary because the existing City land at the burn site, as well as the Sanibel-Captiva Conservation Foundation land to be acquired through the exchange (in Ballot question #1) have to be removed from the Environmentally Sensitive Lands Conservation District designation, because the Dog Park use is not consistent with that designation. These Ballot questions are obviously in draft form only and are subject to review, comment and revision by the City Council at its discretion. When finalized, it would be necessary that both of these questions be approved by the electorate in order for the Dog Park to be constructed.

Also enclosed for your general information is the City Public Works Estimate of the costs of certain Dog Park facilities and maintenance items, as well as location maps for your reference.

All of these materials are being provided for your consideration and direction at the October 7, 2008 meeting. If the City Council wishes to approve Ballot questions for the March 3, 2009 election, a resolution will be presented to City Council on October 21, 2008 with final Ballot language. At that time, the City Council would also be in a position to finalize the Agreement between the City of Sanibel and the Sanibel Dog Club, Inc. The draft Agreement currently provides that the obligations of the parties only become effective if the Ballot questions are approved by the electorate on March 3, 2009.

It is anticipated that one or more representatives of the Dog Club will be present at your October 7, 2008 meeting to discuss these issues with you, as will various City Staff members.

KBC/jg

cc: Judie A. Zimomra, City Manager
Pamela Smith, City Clerk

10. **OLD BUSINESS**

- 11:00 a. m.** d. Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.
- ii. Draft Agreement from City Attorney

AGREEMENT

This Agreement entered into this ____ day of _____, 2008, by and between City of Sanibel, a municipal corporation (hereinafter referred to as the "City") and Sanibel Dog Club, Inc., a Florida non-profit corporation (hereinafter referred to as the "Dog Club").

RECITALS:

1. The Dog Club has requested the Sanibel City Council, as the governing body of the City of Sanibel, to establish a park within the City where residents, property owners and visitors can take their dogs for off-leash exercise, play and socialization with other canines in a safe environment (hereinafter the "Dog Park").
2. The City Council has agreed to preliminarily consider an area approximately ____ acres in size located adjacent to and south of Island Inn Road approximately ____ miles west of Tarpon Bay Road for possible use as a Dog Park (hereinafter referred to as the "Dog Park Property").
3. The Dog Park Property is composed of approximately ____ acres currently owned by the City (hereinafter referred to as the "City Parcel") together with approximately ____ acres which is currently owned by the Sanibel-Captiva Conservation Foundation, Inc., (hereinafter referred to as the "Additional Parcel") which Sanibel-Captiva Conservation Foundation, Inc. is willing to convey to the City in exchange for other City properties within the Sanibel Gardens subdivision. The City Parcel and Additional Parcel, together constituting the Dog Park Property, are generally depicted and legally described in Exhibit "A", attached hereto and incorporated herein.
4. Both the City Parcel and the Additional Parcel are located within the Environmentally Sensitive Lands Conservation District and both parcels would be required to be removed from such district designation in order to be used for the Dog Park, which requires an approval of the Sanibel electorate pursuant to the Sanibel Charter.
5. The City Council has agreed to place ballot question(s) on the March 3, 2009 general election ballot to determine if the electorate will approve, as required by City Charter, (1) the removal of the City parcel and the Additional Parcel from the Environmentally Sensitive Lands Conservation District and also (2) approve the exchange of other City-owned land within the Environmentally Sensitive Lands Conservation District for the Additional Parcel currently owned by Sanibel-Captiva Conservation Foundation, Inc. (SCCF) in order to aggregate the City Parcel and the Additional Parcel (which would then be owned by the City) into a single parcel for use as a Dog Park.

6. The Dog Club has represented to the City Council that it will pay all costs of development, construction and on-going maintenance of the Dog Park (other than insurance) in order to gain the City Council's approval of the establishment of such a Dog Park.
7. The City and the Dog Club wish to set forth the financial arrangements, rights and obligations of both the City and the Dog Club with respect to the establishment and maintenance of the Dog Park Property pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants set forth below and other good and valuable consideration, acknowledged by the parties to be sufficient and received, the City and the Dog Club hereby agree as follows:

1. The above recitals are acknowledged by both parties to be true and correct and are hereby incorporated as if fully set forth in this paragraph.
2. This Agreement is conditioned upon (as a condition precedent) and dependent upon the approval of the electorate of the City of Sanibel of (1) the removal of the City Parcel from the Environmentally Sensitive Lands Conservation District for use as part of the Dog Park Property and (2) the approval of the electorate of the City of Sanibel of the City's acquisition of the Additional Parcel currently owned by SCCF (by exchanging for it other City lands in the Sanibel Gardens subdivision) and the removal of such Additional Parcel from the Environmentally Sensitive Lands Conservation District for use as part of the Dog Park Property.
3. In the event of the non-approval (i.e., defeat) of the ballot question(s) described herein, this Agreement shall be null and void and of no further effect. Each party agrees that any and all costs incurred by either of the parties relating to any of these matters shall be solely the responsibility of such party and neither party shall be entitled to any payment or reimbursement of costs, expenses or fees from the other party.
4. In the event that the required ballot question(s) is approved by the electorate during the March 3, 2009 election, the terms of this Agreement shall become operative and binding upon both parties.

APPLICATION AND APPROVALS REQUIRED

5. The City Planning Department shall file a City-exempt application with the City Council requesting that the existing City Parcel and Additional Parcel together be designated as a community Dog Park in accordance with the requirements of the Sanibel Land Development Code. As part of the application, the Dog Club, at its sole cost, shall be required to submit to City Planning Staff a site plan to scale depicting, at a minimum, the following documentation relating to the proposed Dog Park Property:

- (a) All lot lines and boundaries.
 - (b) All areas to be fenced, including type, size, location, materials, and double-gate entrances.
 - (c) All parking areas depicting materials, parking spaces, ingress/egress and driveways.
 - (d) Landscaping of the entire area, including ground cover, buffer vegetation and vegetated areas inside and outside all fenced areas.
 - (e) All amenities including water fountains, (human and canine), benches, and shade area (if any).
 - (f) The location of trash receptacles, including dog waste receptacles and tools.
 - (g) The location of signage.
 - (h) Any other application documentation or information reasonably requested by City Staff.
6. During the application process and any subsequent hearing, the City Council shall retain full authority to consider and decide, in accordance with its sole discretion, whether to approve the application and nothing in this Agreement shall be deemed to require approval of such application by the City Council.
7. In the event such application is denied by the Sanibel City Council, this Agreement shall be null, void and of no effect and each party shall bear its own fees and costs relating to the Dog Park and all matters related thereto.
8. Contemporaneously with the filing of the City-exempt application for designation of the City Parcel and Additional Parcel (hereafter referred to together as "Dog Park Property") for use as a Dog Park, the City Staff shall provide any necessary application, legislation or other documentation necessary to remove the parcel from the Environmentally Sensitive Lands Conservation District designation, or shall provide a time frame for Council's consideration of such documentation and/or legislation.

SITE WORK AND CONSTRUCTION

9. Upon approval of all necessary land use requirements to remove the Dog Park Property from the Environmentally Sensitive Lands Conservation District and to designate such parcel for a Dog Park, the City shall provide the Dog Club a written authorization to commence site work and construction of the Dog Park Property in accordance with all land use approvals of the City, this Agreement and all applicable federal, state, county and/or City of Sanibel laws. Prior to the commencement of site work and construction, the Dog Club shall provide the City of Sanibel with such assurances, as the City deems necessary, that the Dog Club has the current financial resources to commence and complete all necessary site work and construction for the Dog Park Property as required by this Agreement and any permits issued by the City. All site work, permitting and construction costs shall be the sole responsibility, cost and obligation of the Dog Club.

10. The site work and construction of the Dog Park Property shall be in accordance with the site plan approved by the City and shall include, at a minimum, the following:
 - (a) All clearing, grading, filling and site preparation work necessary for the entire Dog Park Property.
 - (b) All necessary drainage improvements for the entire Dog Park Property.
 - (c) The construction of all parking areas.
 - (d) The construction of all fencing for the Dog Park Property.
 - (e) The design and construction of all potable water lines and/or necessary electric lines.
 - (f) The construction and/or placement of all amenities including, but not limited to, water fountains, benches, and shade areas.
 - (g) The purchase and siting of all necessary trash and recycling receptacles.
 - (h) The purchase and installation of all necessary landscape materials including trees, shrubs and/or ground cover.
 - (i) The fabrication and placement of all required signage setting forth Dog Park rules or other necessary information.

11. Each contractor hired by the Dog Club shall be advised and shall agree that the Dog Club is solely responsible for payment of such contractors' invoices, that the City of Sanibel shall have no obligation for payment and that no workman's or other liens of any sort may attach to either the City of Sanibel's real estate or any improvements placed thereon. Prior to a Notice of Completion, the Dog Park shall obtain from each contractor working on the Dog Park Property an Affidavit of No Liens attesting to the fact that such contractor has been fully paid and has released any lien and/or lien rights with respect to the work performed on the Dog Park Property.

12. Each contractor hired by the Dog Club to perform work on the Dog Park Property owned by the City of Sanibel shall maintain adequate insurance in at least the following coverages:
 - (a) Worker's Compensation: For all of employee's engaged in work on the project under this contract. In case any employee engaged in hazardous work on the project is not protected under the Workman's Compensation statute, the Dog Club shall provide Employer's Liability insurance for the protection of such employees not otherwise protected under such provisions.

