



## Fort Myers Beach Town Council

Bay Oaks Recreation Center  
2731 Oak Street  
Fort Myers Beach, FL 33931

**AMENDED** Agenda

Monday, February 5, 2024

9:00 AM

### ORDER OF BUSINESS

**I. CALL TO ORDER**

**II. INVOCATION**

**III. PLEDGE OF ALLEGIANCE**

**IV. APPROVAL OF FINAL AGENDA**

**V. PUBLIC COMMENT**

**VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

**NEW** A. Proclamation

**VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**

Public Safety Committee

Marine & Environmental Resources Task Force

**VIII. APPROVAL OF MINUTES**

A. Town Council - January 22, 2024

**IX. CONSENT AGENDA**

A. Resolutions 24-23 through 24-26; Extending State of Local Emergency Hurricane Ian

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

B. Resolutions 24-27 through 24-30; Extending State of Local Emergency Hurricane Idalia

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE**

OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

- C. Resolution 24-21; Amendment #2 to Permissive Use License Agreement

**A RESOLUTION AMENDING THE PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR USE OF DISTRICT PROPERTY AS A TOWN HALL UNTIL MARCH 31, 2024; AND PROVIDING AN EFFECTIVE DATE.**

- D. Resolution 24-22: 2024 Sheriff Traffic Detail

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY TRAFFIC DETAIL SERVICES IN THE AMOUNT OF \$68,800; AND PROVIDING FOR AN EFFECTIVE DATE.**

- NEW** E. Resolution 24-32, Special Magistrate Services

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS AND MONICA SCHMUCKER FOR SPECIAL MAGISTRATE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

- F. Resolution 24-31; Stewart Materials

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND STEWART MINE MATERIALS FOR THE PURCHASE OF 170,000 TONS OF BEACH COMPATIBLE SAND FOR \$2,014,500.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.**

- G. Special Event - Shrimp Festival Parade

**Approve the special event permit for the 2024 Shrimp Festival 5K run and parade, contingent on approval of FDOT, FMB Fire District, Lee County Sheriffs Office regarding the event and closure of the Matanzas Pass Bridge.**

- H. Persaud Properties FL Investments LLC

**Authorize the Town Manager to execute approval of the Letter of Credit received from Persaud Properties, LLC as required by paragraph 3 of the Settlement Agreement between Persaud Properties, LLC and the Town of Fort Myers Beach, dated December 27,2023.**



**NEW I. Settlement Agreement**

**Approve and Authorize the Mayor to Execute a Settlement Agreement with Florida Audubon Society, Squeeze Me Inn, LLC and Texas Hold'Em, LLC related to Case No. 23-CA-5506, Filed in the Twentieth Judicial Circuit, In and For Lee County, Florida.**

**X. PUBLIC HEARINGS**

- A. Ordinance 24-01; Amendment to revise previously approved conditions of approval contained in ord. 18-04 and 23-09

**Second Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**NEW B. Ordinance 24-02; DCI Rezoning 20230160, 1301 Estero Blvd**

**Second Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**XI. ADMINISTRATIVE AGENDA**

- A. Resolution 24-34; Boxx Modular

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN REGARDING LEASING OF FURNITURE FOR USE IN TOWN HALL; APPROVING THE LEASE WITH BOXX MODULAR FOR 48 MONTHS AT A MONTHLY RENTAL RATE OF \$2,586.00 AND A ONE TIME INSTALLATION AND DELIVERY FEE OF \$11,050.00; AND PROVIDING AN EFFECTIVE DATE.**

- B. Resolution 24-33; Ratify Renewal of Annual Granicus Software Subscription  
**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH RATIFYING THE APPROVAL AND PAYMENT OF AN ANNUAL GRANICUS SOFTWARE SUBSCRIPTION FOR USE WITH THE TOWN'S SHORT-TERM RENTAL PROGRAM PURSUANT TO THE TERMS AND CONDITIONS OF THE EXISTING UNEXPIRED HOST AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**
- C. Resolution 24-35; Angie Brewer & Associates Inc.  
**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A FIRST AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND ANGIE BREWER & ASSOCIATES, INC. TO EXTEND THE TERM OF THE CONSULTANT AGREEMENT FOR FUNDING MANAGEMENT SERVICES FOR SRF OR OTHER GRANTS AND OR LOANS AVAILABLE TO THE TOWN, TO JUNE 9, 2024 BY THE EXERCISE OF ONE OF TWO RENEWAL OPTIONS; APPROVING SUPPLEMENTAL TASK AUTHORIZATION NO. 4 FOR THE UNINTERRUPTED CONTINUATION OF THESE SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT AND SUPPLEMENTAL TASK AUTHORIZATION AND THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**XII. FINAL PUBLIC COMMENT**

**XIII. TOWN MANAGER'S ITEMS**

**XIV. TOWN ATTORNEY'S ITEMS**

**XV. COUNCILMEMBERS ITEMS AND REPORTS**

- A. Filling of Vacancy

**XVI. ADJOURNMENT**

**NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND YOUTUBE.**

**IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.**



**For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202**

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

## ***Town of Fort Myers Beach***

### ***PROCLAMATION***

***Whereas*** Kim & Ed Ryan, for several years, have been promoters of Fort Myers Beach with their podcast Beach Talk Radio.

***Whereas*** during Hurricane Ian, Kim & Ed Ryan utilized Beach Talk Radio as a lifeline not only to inform residents and visitors of news, but to raise money and supplies.

***Whereas*** Kim & Ed Ryan continue to utilize Beach Talk Radio to inform, but they continue to raise tens of thousands of dollars for Fort Myers Beach organizations.

***Now, therefore, be it proclaimed*** by the Town Council of the Town of Fort Myers Beach, Florida that we hereby recognize

***Kim & Ed Ryan, Honorary Citizens  
and***

***Beach Talk Radion, the official Dinky Podcast of Fort Myers Beach***

*Given under my hand and the seal of the office of the Mayor this 5<sup>th</sup> day of February 2024.*

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*Dan Allers, Mayor*



## Fort Myers Beach Town Council

Bay Oaks Recreation Center  
2731 Oak Street  
Fort Myers Beach, FL 33931

Minutes

Monday, January 22, 2024

9:00 AM

### ORDER OF BUSINESS

#### DRAFT

##### I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King and Council Member Woodson.

##### II. INVOCATION

Pastor John Antonucci.

##### III. PLEDGE OF ALLEGIANCE

##### IV. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the agenda with all items on the consent agenda pulled for discussion; seconded by Council Member Woodson.  
The motion carried unanimously.

##### V. PUBLIC COMMENT

No public comment.

