

**IN THE CIRCUIT CIVIL COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

BEVERLEY WHITE, *et. al.*,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

Case No.: 2016-CA-5528
CLASS ACTION

PLANTATION GOLF AND COUNTRY
CLUB, INC. and CONCERT
PLANTATION, LLC,

Defendants.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

/s/ Christina E. Unkel

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TABLE OF CONTENTS

I. UNDISPUTED FACTS 1

II. SUMMARY JUDGMENT STANDARD 5

III. BREACH OF CONTRACT (PGCC) 6

 A. The only reasonable interpretation of the membership agreement is that resigned members were owed a refund of 80% of their equity portion. 7

 B. The contract was breached by the reduction of equity refunds. 9

IV. UNJUST ENRICHMENT (Concert) 12

V. FRAUDULENT TRANSFER (PGCC) 14

VI. FRAUDULENT TRANSFER (Concert) 17

VII. DEFENDANTS’ AFFIRMATIVE DEFENSES ARE LEGALLY INSUFFICIENT 19

 A. Defendant’s assertion that no breach was committed is belied by their actions and the nature of the contracts. 19

 B. The affirmative defenses of release and waiver are not applicable as the written releases were insufficient to operate as a waiver of a contract right. 19

 1. The releases themselves created confusion and ambiguity as to the contract rights being waived and therefore could not have been signed with the requisite knowledge. 20

 2. Acceptance of the release and waiver of the right to refund could not have been fully voluntary because the release is unconscionable. 23

 C. The affirmative defense that a condition precedent was not met is unavailable to Defendants as they rendered any such condition impossible. 34

 D. The statute of limitations has not run. 35

 E. The transfer was not made in good faith. 36

 F. Plaintiffs have suffered damages 36

VIII. CONCLUSION 36

TABLE OF AUTHORITIES

Cases

<i>14th & Heinberg, LLC v. Terhaar and Cronley Gen. Con., Inc.</i> , 43 So. 3d 877 (Fla. 1st DCA 2010)	12
<i>Agritrade, LP v. Quercia</i> , 253 So. 3d 28 (Fla. 1st DCA 2017)	12
<i>Alston v. Alston</i> , 960 So.2d 879 (Fla. 4th DCA 2007).....	20
<i>Amjad Munim, M.D., P.A. v. Azar</i> , 648 So. 2d 145 (Fla. 4th DCA 1994).....	14
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	6
<i>AT&T Mobility, LLC v. Concepcion</i> , 563 U.S. 333 (2011)	27, 28
<i>Basulto v. Hialeah</i> , 141 So. 3d 1145 (Fla. 2014)	24, 25
<i>Beefy King, Int’l, Inc.</i> , 267 So. 2d 853 (Fla. 4th DCA 1972).....	9
<i>Belcher v. Kier</i> , 558 So. 2d 1039 (Fla. 2d DCA 1990).....	24, 32, 33
<i>Bhd. ’s Relief Comp. Fund v. Cagnina</i> , 155 So. 2d 820 (Fla. 2d DCA 1963).....	7, 19
<i>Feldkamp v. Long Bay Partners, LLC</i> , 773 F. Supp. 2d 1273 (M.D. Fla. 2011).....	Passim
<i>Fireman's Fund Ins. Co. v. Vogel</i> , 195 So.2d 20 (Fla. 2d DCA 1967).....	20
<i>First Fla. Bank, N.A. v. Fin. Trans. Sys., Inc.</i> , 552 So. 2d 891 (Fla. 2d DCA 1988).....	7, 10
<i>Fla. Holdings, III, LLC v. Duerst ex rel. Duerst</i> , 198 So. 3d 834 (Fla. 2d DCA 2016).....	32
<i>Fonte v. AT&T Wireless Svcs. Inc.</i> , 903 So. 2d 1019 (Fla. 4th DCA 2005).....	28, 31
<i>General Elec. Co. v. Chuly Intern., LLC</i> , 118 So. 3d 325 (Fla. 3d DCA 2013).....	15
<i>Graef v. Hegedus</i> , 698 So. 2d 655 (Fla. 2d DCA 1997).....	15
<i>Hamlet Country Club, Inc. v. Allen</i> , 622 So. 2d 1081 (Fla. 4th DCA 1993).....	6
<i>Hobby Lobby Stores, Inc. v. Cole</i> , 287 So. 3d 1272 (Fla. 3d DCA 2020).....	25
<i>Hurchalla v. Homeowners Choice Prop. & Cas. Ins. Co., Inc.</i> , 281 So. 3d 510 (Fla. 4th DCA 2019).....	19
<i>In re Forfeiture of: £1992 Pontiac Firebird No. 1G2FS23T3NL212004</i> , 47 So. 3d 344 (Fla. 2d DCA 2010).....	36

<i>J.J. Gumberg Co. v. Janis Servs. Inc.</i> , 847 So. 2d 1048 (Fla. 4th DCA 2003).....	9
<i>J.R.D. Mgmt. Corp. v. Dulin</i> , 883 So. 2d 314 (Fla. 4th DCA 2004).....	7
<i>JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co.</i> , 292 So. 3d 500 (Fla. 2d DCA 2020).....	9
<i>Johnson v. Dowell</i> , 592 So. 2d 1194 (Fla. 2d DCA 1992).....	15
<i>Kendall Imports, LLC v. Diaz</i> , 215 So. 3d 95 (Fla. 3d DCA 2017).....	27, 28, 31
<i>Kenf, LLC v. Jabez Restorations, Inc.</i> , 303 So. 3d 229 (Fla. 2d DCA 2019).....	12
<i>L.R. v. Dep't of Children & Families</i> , 822 So.2d 527 (Fla. 4th DCA 2002).....	20
<i>Marchisio v. Carrington Mortgage Serv., LLC</i> , 919 F.3d 1288 (11th Cir. 2019).....	9
<i>Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986).....	6
<i>McCalla v. E.C. Kenyon Const. Co., Inc.</i> , 183 So.3d 1192 (Fla. 1st DCA 2016).....	18
<i>Mejia v. Ruiz</i> , 985 So. 2d 1109 (Fla. 3d DCA 2008).....	14, 15
<i>Myers v. Brook</i> , 708 So. 2d 607.....	18
<i>N. Am. Van Lines v. Collyer</i> , 616 So. 2d 177 (Fla. 5th DCA 1993).....	34
<i>Orkin Exterminating Co. v. Petsch</i> , 872 So. 2d 259 (Fla. 2d DCA 2004).....	31
<i>Orkin Exterminating Co., Inc. v. F.T.C.</i> , 849 F.2d 1354 (11th Cir. 1988).....	6
<i>Osprey Healthcare Ctr. LLC v. Pascazi</i> , 2021 WL 4760114 (Fla. 2d DCA 2021).....	32
<i>Paparone v. Lake Placid Holding Co.</i> , 438 So. 2d 155 (Fla 2d DCA 1983).....	35
<i>Powertel, Inc. v. Bexley</i> , 743 So. 2d 570 (Fla. 1st DCA 1999).....	Passim
<i>Practice Mgmt. Assoc., Inc. v. Bitet</i> , 654 So. 2d 966 (Fla. 2d DCA 1995).....	9
<i>Raymond James Fin. Servs., Inc. v. Saldukas</i> , 896 So.2d 707 (Fla. 2005).....	20
<i>Reynolds v. The Surf Club</i> , 473 So. 2d 1327 (Fla. 3d DCA 1985).....	6
<i>Romano ex rel. Romano v. Manor Care, Inc.</i> , 861 So.2d 59 (Fla. 4th DCA 2003).....	25
<i>Soknoh Partners, LLC v. Audio Visions S., Inc.</i> , 319 So. 3d 175 (Fla. 2d DCA 2021).....	5

<i>Spears v. SHK Consulting and Dev., Inc.</i> , 338 F.Supp. 3d 1272 (M.D. Fla. 2018).....	12
<i>Susi v. St. Andrews Country Club, Inc.</i> , 727 So. 2d 1058 (Fla. 4th DCA 1999).....	6
<i>Totura & Co., Inc. v. Williams</i> , 754 So. 2d 671 (Fla. 2000)	35
<i>United States v. Fernon</i> , 640 F.2d 609 (5th Cir. 1981)	15
<i>Verandah Dev., LLC v. Gualtieri</i> , 201 So. 3d 654 (Fla. 2d DCA 2016).....	Passim
<i>VoiceStream Wireless Corp. v. U.S. Commc'ns, Inc.</i> , 912 So. 2d 34 (Fla. 4th DCA 2005).....	27
<i>Wilderness Country Club P'ship Ltd. v. Groves</i> , 458 So. 2d 769 (Fla. 2d DCA 1984).....	9
<i>Williams v. Walker–Thomas Furniture Co.</i> , 350 F.2d 445 (D.C.Cir. 1965).....	24
<i>Winans v. Weber</i> , 979 So. 2d 269 (Fla. 2d DCA 2007).....	20
<i>Woebse v. Healthcare and Ret. Corp. of America</i> , 977 So. 2d 630 (Fla. 2d DCA 2008).....	32, 34
<i>Yusem v. South Fla. Water Mgmt. Dist.</i> , 770 So. 2d 746 (Fla. 4th DCA 2000).....	17
<i>Zephyr Haven Health & Rehab. Ctr., Inc. v. Hardin ex rel. Hardin</i> , 122 So. 3d 916 (Fla. 2d DCA 2012).....	32

Statutes

Fla. Stat. § 95.11(b).....	35
Fla. Stat. § 726.102	14
Fla. Stat. § 726.105	14, 15, 17
Fla. Stat. § 726.108	17

Rules

Fla. R. Civ. P. 1.510(c)	1, 5
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Plaintiffs hereby move this Court for a summary judgment as to Count I of the Amended Complaint (Breach of Contract) against Defendant Plantation Golf and Country Club (“PGCC”); Count III (Unjust Enrichment) against Defendant Concert Plantation, LLC (“Concert”); and Count IV (Fraudulent Transfer) against both PGCC and Concert; pursuant to Florida Rule of Civil Procedure 1.510. For the reasons set forth below, this motion is ripe for summary judgment. The material facts of this case are either agreed upon or established beyond a doubt and the Plaintiffs are entitled to a judgment as a matter of law on the aforementioned counts. If summary judgment is not granted for all counts, in the alternative the Plaintiffs move in the alternative for a determination of material facts not in controversy; and an order specifying those facts and the amount of damages or other relief not in controversy.

I. UNDISPUTED FACTS

Plaintiffs adopt and incorporate as much of paragraphs 3-8 from Defendants’ Joint Response in Opposition to Plaintiffs’ Motion for Class Certification (renumbered as ¶ 1-6) as is restated below. Deletions are represented by ellipsis. Additional facts are supplied with Docket Identification Numbers (DIN) or Exhibit Numbers for reference.

1. Each of Plaintiffs’ claims in the Complaint is based on the underlying premise that, as former equity members of [PGCC], Plaintiffs were entitled to a refund of a portion of their equity buy-in to PGCC (the “Refund Amount”) once they reached the top of a waiting list (the “Resignation Waiting List”) for their respective categories of membership, to wit: i) golf; ii) tennis; iii) social. . . .
2. The Resignation Waiting List consisted of the resigned equity members of PGCC ordered according to their date of resignation, with those who resigned first at the top of the list.

3. Once a resigned equity member reached the top of the Resignation Waiting List, they were next in line to be refunded their respective Refund Amount. The payment of this Refund Amount was contingent on PGCC selling new memberships and a portion of those funds being put in an escrow account.

4. These refunds were to be paid according to PGCC's Bylaws, which were amended over the years. A brief timeline of the relevant Bylaw provisions and their amendments is outlined below:

a. March 26, 2001 – Amended Bylaws (the “March 2001 Bylaws”)

3.9.2 The resigned Equity Membership shall be placed on a waiting list to be repurchased by the Club. The resigned Membership will be purchased at eighty percent (80%) of the equity portion of the membership fee in effect as of the effective date of the resignation.

3.9.3 Prior to the initial issuance of all Equity Memberships in the resigned Member's Membership category, every fifth (5) Membership issued in that category shall be a resigned Equity Membership from the resale list.

...

b. April 11, 2005 – New Bylaws Adopted (the April 2005 Bylaws”)

3.9.2 [No Change]

3.9.3 The Club shall maintain an Escrow Account into which monies from the sale of memberships shall be placed. These monies shall be the net amount of monies received after the Club has deducted the Club's initiation or transfer fee. All monies in this account shall be paid out to the resigned categories in accordance with the priority on the Resigned Members Waiting List.

...

e. November 15, 2010 – Amended Bylaws (the “November 2010 Bylaws”)

3.7.2 The resold Equity membership shall be transferred, and an appropriate Certificate of Membership issued to the purchaser, upon the purchaser's payment of one hundred percent (100%) of the then current Equity Membership price to the Club. Upon receipt of the then current Equity Membership price, the Club will pay to the selling Member the following: eighty percent (80%) of the Equity Membership price originally paid or deemed to be paid by such selling Member in

the case of Tennis Equity I or Social Equity I Member, and fifty percent (50%) of the Equity Membership price originally paid by such selling Member in the case of a Tennis Equity II or Social Equity II Member, less any amounts due from the selling member to the Club. In the case of a Regular Equity Member, the Club will pay to the selling Member the following percentage of the Equity Membership price originally paid or deemed to be paid by such selling member, as applicable, less any amounts due from the selling Member to the Club: Regular Equity Member I – eighty percent (80%); Regular Equity Member II – seventy percent (70%); Regular Equity Member III – sixty percent (60%); Regular Equity Member IV – fifty percent (50%); Regular Equity Member V – forty percent (40%); Regular Equity Member VI – zero percent (0%).

3.8.2 The resigned Equity Membership shall be placed next in line on the Resigned Members Waiting List to be purchased by the Club. The purchase price shall be an amount equal to the percentage of the Equity Membership price originally paid or deemed to be paid by such selling Member for the applicable type and class of Equity Membership set forth in Article 3.7.2 of these Bylaws.

...

- g. April 1, 2016 – Amended and Restated Bylaws (the “April 2016 Bylaws”)

3.7.1 The Club currently offers Equity Memberships with a non-refundable equity portion of the Joining Fees. Nevertheless, if a resigned member is entitled to receive a refund of a percentage of the equity portion such member paid to the Club pursuant to the Prior Bylaws (“Refundable Equity Member”), the Club shall refund the Refundable Amount to such resigned member in accordance with these Bylaws. The “Refundable Amount” in each such case shall be equal to eighty percent (80%) of the equity portion of the Joining Fees the Club receives for issuance of an Equity Membership to a new Equity Member, less any amounts still owed the club by the resigning member. Notwithstanding the preceding sentence, the Club shall not pay any Refundable Amount until the Joining Fees have been paid in fully by the new member.

3.7.2 The Club has previously issued, but is no longer offering, Regular Equity Memberships. For purposes of repayment of a Refundable Amount, resigned Regular Equity Memberships shall be considered to be in either the Full or Golf Equity Membership category, as applicable, and resigned Regular Equity Membership shall be placed on the same Resigned Members Waiting List as Full and Golf Equity Memberships. Resigned Tennis Memberships shall be placed on the respective separate Resigned Members Waiting List accordingly.

...

3.8.3 The Club shall maintain an escrow account into which the Club shall deposit eighty percent (80%) of the equity portion of the Joining Fees paid by each new

Equity Member (the “Escrow Account”). All monies in the Escrow Account shall be paid out to the applicable resigned members in accordance with the priority on the Resigned Member’s Waiting List. Within thirty (30) days of the Club’s receipt of one hundred percent (100%) of the Joining Fees, the Club will pay to the resigned member in the first position on the Resigned Members Waiting List the applicable Refundable Amount, if any. Notwithstanding anything to the contrary in these Bylaws, the Escrow Account shall be the sole source of funds used to pay Refundable Amounts, if any, to resigned members. From and after the date upon which all Refundable Amounts which may be payable to Refundable Equity members have been paid, the Escrow Account will be closed and terminated.

...

5. The refund payments were only to be paid from an escrow account funded by the sale of new memberships net PGCC’s initiation or transfer fees (the “Escrow Account”). To the extent there were no funds in the Escrow Account due to no new memberships being sold, no resigned equity members would be paid their Refund Amount.

6. On November 15, 2018, PGCC entered into a Purchase and Sale Agreement¹ (the “PSA”) whereby it agreed to sell certain Club assets to Concert. The sale of these assets was effectuated as of February 2, 2019. Upon the sale of PGCC’s assets to Concert pursuant to the PSA, PGCC ceased operating as a Club and ceased selling new club memberships, as such, no additional funds have been added to the Escrow Account since the sale.

7. The PSA outlines the parameters of the sale: that Concert will purchase PGCC for the sum of its existing mortgage (then estimated at \$4,546,645.69) and the “SWAP Agreement”, the value of which had not been attained by the time of the transaction, but which would potentially result in a credit. (CONCERT 001582). The property, valued by the county at \$10,800,000.00, was eventually purchased for \$4,533,577.45 according to the property records and special warranty deed. (Ex. A; Ex. B).

¹ Due to the confidentiality order in place, this document will be referred to by Bates number for reference, and the entire Motion for Partial Summary Judgment will be filed under seal.

8. After the sale, resigned members were offered a payment of \$1,200.00, \$480.00, or \$240.00 (depending on their membership class) on the condition that they signed a “release.” If they did not sign the purported release, they did not receive any payment. (Testimony of Barbara J. Camarota, DIN 741, p. 44, ln. 20-21: “No, if they did not sign the release, they did not receive a payment.”). This would be the only opportunity a resigned member had to receive any payment. (Email from Camarota, DIN 757, p. 4 “Be advised, however, that since the old Club has been sold and no longer sells memberships, no further Equity refund payments will be made to resigned members and you will receive nothing at any time in the future.”).

9. Resigned members, such as the Dorsos, who attempted to obtain documents from PGCC related to the resigned member waiting lists and equity refunds were told by the General Manager that “resigned members no longer have the rights and privileges (nor responsibilities) of active members. This would include the right to request copies of internal Club documents.” (Ex. G, Ltr. from J. Leinaweaver).

II. SUMMARY JUDGMENT STANDARD

“A movant is entitled to summary judgment if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Soknoh Partners, LLC v. Audio Visions S., Inc.*, 319 So. 3d 175, 178 (Fla. 2d DCA 2021) (citing Fla. R. Civ. P. 1.510(c)). The summary judgment standard provided for in Rule 1.510 “shall be construed and applied in accordance with the federal summary judgment standard.” Fla. R. Civ. P. 1. 510(a). “[T]his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine issue of material fact*.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)

(emphasis in original). The non-moving party must “do more than show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (citations omitted). *See also, Feldkamp v. Long Bay Partners, LLC*, 773 F. Supp. 2d 1273, 1275-76 (M.D. Fla. 2011), *aff’d*, 453 F. App’x 929 (11th Cir. 2012) (“To avoid the entry of summary judgment, a party faced with a properly supported summary judgment motion must come forward with extrinsic evidence, i.e., affidavits, depositions, answers to interrogatories, and/or admissions, which are sufficient to establish the existence of the essential elements to that party’s case, and the elements on which that party will bear the burden of proof at trial.”) (citations omitted).

III. BREACH OF CONTRACT (PGCC)

“The relationship between a social club and its members is one of contract, which must be judged in accordance with its terms.” *Feldkamp*, 773 F. Supp. 2d at 1279 (citing *Susi v. St. Andrews Country Club, Inc.*, 727 So. 2d 1058, 1061 (Fla. 4th DCA 1999); *Hamlet Country Club, Inc. v. Allen*, 622 So. 2d 1081, 1082 (Fla. 4th DCA 1993); *Reynolds v. The Surf Club*, 473 So. 2d 1327, 1335-36 (Fla. 3d DCA 1985)). The legal effect of unambiguous language in a contract is a question of law. *Id.* at 1280 (citing *Orkin Exterminating Co., Inc. v. F.T.C.*, 849 F.2d 1354, 1360 (11th Cir. 1988)). Likewise, the existence of and resolution of ambiguous language is also a question of law in Florida. *Id.* (citations omitted). PGCC acknowledged in its Answer that the membership agreements were enforceable contracts. (DIN 506, p. 4, ¶ 43). The only questions left to this court are: what were the terms (in light of the most reasonable interpretation), and did PGCC breach those terms?

A. The only reasonable interpretation of the membership agreement is that resigned members were owed a refund of 80% of their equity portion.