Coverage A – Worker's Compensation - Statutory

Coverage B – Employer's Liability - \$500,000.00

- (b) Liability: Commercial General Liability insurance including, but not limited to:
 - i. Independent Contractor's Liability
 - ii. Contractual Liability
 - iii. Personal Injury Liability

The minimum primary limits shall be no less than \$1,000,000/\$1,000,000 Bodily Injury Liability, and no less than \$500,000 Property Damage Liability, or \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. The City of Sanibel shall be named as additional insured.

Automobile Liability: Automobile Liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000 Bodily Injury Liability, and no less than \$1,000,000 Property Damage Liability, or no less than \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. The City of Sanibel shall be named as additional insured.

PROFESSIONAL LIABILITY

Coverage must include the following:

- a) A minimum aggregate limit of \$1,000,000.00.
- b) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Dog Club shall hold contractor responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, contractor shall be required to provide written documentation that is acceptable to the Dog Club establishing that the contractor has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

Such contractor shall provide Certificates of Insurance to the Dog Club, with the City of Sanibel listed as an additional insured, and all coverages set forth in this Section 12 may not be cancelled or amended without thirty (30) days prior written notice to both the Dog Club and the City of Sanibel.

13. All contractors hired by the Dog Club shall be appropriately licensed for work within the City of Sanibel and shall obtain all necessary permits at the sole cost of such contractor or the Dog Club. Nothing in this Agreement shall be deemed to authorize a waiver of necessary permit fees or the payment of such fee by the City.
14. The Dog Park Rules and Regulations shall be posted through signage at a conspicuous location at the Dog Park Property as approved by the City. The sign(s), which shall be approved by the City in advance with regard to materials, lettering and size, shall be fabricated by the Dog Club, at its sole expense, or if requested by the Dog Club, the sign(s) shall be fabricated by or through the City, at the sole expense of the Dog Club. The sign shall set forth the information in substantially the format attached as Exhibit "B".
15. It is agreed by the parties that such construction shall be completed and offered for final acceptance by the City on or before March 1, 2011.
16. Notwithstanding any other provision of this Agreement, and notwithstanding any expenditure of funds by the Dog Club, it is agreed that if the Dog Club fails to meet its requirements with regard to the funding, planning or construction of the Dog Park Property within the time period set forth in this Agreement, City Council may, at its sole option, remove any or all facilities and/or improvements placed on the Dog Park Property and return the parcel to a cleared and unused state. No expenditure or commitment of funds by the Dog Club for fundraising, planning, site work, construction or any other purpose shall provide any vested rights to the Dog Club to either (1) require the City to continue the Dog Park use and/or (2) entitle the Dog Club to a reimbursement of any funds expended. The City Council may, but shall not be required to, extend any time periods for completion of the Dog Park as the Council deems appropriate.
17. Upon the completion of all Dog Park Property site work and construction, and inspection by the City confirming that all necessary requirements have been met for operation of the Dog Park, the Dog Club shall provide a Bill of Sale to the City of Sanibel conveying ownership to the City of all improvements at the Dog Park Property and the City shall issue a Notice of Completion for the Dog Park Property.
18. Upon the issuance of a Notice of Completion by the City, the Dog Park shall be open for use by all members of the public and their dogs under the rules and regulations set forth in this Agreement and posted on the Dog Park Property. At that time, the Dog Park shall be recognized as a City Park and shall be operated and maintained under the sole jurisdiction of the City provided, however, as set forth below the Dog Club shall have maintenance responsibilities in accordance with the terms and provisions of this Agreement.

19. The City shall include the Dog Park Property on its schedule of insurable City properties and shall maintain such insurance coverages in such amounts as deemed appropriate by the City. The Dog Club shall not be required pursuant to the terms of this Agreement to purchase or carry insurance for the Dog Park Property.

OPERATION AND MAINTENANCE

20. The Dog Club agrees that it shall be responsible for the day-to-day maintenance of the Dog Park Property in accordance with the terms and conditions of this Agreement. The Dog Club shall be solely responsible for the following:
 - a. Direct contracting with Waste Pro, with City approval, such collection to occur three (3) times per week from October through April and one (1) to three (3) times per week, as necessary, with the written agreement of the City Manager, from May through September.
 - b. Ground maintenance including, but not limited to, mowing, mulch replenishment, trimming of vegetation, and weed control spraying.
 - c. Inspection of the Dog Park Property, at least once per week, by a physical “walk-around”, to assure safe and proper condition and operation of fencing, gates, water facilities and other Dog Park facilities.
 - d. Inspection of the Dog Park, at least twice weekly, by a physical “walk-around” to clean up any dog waste and/or other debris left by non-compliant users of the Dog Park.
 - e. Either direct repair, after written approval of the City, or payment to the City for the City’s repair of any damage to fencing, landscaping, parking lot facilities, amenities such as the water fountain or benches and/or Dog Park signage.
 - f. Prompt replacement of any dog waste bags which require replacement.

DOG CLUB OBLIGATION FOR ALL COSTS RELATING TO PLANNING, SITE WORK, CONSTRUCTION AND IMPROVEMENTS, AND CONTINUING OPERATION AND MAINTENANCE OF THE DOG PARK

21. Notwithstanding any other provision of this Agreement, it is understood and agreed by City and Dog Club that Dog Club has represented to the Sanibel City Council that it will be responsible for all costs relating to the Dog Park including, but not limited to, planning, site work, construction and improvements, and ongoing operation and maintenance of the Dog Park, with the exception of insurance. It is therefore agreed that the City’s acceptance and operation of the Dog Park is conditioned upon the direct payment, or where applicable, payment or reimbursement to the City, of all costs of the Dog Park including, but not limited to, planning, permitting, site work, construction, purchase and placement of

improvements, and all costs relating to the ongoing maintenance and operation of the Dog Park, with the exception of insurance which will be carried under the City's general property insurance coverages. In the event that a specific cost is not described or set forth in this Agreement, but can be reasonably identified by the City as a cost relating to the activities of the Dog Park set forth in this Agreement or otherwise required for the continued operation of the Dog Park, such cost or expense shall be the responsibility of the Dog Club and shall be paid by the Dog Club within a reasonable time after invoice is provided to the Dog Club from the City. The payment of all costs and expenses related to the construction and operation of the Dog Park is hereby agreed to be a condition of the continued use of the Dog Park by the general public and operation of the Dog Park by the City of Sanibel.

22. In the event the Dog Club fails to meet its maintenance obligations as set forth in this Agreement, or fails to meet any continuing financial obligation for payment to the City for services provided for the Dog Park as set forth in this Agreement, or fails to continue its existence as a corporate entity, and such failure continues for a period of forty-five (45) days after written notice to the Dog Club in accordance with the notice provisions set forth in this Agreement, the City shall have the right, at the sole discretion of the City Council, to discontinue the use of the Dog Park Property as a Dog Park and to remove any or all improvements on the Dog Park Property. The Dog Club understands and agrees that in such event, the Dog Club has no vested right to a continuation of the Dog Park use and the Dog Club shall not be reimbursed or repaid for any expenditures relating to the planning, construction, operation or maintenance of the Dog Park. Thereafter, the City Council shall designate the use of the Dog Park Property for any use Council deems appropriate.

23. Since neither the Dog Club nor the City intend to place personnel at the Dog Park for purposes of enforcement of Rules and Regulations, and the adherence to such Rules and Regulations of the Dog Park are the obligation of individual users of the Dog Park, the City and Dog Club agree that the ongoing substantial compliance with the Dog Park Rules and Regulations is an integral and critical factor in the safe and successful operation of the Dog Park. Therefore, in the event that there are ongoing violations of the required Rules and Regulations of the Dog Park which the City Council determines, in its sole discretion, to be substantial and/or continuous in nature and which are not corrected or cured by the Dog Club or the individual users of the Dog Park after a period of forty-five (45) days written notice to the Dog Club in accordance with the notice provisions set forth in this Agreement, the City shall have the right, at the sole discretion of the City Council, to discontinue the use of the Dog Park

Property as a Dog Park and to remove any or all improvements on the Dog Park Property. The Dog Club understands and agrees that in such event, the Dog Club has no vested right to a continuation of the Dog Park use and the Dog Club shall not be reimbursed or repaid for any expenditures relating to the planning, construction, operation or maintenance of the Dog Park. Thereafter, the City Council shall designate the use of the Dog Park Property for any use Council deems appropriate.

24. Upon the opening of the Dog Park for public use, there shall be no registration requirement or access limitations such as access cards, gate codes or similar access restrictions. The Dog Park shall be open and accessible to any member of the public for use in accordance with the Rules and Regulations posted on the Dog Park Property or otherwise established by the City. The City, however, reserves the right to initiate registration or restricted access at such time and in such manner as the City deems necessary or appropriate and any such change in access and/or restrictions shall be at the sole discretion of the City.