##### VI. PRESENTATION

A. Matt Caldwell, Lee County Property Appraiser

##### **Matt Caldwell, Lee County Property Appraiser**

Mr. Caldwell announced that field staff would be available next Monday and Tuesday to identify which properties were ready to come back on the tax roll and to answer questions regarding the homestead exemption.

##### VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Woodson recognized the Woman's Club for the Putt and Pub fundraiser and commented on the huge crowd. She added that the Shrimp Festival would be held this year on March 9th and 10th.

Vice Mayor Atterholt also recognized the Putt, Pub and Crawl. He thanked the President of the club, John Thomas, the sponsors and the volunteers. He thanked

the mayor for organizing last week's meeting with condo presidents and board members. He recognized the condo presidents and board members and thanked them for their perseverance. He recognized residents and visitors who utilized the pedestrian overpass.

Council Member King and Mayor Allers agreed with the previous comments.

## **VIII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**

No reports.

Council Member King volunteered to be the liaison for MERTF (Marine & Environmental Resources Task Force). Mayor Allers suggested that they wait for the new council member.

## **IX. APPROVAL OF MINUTES**

- A. Draft Town Council minutes - January 8, 2024

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

- B. Draft Town Council Special Mtg with FMB Condo Boards - January 11, 2024

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

- C. Draft Town Council w/Local Planning Agency minutes - January 11, 2024

Council Member King moved to approve the minutes; seconded by Mayor Allers.

The motion carried unanimously.

## **X. CONSENT AGENDA**

- A. Estero Island Polling Precinct

**An agreement with the Lee County Supervisor of Elections office and the Town of Fort Myers Beach to use the new Town Hall building as a polling location for 2024 elections.**

Town Manager Hyatt noted that he was unsure whether a second voting location would be identified on the south end. Town Clerk Baker stated that council meetings on March 18, August 19 and November 4, 2024, conflicted with the polling location. Mayor Allers suggested moving the meetings to Bay Oaks on those dates.

Vice Mayor Atterholt moved to approve the agreement; seconded by Council Member King.

The motion carried unanimously.

B. Special Magistrate Services

**Authorize the Town Attorney to negotiate a contract, to be approved by the Town Council at the February 5, 2024 public meeting, with the Florida Department of Administrative Hearings (DOAH) and Monica Schmucker, Esquire, for special magistrate services.**

Monica Schmucker reviewed her qualifications and experience.

Vice Mayor Atterholt moved to authorize; seconded by Council Member King. The motion carried unanimously.

C. Special Event: Saturday Services at Bayside Park

**Permission to rent Bayside Park on Saturday's from 4:30 pm to 5:30 pm for the month of February 2024**

Pastor John Antonucci reviewed his background and explained why he wanted to meet at Bayside Park. Council Member Woodson expressed concern about the disruptive behavior of the other religious person. She also preferred a more central location so people from the south end could attend. Vice Mayor Atterholt noted that the request was only for February and could be treated as a pilot program to see how it went. Council Member Woodson agreed.

Vice Mayor Atterholt moved to grant permission; seconded by Council Member King.

The motion carried unanimously.

D. LAP Grant Agreement

**Approve the Town entering into the Florida Department of Emergency Management State-Funded LAP Grant Agreement Number D1502 subject to legal sign-off to amend additional language requested by the State clarifying that the grant is a one-time advance payment, Authorizing the Mayor to legally execute and bind the Town to the terms of this Agreement.**

Town Attorney Stuparich requested permission with legal sign-off to amend the agreement in the packet to clarify that it was a one-time advance payment.

Mayor Allers moved to approve the grant agreement, allowing for legal sign-off on final wording; seconded by Council Member Woodson.

The motion carried unanimously.

E. ITB-24-02-EN; Estero Island Beach Sand Truck Haul Project

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS, FLORIDA, ACCEPTING EARTH TECH ENTERPRISES INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO ITB-24-02-EN "ESTERO ISLAND BEACH SAND TRUCK HAUL PROJECT", APPROVING AN AGREEMENT BETWEEN THE TOWN AND EARTH TECH ENTERPRISES INC. FOR BEACH SAND WORK IN THE AMOUNT OF \$2,698,000.00; AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT SUBJECT TO FINAL LEGAL SIGN-OFF, AND EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.**

Town Attorney Stuparich explained that this was on an expedited path and included approval of an agreement for the bid. The contract was subject to legal sign-off. She would like to amend the resolution to authorize an adjustment to the FY2024 budget so that the funds could be spent. She read the title of the resolution.

Environmental Projects Manager Chadd Chustz revisited why the project had to be expedited and Michael Poff from Coastal Engineering expanded on the reasons. Scour holes would be filled, public accesses repaired and graded and the project would begin as soon as February. Property owners who refused to sign easements but changed their minds should contact town staff. Projects Manager Chustz stated that the north end may be a separate truck hall project.

Council Member King moved to approve the resolution as amended; seconded by Vice Mayor Atterholt.  
The motion carried unanimously.

F. Resolution 24-16; Support for Rebuild of FMB Pier

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ENCOURAGING AND PROVIDING SUPPORT TO THE LEE COUNTY BOARD OF COUNTY COMMISSION TO CONSIDER ENHANCEMENTS WHEN REBUILDING THE PIER LOCATED ON ESTERO ISLAND IN ORDER TO BUILD BACK A BETTER AND BOLDER FACILITY FOR THE ENJOYMENT OF THE PUBLIC AND ECONOMIC BENEFIT TO THE COMMUNITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Council Member Woodson stated that the Let's Go Fort Myers Beach group proposed a bigger and better pier because what was there was too small. Since FEMA would only reimburse the county to replace the pier that existed before Ian, a funding strategy would be helpful when presenting to the county commissioners. Vice Mayor Atterholt suggested increasing parking fees at Lynn Hall and Bowditch Parks and applying the revenue stream toward the pier. Mayor Allers clarified that the resolution did not include a funding strategy. Vice Mayor Atterholt supported offering a funding mechanism to the county commissioners. Mayor Allers read the title of the resolution.

Vice Mayor Atterholt moved to approve the resolution with the amendment to allow Council Member Woodson to propose what was discussed to the county commissioners as an option for funding with further public input; seconded by Council Member Woodson.

The motion carried unanimously.

**XI. ITEMS REMOVED FROM CONSENT AGENDA**

See individual items.

## XII. PUBLIC HEARINGS

- A. Ordinance 24-02; DCI Rezoning 20230160, 1301 Estero Blvd  
**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Clerk Baker stated that the agenda was properly noticed. She swore in those providing testimony. Mayor Allers read the title of the ordinance. Ex parte communications: Council Member King - three emails from owners on Santos; Vice Mayor Atterholt - same emails and conversations with an owner behind 7-11 and the planner assisting 7-11; Mayor Allers - same emails and very familiar with the site; Council Member Woodson - same emails and familiar with the location.