“When possible, a contract must receive a construction which will render it valid and enforceable.” *Feldkamp*, 773 F.Supp. 2d at 1284 (citing *J.R.D. Mgmt. Corp. v. Dulin*, 883 So. 2d 314, 316-17 (Fla. 4th DCA 2004)). If one party “retains to itself the option of fulfilling or declining to fulfill its obligations under the contract, there is no valid contract and neither side may be bound.” *Id.* at 1283 (citations omitted). Critically for this case, “where one interpretation of a contract would be absurd and another would be consistent with reason and probability, the contract should be interpreted in the rational manner.” *Verandah Dev., LLC v. Gualtieri*, 201 So. 3d 654, 657 (Fla. 2d DCA 2016) (citations omitted).

The court in *Feldkamp* builds upon this concept, quoting approvingly from *First Fla. Bank, N.A. v. Fin. Trans. Sys., Inc.*, 552 So. 2d 891, 892 (Fla. 2d DCA 1988): “It is firmly established that a corporation is prohibited from amending its bylaws so as to impair a member’s contractual right.” *Feldkamp*, 773 F.Supp. 2d at 1283. The court continued: “even though an express reservation of the power of amendment has been made, the general consent that a member thereby gives to be bound by all present and future enactments of the association does not contemplate that it may be made a means of depriving him of those right that became vested upon his admission to membership.” *Id.* (citing *Bhd. ’s Relief Comp. Fund v. Cagnina*, 155 So. 2d 820, 824 (Fla. 2d DCA 1963)).

The only reasonable interpretation of the membership agreement is that the right to a refund vested at the time that the resignation became effective. This is the plain meaning taken from the bylaws themselves: “[t]he resigned Membership will be purchased at eighty percent (80%) of the equity portion of the membership fee *in effect as of the effective date of the resignation.*” (emphasis added). Once a member’s resignation became effective, they had

performed all that was necessary to be eligible for their refund. The only remaining actions were on behalf of the club in administering the waiting lists and the refunds. Once vested, the right could not have been impeded absent a breach of contract.

PGCC's present position for the purposes of litigation would render the contract illusory and unenforceable. It's position is that by inserting language that the bylaws were subject to amendment from time to time, the club could unilaterally decide to amend those bylaws to reduce or eliminate any refund promised to members. This is the same position that was resoundingly rejected in *Feldkamp*. See also, *Verandah Dev., LLC v. Gualtieri*, 201 So.3d 654, 657-58 (Fla. 2d DCA 2016) (relying on the reasoning in *Feldkamp* to reject theory that refund provisions remained amendable). PGCC goes further, in this instance, in that it wishes to make these changes retroactive against members who had resigned prior to the changes in the bylaws.

Both *Feldkamp* and *Verandah* involved club members who resigned their memberships *after* the changes to refund policy were attempted. The Middle District and Second District Court of Appeal rejected the idea that the clubs could unilaterally modify a material provision in their membership agreement in a way that would infringe on a member's contractual rights. The case at bar is far more egregious in that every Plaintiff, whether they resigned completely from the club or resigned one membership in favor of procuring a less expensive one, made that resignation prior to the bylaw change. The contract was set. Both parties had agreed, upon the member's resignation, as to the rights still owed the member: that they would be paid 80% of the equity amount *in effect at the time of their resignation*. PGCC now argues that it can unilaterally modify that contract after one party's performance has ended in order to reduce the amount owed to that party. This flies in the face of the most fundamental interpretations of contract law.

B. The contract was breached by the reduction of equity refunds.

“The elements of an action for breach of contract are: (1) the existence of a contract, (2) a breach of the contract, and (3) damages resulting from the breach.” *JF & LN, LLC v. Royal Oldsmobile-GMC Trucks Co.*, 292 So. 3d 500, 508 (Fla. 2d DCA 2020) (citation omitted). A breach must be “material” in nature. *See, e.g., J.J. Gumberg Co. v. Janis Servs. Inc.*, 847 So. 2d 1048, 1049 (Fla. 4th DCA 2003). To constitute a material breach, the party’s nonperformance must “go to the essence of the contract.” *Beefy Trail, Inc. v. Beefy King, Int’l, Inc.*, 267 So. 2d 853, 857 (Fla. 4th DCA 1972). *See also, Marchisio v. Carrington Mortgage Serv., LLC*, 919 F.3d 1288 (11th Cir. 2019). Price terms and the timing of payments go to the essence of the contract. *See Practice Mgmt. Assoc., Inc. v. Bitet*, 654 So. 2d 966, 969 (Fla. 2d DCA 1995) (citing *Wilderness Country Club P’ship Ltd. v. Groves*, 458 So. 2d 769, 772 (Fla. 2d DCA 1984)). As discussed below, this case presents the quintessential breach of contract claim. PGCC had a contract with each Plaintiff and breached the most material term of all: that of payment.

Florida courts have found a material breach of contract on a summary judgment motion in nearly identical circumstances. In *Feldkamp v. Long Bay Partners, LLC*, the Middle District of Florida addressed the non-payment of a membership refund after the Feldkamps attempted to resign their membership in Shadow Wood Country Club. 773 F.Supp. 2d at 1276-79. There, the membership application provided for a 100% refund of the membership deposit within thirty days of written notice of resignation. *Id.* at 1280. When their club attempted to “suspend” this policy in November of 2008, the Feldkamps submitted their written resignation in March the next year. *Id.* at 1279. The defendants argued that because the Feldkamps agreed to be bound by “Rules & Regulations” which were subject to change, they effectively forfeited their right to a refund when the rules were amended to suspend that right. *Id.* at 1281-82. The court found that

the club was unable to amend its own bylaws so as to impair a fundamental contractual right (which most certainly included the refund) and ruled in favor of the plaintiffs at summary judgment. *Id.* at 1283. (citing *First Fla. Bank, N.A. v. Fin. Trans. Sys., Inc.*, 522 So. 2d 891, 892 (Fla. 2d DCA 1988)).

The Second District Court of Appeals relied on this reasoning to uphold (in part) a summary judgment in favor of the plaintiffs in *Verandah. Verandah Dev., LLC v. Gualtieri*, 201 So. 3d 654, 657 (Fla. 2d DCA 2016). Although the plaintiff-appellees did not have an equity membership in their golf club, they nevertheless were entitled to a full refund of their \$40,000 membership deposit upon resignation. *Id.* at 656. In 2006, when the Gaultieris joined the club, the refunds were paid via a waiting list structure. *Id.* For each new member to join Verandah, one resigned member would be refunded from the list. *Id.* In 2009, Verandah changed their refund policy to a “three in, one out” policy, requiring three new members to join for a single resigned member to be refunded. *Id.* The Gualtieris did not lodge an objection to the policy when it was changed and did not resign until 2014. *Id.* The Second District sided with the Gualtieries and the trial court, finding that the alteration of the refund schedule constituted a breach (boilerplate language about rules being “amended from time to time” notwithstanding). *Id.* at 659.

This case turns on the same points of law and contract interpretation as *Feldkamp* and *Verandah*. Each Plaintiff had a written contract with PGCC. While the form of said contracts may vary slightly from one Plaintiff or group of Plaintiffs to another, the material provisions are the same: every Plaintiff was an equity member of PGCC and every contract provided for a return of some portion of the equity fee upon the member’s resignation *based on the bylaws in effect at the time of the resignation*. The case at bar is stronger than that in either *Feldkamp* or

Verandah in that the Plaintiffs in this case all resigned prior to the bylaw change. Therefore, their rights had already vested and were no longer subject to any changes.

The April 2016 amendment to the PGCC bylaws materially breached every existing contract with a resigned member. This amendment eliminated the promise to pay a percentage of the equity fees and significantly reduced the amount of money the club was willing to refund. Instead of eighty percent of their equity fees, the amendment promised to pay resigned members eighty percent of the “joining fees” current upon their resignation. The joining fees were a much lower amount (\$1500.00) compared to the equity fees in effect at the time the Plaintiffs resigned (\$30,000.00). (*Compare* DIN 755 *with* DIN 756). PGCC attempted to make this amendment retroactive, thereby attempting to substitute the figure of \$1200.00 (eighty percent of the \$1500.00 joining fee) for the previously promised \$24,000. This would result in a refund that was only 5% of what was originally promised.

This contradicts PGCC’s own interpretation of it’s obligation to resigned members. Many Plaintiffs received a letter prior to 2016 confirming their resigned member refund at the higher amount. (DIN 756, 758). Whether or not each Plaintiff received such a letter is immaterial: the content of the letters serves to evidence PGCC’s understanding, as a party to the contract, as to the meaning of an essential term of the contract. Further, previous versions of PGCC’s own bylaws in effect prior to April 1, 2016 clearly state that “resigned Membership will be purchased at eighty percent (80%) of the equity portion of the Membership fee *in effect as of the effective date of the resignation.*”

In sum, PGCC entered into a contract with each Plaintiff whereupon it agreed to refund them a percentage of the equity fees in effect at the time of their resignation. The Plaintiffs all resigned. Most, if not all, received a letter stating that they were entitled to a refund of 80% of

the equity fees in effect at the time of their resignation. PGCC then later attempted to amend that agreement, significantly reducing the amount of that refund, and thereby materially breaching the contract it had with each Plaintiff. The damages are the original refund amounts owed to each Plaintiff, as calculated based on the bylaws in effect at the time of each Plaintiffs' resignation. For these reasons, the Plaintiffs make the requisite showing for summary judgment and are entitled to a judgment in their favor, as in *Feldkamp* and *Verandah*.

IV. UNJUST ENRICHMENT (Concert)

A claim for unjust enrichment requires proof of: “(1) a benefit conferred upon a defendant by the plaintiff, (2) the defendant’s appreciation of the benefit, and (3) the defendant’s acceptance and retention of the benefit under circumstances that make it inequitable for him to retain it without paying the value thereof.” *Kenf, LLC v. Jabez Restorations, Inc.*, 303 So. 3d 229, 231 (Fla. 2d DCA 2019) (citation omitted). Unjust enrichment is not a claim on a contract, but a claim under an implied contract in order to maintain equity between the parties. *See 14th & Heinberg, LLC v. Terhaar and Cronley Gen. Con., Inc.*, 43 So. 3d 877, 880 (Fla. 1st DCA 2010). It is an “obligation imposed by the court to bring about justice and equity, without regard to the intent of the parties and without regard to whether they have an agreement.” *Id.* at 881 (citation omitted). Unjust enrichment is not barred by the existence of an express contract (even one that “concerns the same subject matter”) when the parties in the unjust enrichment action are different than those who are parties to the contract. *See Agritrade, LP v. Quercia*, 253 So. 3d 28, 34 (Fla. 1st DCA 2017). *See also, Spears v. SHK Consulting and Dev., Inc.*, 338 F.Supp. 3d 1272, 1278 (M.D. Fla. 2018) (“Florida law bars unjust enrichment claims only when *both* parties

to the lawsuit are *also* parties to a written agreement that covers the same subject matter.”) (citation omitted) (emphasis in original).

The benefit conferred on Concert by the Plaintiffs is the sum of their equity fees. These monies were originally used to develop and grow PGCC into a fully functioning golf club and later were used to continue to keep PGCC operating by paying off previously resigned members. Without the membership equity, there would be no PGCC. Without PGCC, Concert would not have been able to purchase the club, an act which it did for its own benefit.

Concert appreciated this benefit, in that it was aware of the status of both parties to the express contracts between PGCC and its resigned members. Concert had direct knowledge of the potential for liability to each resigned member beyond \$1,200.00 based on the membership contracts, applications, membership documents, records, bylaws, and information provided to it as per the PSA with PGCC. (CONCERT 001579, ¶1.3). Concert demonstrated its knowledge of these liabilities (or at the very least the potential for these liabilities) at the time of purchase by attempting to limit its acceptance of liability to the reduced refund amounts in the PSA. (CONCERT 001591, ¶4.3; Ex. H, p. 3).

Further, Concert has taken the step of eliminating all equity memberships and the escrow fund used to refund resigned memberships. The escrow fund was a separate fund into which incoming membership equity is placed. These escrowed funds were then used to pay out obligations to resigned members as the funds accumulate. By eliminating new equity memberships, Concert guaranteed that the escrow account would be unfunded and therefore no refunds could be paid to resigned members. This not only cements its claim to the unjustly retained equity fees but furthers the injustice and inequity against the Plaintiffs.

Without being subject to the full extent of the contractual liability owed to the Plaintiffs, Concert will have received an enhanced value of its asset beyond what it should have received. Concert has profited from and continues to profit from PGCC's breach of contract in that it has retained the majority of the equity funds paid in by Plaintiffs and refuses to disgorge these funds to Plaintiffs in the form of their contractually-obligated refunds. Lastly, Concert has removed any chance of recoupment of these refunds by eliminating the equity structure – thereby preventing new members from ever paying out resigned members. For these reasons, the Plaintiffs have met the summary judgment standard by showing that it would be inequitable for Concert to continue to retain the benefit of the equity refunds owed to the Plaintiffs.

V. FRAUDULENT TRANSFER (PGCC)

“Florida has long recognized the principle that a voluntary conveyance by one who is indebted is presumptively fraudulent when attacked by a judgment creditor upon a debt existing at the time of the conveyance.” *Amjad Munim, M.D., P.A. v. Azar*, 648 So. 2d 145, 152 (Fla. 4th DCA 1994). A transfer made by a debtor is fraudulent as to a creditor if the creditor's claim arose before the transfer and the debtor made the transfer with the actual intent to hinder, delay, or defraud any creditor. Fla. Stat. § 726.105. A creditor is broadly defined as “a person who has a claim.” Fla. Stat. § 726.102. A “claim” is “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” *Id.* Therefore, the resigned members – even if they were to remain on a “waiting list” – are creditors of PGCC and PGCC is a debtor to them.

The fraudulent transfer statute lists several “badges of fraud” which can be used to establish the fraudulent nature of the transfer. *See, e.g., Mejia v. Ruiz*, 985 So. 2d 1109, 1113

(Fla. 3d DCA 2008). Among the “badges of fraud” included in Fla. Stat. § 726.105 are whether the value of consideration received by the debtor was reasonably equivalent to the value of the asset transferred, whether the debtor had been sued or threatened with suit prior to the transfer, and whether or not the transfer was of substantially all the debtor’s assets. Fla. Stat. § 726.105(2). A combination of a number of these badges of fraud will support a presumption of fraudulent intent and justify a finding of fraud. *Mejia*, 985 So. 2d at 1113 (citing *United States v. Fernon*, 640 F.2d 609, 613 (5th Cir. 1981); *Johnson v. Dowell*, 592 So. 2d 1194, 1197 (Fla. 2d DCA 1992)). Courts may also consider other factors, taking into account the totality of the circumstances surrounding the conveyance. *Id.* (citations omitted). *See also, General Elec. Co. v. Chuly Intern., LLC*, 118 So. 3d 325, 327 (Fla. 3d DCA 2013). In the instant case, PGCC’s actions display not only numerous badges of fraud, but create a set of circumstances that evidence fraudulent intent. In total, these actions prove fraudulent transfer beyond the preponderance of the evidence standard required to reach summary judgment.

Sale of assets for less than reasonably equivalent value can give rise to an implication of fraud. *See Fla. Stat. § 726.105(2)(h); Graef v. Hegedus*, 698 So. 2d 655, 656 (Fla. 2d DCA 1997) (reversing summary judgment for further consideration of potentially fraudulent transfer “given the alleged disparity between the value of the...assets and the consideration paid for the purchase”). The PSA shows that Concert purchased PGCC for the total of: its outstanding mortgage, the value of its SWAP transaction (which was indeterminate at the time and could have resulted in a credit), and \$100 consideration for the execution of the PSA. (CONCERT 001582-001583). At the time of the purchase, the outstanding mortgage was estimated at \$4,546,645.69. (CONCERT 001582, ¶2.1(a)). Per the terms of the PSA itself, this amount was to be allocated to the property and represented the “fair market value” of the property. (CONCERT

001582, ¶2.2). Publicly available property records show that the building and land sold to Concert in this transaction were valued at \$10,811,000.00. (Ex. A, p. 1). Concert ultimately paid \$4,533,577.45 for these assets according to the Special Warranty Deed executed in its favor. (Ex. B). The purchase price, which represents slightly less than 42% of the \$10.8M estimated value of the golf course and club house does not even take into account the personal property that transferred to Concert as a result of the PSA.

Beyond the indicator of the minimal consideration paid for PGCC's assets, the transfer between PGCC and Concert displays another classic badge of fraud: that the seller had already been sued prior to the transfer. PGCC was the subject of lawsuits from both the White and Dorso Plaintiffs prior to its sale to Concert. These lawsuits concerned the limited refund payouts and the attempt by PGCC to wipe its substantial debt to its resigned members by amending its bylaws and applying that amendment retroactively.

The transfer displayed a further badge of fraud: though it retained the housing development, PGCC transferred substantially all its assets regarding the golf club itself. The transfer included all the real and personal property, intangible personal property, leases, contracts, rights, liabilities, debts, and claims of PGCC. (CONCERT 001577-001581). Given the circumstances at play, this constitutes a badge of fraud in that, by transferring substantially all of its assets with regard to the golf club, PGCC seeks to avoid any liability for debts remaining to the golf club.

Lastly, although not an enumerated badge of fraud, the totality of the circumstances surrounding the transfer of PGCC's assets gives rise to further indications. PGCC's own internal communications, board minutes, and communications with members show a sea change in 2015 from their previous assessment that members were owed the refunds specified by the bylaws in

effect at the time of their resignation. (*Compare* Ex. C, p. 2 and Ex. D, p. 1 *with* Ex. E and Ex. F, p. 2 ¶6). The 80% equity refunds had been the policy for decades; and despite financial difficulties, had been the line steadfastly maintained by board members and general members alike. The refunds were sacrosanct until their sudden alteration in 2016 (supported by an “education” campaign with the membership). This change, in theory, significantly reduced the debt owed to resigned members, which, in turn, made PGCC a more attractive purchase for Concert. Ultimately, PGCC attempted to divert any liability to resigned members whatsoever by selling the entirety of their club. Taken in totality, these machinations by PGCC constitute a fraudulent transfer under Fla. Stat. § 726.105 and satisfy the preponderance of the evidence standard required to award summary judgment.

VI. FRAUDULENT TRANSFER (Concert)

In accordance with Fla. Stat. § 726.108, “a creditor. . .may obtain: (a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor’s claim; (b) An attachment or other provisional remedy against the asset transferred or *other property of the transferee* in accordance with applicable law. . .[or] Any other relief the circumstances may require.” Fla. Stat. § 726.108 (emphasis added). A fraudulent transfer action “is either an action by a creditor against a transferee directed against a particular transaction, which, if declared fraudulent, is set aside thus leaving the creditor free to pursue the asset, or it is an action against a transferee who has received an asset by means of a fraudulent conveyance and should be required to either return the asset or pay for the asset (by way of judgment and execution).” *Yusem v. South Fla. Water Mgmt. Dist.*, 770 So. 2d 746, 749 (Fla. 4th DCA 2000). In such a case, a money judgment against the transferee for the value of the asset transferred, or an amount necessary to satisfy the

claim, is appropriate. *McCalla v. E.C. Kenyon Const. Co., Inc.*, 183 So.3d 1192, 1195 (Fla. 1st DCA 2016) (citing *Myers v. Brook*, 708 So. 2d 607, 610 n. 1 (Fla. 2d DCA 1998)). Further, this matter is appropriate for summary judgment, assuming the requisite factual basis exists. *Id.* at 1194.

Based on the inherent assumption that a transfer of a debtor's assets while the debt remains outstanding is fraudulent, the badges of fraud displayed in the transfer between PGCC and Concert, and the totality of the circumstances surrounding the transfer, PGCC's sale of its golf course to Concert in 2018 was a fraudulent transfer. Proof abounds in this case that Concert knew the transfer was fraudulent and, in an attempt to avoid debt, structured the transfer with this in mind. First, Concert took the property for far less than market value, as described *supra*. Second, Concert was aware of the risk of extensive debt from the membership refunds - since it was disclosed in the PSA - and sought to reduce its liability and enhance the value of its purchase by restricting members to significantly reduced refunds. (CONCERT 001591, ¶4.3). Concert did this - as it has admitted in this litigation - by eliminating the sale of new equity memberships as part of their management of the club. (DIN 707, p. 7, ¶8). Without new equity memberships funding the escrow account used to pay refunds for resigned memberships, there effectively was no money for refunds. (*Id.*; DIN 741, pp. 80-81). Concert claims that it has offered partial refunds as a gesture of good faith, but in reality, it was a "take-it-or-leave-it" bargain. (*See infra* Sec. VII(B)(2)(a)(iii)). The acceptance of the refund checks was conditioned on signing a release, which Concert sought to reduce its liability both for the litigation that was already pending at the time of the sale, and for future refund claims. Therefore, Concert not only benefitted from the post-hoc reduction in membership refunds, but actively attempted to cement this windfall by eliminating any ability for resigned members to remain on a refund list.