25. It is clearly understood by the Dog Club that the Dog Park Property was used as a "burn site" for hurricane-related debris immediately after Hurricane Charley and for several months thereafter, and remains the City's designated burn site and other emergency use site. The City reserves the right, at the City's sole discretion, to again use the Dog Park Property as a burn site or for any other emergency purpose deemed necessary by the City Council, or the City Manager pursuant to the authority of the Sanibel Code or the City Council. Such emergency circumstances shall include, but not be limited to, a threat of a hurricane or post-hurricane activities. Under such circumstances as determined necessary in the sole discretion of the City, any or all facilities and improvements shall be removed in order to prepare the Dog Park Property for emergency use by the City as a burn site or for such other emergency purpose deemed necessary by the City under the circumstances.
 - (a) Should sufficient time exist before the City's emergency need for the use of the Dog Park Property, such determination of timing to be at the sole discretion of the City, the City will provide notice to the contact person for the Dog Club in accordance with the notice provision set forth in this Agreement. If the improvements at the Dog Park Property, such as fencing, have been constructed in a manner to provide for reasonably quick dismantling, the Dog Club shall be provided such period of time as is considered by the City to be reasonable under the circumstances to dismantle and/or remove such improvements as may be possible before emergency use of the Dog Park Property by the City. Nothing in this Agreement shall be construed to require such notice or opportunity to dismantle Dog Park improvements should the City determine, in its sole discretion, that immediate emergency use by the City is warranted.

In the event that the City deems it necessary to use the Dog Park Property for emergency use and, in the process, damages or destroys Dog Park improvements, the parties understand and agree that (1) the Dog Club shall not be entitled to any repayment or reimbursement for facilities constructed and (2) the City shall have no obligation to reconstruct or replace any facilities or improvements.

26. NOTICE.

- (a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses, unless the City is notified, in writing in accordance with this notice provision, of a change in address or contact individual for the Sanibel Dog Club, Inc. The Sanibel Dog Club should, in addition, be notified by e-mail at the following e-mail address:

If to Dog Club: Harvey Sugerman, President
Sanibel Dog Club, Inc.
290 Southwinds Drive
Sanibel, FL 33957
hsugerman@comcast.net

If to City: City of Sanibel
Attention: City Manager
800 Dunlop Road
Sanibel, FL 33957

- (b) Any of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three days after the date mailed.

27. **APPLICABLE LAW; JURISDICTION; VENUE.** This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Lee County, Florida.

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

SANIBEL DOG CLUB, INC.
A Florida non-profit corporation

WITNESS:

Witness #1 Signature

Witness #1 Printed Name

Witness #2 Signature

Witness #2 Printed Name

By: _____

Printed: Harvey Sugerman, M.D.

Title: President

Date: _____

CITY OF SANIBEL,
a Florida municipal corporation

ATTEST:

Pamela Smith, City Clerk

By: _____

Mick Denham, Mayor

Date: _____

Approved as to form:

Kenneth B. Cuyler, City Attorney

EXHIBIT "A"
(TO BE DETERMINED)

EXHIBIT "B"

SANIBEL DOG PARK RULES

- DOG OWNERS ARE SOLELY LIABLE FOR INJURIES OR DAMAGE CAUSED BY THEIR DOGS. OWNERS MUST ENSURE THAT THEIR DOGS DO NOT ESCAPE THE FENCED AREA.
- NO ATTENDANT ON DUTY. USERS OF THIS FACILITY DO SO AT THEIR OWN RISK. THE CITY OF SANIBEL SHALL NOT BE LIABLE FOR ANY INJURY OR DAMAGE CAUSED BY ANY DOG TO ANY PERSON OR OTHER DOG.
- ALL DOG BITES TO A PERSON OR OTHER DOG MUST BE REPORTED. IF A BITE OCCURS YOU MUST EXCHANGE YOUR NAME AND PHONE NUMBER TO THE OTHER OWNER AND REPORT THE BITE TO ANIMAL CONTROL OFFICE AT (239) _____.
- PARK IS OPEN DAILY SUNRISE TO SUNSET ONLY.
- DOG WASTE MUST BE CLEANED UP BY DOG OWNERS.
- NO LARGE DOGS (OVER 20 LBS.) IN THE SMALL DOG AREA, AND NO SMALL DOGS (20 LBS. OR UNDER) IN THE LARGE DOG AREA.
- NO MORE THAN 2 DOGS PER OWNER ALLOWED IN THE PARK.
- NO ANIMALS OTHER THAN DOGS ARE PERMITTED IN THE PARK.
- DOGS UNDER FOUR (4) MONTHS OF AGE ARE NOT PERMITTED.
- ALL DOGS MUST BE LEGALLY LICENSED AND VACCINATED AND SHALL WEAR A CURRENT VISIBLE DOG LICENSE.
- AGGRESSIVE DOGS ARE PROHIBITED FROM THIS PARK. DOGS EXHIBITING AGGRESSIVE BEHAVIOR MUST BE REMOVED FROM THE PARK IMMEDIATELY.
- DOG OWNERS MUST BE IN THE PARK AND WITHIN VIEW AND VOICE CONTACT OF THEIR DOGS AT ALL TIMES.
- DOGS MUST BE LEASHED WHEN ENTERING AND LEAVING THIS PARK AND DOG OWNERS MUST HAVE A LEASH IN THEIR POSSESSION AT ALL TIMES.
- FEMALE DOGS IN HEAT ARE PROHIBITED FROM THE PARK.
- PET OWNERS MUST IMMEDIATELY FILL ANY HOLES THEIR DOGS DIG.
- NO CHOKER CHAIN TYPE COLLARS ON DOGS WHILE INSIDE THE PARK.
- CHILDREN UNDER 6 ARE NOT ALLOWED WITHIN THE FENCED AREA OF THE PARK. THOSE UNDER 12 MUST BE CLOSELY SUPERVISED AT ALL TIMES BY AN ADULT.
- NO FOOD, STROLLERS, BICYCLES OR CHILDRENS' TOYS ARE ALLOWED WITHIN THE FENCED AREA. DOG TREATS ARE PERMITTED BUT IT IS AT YOUR OWN RISK.
- SMOKING AND/OR ALCOHOLIC BEVERAGES ARE PROHIBITED IN ALL AREAS OF THE PARK.

10. **OLD BUSINESS**

- 11:00 a. m. d. Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.
- iii. Draft Agreement with comments, suggestions and revisions proposed by the Dog Club representative

AGREEMENT

This Agreement entered into this ____ day of _____, 2008, by and between City of Sanibel, a municipal corporation (hereinafter referred to as the "City") and Sanibel Dog Club, Inc., a Florida non-profit corporation (hereinafter referred to as the "Dog Club").

RECITALS:

1. The Dog Club has requested the Sanibel City Council, as the governing body of the City of Sanibel, to establish a park within the City where residents, property owners and visitors can take their dogs for off-leash exercise, play and socialization with other canines in a safe environment (hereinafter the "Dog Park").
2. The City Council has agreed to preliminarily consider an area approximately ____ acres in size located adjacent to and south of Island Inn Road approximately ____ miles west of Tarpon Bay Road for possible use as a Dog Park (hereinafter referred to as the "Dog Park Property").
3. The Dog Park Property is composed of approximately ____ acres currently owned by the City (hereinafter referred to as the "City Parcel") together with approximately ____ acres which is currently owned by the Sanibel-Captiva Conservation Foundation, Inc., (hereinafter referred to as the "Additional Parcel") which Sanibel-Captiva Conservation Foundation, Inc. is willing to convey to the City in exchange for other City properties within the Sanibel Gardens subdivision. The City Parcel and Additional Parcel, together constituting the Dog Park Property, are generally depicted and legally described in Exhibit "A", attached hereto and incorporated herein.
4. Both the City Parcel and the Additional Parcel are located within the Environmentally Sensitive Lands Conservation District and both parcels would be required to be removed from such district designation in order to be used for the Dog Park, which requires an approval of the Sanibel electorate pursuant to the Sanibel Charter.
5. The City Council has agreed to place ballot question(s) on the March 3, 2009 general election ballot to determine if the electorate will approve, as required by City Charter, (1) the removal of the City parcel and the Additional Parcel from the Environmentally Sensitive Lands Conservation District and also (2) approve the exchange of other City-owned land within the Environmentally Sensitive Lands Conservation District for the Additional Parcel currently owned by Sanibel-Captiva Conservation Foundation, Inc. (SCCF) in order to aggregate the City Parcel and the Additional Parcel (which would then be owned by the City) into a single parcel for use as a Dog Park.
6. The Dog Club has represented to the City Council that it will pay all costs of development, construction and on-going maintenance of the Dog Park (other than insurance) in order to gain the City Council's approval of the establishment of such a Dog Park.

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7. The City and the Dog Club wish to set forth the financial arrangements, rights and obligations of both the City and the Dog Club with respect to the establishment and maintenance of the Dog Park Property pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants set forth below and other good and valuable consideration, acknowledged by the parties to be sufficient and received, the City and the Dog Club hereby agree as follows:

1. The above recitals are acknowledged by both parties to be true and correct and are hereby incorporated as if fully set forth in this paragraph.
2. This Agreement is conditioned upon (as a condition precedent) and dependent upon the approval of the electorate of the City of Sanibel of (1) the removal of the City Parcel from the Environmentally Sensitive Lands Conservation District for use as part of the Dog Park Property and (2) the approval of the electorate of the City of Sanibel of the City's acquisition of the Additional Parcel currently owned by SCCF (by exchanging for it other City lands in the Sanibel Gardens subdivision) and the removal of such Additional Parcel from the Environmentally Sensitive Lands Conservation District for use as part of the Dog Park Property.
3. In the event of the non-approval (i.e., defeat) of the ballot question(s) described herein, this Agreement shall be null and void and of no further effect. Each party agrees that any and all costs incurred by either of the parties relating to any of these matters shall be solely the responsibility of such party and neither party shall be entitled to any payment or reimbursement of costs, expenses or fees from the other party.
4. In the event that the required ballot question(s) is approved by the electorate during the March 3, 2009 election, the terms of this Agreement shall become operative and binding upon both parties.