Certified Planner Ken Delander, Civil Engineer Brandon Frey and Civil Engineer Elizabeth Fountain were unanimously approved as qualified experts. Community Development Planner Sarah Propst reviewed the background of the request as stated on the blue sheet and briefly described the deviations. Staff recommended signage for the parking space that backed into the Palermo Circle right-of-way to be aware of cross traffic. Staff recommended approval with conditions. The owners were looking at ways to work with adjacent property owners regarding the dumpster facing Santos Road.

Planner Delander distributed copies of his presentation. Slides included Project Team; Presentation Overview; Background & Request; Aerial Representation Prior to Ian; Rezoning; Location, Site Design & Compatibility; Concept Plan; Findings & Conclusions; Architectural Elevations; Rendering of Property; Initial Concept Murals; LDC Sections; Deviations; Prior and Proposed Dumpster Enclosures with Type A Buffer and Conclusion.

Vice Mayor Atterholt indicated that the dumpster before Ian was not taken care of. The door was left open and trash was everywhere. Planner Delander replied that the new enclosure was opaque and the owners were committed to keeping the area clean. Planner Frey explained that relocating the existing utilities was a challenge and the location of the dumpster created a faster pickup for the trash service. Mayor Allers requested specifics on why the dumpster needed to be in that area and the dimensions. Planner Delander stated that the dumpster enclosure would be six feet tall. Planner Propst noted that the owners could request a deviation to increase the height to seven feet. Council Member Woodson suggested adding it to a condition for approval.

Mark Herin, Manager of Special Projects, stated the larger store would include larger restrooms, three POS (Point of Sale) stations instead of two and food and beverage options would be expanded. He addressed operations and noted there was no excuse for the condition of the dumpster area shown in the photo. He indicated that he would work with the neighbors regarding their concerns.



No public comment.

Vice Mayor Atterholt moved to approve the ordinance, including staff recommendations and the new deviation of seven feet of the enclosure for the dumpster and schedule it for a second reading on February 5, 2024; seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

B. Resolution 24-11; VAR20230233, 11 Palmview Boulevard

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230233, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 11 PALMVIEW BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. No ex parte communications were disclosed. Planner Propst confirmed that the applicant received the packet of information.

Planner Propst reviewed the background of the request as stated on the blue sheet. The LPA had unanimously recommended approval. Planner Propst stated that the easement shown in the side yard did not appear to be correct because there was a stormwater easement on the opposite side of the property. If there is an easement, the applicant agrees to move the equipment. The neighbor affected by the equipment supported the applicant's request.

No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member Woodson.

The motion carried unanimously.

C. Resolution 24-14; VAR20230299, 122 Falkirk St

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230299, A VARIANCE FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED STREET SETBACK BY 11 FEET FROM THE REQUIRED 25 FEET, IN THE RS ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 122 FALKIRK STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. The applicant confirmed receipt of the agenda backup material. Ex parte communications: Mayor Allers - drove by and Council Member Woodson - knows the location. No disclosures from other members.

Planner Propst reviewed the background of the request as stated on the blue sheet. Staff noted that the proposed location would have the least impact on the adjacent properties. The LPA unanimously recommended approval.

Heidi Cawood, applicant, indicated that putting it on the other side would put it in front of the house. She noted that only a corner of the structure crossed the setback and explained why the proposed location made the most sense on her pie-shaped property. She stated the area underneath her house would be open and used for storage.

No public comment.

Council Member Woodson moved to approve the resolution; seconded by Council Member King.

The motion carried unanimously by roll call vote.

D. Resolution 24-12; SEZ20230278, 7400 Estero Blvd - Leonardo Arms

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230278 TO ALLOW RECONSTRUCTION OF A POOL DECK, WALKWAYS, AND FENCE, IN THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT, WITH CONDITIONS, FOR THE PROPERTY LOCATED AT 7400 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.**

Mayor Allers read the title of the resolution. Ex parte communications: Vice Mayor Atterholt - used to own a condo in the building next door and the people who received the notice supported the variance and Mayor Allers - walked the property. No disclosures from other members.

Planner Propst stated that many postcards were returned and encouraged people to ensure their addresses were up-to-date with the Lee County Property Appraiser. She reviewed the background of the request as stated on the blue sheet and noted the applicant provided a plan that clearly showed what was being replaced. The LPA unanimously recommended approval. Planner Propst clarified that the wall would be removed and vegetation planted.

Miles LeGuard, general contractor, represented the applicant and noted that they were not changing anything besides removing the existing wall. He commented that only the corner of the pool deck ran through the current CCCL (Coastal Construction Control Line).

No public comment.

Vice Mayor Atterholt moved to approve the resolution; seconded by Council Member King.

The motion carried unanimously by roll call vote.

**XIII. ADMINISTRATIVE AGENDA**

No items.

**XIV. FINAL PUBLIC COMMENT**

Eddie Rood, resident, noted that a representative from MERTF was not in attendance. He stated that MERTF recommended the continued use of Imazapyr at their last meeting and that the town work with the FWC (Fish & Wildlife Conservation Commission) to eradicate the Australian Pines outside the critical wildlife area.

**XV. TOWN MANAGER'S ITEMS**

Town Manager Hyatt spoke to the Lee County Sheriff's office regarding adding officers to Estero and Crescent and Old San Carlos and Estero for \$68,200.00. Adding a third officer to the pedestrian crossing would be \$34,800.00 for a total of \$103,000.00. Staff would be trained by the state to supplement the officers to help with high-impact areas. The gas tax would be used to fund the officers. Town Manager Hyatt will continue conversations with Captain Lalor regarding community policing.

Mayor Allers described an end-of-year appreciation event for crosswalk volunteers and suggested they reinstate that activity.

Town Manager Hyatt requested support for the mayor to speak on behalf of the town to request federal funds on Friday.

Dr. Savarese from the FGCU (Florida Gulf Coast University) water school requested the town's support with a letter regarding a NOAA (National Oceanic & Atmospheric Administration) study on barrier islands, sea level rise and future storms. There was no obligation to the town. The council did not object.

Operations & Compliance Director Frankie Kropocek stated that they would be on generator power until everything gets connected at the new trailers. He was waiting for FP&L to replace a transformer. Decking would be added to the trailers and furniture would arrive within the next week or so.

The new Public Works & Utilities Director, Mark Ashton, introduced himself and reviewed his experience in the area.