VII. DEFENDANTS' AFFIRMATIVE DEFENSES ARE LEGALLY INSUFFICIENT

Both Defendants have raised numerous affirmative defenses in their answers to the Complaint in this matter. An examination of their various defenses to the counts referenced above will show that none are supported by the facts in this case or are insufficient to impede summary judgment. *See, e.g., Hurchalla v. Homeowners Choice Prop. & Cas. Ins. Co., Inc.*, 281 So. 3d 510, 513 (Fla. 4th DCA 2019) (“Where the defendant has raised affirmative defenses, the plaintiff must factually refute them or establish that they are legally insufficient before being entitled to summary judgment in its favor.”) (citations omitted).

A. Defendant’s assertion that no breach was committed is belied by their actions and the nature of the contracts.

In PGCC’s First Affirmative Defense and Concert’s Fifth Affirmative Defense, both claim that they did not breach the respective Membership Agreements, as these are subject to the Club’s bylaws, which may be amended from time to time. This argument is addressed in Section III, *supra*. In short: an organization may not amend its bylaws to impair a member’s contractual right. *See, Feldkamp*, 773 F.Supp. 2d at 1283 (citing *Bhd. ’s Relief & Comp. Fund v. Cagnina*, 155 So. 2d 820, 824 (Fla. 2d DCA 1963)).

B. The affirmative defenses of release and waiver are not applicable as the written releases were insufficient to operate as a waiver of a contract right.

The Defendants are in the precarious position of arguing both that the Plaintiffs had no contractual right to a refund of their equity payment *and* that they waived any such right by virtue of signing what the Defendants have styled as “releases.”² In order to operate as a waiver of contract rights, a waiver must voluntarily and intentionally relinquish known rights. *See*

² Although the effect of this “release” is disputed, for simplicity’s sake, they are referred to hereinafter as “releases.” This is not meant to imply any agreement or acknowledgment that they do indeed operate as releases.

Raymond James Fin. Servs., Inc. v. Saldukas, 896 So.2d 707, 711 (Fla. 2005). Without delving into any individualized facts that may have precipitated the signing of any release in particular, it is evident from the face of the document that any purported waiver of the rights by the Plaintiffs could not have been fully knowing and voluntary. The document itself created confusion as to the contract rights the signor purported to waive; and the fundamental inequities in the circumstances surrounding the issue of the releases prevented their execution from being fully voluntary.

1. The releases themselves created confusion and ambiguity as to the contract rights being waived and therefore could not have been signed with the requisite knowledge.

“The supreme court has defined a ‘waiver’ as a voluntary and intentional relinquishment of a known right.” *Winans v. Weber*, 979 So. 2d 269, 274 (Fla. 2d DCA 2007) (citing *Raymond James Fin. Servs., Inc. v. Saldukas*, 896 So.2d 707, 711 (Fla. 2005)). In order to demonstrate that a party has waived a right afforded by law or contract, the party relying on the waiver must show: “the existence at the time of the waiver of a right, privilege, or advantage; the actual or constructive knowledge thereof; and an intention to relinquish that right, privilege, or advantage.” *Id.* The knowledge aspect is critical as “there can be no waiver if the party against whom the waiver is invoked did not know all of the material facts, or was *misled* about the material facts.” *Id.* (emphasis added) (citing *Fireman's Fund Ins. Co. v. Vogel*, 195 So.2d 20, 24 (Fla. 2d DCA 1967); *Alston v. Alston*, 960 So.2d 879, 881 (Fla. 4th DCA 2007); *L.R. v. Dep't of Children & Families*, 822 So.2d 527, 530 (Fla. 4th DCA 2002)).

The second “Whereas” clause of the release serves to obfuscate the nature of the rights being waived and misleads the reader. (DIN 743, p. 2, ¶2; DIN 744, p. 2, ¶2). The clause states, in part, that the resigned member “is eligible at some time in the future for a refund of a portion

of the membership contribution previously paid by the Resigned Club Member to the Old Club, pursuant to the amended bylaws of the old club, in an amount which cannot be determined at this time...” (DIN 743, p. 2, ¶2; DIN 744, p. 2, ¶2). This statement belies the facts of the case and the circumstances in which these releases were issued.

First, the acknowledgment that the resigned member is eligible for a partial refund of their membership contribution runs counter to the position of Defendants prior to and during this lawsuit (and during the lawsuits that were pending at the time of these releases, which were eventually joined in this current proceeding). The Defendants’ position is and has been that any resigned member who had not reached the top of the resignation waiting list – which includes all resigned members who were provided releases to sign – was not eligible for a refund of their equity contribution. (Sec. VII(C), *infra*; DIN 505, p. 7; DIN 506, p. 6, ¶78). The pertinent facts of this case also contradict the waiver clause in a practical sense, in that: presuming a resigned member was eligible for a refund of part of their equity contribution, no refund would ever be forthcoming as the club no longer sold equity memberships at the time of this release and therefore had no method in place for funding the escrow account used to refund resigned memberships. (DIN 741, pp. 80-81; DIN 707, pp. 6-7, ¶¶7-8). If Plaintiffs had chosen not to sign the release, they would have never received any refund whatsoever. (CONCERT 001591; DIN 741, p. 44, ln. 20-21).

Second, the clause references amended set of bylaws without specifying which amended set of bylaws or the effect of that amendment. It is important to bear in mind that once a club member resigned their membership, they had no rights in the club, no access to club documents, and no way to view current or previous versions of the bylaws. (DIN 741, p. 106, ln. 2; DIN 741, pp. 105-106; Ex. G, ¶ 2). They were not given notice of upcoming votes, major club decisions,

or the reasoning behind them, as they were no longer considered members of the club. (DIN 741, p. 34, lns. 13, 17; p. 135, ln. 5-9). For all they knew, the club was operating on the version of bylaws in effect at the time they resigned. This was certainly the position that was conveyed to many of them when they received letters tabulating their refunds in amounts dictated by the bylaws that were in effect at the time. (DIN 756, 758). For nearly all class members, that was their last official communication in writing from the club prior to receiving the release. The contrast between the amounts promised in those letters together with the reasoning behind those amounts (to wit: that they were tabulated based on the bylaws in effect at the time of the member's resignation), and the new amount offered contingent on signing the waiver, was a sharp one. Resigned golf members were now being offered 5% of the amount they were entitled to based on "amended bylaws" that were referenced in these releases but effectively inaccessible and amended without any input or say from resigned members.

Third, the clause blatantly denies the ability to calculate the amount of the refund that a given resigned member was entitled to. These refunds had been tabulated in some form or fashion since the inception of the club. As testified to by the former chief financial officer of PGCC, there was a process to the determination which was objective and based entirely on documents already present in the resigned member's file at the time they resigned. (DIN 778, p. 16, ln. 14-15). At the time of the waiver, these documents and files were in the possession of Concert, having been turned over as part of the purchase and sale. (CONCERT 001579, ¶1.3). The clause is misleading in that it states that the amount *cannot* be determined at the time of the release, when in fact: whatever means existed to determine the refund amount were as available at the time of the release as they had ever been and were then in the possession of the party claiming that they were incalculable.

Lastly, by the time the releases were sent to resigned members, PGCC was already being sued over the refusal to pay full refunds to resigned members. (CONCERT 001753-001755 Sch. 5.2(c)). Therefore, clearly there was a dispute as to the exact rights that resigned members were entitled to and remedies that resigned members were able to avail themselves of. This fact was not disclosed in the release. (DIN 741, p. 43, ln. 2-18; p. 134, ln 10-14). Plaintiffs posit that – particularly in light of the complete absence of official communication from PGCC or Concert other than the release – the fact that the refund entitlement was already being litigated was a material fact that should have been disclosed in the release.

In sum: Plaintiffs had resigned their memberships in PGCC (some, many years ago) and were therefore cut off from any official communication. For most, if not all, the last written communication they had received was a letter describing their refund amount and that they were entitled to it based on the bylaws in effect *at the time of their resignation*. They then received, out of the blue, a release with extremely limited information stating that they were entitled to a refund of their equity contribution, but that the amount cannot be determined. They were not provided any reason for this abrupt and costly change, nor were they notified that PGCC and Concert were – at the very time the releases were sent – being sued over the change that prompted the releases. Due to the ambiguous nature of the release, the lack of information available to resigned members regarding the impact of the sale on membership refunds, and the lack of explanation regarding the bylaw change, the releases could not have been signed with the requisite knowledge.

2. Acceptance of the release and waiver of the right to refund could not have been fully voluntary because the release is unconscionable.

The doctrine of unconscionability has been used by courts to prevent enforcement of a contract that is inequitable or one-sided. *See, e.g., Basulto v. Hialeah Auto.*, 141 So. 3d 1145,

1157 (Fla. 2014). The determination of unconscionability is a matter of law. *Belcher v. Kier*, 558 So. 2d 1039, 1040 (Fla. 2d DCA 1990). Therefore, this determination can be made at the summary judgment phase. Further, this doctrine can be applied to any part of a contract, including a modification or waiver. *See Powertel, Inc. v. Bexley*, 743 So. 2d 570, 573 (Fla. 1st DCA 1999) (appeal of nonfinal order denying motion to compel arbitration based on language in a purported modification).

“Unconscionability is a common law doctrine that courts have used to prevent the enforcement of contractual provisions that are overreaches by one party to gain an unjust and undeserved advantage which it would be inequitable to permit him to enforce.” *Basulto*, 141 So. 3d at 1157 (citations and internal quotations omitted). Generally, unconscionability has been recognized to “include an *absence of meaningful choice* on the part of one of the parties together with contract terms which are *unreasonably favorable to the other party*.” *Id.* (quoting *Williams v. Walker–Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C.Cir. 1965)). Doctrinally, the “absence of meaningful choice when entering into the contract is often referred to as procedural unconscionability, which ‘relates to the manner in which the contract was entered,’ and the unreasonableness of the terms is often referred to as substantive unconscionability, which ‘focuses on the agreement itself’.” *Id.* at 1157-58 (citing *Powertel*, 743 So. 2d 570, 574 (Fla. 1st DCA 1999)).

Both procedural and substantive unconscionability need to exist in order to prevent the enforcement of a contract or contract term. *Id.* at 1160. The Supreme Court of Florida has adopted a sliding scale approach, where both elements must be present, but not to the same degree. *Id.* Rather, a stronger showing of one of the two elements can make up for a lack of the other, if both are present in some capacity. *Id.* (citing with approval *Romano ex rel. Romano v.*

Manor Care, Inc., 861 So.2d 59, 62 (Fla. 4th DCA 2003)). “In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa.” *Id.* “Courts must bear in mind the bargaining power of the parties involved and the interplay between procedural and substantive unconscionability.” *Id.*

a. Procedural Unconscionability

Procedural unconscionability is determined based on a totality of the circumstances surrounding the entry into the contract – or contract modification in this case. *See Hobby Lobby Stores, Inc. v. Cole*, 287 So. 3d 1272, 1275 (Fla. 3d DCA 2020). In considering whether “the complaining party lacked a meaningful choice in entering into the contract” courts look to four factors: “(1) the manner in which the contract was entered into; (2) the relative bargaining power of the parties and whether the complaining party had a meaningful choice at the time the contract was entered into; (3) whether the terms were merely presented on a ‘take-it-or-leave-it’ basis; and (4) the complaining party’s ability and opportunity to understand the disputed terms of the contract.” *Id.* (quoting *Basulto*, 141 So. 3d at 1160). All four of these factors weigh in favor of a finding of procedural unconscionability.

i. The modification was unsolicited and to the benefit of one party.

Consideration of the way these releases were issued gives rise to the first indicia of unconscionability. The Plaintiffs - targets of these releases - were resigned members who had left PGCC prior to April 1, 2016. It had been years since they had received any official communication from the club, and for most, the last communique was a letter confirming that PGCC agreed they were owed an 80% refund of the equity membership in effect at the time of

their resignation. Resigned golf members were expecting payments of \$24,000.00. Instead, they received a mailer with the release enclosed.

While the letter attached to the release acknowledged that the recipient was “a former member of the Prior Club who resigned membership and is currently wait listed to receive a payment from the Prior Club. . .”; it also explained that PGCC had been purchased by Concert, LLC. (DIN 648, p. 295). What effect this purchase had on the refunds owed to resigned members is not clearly delineated. Instead, resigned members are succinctly told that Concert is willing to pay them “\$1,200.00 which is the amount which the Prior Club paid to wait listed resigned members who reached the top of the wait list maintained by the Prior Club in accordance with its Bylaws.” *Id.* PGCC had sent letters promising payment of \$24,000.00. PGCC had paid every resigned member similar amounts for all the years prior to 2016. Now, the same club that had confirmed the previous amount in writing, was offering 5% of that amount and passing it off as what PGCC was in the habit of paying. While this is glossed over in a matter-of-fact manner, PGCC had in fact already been sued by multiple resigned members who were faced with the same terms that this release now proposed. (CONCERT 001753-001755, Sch. 5.2(c)). These facts were not disclosed. (DIN 741, p. 43, ln. 2-18; p. 134, ln 10-14).

It must also be considered that this was not a case of two parties entering into a bargain, both having certain interests in mind. Resigned members already had a contract with PGCC and were entitled to certain payments based on that contract. PGCC had, for their part, confirmed their interpretation of the contract terms in writing to many of these resigned members by indicating in letters that refund amounts were calculated based on the bylaws *in effect at the time of the member's resignation*. (DIN 756, 758). Now, one party sought to unilaterally ratify their breach by mailing unsolicited releases to unsuspecting parties. The fact that the resigned member

cohort was elderly, unrepresented, and had lacked notice of the sale of the club only adds to the biased nature of this transaction.

ii. Bargaining power was wholly one-sided and Plaintiffs were given no meaningful choice whatsoever.

In terms of bargaining power: on one side sat two organizations represented by counsel, fully staffed and funded; and on the other side sat elderly individuals, many unsophisticated as to business and contracts, many on fixed incomes, many who by that time had limited contact with the club and had left the area. (DIN 704, p. 92, ln. 8-12; DIN 741, p. 115, ln. 14-15). In terms of the choice presented to the Plaintiffs, it was a relatively simple one prior to the genesis of this class action: they could sign the release and accept \$1,200; they could refuse the \$1,200 and get nothing; or they could sue as an individual over an amount that was at most \$24,000.00. The unspoken fourth choice, to remain on the waiting list until they were paid what they were owed, was not an option after the club ceased selling equity memberships. Without any funding of the escrow account that paid for equity refunds, the choice effectively became “\$1,200 or nothing.”

iii. The releases were offered on a “take it or leave it” basis.

“While a contract of adhesion could indicate procedural unconscionability in some circumstances, ‘the presence of an adhesion contract alone does not require a finding of procedural unconscionability.’” *Kendall Imports, LLC v. Diaz*, 215 So. 3d 95, 110 (Fla. 3d DCA 2017) (quoting *VoiceStream Wireless Corp. v. U.S. Commc’ns, Inc.*, 912 So. 2d 34, 40 (Fla. 4th DCA 2005)). Courts have recognized that many consumer contracts are essentially contracts of adhesion, and therefore, that indicator has become less consequential in certain agreements. *Id.* (citing in part, *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 346-47 (2011) (“the times in which consumer contracts were anything other than adhesive are long past”)). However, many of these more recent decisions, like the Supreme Court of the United States’ decision in

Concepcion, are reached in the context of consumer goods such as cell phone plans and automotive sales. Cf. *Kendall*, at 97 (Appellant-Buyers attempted to avoid the arbitration clauses in the sales contracts for their vehicles) and *Fonte v. AT&T Wireless Svcs. Inc.*, 903 So. 2d 1019, 1021 (Fla. 4th DCA 2005) (purported class action case against a wireless services provider); with *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 572 (finding an after-the-fact arbitration agreement inserted in a cell phone plan unconscionable in large part because it was an adhesion contract). These cases are easily distinguished from the case at bar as they are consumer transactions of a routine nature.

Regardless of the weight given to the adhesiveness of a particular contract provision or modification, even skeptical courts encourage the consideration of the totality of the circumstances involving the “take it or leave it” nature of the agreement. “It is important to inquire into additional surrounding circumstances, such as whether a party could obtain the desired product or services elsewhere, whether one party pressured or rushed the other into signing a contract, or whether the party was otherwise precluded from inquiring into the terms of the agreement.” *Kendall*, 215 So. 3d at 110. The fact that the case at bar did not involve a consumer contract for a common good or service (such as a cell phone plan), but a unilateral modification of an existing contract for a significant sum; taken together with the circumstances surrounding that modification indicate that this was an adhesion contract of the exact kind that courts have historically nullified.

Although somewhat antiquated in light of modern consumer contracts, the reasoning in *Powertel* is nevertheless illustrative of the same concepts at play in this class action. The case involved an arbitration provision that the cell phone provider, Powertel, attempted to insert into existing contracts. *Powertel*, 743 So. 2d at 572. “Powertel prepared the arbitration clause

unilaterally and sent it along to its customers as an insert to their monthly telephone bill.” *Id.* at 572-73. Recipients were given the option to cancel their cell phone plans within ten days as their only method for opting out of the modification. *Id.* Furthermore, Powertel was already embroiled in a potential class action lawsuit brought by the plaintiff-appellee on an unrelated issue when they attempted to modify the contract to require arbitration. *Id.*

The court found the clause procedurally unconscionable because it was an adhesion contract that left customers with little option. *Id.* at 575. “The customers did not bargain for the arbitration clause, nor did they have the power to reject it.” *Id.* The court also focused on the fact that a customer’s only form of rejecting the provision would cause inconvenience and expense due to the requirement that they would have to switch providers and purchase new phones and equipment. *Id.* “Many customers may have continued their service. . . simply because they had no economically feasible alternative.” *Id.*

The use and interoperability of cell phones has changed, which in turn has prompted a change in the prevailing legal view with regard to that specific style of contract. However, the indicia of unconscionability that the First District Court of Appeals exposed in *Powertel* are evident in the case at bar. Much like the contract modification that was discussed in *Powertel*, the releases in this case were mailed to Plaintiffs unbidden. Plaintiffs had a singular choice: to sign or not. (DIN 741, p. 44, ln. 20-21; DIN 757, p. 4). They did not bargain for the release, nor did they have the power to reject it. If the court in *Powertel* considered it economically unfeasible to replace a cell phone and associated equipment; how would it have viewed the release that these Plaintiffs were faced with? They had been promised as much as \$24,000.00 and now were being told that their new option was \$1200.00 or nothing. (*Compare* DIN 756, 758 *with* DIN 755; *see also* DIN 741, p. 44, ln. 20-21). Defendants PGCC and Concert eliminated the

funding of the escrow account prior to sending the releases, ensuring that Plaintiffs who received releases would be left with no viable economic alternative. (DIN 741, p. 22, ln. 20-25; p. 23, ln. 8-10; DIN 778, p. 13, ln. 4-9; DIN 757, p. 3).

Additionally, PGCC had already been sued at the time these releases were mailed. (CONCERT 001753-001755, Sch. 5.2(c)). More egregious than the circumstances in *Powertel*, the Defendants were being sued over the *exact issues* that were to eventually give rise to this class action. PGCC was sued in *Dorso, et al.* and *White* (and threatened with suit by many others) and disclosed this ongoing litigation in its purchase and sale agreement with Concert. The defendants in *Powertel* had been sued over an unrelated contract provision in relation to their long-distance phone charges. However, both defendants sought to reduce legal liability by the post-hoc modification of a contract clause. In *Powertel*, the defendants sought to bind the plaintiff(s) to arbitration after litigation had already been initiated. *Powertel*, 743 So. 2d at 577. The court wisely struck down that provision. *Id.* Here, the Defendants have sought to limit their exposure to litigation by having potential plaintiffs sign releases. As discussed above, the release does not notify the recipient that the club is already involved in litigation over its amendment of the bylaws. Therefore, the Plaintiffs in this case were facing a situation that was costing them up to \$22,800.00, far more than the economic hardships contemplated in *Powertel*; their contracts had been unilaterally amended (as in *Powertel*); and the company that was seeking to unilaterally modify the contracts had already been sued over these modifications. As such, the facts of this case are far more egregious than those in *Powertel* and serve to demonstrate that the releases were contracts of adhesion.

iv. The complaining Plaintiffs had no opportunity to learn the context necessary to make a conscious choice.