APPLICATION AND APPROVALS REQUIRED

5. The City Planning Department shall file a City-exempt application with the City Council requesting that the existing City Parcel and Additional Parcel together be designated as a community Dog Park in accordance with the requirements of the Sanibel Land Development Code. As part of the application, the Dog Club, at its sole cost, shall be required to submit to City Planning Staff a site plan to scale depicting, at a minimum, the following documentation relating to the proposed Dog Park Property:
 - (a) All lot lines and boundaries.
 - (b) All areas to be fenced, including type, size, location, materials, and double-gate entrances.
 - (c) All parking areas depicting materials, parking spaces, ingress/egress and driveways.

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- (d) Landscaping of the entire area, including ground cover, buffer vegetation and vegetated areas inside and outside all fenced areas.
 - (e) All amenities including water fountains, (human and canine), benches, and shade area (if any).
 - (f) The location of trash receptacles, including dog waste receptacles and tools.
 - (g) The location of signage.
 - (h) Any other application documentation or information reasonably requested by City Staff.
6. During the application process and any subsequent hearing, the City Council shall retain full authority to consider and decide, in accordance with its sole discretion, whether to approve the application and nothing in this Agreement shall be deemed to require approval of such application by the City Council.
7. In the event such application is denied by the Sanibel City Council, this Agreement shall be null, void and of no effect and each party shall bear its own fees and costs relating to the Dog Park and all matters related thereto.
8. Contemporaneously with the filing of the City-exempt application for designation of the City Parcel and Additional Parcel (hereafter referred to together as "Dog Park Property") for use as a Dog Park, the City Staff shall provide any necessary application, legislation or other documentation necessary to remove the parcel from the Environmentally Sensitive Lands Conservation District designation, or shall provide a time frame for Council's consideration of such documentation and/or legislation.

SITE WORK AND CONSTRUCTION

9. Upon approval of all necessary land use requirements to remove the Dog Park Property from the Environmentally Sensitive Lands Conservation District and to designate such parcel for a Dog Park, the City shall provide the Dog Club a written authorization to commence site work and construction of the Dog Park Property in accordance with all land use approvals of the City, this Agreement and all applicable federal, state, county and/or City of Sanibel laws. Prior to the commencement of site work and construction, the Dog Club shall provide the City of Sanibel with such assurances, as the City deems necessary, that the Dog Club has the current financial resources to commence and complete all necessary site work and construction for the Dog Park Property as required by this Agreement and any permits issued by the City. All site work, permitting and construction costs shall be the sole responsibility, cost and obligation of the Dog Club.
10. The site work and construction of the Dog Park Property shall be in accordance with the site plan approved by the City and shall include, at a minimum, the following:

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- (a) All clearing, grading, filling and site preparation work necessary for the entire Dog Park Property.
 - (b) All necessary drainage improvements for the entire Dog Park Property.
 - (c) The construction of all parking areas.
 - (d) The construction of all fencing for the Dog Park Property.
 - (e) The design and construction of all potable water lines and/or necessary electric lines.
 - (f) The construction and/or placement of all amenities including, but not limited to, water fountains, benches, and shade areas.
 - (g) The purchase and siting of all necessary trash and recycling receptacles.
 - (h) The purchase and installation of all necessary landscape materials including trees, shrubs and/or ground cover.
 - (i) The fabrication and placement of all required signage setting forth Dog Park rules or other necessary information.
11. Each contractor hired by the Dog Club shall be advised and shall agree that the Dog Club is solely responsible for payment of such contractors' invoices, that the City of Sanibel shall have no obligation for payment and that no workman's or other liens of any sort may attach to either the City of Sanibel's real estate or any improvements placed thereon. Prior to a Notice of Completion, the Dog Park shall obtain from each contractor working on the Dog Park Property an Affidavit of No Liens attesting to the fact that such contractor has been fully paid and has released any lien and/or lien rights with respect to the work performed on the Dog Park Property.
12. Each contractor hired by the Dog Club to perform work on the Dog Park Property owned by the City of Sanibel shall maintain adequate insurance in at least the following coverages:
- (a) Worker's Compensation: For all of employee's engaged in work on the project under this contract. In case any employee engaged in hazardous work on the project is not protected under the Workman's Compensation statute, the Dog Club shall provide Employer's Liability insurance for the protection of such employees not otherwise protected under such provisions.

Coverage A – Worker's Compensation - Statutory

Coverage B – Employer's Liability - \$500,000.00
 - (b) Liability: Commercial General Liability insurance including, but not limited to:
 - i. Independent Contractor's Liability
 - ii. Contractual Liability

iii. Personal Injury Liability

The minimum primary limits shall be no less than \$1,000,000/\$1,000,000 Bodily Injury Liability, and no less than \$500,000 Property Damage Liability, or \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. The City of Sanibel shall be named as additional insured.

Automobile Liability: Automobile Liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000 Bodily Injury Liability, and no less than \$1,000,000 Property Damage Liability, or no less than \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. The City of Sanibel shall be named as additional insured.

PROFESSIONAL LIABILITY

Coverage must include the following:

- a) A minimum aggregate limit of \$1,000,000.00.
- b) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Dog Club shall hold contractor responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, contractor shall be required to provide written documentation that is acceptable to the Dog Club establishing that the contractor has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

Such contractor shall provide Certificates of Insurance to the Dog Club, with the City of Sanibel listed as an additional insured, and all coverages set forth in this Section 12 may not be cancelled or amended without thirty (30) days prior written notice to both the Dog Club and the City of Sanibel.

13. All contractors hired by the Dog Club shall be appropriately licensed for work within the City of Sanibel and shall obtain all necessary permits at the sole cost of such contractor or the Dog Club. Nothing in this Agreement shall be deemed to authorize a waiver of necessary permit fees or the payment of such fee by the City.

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14. The Dog Park Rules and Regulations shall be posted through signage at a conspicuous location at the Dog Park Property as approved by the City. The sign(s), which shall be approved by the City in advance with regard to materials, lettering and size, shall be fabricated by the Dog Club, at its sole expense, or if requested by the Dog Club, the sign(s) shall be fabricated by or through the City, at the sole expense of the Dog Club. The sign shall set forth the information in substantially the format attached as Exhibit "B".
15. It is agreed by the parties that such construction shall be completed and offered for final acceptance by the City on or before March 1, 2011.
16. Notwithstanding any other provision of this Agreement, and notwithstanding any expenditure of funds by the Dog Club, it is agreed that if the Dog Club fails to meet its requirements with regard to the funding, planning or construction of the Dog Park Property within the time period set forth in this Agreement, City Council may, at its sole option, remove any or all facilities and/or improvements placed on the Dog Park Property and return the parcel to a cleared and unused state. No expenditure or commitment of funds by the Dog Club for fundraising, planning, site work, construction or any other purpose shall provide any vested rights to the Dog Club to either (1) require the City to continue the Dog Park use and/or (2) entitle the Dog Club to a reimbursement of any funds expended. The City Council may, but shall not be required to, extend any time periods for completion of the Dog Park as the Council deems appropriate.
17. Upon the completion of all Dog Park Property site work and construction, and inspection by the City confirming that all necessary requirements have been met for operation of the Dog Park, the Dog Club shall provide a Bill of Sale to the City of Sanibel conveying ownership to the City of all improvements at the Dog Park Property and the City shall issue a Notice of Completion for the Dog Park Property.
18. Upon the issuance of a Notice of Completion by the City, the Dog Park shall be open for use by all members of the public and their dogs under the rules and regulations set forth in this Agreement and posted on the Dog Park Property. At that time, the Dog Park shall be recognized as a City Park and shall be operated and maintained under the sole jurisdiction of the City provided, however, as set forth below the Dog Club shall have maintenance responsibilities in accordance with the terms and provisions of this Agreement.
19. The City shall include the Dog Park Property on its schedule of insurable City properties and shall maintain such insurance coverages in such amounts as deemed appropriate by the City. The Dog Club shall not be required pursuant to the terms of this Agreement to purchase or carry insurance for the Dog Park Property.

OPERATION AND MAINTENANCE

20. The Dog Club agrees that it shall be responsible for the day-to-day maintenance of the Dog Park Property in accordance with the terms and conditions of this Agreement. The Dog Club shall be solely responsible for the following:
- a. Direct contracting with Waste Pro with City approval, such collection to occur three (3) times per week from October through April and one (1) to three (3) times per week, as necessary, with the written agreement of the City Manager from May through September.
 - b. Ground maintenance, including, but not limited to, mowing, mulch replenishment, trimming of vegetation, and weed control spraying.
 - c. Inspection of the Dog Park Property, at least once per week, by a physical "walk-around", to assure safe and proper condition and operation of fencing, gates, water facilities and other Dog Park facilities.
 - d. Inspection of the Dog Park, at least twice weekly, by a physical "walk-around" to clean up any dog waste and/or other debris left by non-compliant users of the Dog Park.
 - e. Either direct repair, after written approval of the City, or payment to the City for the City's repair of any damage to fencing, landscaping, parking lot facilities, amenities such as the water fountain or benches and/or Dog Park signage.
 - f. Prompt replacement of any dog waste bags which require replacement.