**XVI. TOWN ATTORNEY'S ITEMS**

Town Attorney Stuparich noted the Key Estero issue was moving forward and she thought they were getting ready to go to trial. She will keep the council updated.

She stated that, regarding the Persaud agreement, the town received \$250,000.00 and a bond supported by a letter of credit.

A. Resolution 23-182; Town Council Policies and Procedures

**Approve recommended changes, inclusive of those from the January 8, 2024 Town Council meeting and approve a resolution entitled:  
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA,  
ADOPTING AND AMENDING THE TOWN COUNCIL POLICIES AND  
PROCEDURES MANUAL; AND PROVIDING FOR AN EFFECTIVE DATE.**

Town Attorney Stuparich reviewed the changes suggested at the last meeting.

Council Member Woodson moved to approve the changes; seconded by Council Member King.

The motion carried unanimously by roll call vote.

## **XVII. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member Woodson stated that the Putt and Pub raised \$70,000.00 and will distribute \$55,000.00 to 10 local charities who participated in the event. She thanked everyone who participated. She noted that Resilient Lee would vote to adopt their plan on Thursday and noted it was overreaching, all-encompassing, and not as deep as she hoped it would be. She will attend the meeting and will voice her concerns. Mayor Allers agreed there were not a lot of specifics and thought that was their intent.

Mayor Allers asked if there was support for the town attorney to draft and sign a letter of support regarding a moratorium on funding reserves for the condos.

Council members supported the request. He said they would go to D.C. in early February to meet with legislative members regarding funding. Town Attorney Stuparich indicated that the council had to approve a resolution with a roll call vote to support legislative changes concerning the condo meeting discussions.

Mayor Allers moved to approve Resolution 24-18 regarding a moratorium on reserve funding for Fort Myers Beach condos; seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

Council Member King stated that the San Carlos Blvd. project had a start date and Chris Speese from the FDOT (Florida Department of Transportation) shared a presentation. Slides included Project Objectives; Project Overview; Project Schedule; Hurricane Bay Bridge; Main Street to Hurricane Bay Bridge; San Carlos Blvd. at Main Street Intersection; Matanzas Pass Bridge; Buttonwood/Prescott Signal Details; Seafarers Alternative with discussions regarding adding another pedestrian overpass and barriers to guide people to the crosswalks; Coordination with Other Local Projects; Project Website and Contact Information. Mr. Speese indicated that construction should begin in April 2024. Council Member Woodson questioned whether the light at Crescent could be changed to a flashing yellow. Mr. Speese will coordinate with the county to see what could be done.

## **XVIII. ADJOURNMENT**

Council Member King moved to adjourn; seconded by Council Member Woodson. The motion carried unanimously.

The meeting was adjourned at 12:21 p.m.

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

**What the action accomplishes:**

Extends the Town's Declaration of state of local emergency.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

**Attachments:**

1. 24-23, Extending Declaration of Local Emergency Ian 2.6.24-2.12.24
2. 24-24, Extending Declaration of Local Emergency Ian 2.13.24-12.19.24
3. 24-25, Extending Declaration of Local Emergency Ian 2.20.24-2.26.24
4. 24-26, Extending Declaration of Local Emergency Ian 2.27.24-3.4.24

**Financial Impact:**

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/29/2024  
Approved - 1/30/2024  
Approved - 1/30/2024  
Final Approval - 1/30/2024

## RESOLUTION 24-23

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS**, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS**, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

**WHEREAS**, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS**, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS**, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 6<sup>th</sup> day of February 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of January 2024.



## **RESOLUTION 24-24**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS**, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS**, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

**WHEREAS**, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS**, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS**, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 13<sup>th</sup> day of February 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of January 2024.

## RESOLUTION 24-25

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS**, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS**, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

**WHEREAS**, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS**, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS**, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 20<sup>th</sup> day of February 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of January 2024.

## RESOLUTION 24-26

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

**WHEREAS**, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

**WHEREAS**, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

**WHEREAS**, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

**WHEREAS**, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

**WHEREAS**, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 26<sup>th</sup> day of February 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.



Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of January 2024.

1. **Requested Motion:**

**Meeting Date: February 5, 2024**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

**Why the action is necessary:**

Keeps the Local State of Emergency in effect for Hurricane Idalia

**What the action accomplishes:**

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

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5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 23-99.

**Attachments:**

1. 24-27, Extension of Local Emergency - Idalia 2.6.24-2.12.24
2. 24-28, Extension of Local Emergency - Idalia 2.13.24-2.19.24
3. 24-29, Extension of Local Emergency - Idalia 2.20.24-2.26.24
4. 24-30, Extension of Local Emergency - Idalia 2.27.24-3.4.24

**Financial Impact:**

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Idalia

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/29/2024  
Approved - 1/30/2024  
Approved - 1/30/2024  
Final Approval - 1/30/2024

## RESOLUTION NUMBER 24-27

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS**, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS**, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

**WHEREAS**, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

**WHEREAS**, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

**THEREFORE**, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
  - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
  - Entering into contracts;
  - Incurring obligations;
  - Employment of permanent and temporary workers;
  - Utilization of volunteer workers;
  - Rental of equipment;
  - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
  - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
  - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
  - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
  - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
  - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
  - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
  - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
  - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
  - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
  - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
  - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

---

Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

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Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of February 2024.

## RESOLUTION NUMBER 24-28

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS**, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS**, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

**WHEREAS**, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

**WHEREAS**, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

**THEREFORE**, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order



specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
  - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
  - Entering into contracts;
  - Incurring obligations;
  - Employment of permanent and temporary workers;
  - Utilization of volunteer workers;
  - Rental of equipment;
  - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
  - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
  - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
  - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
  - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
  - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
  - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
  - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
  - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
  - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
  - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
  - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

---

Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

---

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of February 2024.

## RESOLUTION NUMBER 24-29

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS**, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS**, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

**WHEREAS**, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

**WHEREAS**, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

**THEREFORE**, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
  - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
  - Entering into contracts;
  - Incurring obligations;
  - Employment of permanent and temporary workers;
  - Utilization of volunteer workers;
  - Rental of equipment;
  - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
  - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
  - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
  - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
  - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
  - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
  - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
  - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
  - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
  - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
  - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
  - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |



ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

---

Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

---

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of February 2024.