In terms of the “complaining party’s ability and opportunity to understand the terms of the contract,” this case is distinguishable from the typical consumer contract and far more egregious. Many of the cases evaluating unconscionability discuss consumer contracts that are presented to the signing parties as part of a single transaction. *See, e.g., Kendall Imports*, 215 So. 3d at 97-98 (discussing the terms of a contract agreed to on the spot during a vehicle sale); *Fonte*, 903 So. 2d at 1021-22 (discussing terms of cell phone contract included in product packaging); *Orkin Exterminating Co. v. Petsch*, 872 So. 2d 259, 265 (Fla. 2d DCA 2004) (declining to find procedural unconscionability when arbitration provision was included in the original contract between the parties in large type on the first page of the contract). Conversely, here, as in *Powertel*, the Plaintiffs had agreed to a contract many years ago that incorporated all the terms. Both parties were in agreement as to the meaning of the contract provisions, as evidenced by the letters received by various Plaintiffs stating unequivocally the refunds they were entitled to. (DIN 756, 758).

What makes matters worse, in this instance, is that the Plaintiffs were kept from the underlying information that predicated the release. Whether still members in some capacity or whether they had fully resigned from the club, Plaintiffs were not permitted to view the resigned waiting list or even to know how many individuals were on it. (Ex. G, ¶2). Members who were fully resigned from the club had no opportunity to attend informational meetings or receive communication as to the changes and the reasons behind them. Further, unlike consumer contracts that are offered to a broad swath of society, the releases were mailed to a limited group of people. The releases referenced a contract that had been entered into years, even decades prior, and that had ended upon the member’s resignation. The alteration of a previously vested

contract right by written waiver, mailed to a recipient years after the contract has ended, provided Plaintiffs with extremely limited opportunity to understand the terms of the contract.

b. Substantive Unconscionability

The Second District Court of Appeal has adopted an admittedly high threshold for substantive unconscionability: “whether the terms are so outrageously unfair as to shock the judicial conscience.” *Osprey Healthcare Ctr. LLC v. Pascazi*, --So. 3d--, 2021 WL 4760114 at *2 (Fla. 2d DCA 2021) (quoting *Zephyr Haven Health & Rehab. Ctr., Inc. v. Hardin ex rel. Hardin*, 122 So. 3d 916, 920 (Fla. 2d DCA 2012)). In *Woebse* the court adopted reasoning from the 4th DCA in finding that interference with a plaintiff’s statutory rights did rise to the level of substantive unconscionability. *See, Woebse v. Healthcare and Ret. Corp. of America*, 977 So. 2d 630, 634-35 (Fla. 2d DCA 2008).

Other cases serve to emphasize that substantive unconscionability must rise beyond some minor unfairness. For example, in *Belcher v. Kier*, the court examined a rent increase on lot fees in a mobile home park. 558 So. 2d 1039, 1044-45 (Fla. 2d DCA 1990). Although the court found that the modification to the rent was procedurally unconscionable, it did not find that a \$18 increase in monthly rent over four years was substantively unconscionable. *Id.* at 1045. In *Florida Holdings*, the court found that the plaintiff’s claim boiled down to a “quarrel with two standard features of arbitration,” and therefore did not merit a finding of substantive unconscionability. *Fla. Holdings, III, LLC v. Duerst ex rel. Duerst*, 198 So. 3d 834, 843 (Fla. 2d DCA 2016). These cases serve to illustrate that unconscionability must rise beyond simple unfairness or inequity.

The case at bar presents a far more egregious set of circumstances than these two Second District cases. First, the very terms of the releases themselves are unconscionable. The releases

begin by acknowledging that the Plaintiffs are owed a refund of a portion of their equity contribution. (DIN 743, p. 2, ¶2). However, in order to receive *any* payment, the signor must release Concert and PGCC from any liabilities, including those unrelated to the refund (e.g. the release of any and all affiliates of Concert – including legal counsel – from “any and all claims, liabilities, complaints, obligations, or requests”). (*Id.*, ¶4). This places an additional burden on a party who has already performed their part of the contract and whose rights have vested. As discussed above, absent a signature on the release (and acquiescence to its terms), the resigned member would get nothing as there was no longer a mechanism to fund the refund escrow account. (DIN 741, p. 44, ln. 20-21; DIN 778, p. 13, ln. 4-9; DIN 757, p. 3).

Second, unlike the minor increases in rent discussed in *Belcher*, the economic effect of the release here was drastic. *Belcher* dealt with elevated lot rent that was between 6.6% and 15.9% above market-value. *Belcher*, 558 So. 2d at 1045. Though the court acknowledged that this was above market price, it declined to find that “no man in his right mind” would pay that rate, or that the increases were so “grossly excessive” as to render them unconscionable. *Id.* However, in this case, resigned golf members were being offered a mere 5% of their promised refund. (DIN 756). Indeed, it appears that the minimal value offered was mostly as an inducement to sign the release. (DIN 744, p. 2).

Lastly, the release asks the recipient to give up on a host of legal rights in order to receive money that they were already entitled to. (DIN 744, p. 2). The release requires indemnification of the released parties not only with respect to “future payments” related to the resigned member’s equity refund, but also with respect to “any and all claims, liabilities, complaints, obligations, or requests relating to the Resigned Club Member’s Resigned Club Membership in the Old Club known or unknown. . . .” (*Id.*). Courts have not hesitated to find substantive

unconscionability when a plaintiff's legal or statutory rights were significantly impaired by the purported agreement. *See, e.g., Powertel*, 743 So. 2d at 576; *Woebse*, 977 So. 2d at 634-35. Here, Plaintiffs who signed releases would be giving up a host of rights, including, according to the terms of the release, even the right to make *requests* as to their refunds. (*Id.*). The release purports to indemnify against any claim or liability known or unknown. (*Id.*). Again, this sweeping release was to be executed "in consideration" for \$1200.00 that Plaintiffs were already entitled to by virtue of their membership contracts with PGCC.

In sum, the releases were both procedurally and substantively unconscionable. They were true contracts of adhesion: unsolicited, not bargained for, and forced onto one party by the other party's creation of an inequitable situation that left no other feasible option. The releases were substantively unconscionable because they required recipients to give up not only their remaining contract rights, but a host of other rights, in exchange for a 95% reduction in a contractually-guaranteed payment. Plaintiffs who signed releases had little choice, other than to forego payment entirely. To hold these releases against the Plaintiffs would only further perpetrate the inequity.

C. The affirmative defense that a condition precedent was not met is unavailable to Defendants as they rendered any such condition impossible.

It is axiomatic that "a party who, by his own acts, prevents performance of a contract provision cannot take advantage of his own wrong." *N. Am. Van Lines v. Collyer*, 616 So. 2d 177, 179 (Fla. 5th DCA 1993). This principle provides a prevailing counterargument to a claim that a party has failed to satisfy a condition precedent. "If one prevents or renders impossible the performance or occurrence of a condition precedent, upon which his liability is contingent, he cannot avail himself of its nonperformance." *Paparone v. Lake Placid Holding Co.*, 438 So. 2d 155, 157 (Fla 2d DCA 1983) (citation omitted).

In PGCC's Fourth and Fifth Affirmative Defenses, they raise the argument that the Plaintiffs' claims are not ripe or are barred because the condition precedent of them reaching the top of the refund list did not occur. Concert asserts much the same defenses in its Fourth and Sixth Affirmative Defenses. Assuming that PGCC's refund liability to resigned members was contingent upon them reaching the top of the resigned member waiting list, then PGCC and Concert worked together to render this an impossibility. As stated in their joint response to the Motion for Class Certification, "[u]pon the sale of PGCC's assets to Concert pursuant to the PSA, PGCC ceased operating as a Club and ceased selling new club memberships, as such, no additional funds have been added to the Escrow Account since the sale." (DIN 707, pp. 6-7, ¶8). If no funds were added to the escrow account, no resigned memberships were purchased off the waiting list. If no resigned memberships were purchased off the waiting list, it was impossible for a resigned member to move up the waiting list. Since PGCC and Concert rendered the condition precedent an impossibility, they cannot now use it as a defense to payment.

D. The statute of limitations has not run.

Both Defendants assert the statute of limitations in their affirmative defenses. However, the statute of limitations has not run as to any action in this case. Legal and equitable actions on contract, when founded on a written instrument, must be brought within five years. Fla. Stat. § 95.11(b). Further, an amended complaint relates back to the motion for leave to amend, even if the statute of limitations has run in the interim. *See, e.g., Totura & Co., Inc. v. Williams*, 754 So. 2d 671, 679-80 (Fla. 2000); *In re Forfeiture of: £1992 Pontiac Firebird No. 1G2FS23T3NL212004*, 47 So. 3d 344, 346 (Fla. 2d DCA 2010).

All claims asserted in this case are legal or equitable claims based on a written contract and therefore are subject to a five-year statute of limitations. At the earliest, breach occurred on

April 1, 2016. The final Motion for Leave to Amend Complaint in this matter was filed on March 26, 2021. The Fourth Amended Complaint was deemed filed as of May 6, 2021. Therefore, the claims alleged in this action are deemed filed as of March 26, 2021; within five years of the April 1, 2016 amendment to the bylaws.

E. The transfer was not made in good faith.

Defendants' defenses related to the transfer of club ownership between PGCC and Concert (PGCC's Ninth Affirmative Defense and Concert's Seventh Defense to Count IV) are addressed *supra* Sections V and VI.

F. Plaintiffs have suffered damages.

Defendant PGCC's Eighth Affirmative Defense, that the Plaintiffs have not suffered damages is addressed *supra* Section IV.B.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs move this Honorable Court to grant summary judgment in their favor on Count I, Count III, and Count IV of the Fourth Amended Complaint against the parties set forth above. In the alternative, should this Court not grant partial summary judgment, Plaintiffs move for a determination of material facts not in controversy; and an order specifying those facts and the amount of damages or other relief not in controversy.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via electronic notification through the Florida E-Filing Portal upon the following:

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Attorney for Plaintiffs

EXHIBIT A

Plaintiffs' Motion for Partial Summary Judgment

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

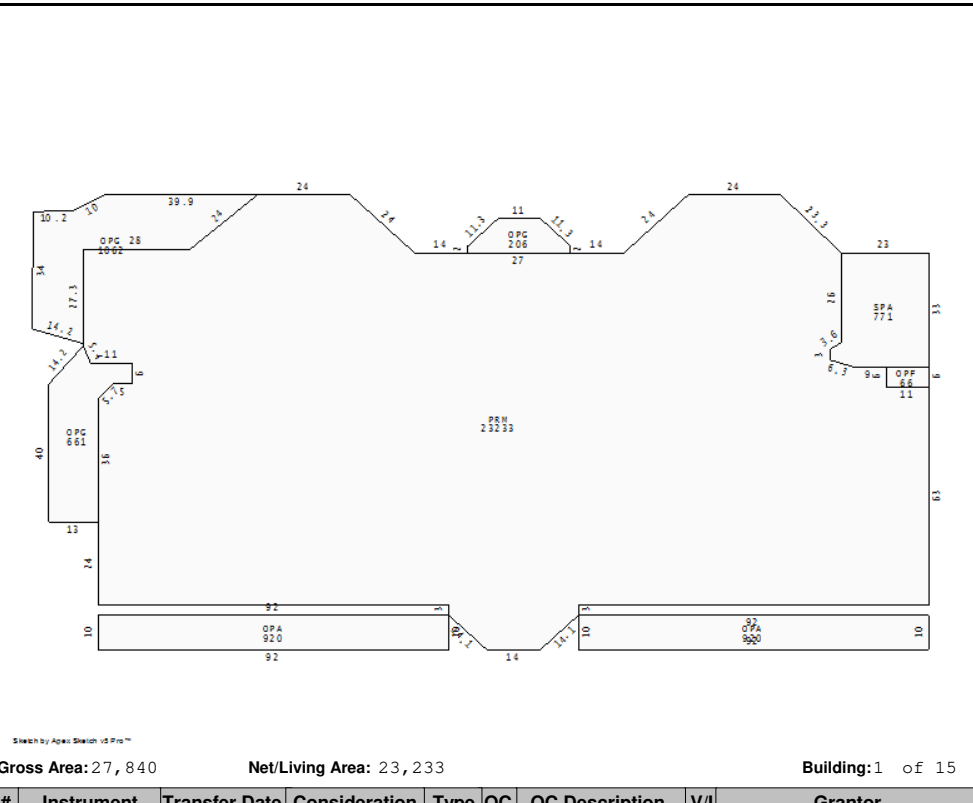
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Fire/Sprinkler	SPRINKLERS	100	1.0000
Floors	CARPET,	90	0.9000
Floors	CERAMIC	10	0.1010
Frame	MASONRY OR	100	1.0000
Heat-Air	HEAT & AIR	100	1.0000
Interior Wall	DRYWALL	100	1.0000
Quality Adj.	QA	100	2.0000
Roof Material	CONCTILE	100	1.0300
Roof	HIP	100	1.0100
Size Index	SZ	100	0.9700
Wall Height	WH	100	1.0100

Total Adjustments 2.0404

SAR	Area	H	Rate	Cost New
PRM	23,233	X	146.91	3,413,160
OPG	1,063		44.09	46,868
OPA	920		36.73	33,792
OPA	920		36.73	33,792
SPA	771		29.34	22,621
OPG	661		44.01	29,091
OPG	206		44.21	9,107
OPF	66		28.94	1,910



SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name: NOT PART OF A SUBDIVISION				
Bldg Type: Country Club				
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Category	Units	Cost New
Number of Stories	1.00	0
Wall Height	15.00	0

Total Replacement Cost New:	3,590,332
Less Total Depr: 19.00%	682,163
Building Value:	2,908,169
Depreciation Adj. Adj.	
Average Condition	19.00%

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	PAVE	Asphalt paving	1	1	0	0	29,600.00	1.950	AVERAG	AV	1981	1981	50.000	28,860	
2	UTIL	Utility Building	1	1	16	16	256.00	14.280	AVERAG	AV	1981	1981	39.993	1,462	
3	UTIL	Utility Building	1	1	12	4	48.00	14.760	AVERAG	AV	1980	1980	39.945	283	

Grade	Description	Nbhd Factor	Mkt Area Factor	
A2	Commercial	1.0000	0	
AYB	EYB	DT	% Good	Last Inspection
2002	2002	30	81.00%	06/18/2019 427

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		
1	HH	Golf Courses (Per	3810	18.00	ST	100,000.00	1								100,000.00	1,800,000
2	HH	Golf Courses (Per	3810	18.00	ST	100,000.00	1								100,000.00	1,800,000
3	HA	Golf Courses (Acreage	3810	354.80	A	0.02	1								0.02	7

Disclaimer: This information is believed to be correct but is subject to change and is not warranted Database: CAMA PRINTED 07/04/2021 2:45:13 PM Status: OPEN

EXHIBIT A

PLANTATION GOLF AND COUNTRY CLUB BOBCAT GOLF COURSE & PANTHER GOLF COURSE AT THE PLANTATION MAIN CLUBHOUSE 2001/2002 EXPANSION

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 423 WINCANTON PL VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

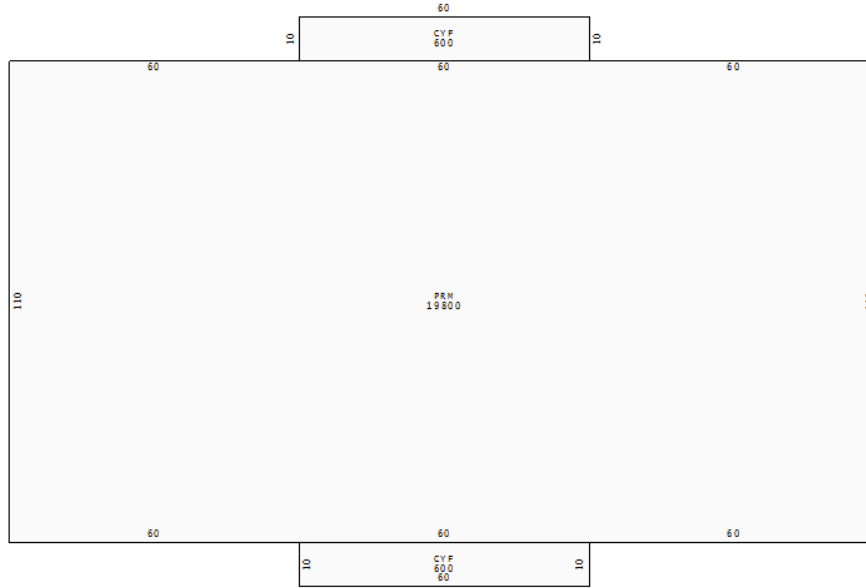
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	CORRUGATED	70	0.6860
Exterior	STUCCO	30	0.3000
Fire/Sprinkler	SPRINKLERS	100	1.0000
Floors	CONCRETE,	100	0.9900
Frame	WOOD	100	0.9800
Heat-Air	HEAT & AIR	12	0.1200
Heat-Air	NO AIR	88	0.8536
Insulation	ROOF	100	1.0000
Interior Wall	NO	88	0.8536
Interior Wall	PANEL OR	12	0.1188
Quality Adj.	QA	100	1.2000
Roof Material	SHEET MTL	100	0.9900
Roof	HIP	100	1.0100
Size Index	SZ	100	0.9700
Wall Height	WH	100	1.0000

Total Adjustments 1.0541

SAR	Area	H	Rate	Cost New
PRM	19,800	X	27.41	542,718
CYF	600		5.48	3,288
CYF	600		5.48	3,288



Sketch by Apex Sketch v5 Pro™

Gross Area: 21,000

Net/Living Area: 19,800

Building: 2 of 15

Category	Units	Cost New
Bathrooms	3.00	0
Extra Fixtures	2.00	0
Number of Stories	1.00	0
Wall Height	14.00	0

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes	
1	PAVE	Concrete paving	2	1	1,680		1	1,680.00	4.545	AVERAG	AV	1980	1980	48.745	3,722	
2	UTIL	Utility Building	2	1	20	14		280.00	9.828	LOW	AV	2000	2000	65.156	1,793	BEVERAGES
3	WALL	Concrete block wall	2	1	1,746	1		1,746.00	4.984	LOW	AV	1996	1996	68.754	5,983	

Total Replacement Cost New: 549,296

Less Total Depr: 25.00% 137,324

Building Value: 411,972

Depreciation Adj. Adj.