DOG CLUB OBLIGATION FOR ALL COSTS RELATING TO PLANNING, SITE WORK, CONSTRUCTION AND IMPROVEMENTS, AND CONTINUING OPERATION AND MAINTENANCE OF THE DOG PARK

21. Notwithstanding any other provision of this Agreement, it is understood and agreed by City and Dog Club that Dog Club has represented to the Sanibel City Council that it will be responsible for all costs relating to the Dog Park including, but not limited to, planning, site work, construction and improvements, and ongoing operation and maintenance of the Dog Park, with the exception of insurance. It is therefore agreed that the City's acceptance and operation of the Dog Park is conditioned upon the direct payment, or where applicable, payment or reimbursement to the City, of all costs of the Dog Park including, but not limited to, planning, permitting, site work, construction, purchase and placement of improvements, and all costs relating to the ongoing maintenance and operation of the Dog Park, with the exception of insurance which will be carried under the City's general property insurance coverages. In the event that a specific cost is not described or set forth in this Agreement, but can be reasonably identified by the City as a cost relating to the

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activities of the Dog Park set forth in this Agreement or otherwise required for the continued operation of the Dog Park, such cost or expense shall be the responsibility of the Dog Club and shall be paid by the Dog Club within a reasonable time after invoice is provided to the Dog Club from the City. The payment of all costs and expenses related to the construction and operation of the Dog Park is hereby agreed to be a condition of the continued use of the Dog Park by the general public and operation of the Dog Park by the City of Sanibel.

22. In the event the Dog Club fails to meet its maintenance obligations as set forth in this Agreement, or fails to meet any continuing financial obligation for payment to the City for services provided for the Dog Park as set forth in this Agreement, or fails to continue its existence as a corporate entity, and such failure continues for a period of forty-five (45) days after written notice to the Dog Club in accordance with the notice provisions set forth in this Agreement, the City shall have the right, at the sole discretion of the City Council, to discontinue the use of the Dog Park Property as a Dog Park and to remove any or all improvements on the Dog Park Property. The Dog Club understands and agrees that in such event, the Dog Club has no vested right to a continuation of the Dog Park use and the Dog Club shall not be reimbursed or repaid for any expenditures relating to the planning, construction, operation or maintenance of the Dog Park. Thereafter, the City Council shall designate the use of the Dog Park Property for any use Council deems appropriate.

23. Since neither the Dog Club nor the City intend to place personnel at the Dog Park for purposes of enforcement of Rules and Regulations, and the adherence to such Rules and Regulations of the Dog Park are the obligation of individual users of the Dog Park, the City and Dog Club agree that the ongoing substantial compliance with the Dog Park Rules and Regulations is an integral and critical factor in the safe and successful operation of the Dog Park. Therefore, in the event that there are ongoing violations of the required Rules and Regulations of the Dog Park which the City Council determines, in its sole discretion, to be substantial and/or continuous in nature and which are not corrected or cured by the Dog Club or the individual users of the Dog Park after a period of forty-five (45) days written notice to the Dog Club in accordance with the notice provisions set forth in this Agreement, the City shall have the right, at the sole discretion of the City Council, to discontinue the use of the Dog Park Property as a Dog Park and to remove any or all improvements on the Dog Park Property. The Dog Club understands and agrees that in such event, the Dog Club has no vested right to a continuation of the Dog Park use and the Dog Club shall not be reimbursed or repaid for any expenditures relating to the planning, construction, operation or maintenance of the Dog Park. Thereafter, the City Council shall designate the use of the Dog Park Property for any use Council deems appropriate.

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24. Upon the opening of the Dog Park for public use, there shall be no registration requirement or access limitations such as access cards, gate codes or similar access restrictions. The Dog Park shall be open and accessible to any member of the public for use in accordance with the Rules and Regulations posted on the Dog Park Property or otherwise established by the City.

Comment [HJS1]: At the very least, this should be after agreement with the Dog Club -- but better to delete the entire clause

Deleted: The City, however, reserves the right to initiate registration or restricted access at such time and in such manner as the City deems necessary or appropriate and any such change in access and/or restrictions shall be at the sole discretion of the City

Deleted: .

25. It is clearly understood by the Dog Club that the Dog Park Property was used as a "burn site" for hurricane-related debris immediately after Hurricane Charley and for several months thereafter, and remains the City's designated burn site and other emergency use site. The City reserves the right, at the City's sole discretion, to again use the Dog Park Property as a burn site or for any other emergency purpose deemed necessary by the City Council, or the City Manager pursuant to the authority of the Sanibel Code or the City Council. Under such circumstances as determined necessary in the sole discretion of the City, any or all facilities and improvements shall be removed in order to prepare the Dog Park Property for emergency use by the City as a burn site or for such other emergency purpose deemed necessary by the City under the circumstances. The City will exercise due diligence to limit destruction of the Dog Park to only what is absolutely necessary for its emergency use.

Comment [HJS2]: A "threat of a hurricane" and the City can rip the whole thing out -- this doesn't seem at all reasonable

Deleted: Such emergency circumstances shall include, but not be limited to, a threat of a hurricane or post-hurricane activities

Deleted: .

(a) The City will provide notice to the contact person for the Dog Club in accordance with the notice provision set forth in this Agreement. If the improvements at the Dog Park Property, such as fencing, have been constructed in a manner to provide for reasonably quick dismantling, the Dog Club shall be provided such period of time as is considered by the City to be reasonable to dismantle and/or remove such improvements as may be possible before emergency use of the Dog Park Property by the City.

Deleted: Should sufficient time exist before the City's emergency need for the use of the Dog Park Property, such determination of timing to be at the sole discretion of the City, t

Deleted: under the circumstances

In the event that the City deems it necessary to use the Dog Park Property for emergency use and, in the process, damages or destroys Dog Park improvements, the parties understand and agree that (1) the Dog Club shall not be entitled to any repayment or reimbursement for facilities constructed and (2) the City shall have no obligation to reconstruct or replace any facilities or improvements.

Comment [HJS3]: This is giving the City carte blanche to do whatever it wants, whenever it wants, without any reasonable responsibility. We believe this to be unacceptable. After a major hurricane, like Charley, there would be time before debris would have to be brought to this site. Furthermore, with all of the Australian Pines gone from near major thoroughfares, the need for such emergency use would be negligible.

Deleted: Nothing in this Agreement shall be construed to require such notice or opportunity to dismantle Dog Park improvements should the City determine, in its sole discretion, that immediate emergency use by the City is warranted

Deleted: .

(b) 26. NOTICE.

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses, unless the City is notified, in writing in accordance with this notice provision, of a change in address or contact individual for the Sanibel Dog Club, Inc. The Sanibel Dog Club should, in addition, be notified by e-mail at the following e-mail address:

Comment [HJS4]: After going through all of this time, effort and money, and a referendum which presumably will be passed by the Citizens, otherwise the Dog Park would never be built, it should be understood that the Dog Park can be reconstituted after its emergency use. The onus should be on City Council to rule against re-establishing a dog park. Furthermore, we think it is unreasonable that the City doesn't have the responsibility for re-establishing the Dog Park if it tears it down.

Deleted: <#> or to re-establish the Dog Park use unless the City Council, in its sole discretion, determines it appropriate to do so

Deleted: <#>. ¶

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If to Dog Club: Harvey Sugerman, President
Sanibel Dog Club, Inc.
290 Southwinds Drive
Sanibel, FL 33957

hsugerman@comcast.net

If to City: City of Sanibel
Attention: City Manager
800 Dunlop Road
Sanibel, FL 33957

- (b) Any of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three days after the date mailed.
- 27. **APPLICABLE LAW; JURISDICTION; VENUE.** This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Lee County, Florida.