## RESOLUTION NUMBER 24-30

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE**

**WHEREAS**, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

**WHEREAS**, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

**WHEREAS**, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

**WHEREAS**, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

**THEREFORE**, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

**SECTION 1. State of Local Emergency.** The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
  - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
  - Entering into contracts;
  - Incurring obligations;
  - Employment of permanent and temporary workers;
  - Utilization of volunteer workers;
  - Rental of equipment;
  - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
  - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
  - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
  - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
  - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
  - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
  - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
  - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
  - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
  - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
  - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
  - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

**SECTION 2. Conflicts.** Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

**SECTION 3. Severability.** If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

**SECTION 4. Effective Date and Termination Date.** This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

**SECTION 5. Direction to Implement.** The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             |     |
| Jim Atterholt, Vice Mayor     |     |
| John R. King, Council Member  |     |
| Vacant, Council Member        | N/A |
| Karen Woodson, Council Member |     |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

---

Dan Allers, Mayor

**ATTEST:**

---

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

---

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 6<sup>th</sup> day of February 2024.

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION AMENDING THE PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR USE OF DISTRICT PROPERTY AS A TOWN HALL UNTIL MARCH 31, 2024; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

Additional time is necessary to allow for the delivery of new Town Hall facilities, and the clean up and vacation of fire district property.

**What the action accomplishes:**

It allows the Town to use the Fire District's property across the street from the damaged Town Hall as a location for a temporary Town Hall.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The Town entered into a Permissive Use License Agreement with the Fort Myers Beach Fire Control District for the use of the property located at 2545 Estero Blvd. on January 9, 2023 for the location of temporary Town Hall facilities.

The Town Council approved an amendment to extend the use of the property until January 31, 2024 through Resolution 23-183. This additional amendment will extend the use of the property until March 31, 2024.

**Attachments:**

1. 24-21 Approving TFMB & FMBFCD Amendment to Permissive Use License Agreement
2. SECOND AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT (1)

**Financial Impact:**

6. **Alternative Action**

Do not approve the amendment.

7. **Management Recommendations:**

Approve the amendment.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk  
Joe Onzick, Finance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/29/2024  
Approved - 1/29/2024  
Approved - 1/30/2024  
Approved - 1/30/2024  
Final Approval - 1/30/2024

## **RESOLUTION NUMBER 24-21**

### **A RESOLUTION AMENDING THE PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR USE OF DISTRICT PROPERTY AS A TOWN HALL UNTIL MARCH 31, 2024; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town entered into a Permissive Use License Agreement with the Fort Myers Beach Fire Control District (“District”) for the use of District property as a location for a temporary Town Hall because of the catastrophic damage caused by Hurricane Ian to the building in which Town Hall previously operated out of; and

**WHEREAS**, the Town Council deemed it to be in the best interests of the business owners, residents, and visitors of the Town to enter into the License Agreement with the District.

**WHEREAS**, the Town Council previously approved an extension of the expiration date of the agreement until January 31, 2024; and

**WHEREAS**, the Town wishes to extend the expiration date of the agreement again until March 31, 2024.

### **NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. The Amendment to Permissive Use License Agreement between the Town and District, a copy of which is attached as Exhibit “A” is approved. The Mayor is authorized to execute the Amendment to Permissive Use License Agreement on behalf of the Town, and the Town Manager is authorized to expend budgeted funds on behalf of the Town to implement the amendment.



Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Vacant, Council Member        | N/A   |
| Karen Woodson, Council Member | _____ |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day February 2024.

## **SECOND AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT**

THIS SECOND AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT is made and entered into this 5<sup>th</sup> day of February 2024, (“Amendment”), and is by and between Fort Myers Beach Fire Control District, an independent special district of Florida, whose mailing address is 100 Voorhis St, Fort Myers Beach, Florida 33931, hereinafter called “LICENSOR”, and Town of Fort Myers Beach, a Florida municipal corporation, whose mailing address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931, hereinafter called “TOWN”, and amends that certain PERMISSIVE USE LICENSE AGREEMENT entered into on the 9<sup>th</sup> day of January, 2023 and amended on the 4<sup>th</sup> day of December 2023. (“Agreement”); and

WHEREAS, LICENSOR is the owner of certain property in the Town of Fort Myers Beach, Lee County, Florida, located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida and being further identified as Strap #19-46-24-W3-00458.0000 and #19-46-24-W3-00458.0010 (collectively the “Parcel”); and

WHEREAS, TOWN is desirous of obtaining the continued permission to use, as provided in the Agreement, a portion of said Parcel of the LICENSOR for the additional month of December, 2023.

NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar (\$1.00) cash in hand paid by the TOWN to the LICENSOR, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. USE AND TERM - LICENSOR, subject to the conditions herein expressed, does hereby grant unto the TOWN, the continued privilege and license to use the area indicated in Exhibit “A” of the Agreement (“Site Area”) for the continued placement and use of a temporary Town Hall for an additional two month period ending on March 31, 2024.
2. REMAINING TERMS – Other than the Term of the Agreement, which Term shall be extended for two additional months, all terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the LICENSOR and TOWN have executed this Second Amendment to the Agreement as of the date and year first above written.

WITNESSES:

LICENSOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Scott Wirth, Fire Chief

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

TOWN:

\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

\_\_\_\_\_  
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY FOR THE USE AND RELIANCE  
OF THE TOWN OF FORT MYERS BEACH  
ONLY:

\_\_\_\_\_  
Vose Law Firm, Town Attorney

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY TRAFFIC DETAIL SERVICES IN THE AMOUNT OF \$68,800; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

To provide extra traffic duty detail at the light at the base of the bridge by Times Square and enforcement of the signal at Old San Carlos Boulevard and Estero Boulevard (Fifth Street).

**What the action accomplishes:**

Ratifies the Town's execution of the contract documents and expend the funds.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chelsea O'Riley, Public Works  
Director

5. **Background:**

These extra-duty agreements were discussed at the January 22, 2024 Town Council Meeting in which the Town Manager had consensus from the Town Council to sign these agreements and bring them back to the Town Council at their next meeting for ratification.

The Agreements cover both Estero/Crescent Street and Old San Carlos Boulevard/Estero Boulevard.

Uniformed deputies to assist with traffic control and pedestrian crossing. Primary function of the detail will be to limit pedestrian crossing and getting vehicles through the intersection to keep the flow of traffic moving. Deputies will run the light and hold pedestrians until there is a natural break in traffic. Details will be scheduled through Easter 3/31/24.

**Attachments:**

1. 24-22 Ratifying Lee County Sheriff Extra Duty Detail Contract
2. 2024 TFMB Sheriff Detail Request Form Signed
3. 2024 TFMB Sheriff Detail Exhibit A

**Financial Impact:**

\$68,800 from Gas Tax

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Approve the contract(s).