Average Condition 25.00%

Grade	Description	Nbhd Factor	Mkt Area Factor
D3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1996	1996	30	75.00%	06/18/2019 427

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Code	Fact	Code	Fact	Code	Fact	Adj. Unit Price	Land Value

Parcel Notes																
CART STORAGE-SOUTH OF CLUBHOUSE																

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Golf Cart Storage			
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 490 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

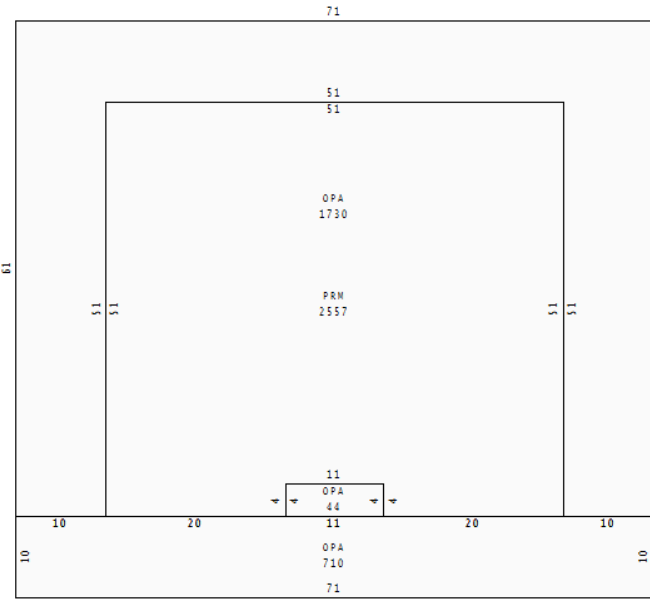
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CARPET,	100	1.0000
Frame	MASONRY OR	100	1.0000
Heat-Air	HEAT & AIR	100	1.0000
Interior Wall	DRYWALL	100	1.0000
Quality Adj.	QA	100	2.2000
Roof Material	CONCTILE	100	1.0300
Roof	HIP	100	1.0100
Size Index	SZ	100	1.0200
Wall Height	WH	100	1.0200

Total Adjustments 2.3811

SAR	Area	H	Rate	Cost New
PRM	2,557	X	176.20	450,543
OPA	1,730		44.10	76,293
OPA	710		44.17	31,361
OPA	44		44.05	1,938



Sketch by Apex Sketch & Print

Gross Area: 5,041

Net/Living Area: 2,557

Building: 4 of 15

Category	Units	Cost New
Bathrooms	2.00	0
Extra Fixtures	4.00	0
Number of Stories	1.00	0
Wall Height	16.00	0

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	PATI	Patio - concrete or	4	1	420		1	420.00	3.807	FAIR	AV	1985	1985	54.974	879

Total Replacement Cost New:	560,140
Less Total Depr: 31.00%	173,643
Building Value:	386,497
Depreciation Adj. Adj.	
Average Condition	31.00%

Grade	Description	Nbhd Factor	Mkt Area Factor
A3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1983	1990	30	69.00%	06/18/2019 427

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Code	Fact	Code	Fact	Code	Fact	Adj. Unit Price	Land Value

CONDOMINIUM INFORMATION																
Floor #	Total Floors	Unit #	View													

PERMIT INFORMATION																
Number	Date	Cost	Description													

Parcel Notes
 EXERCISE ROOM NORTH OF CLUBHOUSE

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Retail Store			

CONDOMINIUM INFORMATION																
Floor #	Total Floors	Unit #	View													

PERMIT INFORMATION																
Number	Date	Cost	Description													

LAND INFLUENCES																
#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes	
1	PATI	Patio - concrete or	4	1	420		1	420.00	3.807	FAIR	AV	1985	1985	54.974	879	

Parcel Notes
 EXERCISE ROOM NORTH OF CLUBHOUSE

EXHIBIT A

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

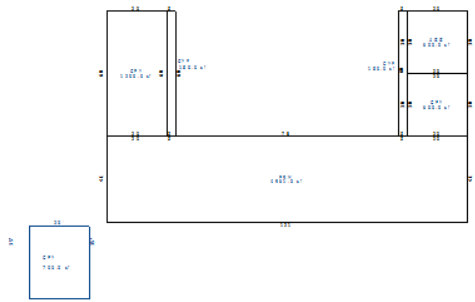
CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	METAL	100	1.0100
Floors	CONCRETE,	100	0.9900
Frame	FIREPROOF	100	1.0700
Heat-Air	NO AIR	75	0.7275
Heat-Air	WALL A/C	25	0.2500
Interior Wall	NO	100	0.9700
Quality Adj.	QA	100	1.0000
Roof Material	METAL,	100	1.0100
Roof	HIP	100	1.0100
Size Index	SZ	100	1.0000
Wall Height	WH	100	0.9800



Total Adjustments				1.0141
SAR	Area	H	Rate	Cost New
PRM	4,961	X	49.69	246,512
CPY	1,200		14.91	17,892
CPY	700		14.91	10,437
AGG	600		17.39	10,434
CPY	600		14.91	8,946
CYF	180		9.94	1,789
CYF	180		9.94	1,789

Gross Area: 8,421 Net/Living Area: 4,961 Building: 6 of 15

Category	Units	Cost New
Bathrooms	3.00	0
Extra Fixtures	6.00	0
Number of Stories	1.00	0
Wall Height	12.00	0

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	FENC	Fence, chain link 6	6	1	0	0	700.00	19.500	AVERAG	AV	1983	1983	40.000	5,460	
2	PAVE	Asphalt paving	6	1	0	0	5,800.00	2.775	AVERAG	AV	1983	1983	52.501	8,450	
3	PAVE	Concrete paving	6	1	0	0	6,000.00	3.555	AVERAG	AV	1983	1983	52.499	11,198	

Total Replacement Cost New:	297,792
Less Total Depr:	34.50% 102,738
Building Value:	195,054
Depreciation Adj.	Adj.
Average Condition	34.50%

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Grade	Description	Nbhd Factor	Mkt Area Factor
E2	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1983	1983	30	65.50%	06/18/2019 427

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Storage/Warehouse			

CONDOMINIUM INFORMATION			
Floor #	Total Floors	Unit #	View

Permit Information			
Number	Date	Cost	Description

Parcel Notes															

EXHIBIT A

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

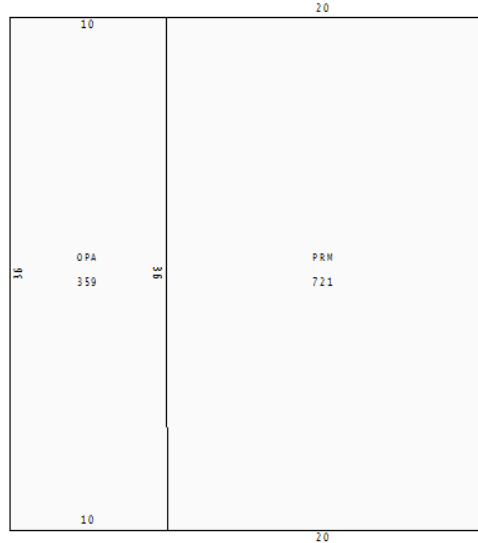
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CERAMIC	100	1.0100
Frame	MASONRY OR	100	1.0000
Heat-Air	HEAT & AIR	100	1.0000
Interior Wall	PLASTER	100	1.0100
Quality Adj.	QA	100	2.2000
Roof Material	CONCTILE	100	1.0300
Roof	HIP	100	1.0100
Size Index	SZ	100	1.1600
Wall Height	WH	100	1.0000

Total Adjustments 2.7082

SAR	Area	H	Rate	Cost New
PRM	721	X	86.66	62,482
OPA	359		21.72	7,797



Sketch by Apex Sketch v5 Pro™

Gross Area: 1,080

Net/Living Area: 721

Building: 7 of 15

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name: NOT PART OF A SUBDIVISION				
Bldg Type: Commercial Utility Building				
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Category	Units	Cost New
Bathrooms	2.00	0
Extra Fixtures	12.00	0
Number of Stories	1.00	0
Wall Height	14.00	0

Total Replacement Cost New:	70,281
Less Total Depr: 31.00%	21,787
Building Value:	48,494
Depreciation Adj. Adj.	
Average Condition	31.00%

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	PATI	Patio - concrete or	7	1	0	0	2,410.00	4.450	AVERAG	AV	1983	1983	52.497	5,630	
2	PATI	Patio - concrete or	7	1	33	33	1,089.00	4.450	AVERAG	AV	1983	1983	52.496	2,544	
3	PATI	Patio - concrete or	7	1	0	0	2,740.00	4.450	AVERAG	AV	1983	1983	52.497	6,401	
4	POOL	Swimming Pool	7	1	12	12	144.00	78.000	AVERAG	AV	1985	1985	40.242	4,520	
5	POOL	Swimming Pool	7	1	46	77	3,542.00	51.600	AVERAG	AV	1983	1983	40.000	73,107	

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value		
										Code	Fact	Code	Fact	Code	Fact			

Grade	Description	Nbhd Factor	Mkt Area Factor	
A3	Commercial	1.0000	0	
AYB	EYB	DT	% Good	Last Inspection
1983	1990	30	69.00%	06/18/2019 427

Parcel Notes														
BATH HOUSE & SWIMMING POOL-SOUTH OF POOL DECK														

EXHIBIT A

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

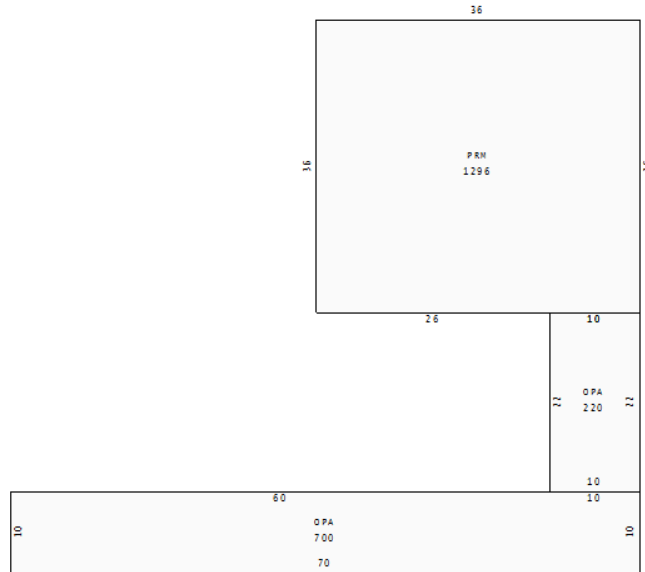
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CARPET,	100	1.0000
Frame	MASONRY OR	100	1.0000
Heat-Air	HEAT & AIR	100	1.0000
Interior Wall	DRYWALL	100	1.0000
Quality Adj.	QA	100	2.2000
Roof Material	CONCTILE	100	1.0300
Roof	HIP	100	1.0100
Size Index	SZ	100	1.0700
Wall Height	WH	100	1.0000

Total Adjustments 2.4489

SAR	Area	H	Rate	Cost New
PRM	1,296	X	146.93	190,421
OPA	700		36.73	25,711
OPA	220		36.73	8,081



Sketch by Apex Sketch & Plan

Gross Area: 2,216

Net/Living Area: 1,296

Building: 8 of 15

Category	Units	Cost New
Bathrooms	2.00	0
Extra Fixtures	4.00	0
Number of Stories	1.00	0
Wall Height	14.00	0

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	PAVE	Concrete paving	8	1	0	0	2,904.00	3.960	AVERAG	AV	1988	1988	58.749	6,756	

Total Replacement Cost New:	224,215
Less Total Depr: 31.00%	69,507
Building Value:	154,708
Depreciation Adj. Adj.	
Average Condition	31.00%

Grade	Description	Nbhd Factor	Mkt Area Factor
A3	Commercial	1.0000	0

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Code	Fact	Code	Fact	Code	Fact	Adj. Unit Price	Land Value

Parcel Notes																
LIBRARY/PLANTATION COMMUNITY FOUNDATION NORTH OF POOL DECK																

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Office Building			
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 490 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

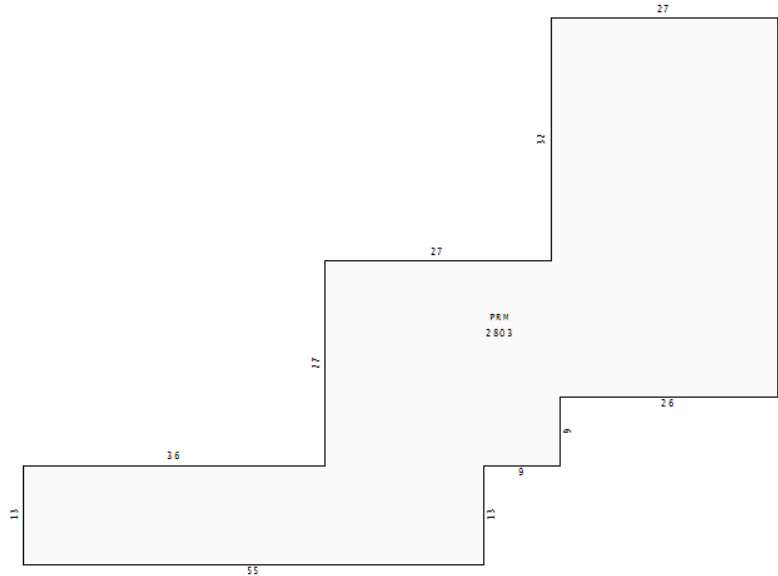
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	COMPOSITION	100	0.9800
Floors	CARPET,	100	1.0000
Frame	WOOD	100	0.9800
Heat-Air	HEAT & AIR	100	1.0000
Interior Wall	DRYWALL	100	1.0000
Quality Adj.	QA	100	2.2000
Roof Material	BUILT-UP	100	0.9900
Roof	LOW PITCH	100	0.9800
Size Index	SZ	100	1.0100
Wall Height	WH	100	1.0000

Total Adjustments 2.0704

SAR	Area	H	Rate	Cost New
PRM	2,803	X	124.22	348,189



Sketch by Apex Sketch v5 Pro™

Gross Area: 2,803

Net/Living Area: 2,803

Building: 9 of 15

Category	Units	Cost New
Bathrooms	2.00	0
Number of Stories	1.00	0
Wall Height	14.00	0

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	DECK	Deck - Frame or	9	1	0	0	1,343.00	9.256	GOOD	AV	1980	1980	39.997	4,972	

Grade	Description	Nbhd Factor	Mkt Area Factor
A3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1980	1990	30	69.00%	06/18/2019 427

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Parcel Notes	
SALES OFFICE-LEASED TO MICHAEL SAUNDERS LOCATED AT SEC OF CLUBHOUSE PROPERTY	

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2

Sub Name: NOT PART OF A SUBDIVISION
 Bldg Type: Office Building

CONDOMINIUM INFORMATION			
Floor #	Total Floors	Unit #	View

Permit Information			
Number	Date	Cost	Description

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

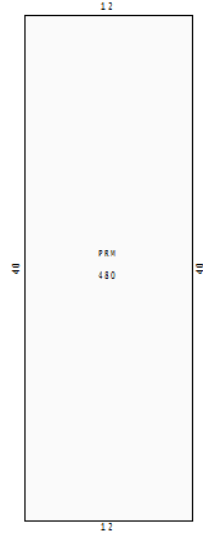
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CONCRETE,	100	0.9900
Frame	MASONRY OR	100	1.0000
Interior Wall	NO	100	0.9700
Quality Adj.	QA	100	1.2000
Roof Material	CONCTILE	100	1.0300
Roof	HIP	100	1.0100
Size Index	SZ	100	1.2600
Wall Height	WH	100	1.0000

Total Adjustments 1.5105

SAR	Area	H	Rate	Cost New
PRM	480	X	48.34	23,203



Sketch by Apex Sketch v5 Pro™

Gross Area: 480

Net/Living Area: 480

Building: 10 of 15

Category	Units	Cost New
Number of Stories	1.00	0
Wall Height	14.00	0

Total Replacement Cost New:	23,203
Less Total Depr: 31.00%	7,193
Building Value:	16,010
Depreciation Adj. Adj.	
Average Condition	31.00%

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	TENN	Tennis court	10	2	120	60	7,200.00	4.000	AVERAG	AV	1983	1983	80.000	23,040	
2	UTIL	Utility Building	10	1	20	12	240.00	18.876	GOOD	AV	2000	2000	65.140	2,951	

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Grade	Description	Nbhd Factor	Mkt Area Factor
D3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1983	1990	30	69.00%	06/18/2019 427

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Commercial Utility Building			
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

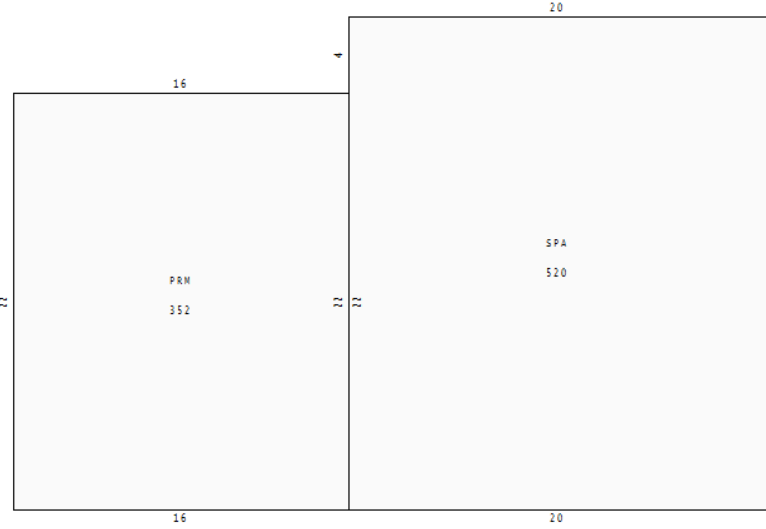
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CERAMIC	100	1.0100
Frame	MASONRY OR	100	1.0000
Heat-Air	HEAT & AIR	80	0.8000
Heat-Air	NO AIR	20	0.1940
Interior Wall	DRYWALL	25	0.2500
Interior Wall	PLASTER	75	0.7575
Quality Adj.	QA	100	2.2000
Roof Material	CONCTILE	100	1.0300
Roof	HIP	100	1.0100
Size Index	SZ	100	1.3700
Wall Height	WH	100	0.9600

Total Adjustments 3.0446

SAR	Area	H	Rate	Cost New
SPA	520		47.50	24,700
PRM	352	X	237.48	83,593



Sketch by Apex Sketch & Print

Gross Area: 872

Net/Living Area: 352

Building: 11 of 15

Category	Units	Cost New
Bathrooms	2.00	0
Extra Fixtures	5.00	0
Number of Stories	1.00	0
Wall Height	10.00	0

Total Replacement Cost New:	108,291
Less Total Depr: 25.00%	27,073
Building Value:	81,218
Depreciation Adj.	Adj.
Average Condition	25.00%

Grade	Description	Nbhd Factor	Mkt Area Factor
A3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1996	1996	30	75.00%	06/18/2019 427

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	BRID	Foot bridge	11	1	0	0	280.00	6.565	AVERAG	AV	2000	2000	65.118	1,197	
2	UTIL	Utility Building	11	1	8	8	64.00	28.782	EXCELL	AV	2000	2000	65.145	1,200	

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Parcel Notes															
RESTROOMS & SNACK BAR-AT 10TH TEE BEHIND CLUBHOUSE															

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Restroom Building			
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

EXHIBIT A

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

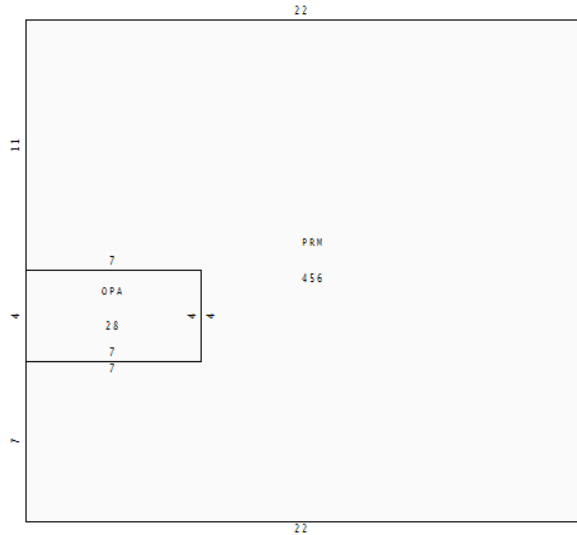
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CARPET,	80	0.8000
Floors	CONCRETE,	20	0.1980
Frame	MASONRY OR	100	1.0000
Heat-Air	HEAT & AIR	100	1.0000
Interior Wall	DRYWALL	100	1.0000
Quality Adj.	QA	100	1.3000
Roof Material	CONCTILE	100	1.0300
Roof	LOW PITCH	100	0.9800
Size Index	SZ	100	1.2800
Wall Height	WH	100	1.0000

Total Adjustments 1.6763

SAR	Area	H	Rate	Cost New
PRM	456	X	53.64	24,460
OPA	28		13.39	375



Gross Area: 484

Net/Living Area: 456

Building: 12 of 15

Category	Units	Cost New
Number of Stories	1.00	0
Wall Height	14.00	0

Total Replacement Cost New:	24,835
Less Total Depr: 30.50%	7,575
Building Value:	17,260
Depreciation Adj. Adj.	
Average Condition	30.50%

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes
1	PAVE	Concrete paving	12	1	100	25	2,500.00	4.050	AVERAG	AV	1991	1991	62.499	6,328	

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Grade	Description	Nbhd Factor	Mkt Area Factor
C2	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1991	1991	30	69.50%	06/18/2019 427

Parcel Notes
 STARTERS SHACK-PANTHER COURSE COMB FROM 443-1-1

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name:	NOT PART OF A SUBDIVISION			
Bldg Type:	Commercial Utility Building			
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

EXHIBIT A

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 525 ROCKLEY BLVD VENICE 34293