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

SANIBEL DOG CLUB, INC.
A Florida non-profit corporation

WITNESS:

Witness #1 Signature

Witness #1 Printed Name

Witness #2 Signature

Witness #2 Printed Name

By: _____
Printed: Harvey Sugerman, M.D.
Title: President
Date: _____

CITY OF SANIBEL,
a Florida municipal corporation

ATTEST:

Pamela Smith, City Clerk

By: _____
Mick Denham, Mayor

Date: _____

Approved as to form:

Kenneth B. Cuyler, City Attorney

EXHIBIT "A"
(TO BE DETERMINED)

**SANIBEL DOG PARK
RULES**

- DOG OWNERS ARE SOLELY LIABLE FOR INJURIES OR DAMAGE CAUSED BY THEIR DOGS. OWNERS MUST ENSURE THAT THEIR DOGS DO NOT ESCAPE THE FENCED AREA.
- NO ATTENDANT ON DUTY. USERS OF THIS FACILITY DO SO AT THEIR OWN RISK. THE CITY OF SANIBEL SHALL NOT BE LIABLE FOR ANY INJURY OR DAMAGE CAUSED BY ANY DOG TO ANY PERSON OR OTHER DOG.
- ALL DOG BITES TO A PERSON OR OTHER DOG MUST BE REPORTED. IF A BITE OCCURS YOU MUST EXCHANGE YOUR NAME AND PHONE NUMBER TO THE OTHER OWNER AND REPORT THE BITE TO ANIMAL CONTROL OFFICE AT (239) _____.
- PARK IS OPEN DAILY SUNRISE TO SUNSET ONLY.
- DOG WASTE MUST BE CLEANED UP BY DOG OWNERS.
- NO LARGE DOGS (OVER 20 LBS.) IN THE SMALL DOG AREA, AND NO SMALL DOGS (20 LBS. OR UNDER) IN THE LARGE DOG AREA.
- NO MORE THAN 2 DOGS PER OWNER ALLOWED IN THE PARK.
- NO ANIMALS OTHER THAN DOGS ARE PERMITTED IN THE PARK.
- DOGS UNDER FOUR (4) MONTHS OF AGE ARE NOT PERMITTED.
- ALL DOGS MUST BE LEGALLY LICENSED AND VACCINATED AND SHALL WEAR A CURRENT VISIBLE DOG LICENSE.
- AGGRESSIVE DOGS ARE PROHIBITED FROM THIS PARK. DOGS EXHIBITING AGGRESSIVE BEHAVIOR MUST BE REMOVED FROM THE PARK IMMEDIATELY.
- DOG OWNERS MUST BE IN THE PARK AND WITHIN VIEW AND VOICE CONTACT OF THEIR DOGS AT ALL TIMES.
- DOGS MUST BE LEASHED WHEN ENTERING AND LEAVING THIS PARK AND DOG OWNERS MUST HAVE A LEASH IN THEIR POSSESSION AT ALL TIMES.
- FEMALE DOGS IN HEAT ARE PROHIBITED FROM THE PARK.
- PET OWNERS MUST IMMEDIATELY FILL ANY HOLES THEIR DOGS DIG.
- NO CHOKER CHAIN TYPE COLLARS ON DOGS WHILE INSIDE THE PARK.
- CHILDREN UNDER 6 ARE NOT ALLOWED WITHIN THE FENCED AREA OF THE PARK. THOSE UNDER 12 MUST BE CLOSELY SUPERVISED AT ALL TIMES BY AN ADULT.
- NO FOOD, STROLLERS, BICYCLES OR CHILDRENS' TOYS ARE ALLOWED WITHIN THE FENCED AREA. DOG TREATS ARE PERMITTED BUT IT IS AT YOUR OWN RISK.
- SMOKING AND/OR ALCOHOLIC BEVERAGES ARE PROHIBITED IN ALL AREAS OF THE PARK.

10. **OLD BUSINESS**

- 11:00 a. m. d. Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.

- iv. Draft Ballot questions

BALLOT QUESTION #1

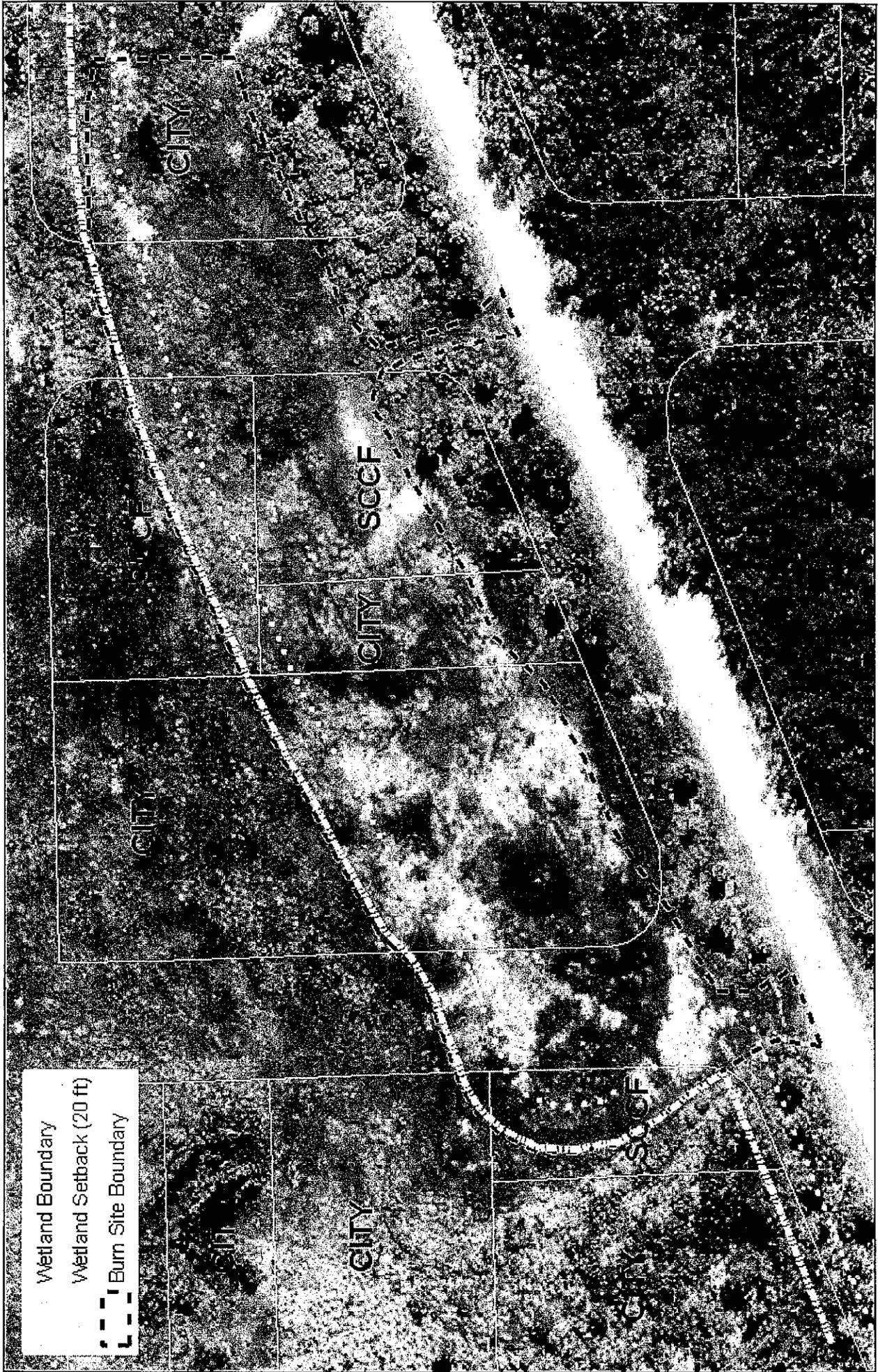
EXCHANGE OF LAND OWNERSHIP WITHIN THE ENVIRONMENTALLY SENSITIVE LANDS CONSERVATION DISTRICT

Do you approve the exchange of .6 acres owned by the City (Block 14, Lots 11, 13, 19, 25; Block 13, Lot 6) for .6 acres owned by Sanibel-Captiva Conservation Foundation (Block 17, Lots 1-4; Block 6, Lot 5), with both properties located in Sanibel Gardens Subdivision and both designated Environmentally Sensitive Lands Conservation District, in order to consolidate SCCF property along the Sanibel River and City property along Island Inn Road?

BALLOT QUESTION #2

REMOVAL OF LAND FROM THE ENVIRONMENTALLY SENSITIVE LANDS CONSERVATION DISTRICT

Do you approve the removal of approximately 1.46 acres of land from the City's Environmentally Sensitive Lands Conservation District so that a dog park, **completely financed by the Sanibel Dog Club, Inc.**, can be located thereon, such land generally described as located within the Sanibel Gardens Subdivision and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road?



Environmentally Sensitive Lands Conservation District

Sanibel Gardens Preserve

Date: July 30, 2008

250 Feet



City of Sanibel
 800 Dunlop Road
 Sanibel, FL 33957
 (239) 472-3700



10. **OLD BUSINESS**

11:00 a. m. d. Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.

vi. Public Works Department estimate of certain Dog Park costs

08/08

Estimate of Dog Park Costs

I. Fountain w/Doggie Attachment		
- Purchase (including shipping)		= \$3,200
- Installation of fountain		= 750
- Concrete slab		= 700
- Water service to fountain		= <u>1,500</u>
	Total	= \$6,150
II. Animal Proof Garbage/Recycling Can		= \$1,900
III. Maintenance		
1. Mulch		
- Spraying		
Labor:		
4 hours every 2 weeks		
104 hours/year X \$27.24/hr		= \$2,830
Equipment (Pickup)		
104 hours/year X \$10.00/hr		= \$1,040
Chemicals:		
\$100/year		= \$ 100
	Total	= \$3,970
1. (Alternate) Sod		
Mowing & Trimming		
Labor		
2 hours/week for 6 months		= 52 hours
2 hours/month for 6 months		= <u>12 hours</u>
	Total	= 64 hours/year
64 hours/year X \$27.24/hr		= \$1,740
Equipment (pickup & mower)		
64 hours/year X \$10.00/hr		= <u>640</u>
	Total	= \$2,380

Estimate of Dog Park Costs (Con't)

2. Garbage & Recycling

(Empty 3 times per week)