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk

Created/Initiated - 1/29/2024

Joe Onzick, Finance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Approved - 1/29/2024  
Approved - 1/30/2024  
Approved - 1/30/2024  
Final Approval - 1/30/2024

## **RESOLUTION NUMBER 24-22**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY TRAFFIC DETAIL SERVICES IN THE AMOUNT OF \$68,800; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the law enforcement services within the Town are provided by the Lee County Sheriff's Office; and

**WHEREAS**, the Lee County Sheriff's Office has the capacity to provide extra traffic detail services for the Town; and

**WHEREAS**, the Town Council previously reached consensus to authorize the Town Manager to execute a traffic detail agreement to address traffic concerns on the island at their January 22, 2024 meeting and ratify the agreement at their next meeting; and

**WHEREAS**, the Town wishes to ratify and approve the traffic detail agreement for services through March 31, 2024 at the intersections of Estero Boulevard/Crescent Street and Estero Boulevard/Old San Carlos Boulevard.

### **NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

Section 1. The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

Section 2. This Resolution ratifies and approves the Town Manger's execution of a contract agreement with the Lee County Sheriff to provide extra-duty traffic detail in the amount of \$68,800.

Section 3. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a roll call vote, the result was as follows:

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Karen Woodson, Council Member | _____ |
| Vacant, Council Members       | N/A   |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day February 2024.

# Detail Request Form - continued

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                          |                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| LCSO Details Main Phone Number: 239-477-1199                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                          |                                                                |
| Vendor Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                          |                                                                |
| Business Name: <u>Town of Ft Myers Beach - Traffic light &amp; OSC</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                          |                                                                |
| Street: <u>2525 Estero Blvd</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                          |                                                                |
| City: <u>Ft Myers Beach</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | State: <u>FL</u>                                                                         | Zip Code: <u>33931</u>                                         |
| Business Contact: <u>Andy Hyatt</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                          | Phone: <u>239-765-0202 x1100</u>                               |
| Email Address: <u>Andyhyatt@fmbgov.com</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                          |                                                                |
| Event Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                          |                                                                |
| Detail Location: <u>Estero/Crescent &amp; Old San Carlos/Estero Blvd</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                          |                                                                |
| Street: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                          |                                                                |
| City: <u>Ft Myers Beach</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | State: <u>FL</u>                                                                         | Zip Code: <u>33931</u>                                         |
| Contact During Event: <u>West District Supervisor on Duty</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                          | Phone: _____                                                   |
| Event Date: <u>1/26/24 through 3/31/24</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                          | Event Time: <u>12p-8p weekdays &amp; 11a-7p Sat/Sun</u>        |
| Anticipated Crowd Size: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                          | Type of Event: <u>Traffic light control &amp; ped crossing</u> |
| Additional Security Working Detail: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, how many? _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                          |                                                                |
| Permits Attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Alcohol Served: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                          |                                                                |
| Detail Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                          |                                                                |
| Security/Funeral <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Traffic/Boat <input checked="" type="checkbox"/>                                         | Prisoner Trans/Civil <input type="checkbox"/>                  |
| CSA/Dispatcher <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Bomb Sweep <input type="checkbox"/>                                                      | CSA Holiday <input type="checkbox"/>                           |
| Last Minute/Holiday <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Supervisor <input type="checkbox"/>                                                      | Holiday Sup/IC <input type="checkbox"/>                        |
| Marked Vehicle <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Unmarked Vehicle <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No     |                                                                |
| Uniformed Deputy <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Plain Clothes Deputy <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |                                                                |
| Detail Description:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                          |                                                                |
| <p>Uniformed deputies to assist with traffic control and pedestrian crossing. Primary function of the detail will be to limit pedestrian crossing and getting vehicles through the intersection to keep the flow of traffic moving. Deputies will run the light and hold pedestrians until there is a natural break in traffic. Deputies will be paid drive time to &amp; from detail. Details will be scheduled through Easter 3/31/24. Holiday rate of \$75/hr will be charged for Easter. Estimated total from 1/26 through 3/31 is \$68800 and does not take into account the deputies being held over.</p> |                                                                                          |                                                                |



*"The Lee County Sheriff's Office is an Equal Opportunity Employer"*  
**14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000**



## **AGREEMENT FOR EXTRA-DUTY DETAIL SERVICES**

This Agreement for **Extra-Duty Detail Services** ("The Agreement" or "Agreement"), effective upon the date of LCSO's signature, is made by and between Sheriff Carmine Marceno, in his official capacity as Sheriff in and for Lee County, Florida and the Lee County Sheriff's Office (hereinafter "LCSO"), and Town of Ft Myers Beach - Traffic light & OSC \_\_\_\_\_, (hereinafter "Entity"), and collectively as "the parties", hereby agree as follows:

### **WITNESSETH:**

**WHEREAS**, Entity plans to engage in an event as set forth, and at a location set forth, in Exhibit A and desires, as a security measure, a law enforcement presence at said event; and

**WHEREAS**, the LCSO is willing to provide law enforcement personnel, acting in an extra-duty detail capacity, to provide services described herein and set forth in Exhibit A while wearing LCSO uniforms, utilizing LCSO vehicles, and other LCSO property; and

**WHEREAS**, Exhibit A attached hereto is a material part of the Agreement and is incorporated and merged as if fully set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations undertaken by the parties as contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Authority.**

The Entity expressly represents it or they are legally authorized to bind the Entity. The Entity fully comprehends and acknowledges the LCSO is acting in reliance on this, as well as other representations the Entity has made to members of the LCSO. The Entity further expressly represents that it or they has/have acquired all necessary applicable permits to engage in the event for which they are requesting LCSO law enforcement personnel as set forth in **Exhibit A**.

2. **Description and Schedule of Event.**

The description of the event, including the time, place, and duration, are set forth in Exhibit A, which is attached hereto and incorporated as if full set forth herein.

3. **Term of Agreement.**

The term of this Agreement shall begin on the first day of the event and terminate on the last day of the event as set forth in Exhibit A.

4. **Assessment of Security Needs and Authority Retained by LCSO.**

The Entity understands and consents to the LCSO conducting an assessment of the security needs of the Entity for the event location set forth in Exhibit A. The Entity understands the assessment of the referenced security needs by the LCSO is conducted by the LCSO, at their sole and absolute discretion, to allow LCSO to determine the minimum number of extra-duty detail law enforcement personnel adequate for the event. The Entity acknowledges the assessment of security needs by LCSO as set out herein does not constitute a representation, promise, guarantee or warranty by LCSO that LCSO will be able to supply the minimum number of off-duty or extra-duty detail law enforcement personnel which LCSO determines are required.