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

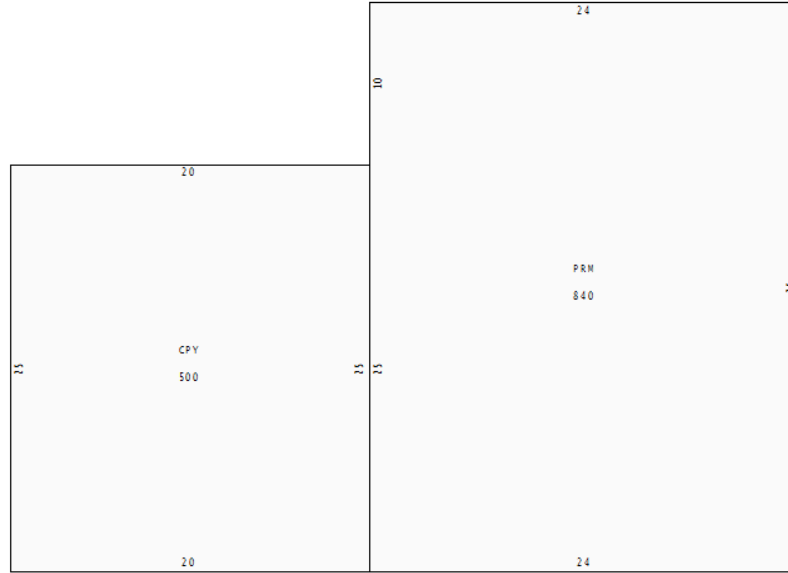
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CONCRETE,	100	0.9900
Frame	MASONRY OR	100	1.0000
Heat-Air	NO AIR	60	0.5820
Heat-Air	WALL A/C	40	0.4000
Interior Wall	DRYWALL	100	1.0000
Quality Adj.	QA	100	1.4000
Roof Material	ASPHALT OR	100	1.0000
Roof	HIP	100	1.0100
Size Index	SZ	100	1.5000
Wall Height	WH	100	1.0000

Total Adjustments 2.0620

SAR	Area	H	Rate	Cost New
PRM	840	X	101.04	84,874
CPY	500		30.31	15,155



Sketch by Apex Sketch & Print

Gross Area: 1,340

Net/Living Area: 840

Building: 13 of 15

Category	Units	Cost New
Number of Stories	1.00	0
Wall Height	14.00	0

Total Replacement Cost New:	100,030
Less Total Depr: 10.00%	10,003
Building Value:	90,027
Depreciation Adj. Adj.	
Average Condition	10.00%

Grade	Description	Nbhd Factor	Mkt Area Factor
C3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
2011	2011	30	90.00%	06/18/2019 427

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Parcel Notes															
THE LEARNING CTR @ THE DRIVING RANGE															

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name: NOT PART OF A SUBDIVISION				
Bldg Type: Storage/Warehouse				
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293-

CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

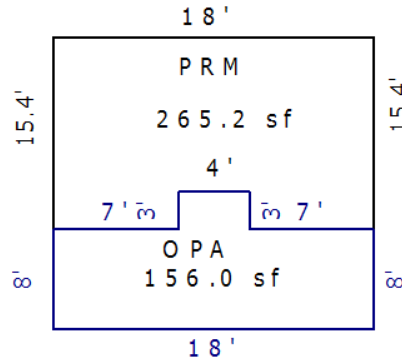
Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	STUCCO	100	1.0000
Floors	CERAMIC	100	1.0100
Frame	MASONRY OR	100	1.0000
Heat-Air	NO AIR	100	0.9700
Interior Wall	NO	100	0.9700
Quality Adj.	QA	100	2.2000
Roof Material	CONCTILE	100	1.0300
Roof	HIP ROOF	100	1.0100
Size Index	SZ	100	1.5000
Wall Height	WH	100	0.9600

Total Adjustments 3.1319

SAR	Area	H	Rate	Cost New
PRM	265	X	244.29	64,737
OPA	156		61.07	9,527



Gross Area: 421 Net/Living Area: 265 Building: 14 of 15

Category	Units	Cost New
Bathrooms	2.00	0
Half Baths	0.00	0
Rooms	0.00	0
Wall Height	10.00	0
Number of Stories	1.00	0

Grade	Description	Nbhd Factor	Mkt Area Factor
A3	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
2014	2014	30	93.00%	06/18/2019 427

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value	
									Code	Fact	Code	Fact	Code	Fact			

Parcel Notes															
COMFORT STATION @ 13TH GREEN PANTHER COURSE															

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name: NOT PART OF A SUBDIVISION				
Bldg Type: Restroom Building				
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

EXHIBIT A

Property Description
 TRACT OF LAND LYING IN SEC 24 & 25-39-19 BEING
 DESC IN PARCELS 1 THRU 10 IN ORI 2019014257, LESS
 TRACTS FOR ROCKLEY BLVD AS DESC IN OR 2044/2142
 Situs: 500 ROCKLEY BLVD VENICE 34293-

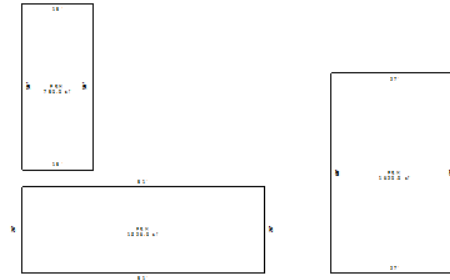
CONCERT PLANTATION LLC
 500 ROCKLEY BLVD
 VENICE, FL 34293

2021

Parcel ID: 0441-11-0001

3810 Golf course/private

Building Characteristics			
Category	Type	%	Mult.
Exterior	NO WALLS	100	0.9500
Floors	NO	100	0.9750
Frame	METAL	100	1.0000
Heat-Air	NO AIR	100	0.9700
Interior Wall	NO	100	0.9700
Quality Adj.	QA	100	1.1500
Roof Material	NONE	100	0.9500
Roof	NONE	100	0.9500
Size Index	SZ	100	1.0000
Wall Height	WH	100	0.9400



Total Adjustments 0.8503

SAR	Area	H	Rate	Cost New
PRM	1,620	X	13.60	22,032
PRM	1,326	X	13.60	18,034
PRM	750	X	13.60	10,200

Gross Area: 3,696 Net/Living Area: 3,696 Building: 15 of 15

Category	Units	Cost New
Bathrooms	0.00	0
Half Baths	0.00	0
Rooms	0.00	0
Number of Stories	1.00	0
Wall Height	8.00	0

Total Replacement Cost New:	50,266
Less Total Depr: 31.00%	15,582
Building Value:	34,684
Depreciation Adj. Adj.	
Average Condition	31.00%

Grade	Description	Nbhd Factor	Mkt Area Factor
D2	Commercial	1.0000	0

AYB	EYB	DT	% Good	Last Inspection
1983	1990	30	69.00%	06/18/2019 427

#	Instrument	Transfer Date	Consideration	Type	QC	QC Description	V/I	Grantor
1	2019014257	01/31/2019	\$4,533,600	WD	16	Deeds conveying	I	PLANTATION GOLF &
2	2345/2622	09/13/1991	\$5,022,571	WD	X2	Pre-2009	I	PLANTATION ASSOCIATES
3	1463/1854	08/01/1981		NA	01	Sale qualified	I	

#	Code	Description	B#	Qty	Length	Width	Units	Unit Price	Grade	Cond	AYB	EYB	% Depr	Value	Notes

#	Land Type	Land Type Description	Land Use	Units	Unit Type	Base Unit Price	Nbhd Factor	Mkt Factor	Land Influences						Adj. Unit Price	Land Value
									Code	Fact	Code	Fact	Code	Fact		

Parcel Notes															

SARASOTA COUNTY PROPERTY APPRAISER		
PROPERTY RECORD CARD		
VALUE SUMMARY	CURRENT	PRIOR YEAR
Building Value	\$ 6,824,200	\$ 6,886,900
Extra Feature Value	\$ 386,800	\$ 420,200
Land Value - Market	\$ 3,600,000	\$ 2,857,600
Land Value - Ag	\$ 0	\$ 0
TOTAL JUST VALUE	\$ 10,811,000	\$ 10,164,700
Values pertaining to County Assessment		
Assessed Value	\$ 10,811,000	\$ 10,164,700
Exemption Codes	None	None
Exemption Amount	\$ 0	\$ 0
Taxable Value	\$ 10,811,000	\$ 10,164,700

PARCEL DATA				
Mkt Area	Nbhd	Sub	Lot SqFt	Zoning
206	2260.00	0000	15,455,249	RSF2
Sub Name: NOT PART OF A SUBDIVISION				
Bldg Type: Metal, Pole, Quonset				
CONDOMINIUM INFORMATION				
Floor #	Total Floors	Unit #	View	

Permit Information			
Number	Date	Cost	Description

EXHIBIT A

EXHIBIT B

Plaintiffs' Motion for Partial Summary Judgment

2/5/2019 1:26 PM

KAREN E. RUSHING

CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA

CSC

Receipt # 2333367

Prepared by and After Recording
Return to:
John Theirl, Esq.
Theirl Wilson, PLLC
6440 N. Central Expressway, Ste. 203
Dallas, TX 75206

Doc Stamp-Deed: \$31,735.20

Parcel I.D. Numbers:

0441110001, 0442050001
0441130006, 0441130007, 0442050007

Consideration: \$4,533,577.45

NOTE TO RECORDER: DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$35,000.00 ARE BEING PAID IN CONNECTION WITH THE RECORDING OF THIS DEED.

SPECIAL WARRANTY DEED

(this "**Deed**")

KNOW ALL MEN BY THESE PRESENTS that PLANTATION GOLF AND COUNTRY CLUB, INC., a Florida not-for-profit corporation ("**Grantor**"), having an address of 500 Rockly Blvd., Venice Florida 34293, for valuable consideration paid, grants with warranty covenants, and bargains and conveys to CONCERT PLANTATION, LLC, a Delaware limited liability company ("**Grantee**"), the tax mailing address of which is 500 Rockly Blvd., Venice, Florida 34293, the real property described on the **Exhibit A** attached hereto and incorporated herein for all purposes (the "**Land**") located in Sarasota Beach County, Florida, together with all of Grantor's rights and interests in all improvements, structures, fixtures, parking areas, buildings, and other improvements, located on, under, or over the Land (collectively, the "**Improvements**"), together with all right, title and interest of Seller in the following (collectively, the "**Appurtenances**"): (i) all appurtenances, hereditaments and easements; (ii) in and to all minerals including, without limitation, all oil, gas and other hydrocarbons and any other minerals on, in or under the Land and all surface and subsurface rights (including mining and development rights); (iii) all other rights, privileges, easements and entitlements belonging to or running with the Land (including as may be necessary for ingress, egress and maintenance of the Land, and the Improvements); (iv) adjacent streets, alleys, rights-of-way, strips and gores and (v) all surface and subsurface water, riparian, appropriation and allocation rights, water stock agreements and water rights associated with the Land (the Land, Improvements and Appurtenances are collectively referred to as the "**Real Property**").

SUBJECT TO (i) real estate taxes and assessments not yet due and payable and (ii) the items listed on **Exhibit B** attached hereto and incorporated herein for all purposes.

Grantor does hereby specially warrant the title to the Real Property and will defend the same against the lawful claims of all persons claiming by, through or under Grantor but not otherwise.

[Signature of Grantor appears on the following page]

IN WITNESS WHEREOF. Grantor has caused these presents to be executed this 31st day of JANUARY, 2019.

Witnesses:

Grantor:

Signature: B. Camarota PLANTATION GOLF AND COUNTRY CLUB, INC.,
Print Name: B.J. Camarota a Florida not-for-profit corporation

Signature: Bill Trent By: Tom Kubik
Print Name: BILL TRENT Name: Tom Kubik
Title: President

STATE OF Florida)

COUNTY OF Sarasota)

SS:

The foregoing instrument was acknowledged to and before me on this 31st day of January, 2019, by Tom Kubik, as President of PLANTATION GOLF AND COUNTRY CLUB, INC, a Florida not-for-profit corporation, on behalf of the corporation. Said person is either personally known to me or produced _____ as identification.

Georgia Carr

Notary Public, State of Florida

Print Name: Georgia Carr

My Commission Expires: November 20, 2020

[Affix Notary Seal]

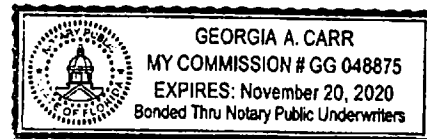


EXHIBIT A

Legal Description of Land

Parcel 1:

All that property described in Warranty Deed recorded in Official Records Book 2345 page 2622 of the Public Records of Sarasota County, Florida

For informational Purposes only: Property Appraiser # 0441110001

Parcel 2:

All that property described in Warranty Deed recorded in Official Records Book 2348 page 1679 of the Public Records of Sarasota County, Florida

For informational Purposes only: Property Appraiser # 0442050001

Parcel 3:

A parcel of land lying in Section 24, Township 39 South, Range 19 East, Sarasota County, Florida described as follows:

Commence at the Southwest corner of the lands described in Easement No. 2 recorded in Official Records Book 2269, Page 1894, public records of Sarasota County, Florida.

Thence N. 88°52'00" W., along the north lines of those lands described in Easement No. 1, recorded in Official Records Book 2269, Page 1891, of said public records, a distance of 12.00 feet for a Point of Beginning.

Thence N. 88°52'00" W. along said North line, a distance of 74.58 feet to a point on the East boundary line of those lands described in Official Records Book 2269, Page 1890 of said public records; thence leaving said North line, traverse along said East boundary line by the following three courses:

1. N.09°09'05"E., a distance of 155.21 feet;
2. N.15°08'20" E., a distance of 46.21 feet,
3. S.72°10'44" E., a distance of 75.02 feet to a point on the West line of the lands described in Official Records Book 2269, Page 1894.

Thence S. 01°09'28" W. along said West line, a distance of 40.21 feet; thence S. 08°40'13" W., a distance of 107.97 feet; thence leaving said West line, N.88°52'00" W., a distance of 12.00 feet; thence S.08°40'13"W. a distance of 30.00 feet to the Point of Beginning.

For informational Purposes only: Property Appraiser # 0442050007

Parcel 4:

A parcel of land lying in Section 24, Township 39 South, Range 19 East, Sarasota County, Florida lying Easterly of Woodbridge Drive and the 12th Fairway on the Bobcat Golf Course, designated Parcel 120 for convenience, described as follows:

Commence at the Northwest corner of THE VILLAS OF SOMERSET AT THE PLANTATION, as per plat recorded in Condominium Book 28, Page 37, Public Records of Sarasota County, Florida, thence traverse along the Easterly R/W line of Woodbridge Boulevard (an 80 Private R/W) by the following four courses: N.04 °36'50"E., a distance of 69.50 feet to the point of curvature of a curve to the left. having: a radius of 3140.00 feet, a central angle of 06 °15'00"; thence along the arc of Said curve, an arc length of 418.88 feet to the point of tangency of said curve; thence N.01°38'10"W., a distance of 85.19 feet to the point of curvature at a curve to the left, having: a radius of 440.00 feet, a central angle of 12°10'37", thence along the arc of said curve, an arc length of 93.51 feet, for a Point of Beginning.

Thence leaving said Easterly R/W line N.76 °11'13" E., a distance of 18.67 feet; thence N.16 °08'40"W., a distance of 173.75 feet; thence N.01°27'13"W., distance of 138.49 feet: thence N.76°36'29"W., a distance of 70.70 feet: thence N.51°37'56"W., a distance of 60.34 feet: thence N.36 °13'38"W., a distance of 245.26 feet; thence N.21°18'04"W., a distance of 127.55 feet; thence S.13°.58'28"W., a distance of 80.44 feet to a point on said Easterly R/W line thence by

a curve to the left, having: a radius of 960.01 feet, a central angle of $04^{\circ}33'01''$, an arc length of 76.24 feet to the point of reverse curvature of a curve to the right, having: a radius of 1240.00 feet, a central angle of $14^{\circ}03'54''$; thence along the arc of said curve, an arc length of 304.40 feet to the point of tangency of said curves thence $S.27^{\circ}38'10''E.$, a distance of 219.67 feet to the point of curvature of a curve to the right, having: a radius of 440.00 feet, a central angle of $13^{\circ}49'23''$, an arc length of 106.15 feet to the Point of Beginning.

For informational Purposes only: Property Appraiser # 0441130006.

Parcel 5:

A parcel of land lying in Section 24, Township 39 South, Range 19 East, Sarasota County, Florida being that portion of the property conveyed in Instrument #2000.59169 lying southerly of Fairway Glen, more particularly described as follows:

That portion of proposed Woodbridge Drive extending south of Fairway Glen of St. Andrews Park at the Plantation, a condominium ("Fairway Glen"), according to Declaration of Condominium thereof recorded in the Official Records as Instrument No. 2002.178463, and as per plat thereof recorded in Condominium Book 35, Page 41, Public Records of Sarasota County, Florida, commencing at the southerly boundary of Phase 6 of said Fairway Glen, said boundary having a length of 80 feet and a bearing of $S 52^{\circ}50'55'' W$, extending southerly to a terminus being the north line of the parcel described in Official Records Book 2590, Page 2341, Public Records of Sarasota County, Florida.

For informational Purposes only: Property Appraiser # 0441130007.

Parcel 6:

All that property described Special Warranty Deed recorded in Official Records Book 2465, page 219 as re-recorded at 2474, Page 5 as corrected by Special Warranty Deed recorded in Official Records 2682, Page 742

Parcel 7:

All that property described Special Warranty Deed recorded in Official Records Book 2663,
Page 245

Parcel 8:

All that property described Special Warranty Deed recorded in Official Records Book 2785,
Page 2207

Parcel 9:

All that property described Special Warranty Deed recorded in Official Records Book 2785,
Page 2217

Parcel 10:

All that property described Special Warranty Deed recorded in Official Records Book 2785,
Page 2232

Less and Except from Parcels 1-10 the property described in Warranty Deed recorded in Official
Records Book 2044, page 2142.

EXHIBIT B

Exceptions

7. All matters contained on the Plat of The Plantation, Unit One, as recorded in Plat Book 28, Page 4.
8. Subject to stipulations, terms and conditions as set forth in the Resolution of Board of County Commissioners of Sarasota County, Florida, Rezoning Petition No. 72-12 (Resolution No. 73-23), recorded in Official Records Book 992, Page 114, as amended in Official Records Book 1779, Page 236 amended by Resolution No. 86-246, recorded in Official Records Book 1858, Page 1336, and Notice of Stipulations and Limitations Encumbering Real Property pursuant to Sarasota County Zoning Code/Ordinance No. 94-011 as recorded in Official Records Book 2611, Page 238.
9. Subject to the Plantation Master Covenants recorded in Official Records Book 1450, Page 16, and all subsequent amendments thereto, and various Assignments of Certain Developer's Rights and Responsibilities recorded in Official Records Book 1463, Page 1848, Official Records Book 1952 Page 1760, Official Records Book 2525 page 920, Official Records Book 2525 page 922, Official Records Book 2525 page 927, Official Records Book 2525 page 929, Official Records Book 2579 page 535, Official Records Book 2579 page 537, Official Records Book 2597, Page 1531, Official Records Book 2607 Page 673, Official Records Book 2637, Page 1741, Official Records Book 2707 page 1879, Official Records Book 2777 page 1209, Official Records Book 2837 page 2564; Official Records Book 2837, Page 2568, ; Official Records Book 2992, Page 1459; Official Records Book 2992, Page 1463; Instrument Number 1999.26730, Instrument Number 1999.26731, Instrument Number 1999.26732, Instrument Number 1999.26733, Instrument Number 1999.26734, Instrument Number 1999.26735, Instrument Number 1999.26736, Instrument Number 2011.39091, Instrument Number 2011.39092, Instrument Number 2011.39093, Instrument Number 2015.30248, Instrument Number 2016.81411.
10. Easement granted to Florida Power & Light Company recorded in Official Records Book 1466, Page 195.
11. Easement granted to Florida Power & Light Company recorded in Official Records Book 1466, Page 196.
12. Easement granted to Florida Power & Light Company recorded in Official Records Book 1548, Page 1248.