Labor:
3 hours/week X 52 wks/yr = 156hrs/year
156 hours/year X \$27.24/hr = \$4,250

Equipment (pickup)
156 hours/yr X \$10/hr = \$1,560

Bags (\$50/yr) = 50

Total = \$5,860

Totals:

Capital Costs = \$8,050

Maintenance Cost (Annual) = \$9,830 (w/Mulch)
Or \$8,240 (w/Sod)

10. **OLD BUSINESS**

- 11:00 a. m. d. Proposal from Sanibel Dog Club, Inc. to develop a Dog Park, financed by the Sanibel Dog Club, Inc., on City owned property and adjacent SCCF property (proposed to be acquired by the City in exchange for other City lands in Sanibel Gardens Subdivision), such parcels previously used as a burn site after Hurricane Charley and generally located adjacent to and north of Island Inn Road and extending from approximately .25 miles to approximately .33 miles west of Tarpon Bay Road.
- vii. Plat Map with Green highlighted parcels depicting City lands to be exchanged for SCCF lands

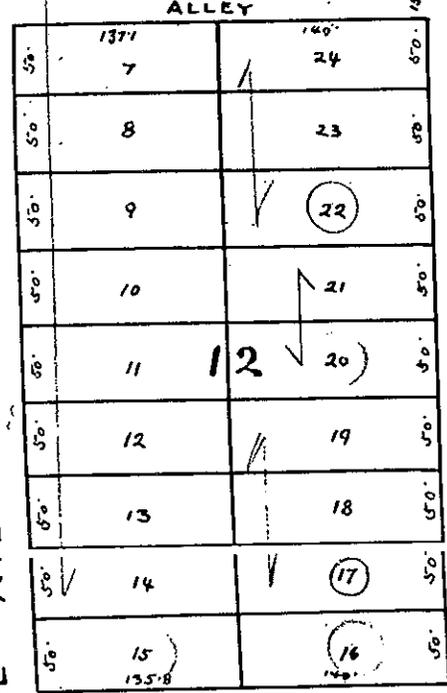
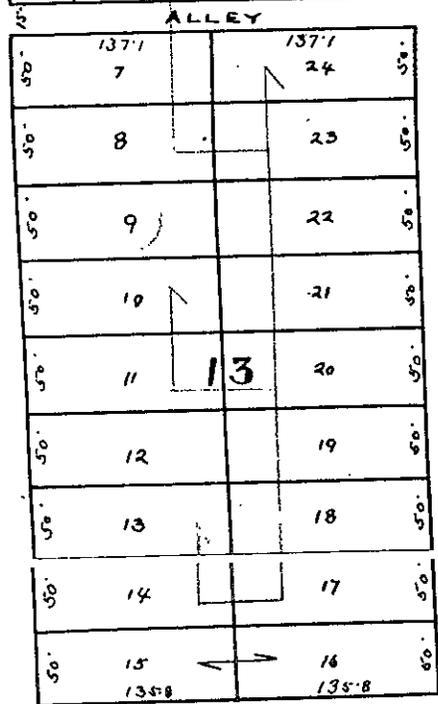
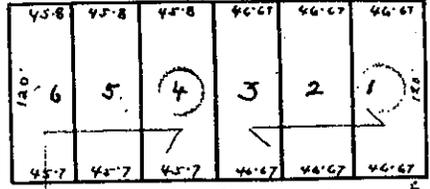
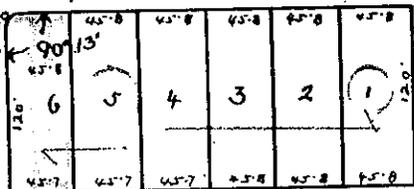
GREEN HIGHLIGHTED PARCELS - CITY LANDS TO BE EXCHANGED FOR SCCF
LANDS NOTED ON OTHER PLAT MAP

W 1/2 MILE POST
SEC 26

SANIBEL BOULEVARD

1312 6

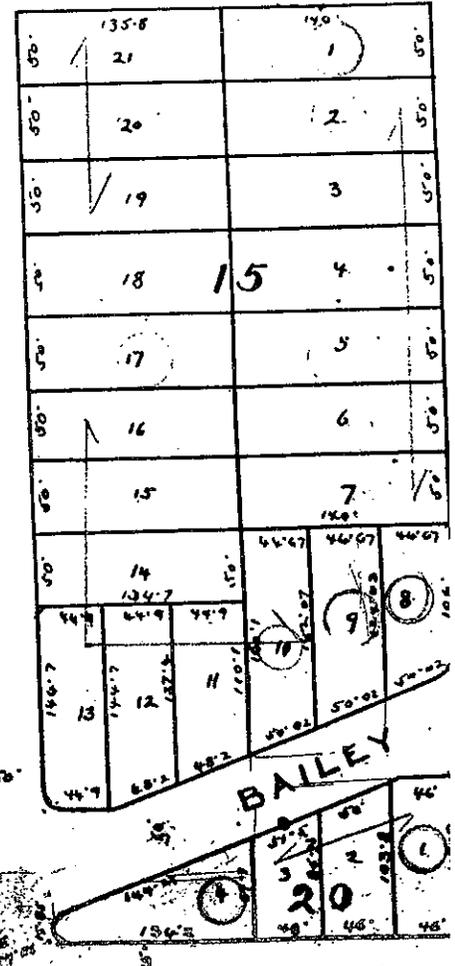
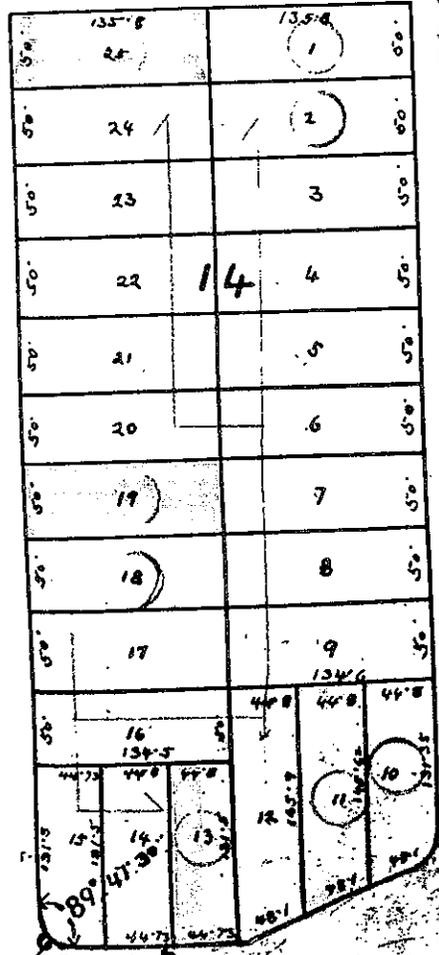
TP. 46 S
RA. 22 E
P.R.M.
W 1/2 mile post
Sec. 26, T. 46 S
R 22 E
30' North and
25' West