The Entity understands the extra duty detail services provided to the Entity are intended to offer an immediate presence of uniformed, sworn law enforcement personnel and to, by their presence alone, serve to potentially deter unruly or unlawful behavior. The Entity fully understands and accepts that by LCSO providing extra duty detail services pursuant to this Agreement LCSO is not assuming any duties of protection or care to any persons who may or may not be present at the location of the event as set forth in Exhibit A. The Entity acknowledges the extra-duty detail services provided by LCSO are merely to serve as a supplement to other measures and/or care provided or taken by the Entity and the Entity specifically DOES NOT expect or rely on LCSO to exclusively assume any duties of care.

5. **Scheduling and Command.**

The primary duties and essential functions of law enforcement personnel providing extra-duty detail services shall be as assigned by LCSO command.

The selection and scheduling of the law enforcement personnel providing extra-duty detail services shall be in accordance with the practices and policies of LCSO.

6. **Termination of Agreement.**

As set forth in Exhibit A.

7. **Compensation.**

As set forth in Exhibit A.

8. **Independent Relationships.**

The parties to this Agreement are solely independent of each other and are contracting with each other for the sole purpose of the obligations set forth in the Agreement. Nothing in this Agreement shall create a partnership, joint venture, agency, or employer/employee relationship. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

9. **Waiver of Terms and Conditions.**

The failure of LCSO to insist on any one or more instances of performance of any of the terms and conditions of this Agreement or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be considered as having waived any such terms, conditions, rights or privileges of the Agreement, and the same shall continue and remain in force and effect.

10. **Severability.**

It is the intention of the parties that this Agreement is in compliance with all relevant state and federal statutes, regulations, and governmental agency guidelines governing the relationship between the parties at the time of execution. If any provision of this Agreement is subsequently rendered invalid or unenforceable by any local, state or federal statute or regulation, or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

11. **Third Party Beneficiaries.**

This Agreement is intended solely for the benefit of the parties hereto and shall not, directly or by implication, create any rights, claims, obligations, or duties to any third party not a signatory to this Agreement.

12. **Assignment.**

This Agreement shall not be assigned in whole or in part by either party without the express prior written consent of the other party.

13. **Binding Effect.**

This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the Entity or the LCSO, as applicable.

14. **Governing Law.**

This Agreement shall be controlled, interpreted, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. The exclusive venue for any dispute arising out of this Agreement shall be in a court of competent jurisdiction in Lee County, Florida.

15. **Titles or Captions.**

The paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, modify, amplify, or describe the scope of this Agreement or the intent of any provision hereof.

16. **Draftsmanship.**

Any conflict in the terms of this Agreement shall be construed in favor of LCSO.

17. **Amendments.**

This Agreement may only be modified or amended by the mutual written agreement of the parties. Any such modification or amendment shall be signed by each party and shall be attached to and become a part of this Agreement.

18. **Indemnification.**

The Entity agrees to indemnify and hold harmless LCSO, and its employees, volunteers, and agents for and from any and all claims (direct or derivative), damages, costs, expenses, demands of whatsoever kind or nature, and causes of action, arising from or related to the Entity's performance, nonperformance, action(s), omission(s), or failure to act related to any duty or obligation imposed upon LCSO pursuant to the Agreement. This indemnification obligation shall not be subject to any limitation as to the amount or type of recovery sought, or, on the amount or type of insurance coverage secured by the Entity. Further, the Entity shall require all their insurance carriers, with respect to all insurance policies to which they are a party, to waive all rights of subrogation against LCSO incidental to the extra-duty detail service described herein.

19. **Sovereign Immunity.**

Nothing herein contained in this Agreement is intended, nor shall be construed, to waive any of the limitations of liability and other defenses provided by sovereign immunity and the strict financial limitations set forth in Florida Statute 768.28.

20. **Extra-Duty Detail Indemnification.**

Nothing contained in this Agreement shall in any way limit or impeded application of the indemnification language in Florida Statute 30.2905.

21. **Recitals/Entire Agreement.**

The recitals above are incorporated herein as if fully restated. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

ENTITY

Town of Ft Myers Beach - Traffic light & OSC

2525 Estero Blvd Ft Myers Beach FL 33931

By: Andrew Hyatt

Print Name: Andrew Hyatt

Date: 1/23/24

CARMINE MARCENO, SHERIFF O/BO/  
THE LEE COUNTY SHERIFF'S  
OFFICE

By: \_\_\_\_\_  
Sheriff/Designee

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Carmine Marceno**  
**Sheriff**



**State of Florida**  
**County of Lee**

**"Proud to Serve"**

**Exhibit A**  
**Detail Request Form**

Please review all information on this request form for accuracy and as the vendor, sign at the bottom. All details are a minimum of four (4) hours with the exception of boat details which are a minimum of six (6) hours and a half hour drive time to and from the detail location. When five (5) or more deputies are assigned to an event, a supervisor with the rank of Sergeant or above may be required at an upgraded hourly charge. Depending on the type of event or crowd size, it will be at the discretion of the Sheriff's Office to determine the number of deputies needed.

**The current detail rates are:**

|                             |                |                             |                |
|-----------------------------|----------------|-----------------------------|----------------|
| <b>Security/Funeral</b>     | <b>\$55/hr</b> | <b>Traffic</b>              | <b>\$65/hr</b> |
| <b>CSA/Dispatch Holiday</b> | <b>\$55/hr</b> | <b>Detail Supervisor</b>    | <b>\$75/hr</b> |
| <b>CSA/Dispatcher</b>       | <b>\$45/hr</b> | <b>Holiday Sup/IC</b>       | <b>\$85/hr</b> |
| <b>Boat</b>                 | <b>\$65/hr</b> | <b>Civil/Prisoner Trans</b> | <b>\$75/hr</b> |
| <b>Holiday/Last Minute</b>  | <b>\$75/hr</b> | <b>Bomb Sweep</b>           | <b>\$65/hr</b> |

*Details are charged a \$15 per deputy vehicle rate (when applicable).*  
*All boat details are charged a \$20 per hour boat rate (when applicable).*

Holidays: New Year's Day, Easter Sunday, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Eve

Extra Duty Details will not be provided to any person, firm or organization whose members, business or operations are of questionable nature; or for any event that will discredit the assigned Deputy, Sheriff's Office or County. The Sheriff's Office reserves the right to cancel the detail without notice and to recall the deputy(s) when necessary for community safety without penalty. LCSO cannot guarantee detail coverage.

The Lee County Sheriff's Office will be the only armed personnel at any event where the detail is taking place. Any private security company that is hired to work alongside the Sheriff's Office will be a reputable, licensed and insured company whose employees are State D licensed unarmed security guards. Proof of the signed contract with private security company will be required.