13. Memorandum and Notice of SMATV Service Agreement between Plantation Associates, a Florida general partnership, Telstar Communications, Inc., a Florida corporation, and Crystal Cablevision Co., Inc., a Florida corporation, recorded in Official Records Book 1652, Page 271, Memorandum of Notice of Lease recorded in Official Records Book 1652, Page 274 and Memorandum of Assignment recorded in Official Records Book 2007, Page 2184.
14. Utility and Access Easement/ Pump Station No. 7 granted to Plantation Associates recorded in Official Records Book 1685, Page 1855 as assigned to Sarasota County by Assignment recorded in Official Records Book 2269, Page 1911
15. Easement granted to Florida Power & Light Company recorded in Official Records Book 1923, Page 2111.
16. Easement granted to Florida Power & Light Company recorded in Official Records Book 1997, Page 584
17. Easement granted to Florida Power & Light Company recorded in Official Records Book 2078, Page 2691.
18. Golf Course Agreement recorded in Official Records Book 2119, Page 1803.
19. Easement granted to Florida Power & Light Company recorded in Official Records Book 2132, Page 2560.
20. Utility Easement recorded in Official Records Book 2223, Page 2149.
21. Road Easement recorded in Official Records Book 2223, Page 2154.
22. Sidewalk Easement recorded in Official Records Book 2223, Page 2157
23. Utility and Access Easement/ Pump Station No. 5 granted to Sarasota County recorded in Official Records Book 2269, Page 1898.
24. Utility and Access Easement/ Pump Station No. 8 granted to Sarasota County recorded in Official Records Book 2269, Page 1913.
25. Utility and Temporary Construction Easement granted to Sarasota County recorded in

Official Records Book 2444, Page 2773

26. Permanent Easement Sewer granted to Sarasota County recorded in Official Records 2530, Page 2034 as modified by Modification to Permanent Easement Sewer recorded as Instrument Number 2011.105267
27. Permanent Easement Water granted to Sarasota County recorded in Official Records 2530, Page 2037 as modified by Modification to Permanent Easement Water recorded as Instrument Number 2011.105268.
28. Subject to Buffer Property Agreement recorded in Official Records Book 2304, Page 2734.
29. Easement granted to Florida Power & Light Company recorded in Official Records Book 2330, Page 1130
30. Easement granted to Florida Power & Light Company recorded in Official Records Book 2330, Page 1133
31. Terms and conditions of Easement granted to Plantation Golf and Country Club, Inc. recorded in Official Records Book 2345, Page 2653.
32. Reservations and conditions contained in Special Warranty Deed recorded in Official Records Book 2345, Page 2622. Restrictions include, but may not be limited to, 99 year use restriction.
33. Easement granted to Florida Power & Light Company recorded in Official Records Book 2348, Page 755
34. Well Easement recorded in Official Records Book 2369, Page 917
35. Utility Easement recorded in Official Records Book 2369, Page 1368.
36. Easement Agreement between Plantation Associates, et.al. recorded in Official Records Book 2381, Page 438.
37. Easement granted to Florida Power & Light Company recorded in Official Records Book 2436, Page 2158.

38. Easement to Plantation Associates recorded in Official Records Book 2465, Page 305.
39. Terms and conditions of Easement granted to Plantation Golf and Country Club, Inc. recorded in Official Records Book 2465, Page 307.
40. Easement in favor of Plantation Golf & Country Club, Inc., a Florida not-for-profit corporation, recorded in Official Records Book 2465, Page 313.
41. Terms and conditions of Easement granted to Plantation Golf and Country Club, Inc. recorded in Official Records Book 2489, Page 472
42. Agreement for Covenant Running with Land recorded in Official Records Book 2535, Page 1973.
43. Reservations and conditions contained in Special Warranty Deed recorded in Official Records Book 2465, Page 219 as re-recorded at 2474, Page 5 as corrected by Special Warranty Deed recorded in Official Records Book 2682, Page 742. Restrictions include, but may not be limited to, 99 year use restriction.
44. Notice of Sarasota County Zoning Code Limitations recorded in Official Records Book 2611, Page 238.
45. Easement in favor of Bermuda Club West recorded in Official Records Book 2727, Page 1841.
46. Covenants, conditions and restrictions recorded in Official Records Book 2777, Page 1130.
47. Non-Exclusive Utility and Ingress/Egress Easement granted to Sarasota County recorded as Instrument Number 2002.45143
48. Reciprocal Easement Agreement by and between SAP Development I, Inc., SAP Panther Development, Inc., and Plantation Golf and Country Club, Inc., as recorded as Instrument Number 2004.111769.
49. Drainage and Retention Easement Agreement recorded as Instrument Number 2008.129625.

50. Utility Easement recorded as Instrument Number 2011.90777

51. Notice of Stipulations. and Limitations Encumbering Real Property Pursuant to the Sarasota County Zoning Code, together with attached Ordinance No. 2013-05 of the Board of County Commissioners of Sarasota County, Florida recorded as Instrument Number 2013.69188.

52. Terms and conditions of unrecorded Lake Bank Erosion and Repair Agreement between Plantation Golf and Country Club, Inc. and Plantation Management Association, Inc. as evidenced by Certificate of Recording recorded as Instrument Number 2015.153218.

53. Non-Exclusive Ingress/Egress Easement between Plantation Holdings LLP, et. al. recorded as Instrument Number 2016.122568.

EXHIBIT C

Plaintiffs' Motion for Partial Summary Judgment

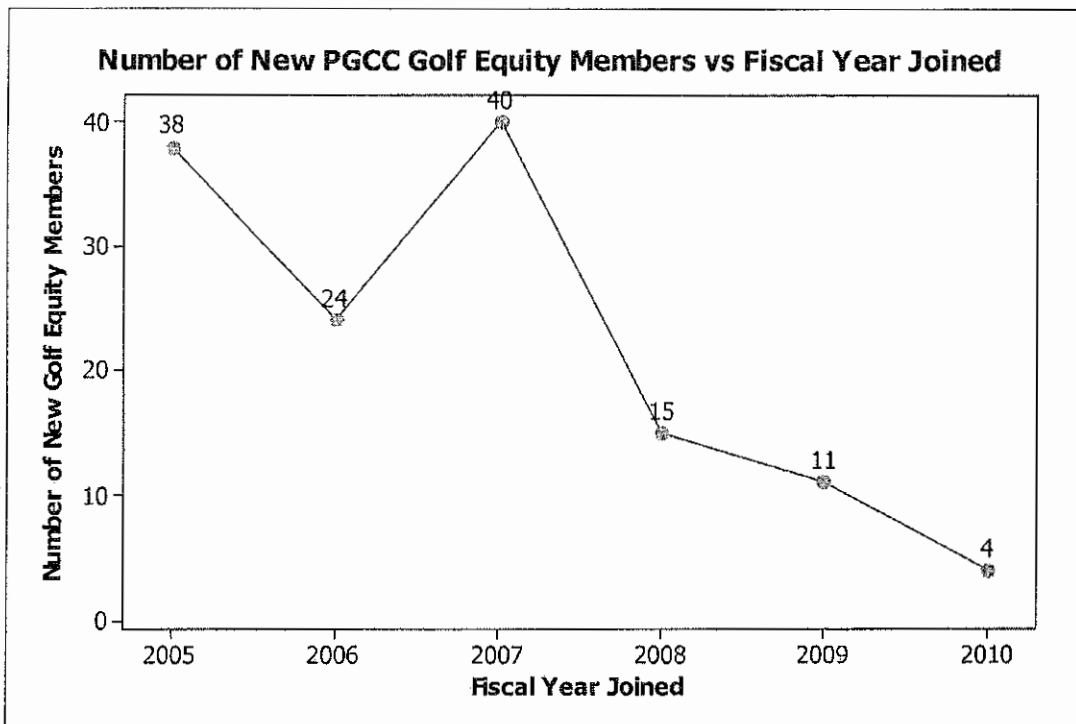
PLANTATION GOLF & COUNTRY CLUB, INC.
PROPOSED BYLAWS CHANGES
October 7, 2010

As you know, Members are the lifeblood of private clubs. Over the past two years we have aggressively cut costs and improved the efficiency in our services. However there is a limit to what can be accomplished by cost-cutting alone. We must reverse our Membership decline in Golf and we need to increase our Membership levels in Tennis and Social.

Our expected dues income for 2011 is about \$4 million, some \$900,000 less than it would be if we were to sell all of our 680 available Equity Golf Memberships. Our Golf Membership cap is 680 and we expect to be at about 530 for fiscal year 2011. In Tennis we have a cap of 325 in place, so we could easily accommodate a Membership increase of 50 Members. We could also accommodate an increase of 150 Social Memberships.

Our Club is very competitive in annual Golf dues costs, where we rank 17th in cost of 23 clubs in our area. However, we are at a competitive disadvantage in terms of upfront Golf Equity/Initiation fee joining costs, where we rank 7th in cost of 23 clubs in our area. This ranking, however, does not take into account special deals and waivers that many of these clubs offer in these competitive times. Exit interviews of prospective Members, who visited our Club but did not join, show that the largest impediment to selling our available Golf Memberships is our very large equity fee of \$30,000.

As shown in the chart below, we have seen a sharp and alarming reduction in new Equity Memberships sold over the past few years.



Since 2007 equity shares at many clubs have declined in price, while ours have remained unchanged. In the three years of 2005 to 2007, we sold an average of 34 Equity Memberships per year, enough to mostly offset our annual resignations. In 2008 we sold 15 Equity Memberships. In 2009, the total was 11 and in fiscal year 2010 we have sold only 4 Equity Memberships. Clearly it is time for change.

We must reverse this trend; otherwise, we could sink into a dangerous spiral of increasing dues which could make us uncompetitive, followed by loss of Members, followed by more dues increases, making us even less competitive, and so on. The lack of new Equity Members also extends the waiting period for the equity refund after resignation.

We are convinced, through competitive analysis, that the barrier to entry is too high for many of our new Equity Member candidates. In fact we have only been able to sell eight of our 40 available Associate Memberships due to the expectation of potential members that they will have to convert to an Equity Membership at some point after three years and pay the \$30,000 equity. We need the flexibility to offer lower equity alternatives so that we can be competitive in attracting new Equity Members. We want to remove this barrier *while protecting your Equity Investment*. The Board of Directors has therefore drafted proposed changes to our Bylaws which would permit us to offer lower equity alternatives. These changes to the Bylaws will require a majority vote of our Equity Membership.

In these Bylaws changes, all current Equity Golf Members will be guaranteed that their \$30,000 equity, 80% refund, and six (6) votes will remain unchanged. Similarly, all current Tennis and Social Members will be guaranteed their existing equity, refund, and voting rights. Going forward, the Bylaws changes would incorporate a new sliding scale of Equity Memberships, which *could* be offered for sale by a vote of the Board.

The Equity change proposal for Golf is as follows and includes the proposed new vote structure based on the proportionate equity level of the Membership Category.

Golf Equity Membership Category	Equity Payment	% Refund	Equity Refund	Initiation Fee	Votes	Final Cash Cost
Regular Equity Membership I	\$30,000	80%	\$24,000	\$ 1,000	6	\$ 7,000
Regular Equity Membership II	\$25,000	70%	\$17,500	\$ 2,000	5	\$ 9,500
Regular Equity Membership III	\$20,000	60%	\$12,000	\$ 3,000	4	\$11,000
Regular Equity Membership IV	\$15,000	50%	\$ 7,500	\$ 4,000	3	\$11,500
Regular Equity Membership V	\$10,000	30%	\$ 3,000	\$ 5,000	2	\$12,000
Regular Equity Membership VI	\$ 5,000	0%	\$ -0-	\$ 7,000	1	\$12,000

The equity change proposal for Tennis is as follows and includes the proposed new vote structure based on the proportionate equity level of the Membership Category.

Tennis Equity Membership Category	Equity Payment	% Refund	Equity Refund	Initiation Fee	Votes	Final Cash Cost
Tennis Equity Membership I	\$ 4,200	80%	\$ 3,360	\$ 300	2	\$ 1,140
Tennis Equity Membership II	\$ 2,100	50%	\$ 1,050	\$ 600	1	\$ 1,650
Tennis Equity Membership III	\$ 1,050	20%	\$ 210	\$ 900	1/2	\$ 1,740

The equity change proposal for Social is as follows and includes the proposed new vote structure based on the proportionate equity level of the Membership Category.

Social Equity Membership Category	Equity Payment	% Refund	Equity Refund	Initiation Fee	Votes	Final Cash Cost
Social Equity Membership I	\$ 2,400	80%	\$ 1,920	\$ 100	1	\$ 580
Social Equity Membership II	\$ 1,200	50%	\$ 600	\$ 200	1/2	\$ 800

In summary, we are proposing to change the Golf, Tennis and Social Equity fee structures to enhance the marketability of our Club and increase Membership levels. Higher Membership levels will lower the dues burden across the board, provide more income for capital projects, and help us achieve a strong and stable financial position. These changes will not affect your existing equity, refund percentage, or your voting rights. Since we currently have a very low rate of Equity Members joining, new Equity Members joining under the new sliding equity scales will probably bring more money into the equity pool for payback of Members' equity than would otherwise be the case. Therefore, the waiting periods should be shorter than would otherwise be the case.

In order to make this happen, it will be necessary to change our Bylaws. The Bylaws changes are listed below. These changes will allow the Board the flexibility to be competitive in attracting new Equity Members in the unfavorable short term economic environment we face. These changes also preserve the option of the board *not to offer* the lower Equity Memberships in the future when and if economic conditions improve and the market conditions allow us to maintain full Membership without them. We urgently need you to approve these changes now, so that we can begin offering these new Membership options for our recruitment drive this year. We cannot afford to wait.

We ask that each Member consider the seriousness of the need to change our Bylaws and to seek clarification to any questions you may have by contacting John Leinaweaver or any Board member. The Board asks you to support our strategy for the future and vote *FOR* on the Bylaws changes. It is important to get a high vote turnout, so please take the time to vote. Voting will begin October 25, 2010 through November 15, at 2:00 p.m.

Thank You,

Plantation Golf & Country Club, Board of Directors

EXHIBIT D

Plaintiffs' Motion for Partial Summary Judgment

Membership Membership

From: John Leinaweaver
Sent: Friday, October 03, 2014 4:43 PM
To: Rob
Cc: Floyd Juday (fjuday@verizon.net); Membership Membership
Subject: RE: Follow up

Mr. Nicks,

I apologize for the delay in response. At the current time you are number 322 on the equity wait list. At the current trend, we pay off approximately 10 to 12 people each year. As you know the current equity pay in for a golf member is \$5,000. This means it takes 6 new members to pay off one on the equity wait list. As of 2010 all of our Members who joined before that date were grandfathered and have deemed to have paid \$30,000 and will receive an 80% refund of \$24,000 when their name comes to the top of the equity refund list. Equity is a marketable dollar amount and at this time the market will bear \$5,000. In the future we hope to be able to raise our equity as the market changes. At that time we can expedite the payback list. The Board is always looking for other options to handle this matter, so we appreciate your feedback. We continually work with our club attorney and he has stated that we are doing the best thing we can right now while adhering to our Club By-Laws. There are many clubs across the country that have just written off all equity payments. I can assure you that our Board has no intentions of doing this. As far as your Club account we have handled that matter to ensure it has a zero balance and you will not receive any further statements.

In the meantime, if you have any further questions please feel free to contact me.

Thank you,

John Leinaweaver, CCM
General Manager/ COO



Plantation
Golf & Country Club
Venice, Florida

Plantation Golf & Country Club
500 Rockley Blvd.
Venice, Florida 33429
Phone: 941-497-1494 | Fax: 941-497-6497
www.plantationgccc.com

From: Rob [<mailto:rsn110308@yahoo.com>]
Sent: Friday, October 03, 2014 4:10 PM
To: John Leinaweaver
Subject: Re: Follow up

John

It is October 3 and I have not heard back from you with an answer. I did receive a billing complete with a late charge which is totally inaccurate.

Would you please update your records so no longer bill ASAP and answer my direct questions?

I'd appreciate an immediate response.

Thank you

Rob Nicks

Sent from my iPhone

On Sep 19, 2014, at 4:28 PM, Rob <rsn110308@yahoo.com> wrote:

Yes that's fine, thank you

Sent from my iPhone

On Sep 19, 2014, at 4:19 PM, John Leinaweaver <JLeinaweaver@plantationgcc.com> wrote:

Mr. Nicks,
I will be out of town for the next week.
May I get back to you on the 29th?

Thank you.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: Rob
Date: 09/19/2014 3:09 PM (GMT-05:00)
To: John Leinaweaver
Subject: Follow up

Dear Mr. Leinaweaver:

I received your letter today concerning my resignation from the club and the reference to the membership manual citing the refund policy as it is stated. I completely understand those specifics, thank you.

What I'm questioning and concerned about is the unclear and non specific comments you put in writing referring to my equity refund. To paraphrase you ask us to keep the club updated as to our mailing address as it will take several years before we are paid. I'd appreciate a more specific response. For example how many former members are ahead of me? How many equity members are paid each year? What is the clubs long range plan to retire these obligations? When I was asked to pay the equity charge to join there were specific expectations for me and I believe the club should have the same in repaying its former equity members. Any/all answers would be appreciated.

I look forward to your response in writing. My email address is rsn110308@yahoo.com or my mailing address is :

Rob Nicks
245 Fountain Dr.
Glen Carbon IL 62034
The amount owed is \$12,000

Thank you.

Sincerely,

Rob Nicks

Sent from my iPhone

EXHIBIT E

Plaintiffs' Motion for Partial Summary Judgment

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

EQUITY REDEMPTION PROVISIONS:

1. Presentation to members at Nov. 9th meeting:
 - Presented the history of changes made to the bylaws in November 2010 and the "profile" of our membership today regarding redemption rights
 - Provided estimate of the time required to complete redemptions for each membership category at current rate of new membership sales
 - Highlighted preliminary thoughts on "what to do"
 - Many clubs facing the problem
 - Growing percentage of PGCC active members have "zero" redemption right
 - Competitive market conditions make it increasingly important to re-direct the money that is being paid to "resigned" members from redemption payments to Capital Reserves to avoid increasing operating and capital dues of active members
 - Advised active members' views would be solicited in upcoming GGA member survey

2. Legal counsel engaged - Michelle Tanzer, **Shareholder | Chair of the Residential, Resort & Club Section**
GRAY | ROBINSON Boca Raton, FL
 - Approximately 50% of her practice is representing clubs. The other half is representing developers and international hotel companies who build and manage clubs, communities and resorts.
 - Has worked with number of clubs with similar bylaw provisions to eliminate or reduce the equity redemption provision

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

3. Ad-hoc committee (Schell, Broman, Leinaweaver, Bill Fitzgerald & Mike McCreery) has held conference calls with Ms. Tanzer & Mr. Johnston of GGA
- Florida law classifies private club memberships as "contracts" and rights of the party are dictated by the signed application for membership
 - Membership application in use for many years clearly states "...the undersigned (the applicant) hereby acknowledges receipt of a copy of the club Bylaws and General Rules in Plantation Golf and Country Club and agrees to be bound by all of the respective term and conditions thereof. The undersigned hereby understands that the Club Bylaws and rules can be modified in accordance with those documents."
 - Management is conducting reviews of membership applications for a sample of active & resigned members to determine whether such language was used consistently in documents completed by new member applicants
 - John Leinaweaver to report on results to date on that review
 - I believe we can be comfortable that club "policy" always has been to have applicant sign a two page 8x11 application form or, prior to that form being used, a 3x5 yellow card that contained the quoted language from above
 - Recording keeping has not always been great and we might not be able to produce the signed card/form in all instances

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

4. Current headcount of members WITH and WITHOUT redemption rights as of September 30, 2015:

Category	Total Active Members	# with redemption rights	# without "Redemption Rights"
Golf - Equity member	505	362 (69%)	143 (27%)
Golf - Associate member	18	NA	18 (4%)
Golf Total	523	362 (69%)	161 (31%)
Tennis	105	85 (81%)	20 (19%)
Social	391	320 (82%)	71 (18%)

5. Primary objectives for any change to "redemption" provisions:

- the proposal put forth would be approved by membership (see summary of current voting rights)
- direct more of future new member joining receipts to the Capital Reserve rather than making redemption payments to resigned members
- the proposal as approved would not cause an increase in resignations of active members
- minimize exposure to litigation costs

6. Alternative ideas under discussion with legal counsel for changes to "redemption rights" from current bylaws:

- **OPTION #1:**
 - Active & Resigned Member's with redemption rights would be entitled to receive 80% of the equity portion of the membership fee in effect at "the date the redemption

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

payment is made" vs. "the effective date of the resignation" as is currently provided in the bylaws.