13213

GRANDE AVE
BOCA

USEPPA

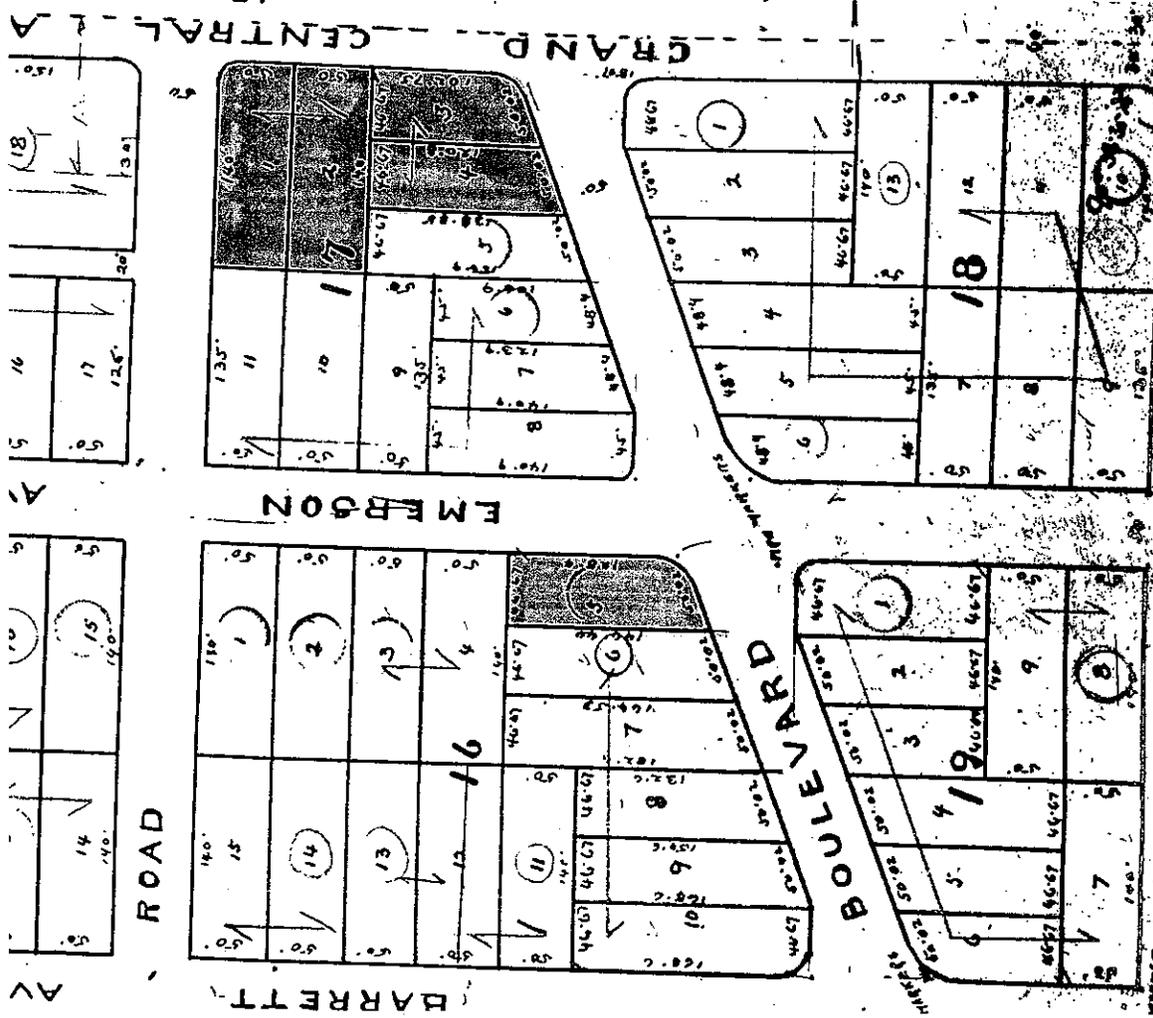
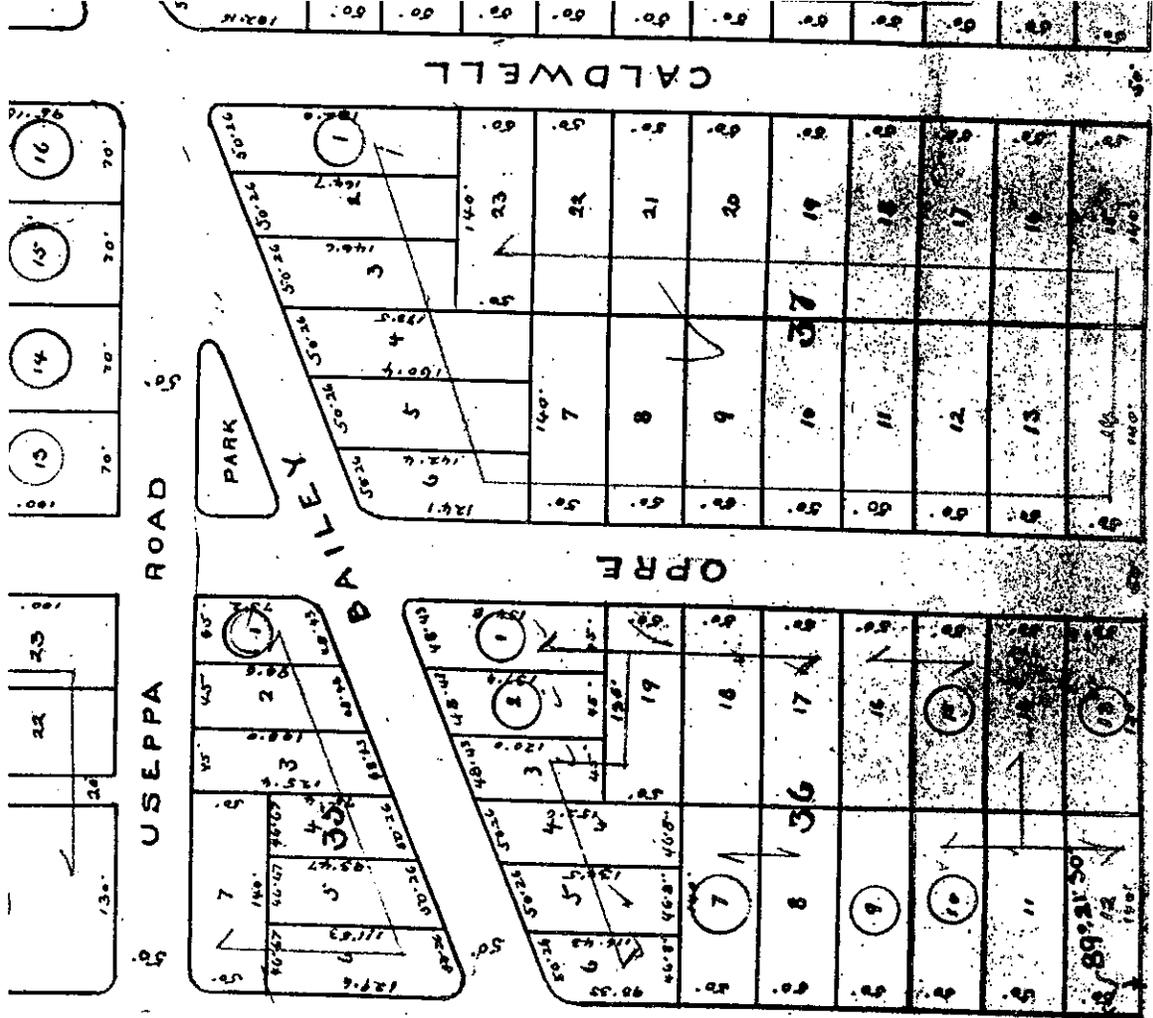


BAILEY

P.R.M.

10. **OLD BUSINESS**

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- viii. Plat Map with Pink highlighted parcels depicting SCCF owned lands to be exchanged for City Lands, and Yellow highlighted parcels depicting current City owned lands



YELLOW HIGHLIGHTED PARCELS - CITY OWNED LANDS

PINK HIGHLIGHTED PARCELS - SCCF OWNED LANDS

10. **OLD BUSINESS**

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- ix. Memo to City Council from Sanibel Dog Club, Inc., President Harvey Sugeran, M.D.

City of Sanibel

Re: Sanibel Dog Park

The Sanibel Dog Club, Inc. has become incorporated as a Florida not-for-profit corporation. In addition, another entity, the Sanibel Dog Park Foundation, Inc. has also become a Florida not-for-profit corporation and has applied for a 501(c)4 Federal not-for-profit status. The latter corporation will be applying for a Federal 501(c)3 status to enable tax deductible donations once it receives its 501(c)4 approval. Copies of the State of Florida not-for-profit status of these corporate entities will be provided prior to the October 7, 2008 City Council meeting.

A site plan for the proposed Sanibel Dog Park, developed by R. Walsh, Landscaping, Inc. is attached to this letter. This site plan includes land currently owned by the Sanibel Captiva Conservation Foundation. The latter's Board has supported an equivalent exchange of land with the City of Sanibel; this land exchange will require approval by the citizens of Sanibel in a referendum on March 16.

The referendum for this land exchange, as well as a referendum requesting approval for removal of these areas from the City's Environmentally Sensitive Lands Conservation District will be submitted by the City's Attorney to the Sanibel City Council for their approval.

A draft contract between the City of Sanibel and the Sanibel Dog Club, Inc. also will be submitted by the City's Attorney.

A preliminary budget for the development and maintenance of the Sanibel Dog Park is attached. There may be modifications of this budget, especially regarding landscaping plans, which will be dependent upon fund-raising.

The proposed rules for the Sanibel Dog Park have been previously provided to the City and have not been changed; they are included as Exhibit B in the Dog Park Contract. As with most other dog parks, an honor system will be expected of users of the Park. However, members of the Sanibel Dog Club will strongly encourage their support whenever they notice a violation and, if necessary, contact City Police when a dog owner refuses to obey.

Sincerely yours,
Harvey Sugerman, MD
President
Sanibel Dog Club, Inc.

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- x. Proposed Dog Park Budget from Sanibel Dog Club, Inc.

SANIBEL DOG PARK

DRAFT BUDGET

CONSTRUCTION OF PARK

Site Survey	\$1,000
Mulch	1,500
Fencing	9,000
Landscaping	20,000
Fountain	4,500
Signage	500
Plastic bag dispenser	100
Total	\$36,600

ANNUAL MAINTENANCE OF PARK

Mulch	\$500
Spraying	400
Garbage removal	4,140
Plastic waste bags	200
Total	\$5,240

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xi. Proposed Dog Park Site Plan from Sanibel Dog Park Club, Inc.

NOTE: A full size copy of the Site Plan is available in the City Clerk's office and Council Chambers for review.

10. **OLD BUSINESS**

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xii. Florida Division of Corporation Registry of Sanibel Dog Club, Inc.

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Detail by Entity Name

Florida Non Profit Corporation

SANIBEL DOG CLUB, INC.

Filing Information

Document Number N08000007221**FEI Number** NONE**Date Filed** 07/31/2008**State** FL**Status** ACTIVE

Principal Address

290 SOUTHWINDS DRIVE
SANIBEL FL 33957

Mailing Address

290 SOUTHWINDS DRIVE
SANIBEL FL 33957

Registered Agent Name & Address

SUGERMAN, HARVEY J M.D.
290 SOUTHWINDS DRIVE
SANIBEL FL 33957

Officer/Director Detail

Name & Address

NONE

Annual Reports

No Annual Reports Filed

Document Images

07/31/2008 -- Domestic Non-Profit

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xiii. Direction from City Council