<u>Membership Category</u>	<u>Current Equity Price</u>	<u>Redemption value @ 80%</u>
Golf	\$5,000	\$4,000
Tennis	\$2,100	\$1,680
Social	\$1,200	\$960

- "Current equity price" could be adjusted by the board as changes occur in the competitive market place and could be decreased by board declaration from prices currently in effect
- Members who have purchased club memberships after September 1, 2010 which currently have "zero" redemption value rights would continue to have "zero" redemption value
- Pro's:
 - The period of time to repay resigned and active members would be greatly reduced from current circumstances because one membership on the resigned list would be repaid for every new membership sold. Under existing bylaws it requires 6 new golf members to redeem 1 resigned golf member and 2 new tennis or social members to redeem 1 resigned tennis or social member.
 - Using budgeted new membership sales in fiscal 2016, the estimated time required to repay all redemption payments would be as shown below:

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

Category of membership with Redemption Rights	Average # repaid each year based on 2016 budget	# of years required to pay-off current RESIGNED members	# of years required to pay-off current ACTIVE members	Total years to complete redemptions
Golf	29	13.6	12.5	26.1
Tennis	7	4.3	12.1	16.4
Social	35	11.3	9.1	20.4

- Con's:
 - The club would continue to receive just the 20% retention fee and no additional money would be available for Capital Reserve funding.
- Other Considerations:
 - Additional funding for Capital Reserve from new member joining fees could be generated if the board declared the "current equity price" is reduced as a % of total new member joining fees (currently \$5K or 71% of total \$7K joining fees for Golf equity membership).
 - As an illustration, if the "current equity price" for a Golf equity membership was lowered to \$1K (14% of joining fee) and the joining fee remained at \$7K, the club would receive a total of \$6,200 vs. currently receiving \$3,000 (with equity priced at \$5K) or an increase of \$3,200 for each new Golf membership sold & redeemed. This would equate to approximately \$93K of additional capital reserve funding at 2016 budgeted new golf membership sales.

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

- If Option #1 is selected, membership should be advised of this illustration at time of proposing the March 28, 2016 bylaw change

○ **OPTION #2:**

- Propose that "active" members possessing redemption rights (generally pre-September 1, 2010 memberships) forfeit those redemption rights, i.e. all redemption rights are reduced to zero other than to retain priority interest in any proceeds from sale or liquidation of the club.
- Given that "active" members will have voted, if approved, to reduce their redemption rights from 100% value to "zero" value, it would be appropriate to have the revised bylaws provide for significant reductions to the redemption payment that that existing bylaws provide, i.e. a class I Golf member currently receives 80% of \$30,000.
- The actual pro-ration of the "haircut" to be applied to payments to resigned members could be any range of possibilities. The following table illustrates two scenarios phasing out redemptions to resigned members over 4 year and 3 year scenarios ("the phase-out period):

Timing of any redemption payments occurring:	% of original payment due under a 4 year phase-out period	% of original payment due under a 3 year phase-out period
First 12 months following revision	80%	75%
Year 2	60%	50%
Year 3	40%	25%
Year 4	20%	0%
Year 5	0%	

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

- If we wanted to be somewhat more aggressive, the above principle could be applied phasing out the redemption payments over a shorter phase-out period, i.e. 2 years - year 1 @ 66%, year 2 @ 33% and year 3 @ 0%.
- **Pro's:**
 - Eliminates & phases out the redemption payout more rapidly than under Option #1 and thereby accelerates the re-direction of new member joining fees to Capital Reserve vs. redemption payments
 - While resigned members that are scheduled to receive payments during the "phase-out years" would have the amount of the payments reduced, they would still receive preferential treatment by continuing to receive some redemption payment. This should reduce the exposure of litigation claims from resigned members.
- **Con's:**
 - Asking currently active members to totally forfeit any redemption payment while continuing to make "above market payments" to resigned members for a short period of years might alienate member support and cause a higher rate of resignations than might otherwise have occurred. It would be important in presenting the proposal that we sell the overall benefit to the club (and therefore continuing members) of directing new member joining fees to the Capital Reserve quicker while mitigating litigation risks associated from resigned members that otherwise would have received higher payments in the next few years.

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

7. Incorporate "hero" programs suggested by Ms. Tanzer, as appropriate to the circumstances:

- Incorporate into either of the 2 options a reset of the priority to receive payments on the resigned member list in exchange for the resigned member agreeing to accept a lower payment
- Create "wall of fame" to recognize those active & resigned members agreeing to forfeit redemption rights
- Active members provided voucher that can be claimed by party that buys the member's Venice home that would allow credit against joining fees
- Re-visit our "legacy" rules to see if further enhancements should be made

OTHER BYLAW CHANGES:

VOTING RIGHTS:

The revised bylaws should restore voting rights of all active member classes to what existed prior to the November 2010 revisions. Those voting rights were:

Golf (Regular)	6
Tennis	2
Social	1

3.11 LIQUIDATION OF EQUITY MEMBERSHIPS - Consider whether this future contingent benefit should provide for priority treatment to any active member as of September 1, 2010 or any member on the resigned list that did not received a redemption payment.

4.1 ANNUAL MEETING - Might want to move to 3rd Monday of March or provide for Board to establish a date for annual meeting annually with appropriate notice.

5.2 STRUCTURE:

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

- Do we want to introduce changes that would have President serving more than one year?
- Clarify a person that is appointed to fill the unexpired term of another director is eligible to run for election to the board upon expiration of the appointed term.

7.7 NO ACTION REDUCING VALUE OF EQUITY MEMBERSHIPS - Delete this or clarify this has nothing to do with "current equity price" as determined by the board from time to time.

10.2 OTHER COMMITTEES - Consider changes to reduce "board" committees

OTHER BYLAW THOUGHTS:

- John L has some definitions that need to be changed/clarified
- Bill Fitz or David Weltman had a list of items that they believed should be cleaned up

ASSOCIATE GOLF MEMBERS:

Using authority granted under the bylaws, on [JOHN INSERT DATE INITIATED] the Board created the Associate golf membership. This action was taken because the club was unable to sell the equity membership authorized under the bylaws which was then being offered at \$30,000 equity payment. A total of 28(???) Associate memberships were sold during the period 200x to November 2010. When the bylaws were amended in November 2010 and introduced the Class VI equity membership which required a \$5,000 equity payment, the club suspended sales of Associate memberships. With the suspension of sales of the associate membership, then current Associate members received a letter from the club advising they could continue to be Associate members until such time as the club returned to the maximum total of 680 equity golf members as provided in the bylaws. Subsequently, through either through voluntary conversion to Class VI equity (with equity payments of \$5,000 being made) and resignations, the

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

number of Associate equity members has declined to be 18 or 3% of golf members at September 30, 2015.

When associate members joined the club, they paid an initiation fee which was generally \$2,500 and agreed to pay annual dues which approximate slightly more than the sum of the current operating and capital reserve dues. Being "non-equity" memberships, Associate members paid no equity contribution and therefore none of the joining fees paid were used to make payments to resigned members. As "non-equity" members, Associate members have no status under the club's bylaws and therefore are not entitled to vote on club matters or participate in board committee roles.

[JOHN - CAN YOU PROVIDE A RECAP OF THE ORIGINAL # OF ASSOCIATE MEMBERSHIPS THAT WERE SOLD, WHAT THEY PAID IN INITIATION FEES AND HOW THE ATTRITION OCCURRED - I.E. CONVERSION TO EQUITY OR RESIGNATIONS? ALSO PLEASE CLARIFY EXACTLY HOW THE TOTAL DUES BEING PAID BY AN ASSOCIATE MEMBER COMPARES TO THE SUM OF OPERATING & CAPITAL RESERVE DUES BEING PAID BY AN EQUITY GOLF MEMBER OF SIMILAR FAMILY STRUCTURE.]

Five years have passed since the last Associate membership was sold. The 18 current Associate members have been paying dues for at least 5 years and it would seem they have the same vested interest in the club's long term success as any equity golf member. I encourage the board to consider some options that would lead to the phase-out of the Associate program in a manner that would be equitable in the eyes of equity golf members and attractive to existing Associate members to make the conversion to Equity golf memberships. This conversions would provide them with full voting rights (6 votes) and the opportunity to fully participate in the governance of the club. Some possible incentives:

- No further initiation fee as that was paid when the Associate member joined

Bylaw revisions to be proposed at March 28, 2016 Annual Meeting
TENTATIVE & PRELIMINARY NOV. 30, 2015

- If membership approves the proposed bylaw changes, the board could make a determination of the appropriate market value of "equity" contribution.
- Associate members could be offered a one-time opportunity to convert their membership to an "equity" golf membership by September 30, 2016 with an equity contribution payment that is a modest discount from the "current equity price".
- Consider stating that with the bylaw revisions, the club will eliminate Associate membership category by September 30, 20xx.

QUESTIONS THAT NEED ANSWERS:

1. Tax treatment
2. Confirm "no gain" recognition by club for extinguishment of redemption rights

KEY DATES regarding Bylaw changes:

December 16	Board meeting
January 11	Town Hall meeting - Equity
January 27	Review proposed bylaw changes with membership & voting begins

EXHIBIT F

Plaintiffs' Motion for Partial Summary Judgment

**PLANTATION GOLF AND COUNTRY CLUB, INC.
SPECIAL BOARD OF DIRECTORS' MEETING MINUTES
AMENDED BYLAWS
FEBRUARY 5, 2016**

John Schell, President		John Leinaweaver, GM, COO
Don Broman, Vice President		BJ Camarota, CFO
Pat Decker, Treasurer		Linda Steele, Exec Asst./Recorder
Marjorie Lapp, Secretary		
Mike Bene, Director		Mike McCreery, Finance
Jeffrey Farrington, Director		
Pat Fitzgerald, Director		
Bill Grove, Director		
Jon Wioskowski, Director	<i>absent</i>	
Floyd Juday, Past President		

PRESIDENT'S COMMENTS

The Board of Directors' Meeting was called to order at 11:00 a.m. by John Schell, President, and it was determined that a quorum was established.

Mr. Schell commenced the meeting by thanking the Ad Hoc Committee members for the many hours of work they put into the creation of the proposed amended Bylaws document. He then extended a special thank you to Bill Fitzgerald and Mike McCreery for their time and expertise. In addition, Michelle Tanzer, Esquire has done a great job at guiding us, and she commented that our program was one of the better ones she has seen because of the input from the Committee and Mike McCreery.

Mr. Schell turned the meeting over to Mr. McCreery. Mr. McCreery provided a synopsis of the Notice of the Annual Meeting, Ballot, Summary of Changes to the Bylaws, and the Proposed Amended Bylaws. Mr. McCreery then walked through the amendments to the Bylaws to ensure the Board Members were clear with the proposed amendments.

It was noted that the Ad Hoc Committee has consulted with legal and financial advisors regarding the proposed Bylaws with reference to Equity, and told us the Board's first priority to do what necessary to make sure the Club remains viable. A Board dialogue ensued. The Board reviewed and discussed the following "Summary of Changes to the Bylaws" which is to be included in the mailing to members along with the actual bylaws "marked" to show deletions/changes to the existing bylaws and addition of changed provisions of the new bylaws.

SUMMARY OF CHANGES TO BYLAWS

Club members have been asking the Board to find a solution to the untenable situation that exists today in fulfilling redemption payments to resigned members as provided in current Bylaws. Furthermore, changing market conditions for the sale of new memberships requires more flexibility and the ability to retain more of new member joining fees to properly maintain club facilities.

The Board has briefed membership on the current status and alternatives in Town Hall meetings on November 9, 2015 and January 11, 2016. Information shared at those meetings is available for your review on www.plantationgcc.com.

The proposed changes to the Bylaws have been developed in consultation with club members, including past-Presidents, outside financial advisors and legal counsel. The Board has voted unanimously to recommend approval by membership of the First Amended and Restated Bylaws dated March 28, 2016. Town Hall Meetings to discuss the changes to Bylaws will be held on Monday, February 15 at 1:00 p.m. and Monday, February 22 at 10:00 a.m.

1. Preamble: The First Amended and Restated Bylaws replace the prior bylaws in their entirety. A restatement is preferable to avoid having multiple pages of amendments.
2. Glossary of Terms: A glossary of terms was inserted to clarify the meanings ascribed to important terms and concepts and to eliminate any potential confusion about the meaning of such terms. Consistent use of the defined terms was applied throughout the document.
3. Article 1 Purpose of the Club. Consistent use of defined terms was applied for clarity.
4. Article 2 Corporate Status. Consistent use of defined terms was applied for clarity.
5. Article 3 Equity Memberships. All further Equity Memberships sold will be without any refund rights. Any Equity Member who joined under the Prior Bylaws who had a right to a refund will still have a right to a refund. However, the amount to be refunded will be determined in accordance with the new Bylaws (80% of the equity portion of the Joining Fees paid by the new member). When these new Bylaws are approved by the Equity Members, the Board will determine the current values of the new Equity Memberships. The anticipated amounts of equity portions will be lower than the current \$5,000 for Full and Golf, \$1,050 for Tennis and \$1,200 for Social.
6. The benefit of this amendment is that going forward, one member will be retired from the Resigned Members Waiting List upon the sale of each new Equity Membership in the Club, which will significantly reduce the time required to repay resigned members as compared to provisions of Prior Bylaws.
 - a. The term “Joining Fees” was established to identify the monies to be paid by a new member, which may include an equity portion and a capital contribution portion.
 - b. The Joining Fees will be established by the Board and tied to the market. The concept of “Refundable Amount” was included to reference the portion of the equity that a member may be entitled to receive (80% of equity portion paid by a new member), less any amounts owed to the Club. This concept addresses the current financial needs of the Club for retention of capital as presented at the town hall meeting held on January 11, 2016, which was overwhelmingly supported by the members in attendance.
 - c. The categories of memberships currently being offered were updated to reflect current practice and address prior Regular Equity Memberships, which are no longer offered. The text relating to various levels of membership and repayment calculations was removed.
 - d. Voting was restored back to the prior 3 levels. Full and Golf Equity Memberships: Six (6); Tennis Equity Memberships: two (2); Social Equity Memberships: one (1).
 - e. Clarification was added that Refundable Amounts, if any, are paid solely from the Escrow Account to avoid any potential confusion.
 - f. Express authority was given to the Board to establish other categories of membership in response to market demand.
 - g. In the event of sale or other liquidation of the Club Facilities, payments will be made to then current Equity Members based on equity payments actually made by such Equity Members to the Club.
7. Article 4 Members’ Meeting. Flexibility was given to the Board allowing the Club Annual Meeting to be held on any date in the month of March. Voting electronically was specifically authorized.

8. Article 5 Board of Directors. Directors serving for the balance of another director's unexpired term may be re-elected without a 1 year absence.
9. Article 6 Meetings of the Board of Directors. Consistent use of defined terms was applied for clarity.
10. Article 7 Duties and Powers of the Board of Directors. External audits are to be prepared by an independent accounting firm selected by the Board. Disciplinary processes were added for violations of the Bylaws and Club Rules.
11. Article 8 Officers' Election and Liability. Re-election of officers was clarified.
12. Article 9 Duties of Officers. The roles of officers were clarified.
13. Article 10 Committees of the Board. Flexibility regarding committees was added.
14. Article 11 Assessments. Language concerning assessments was revised to reflect actual practice.
15. Article 12 Indemnification. Consistent use of defined terms was applied for clarity.
16. Article 13 Amendments. Consistent use of defined terms was applied for clarity.
17. Article 14 Master Plan. Updated Master Plan is referenced.

Following discussion of the documents to be sent to members, the following motion was considered:

MOTION: Mr. Bene made a motion to approve the February 5, 2016 proposed amendments to the Club Bylaws, and to be sent to the Membership for a vote on February 10, 2016. If approved on March 28, 2016, the amended Bylaws will be effective April 1, 2016. Mrs. Fitzgerald seconded the motion. The motion carried unanimously.

It was decided to schedule two Town Hall Meetings – February 15 and February 22, Mr. McCreery to provide a detailed (presentation) report for the proposed Bylaws.

There was a brief discussion regarding the Golf Course Design Master Plan.

It was decided to move the February 17, meeting time to 1:00 p.m. to discuss the GGA Membership Survey Results.

The next Board Meeting is February 17, 2016 at **1:00** p.m.
The meeting adjourned at 12:10 p.m.

Respectfully submitted,

Marjorie Lapp, Secretary

EXHIBIT G

Plaintiffs' Motion for Partial Summary Judgment



October 8, 2013

Mr. John M. Dorso
822 Carnoustie Drive
Venice, FL 34293

RE: Plantation Golf & Country Club, Inc.
Request for Information

Dear Mr. Dorso:

I am responding to your letter of September 26, 2013, which included letters from a number of other resigned members of the Club requesting information concerning the return of equity of resigned members. I understand that your request is prompted by a belief that some resigned equity members have had their equity redeemed in a manner inconsistent with the Club Bylaws. I want to assure you that the Bylaws have been closely followed in all respects relating to any equity redemption payments made to resigned members, and there is no basis for your concern.

As I am sure you can understand, resigned members no longer have the rights and privileges (nor responsibilities) of active members. This would include the right to request copies of internal Club documents. We have been advised by legal counsel that providing Club documents to non-members would set a precedent that would be unacceptable in the future.

However, in an effort to assure you, and the others that you represent, that the Club has been handling equity redemptions in an appropriate manner, I am prepared to meet with you or some other representative of the group to go over the status of equity redemption payments. If you will contact me to arrange a mutually convenient time, I will cooperate with you to the extent possible.

Sincerely yours,

John Leinaweaver, CCM
COO/General Manager

cc: Max Eisenbarth
Joe Mercier
Nathan S Pendleton III & Sharon Furman
Sam Tedesco

EXHIBIT H

Plaintiffs' Motion for Partial Summary Judgment

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POST DATE: MONDAY, FEBRUARY 4, 2019

ConcertGolf Partners

February 4th, 2019

Plantation Members Vote to Recapitalize With Concert Golf Partners

Mark Cardon

Golf Coast Magazine



VENICE – Plantation Golf & Country Club (PGCC), a premier 36-hole Ron Garl championship design, is the latest high-end private club to join the growing boutique collection of Concert Golf Partners. Like other Concert Golf partnerships with member-owned private clubs, the transaction paid off all club debt, froze member dues rates, injects over \$3 million into capital projects and bars any future assessments on the membership.

PGCC is the centerpiece amenity at the 1,300-acre master-planned community in fast-growing Venice, Florida, featuring 2,382 residences, an acclaimed 36-hole Ron Garl championship golf course that hosts the second stage of the LPGA Tour Qualifier each year, a 45,000-square foot clubhouse, fitness center, Olympic swim complex and 13 tennis courts.

The club had manageable debt and a strong membership base, but the aging member demographics and continuing capital project funding needs led to a re-thinking of the equity club business model.

“We conducted a thorough strategic planning process over the last two years, and it became clear that partnering with a well-capitalized private club operator was our best path for the long-term preservation of the Plantation lifestyle,” said Kubik. “And after months of due diligence on the leading golf club operators, we determined that Concert Golf Partners is the best choice for our club members and the community. Our Board was unanimous, and our members approved the transaction by a 97 percent vote.”

According to Bill Trent, board member and retired lawyer, “Our agreement with Concert Golf contains important protections for members, including commitments to high quality club operations. Concert Golf demonstrated its willingness to partner with the club members and the entire community.”

PGCC is the sixth private club in Florida for Concert Golf Partners. The club’s board members made numerous calls and visits to other Concert Golf clubs. “It was the consistently positive member feedback from so many equity clubs like ours that convinced us that we needed to offer the proposal to our members to bring Concert Golf here to Plantation,” said Kubik.

Concert Golf CEO Peter Nanula announced that his team would immediately

undertake more than \$3 million in new capital projects at PGCC, including a re-grassing of the Bobcat course; bunker renovations throughout; expansion of the practice facilities; and some clubhouse remodeling.

“The members and board had a ‘wish list’ of capital projects,” said Nanula.

“And we agreed to fund them all.”

The club also was involved in some small member refund litigation, which is often a concern to a member-governed board.

“We are in such a different position as a well-capitalized club owner-operator, so we paid the old refund obligations and took responsibility for the litigation,” said Nanula.

Concert Golf Partners is a boutique owner-operator of private clubs based in Newport Beach, Calif. Formed by Nanula, the founder and CEO of Arnold Palmer Golf Management (1993 to 2000), Concert Golf has amassed \$150 million of patient, long-term equity capital to invest in and upgrade large-scale private clubs located in major metro areas. Concert Golf is also unique in operating as an all-cash investor with a dedicated fund, which allows it to acquire or recapitalize clubs quickly (without incurring debt) and subsequently invest in these properties for the long term.

Concert Golf has recently acquired 20 such clubs nationally, including both developer-owned and longtime member-owned clubs such as The Club at 12 Oaks in Raleigh and Fountains CC in Palm Beach. Plantation members now enjoy free reciprocal privileges at these and Concert Golf’s other upscale clubs, as well as discounted access to more than 300 TPC™ clubs and Pacific Links International clubs worldwide.