In order to cancel a detail, notice must be given to the Detail Coordinator twenty-four (24) hours prior to the start of the detail either by phone or email. In the case of weather, notice of cancellation must be received within two (2) hours of the starting time otherwise a two (2) hour charge per deputy will be billed. In the event of a cancellation after business hours, please call 239-477-1000 and ask to have the on-call Detail Coordinator call you. If cancellation notification is not made, and LCSO Detail Deputies show up to the detail, vendor will be billed the four-hour minimum for each deputy.

Unless otherwise specified, full payment of all details must be received one (1) week prior to the start of the event in the form of a cashier's check, money order, or business check made out to Lee County Sheriff's Office. Credit card payments can be made via telephone. The Lee County Sheriff's Office does not accept cash or personal checks. **Payments can be sent to: The Lee County Sheriff's Office 14750 Six Mile Cypress Pkwy., Fort Myers, FL 33912 ATTN: Details Unit.**

|                                    |                         |                                |                            |
|------------------------------------|-------------------------|--------------------------------|----------------------------|
| Total Deputy(ies) <u>2</u> per day | Total Hours <u>8</u> ea | Rate per Hour <u>\$65/\$75</u> | Vehicle Rate <u>Waived</u> |
| Supervisory Deputy(ies) _____      | Total Hours _____       | Rate per Hour _____            | Vehicle Rate _____         |
| <br>Entity _____                   |                         |                                |                            |



**"The Lee County Sheriff's Office is an Equal Opportunity Employer"**  
**14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000**

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS AND MONICA SCHMUCKER FOR SPECIAL MAGISTRATE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

To have available special magistrate resources, which will allow the Town to expedite and manage an anticipated increase in code enforcement cases for code violations (ex: litter and unsafe structures).

**What the action accomplishes:**

Ensures adequate resources are available to efficiently handle resolution of pending code violations and cases.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution.  
Consistent with direction from Council regarding the need to increase code enforcement efforts to eliminate litter and unsafe structures in the Town

4. **Submitter of Information:**

Gretchen R.H. Vose, Town Attorney, Nancy Stuparich, Town Attorney

5. **Background:**

The Town of Fort Myers Beach was severely damaged by Hurricane Ian in September 2022 and recovery efforts remain ongoing. However, in view of the time that has passed since the storm and the increasing return of residents and the public, the Town will be increasing its code enforcement efforts to address code violations and the removal of unsafe structures. For this reason, the Town Attorney requested authority to negotiate contracts with DOAH and Monica Schmucker at the January 22, 2024 Town Council meeting. We are exploring additional resources that may be needed to expedite hearings associated with these matters. Moreover, the current special magistrate has indicated that she may no longer be available to provide special magistrate services in the future.

**Attachments:**

1. 24-32, Special Magistrate Schmucker and DOAH
2. 2024 Agreement for Special Magistrate FMB\_Monica Schmucker (1) NS edits
3. Schmucker Monica Resume 2024Jan
4. Final FMB DOAH Contract
5. \* Added 2.2.2024 Schmucker Contract Addendum

**Financial Impact:**

The hourly rate for DOAH hearings (via Zoom) is \$200. Ms. Schmucker's hourly rate is \$250 and she will attend in person unless an unavoidable scheduling conflict arises. In 2023 (post Ian), the town paid \$850 for special magistrate services. Two invoices have yet to be received for hearings in 2023. In 2022, the Town paid approximately \$1800 for special magistrate services. Additional research found that Ms. Roche was paid \$190 per hour rather than \$250 as Council was previously informed. Ms. Roche has informed the Town she would like to terminate

her contract and has agreed to provide service to the Town until a replacement special magistrate is hired.

6. **Alternative Action**

Approve only one special magistrate contract.

7. **Management Recommendations:**

Concur

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk

Amy Baker, Town Clerk

Nancy Stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 1/30/2024

Approved - 1/30/2024

Approved - 1/31/2024

Approved - 1/31/2024

Final Approval - 1/31/2024



## **RESOLUTION NUMBER 24-32**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS AND MONICA SCHMUCKER FOR SPECIAL MAGISTRATE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the current special magistrate for code enforcement matters has informed the Town that she desires to terminate her contract; and

**WHEREAS**, it is anticipated that there may be a need for additional code enforcement services in the near future; and

**WHEREAS**, having more than one code enforcement special magistrate provides the Town with needed resources to avoid schedule or other conflicts of interest; and

**WHEREAS**, the Florida Department of Administrative Hearings provides qualified hearing officials to serve as local hearing examiners for local governments in matters such as code enforcement at a cost of \$200 per hours; and

**WHEREAS**, Monica Schmucker is a local attorney, who is similarly qualified to provide special magistrate services at a cost of \$250 per hour; and

**WHEREAS**, it is in the best interest of the Town to enter into the negotiated contracts with both Ms. Schmucker and DOAH for performance of special magistrate services.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. That the above recitals are true, correct, incorporated herein by this reference, and adopted as findings of the Town Council.

Section 2. That the Town Council hereby approves the agreement with addendum with Ms. Schmucker, attached as Exhibit A, and the agreement with DOAH, attached as Exhibit B, for the performance of special magistrate services for the Town's code enforcement cases.

Section 3. That this Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor \_\_\_\_\_  
Jim Atterholt, Vice Mayor \_\_\_\_\_  
John R. King, Council Member \_\_\_\_\_  
Karen Woodson, Council Member \_\_\_\_\_  
Vacant, Council Member \_\_\_\_\_

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of \_\_\_\_\_, 2024.

## **AGREEMENT FOR SPECIAL MAGISTRATE SERVICES TOWN OF FORT MYERS BEACH**

THIS AGREEMENT is made and entered into on this 5<sup>th</sup> day of February, 2024, by and between the Town of Fort Myers Beach, hereinafter referred to as the “Town”, and Monica Schmucker of Schmucker & Lavy Legal, PLLC, hereinafter referred to as the “Special Magistrate”.

WHEREAS, the Town periodically requires the services of a special magistrate to adjudicate various code enforcement matters in the Town as set forth in Article V-Code Enforcement, Division 2 of the Town of Fort Myers Beach Code of Ordinances and Chapter 162, Florida Statutes; and

WHEREAS, the Fort Myers Beach Town Council at their duly advertised public meeting on January 22, 2024 authorized staff to negotiate an agreement for the delivery of professional services to the Town of Fort Myers Beach as its Special Magistrate;

WHEREAS, the Special Magistrate is a licensed Florida attorney familiar with and qualified to perform the duties and responsibilities of a Special Magistrate as provided in the Town’s Code of Ordinances and Chapter 162, Florida Statutes and agrees to perform such services as may be requested by the Town.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. **TERM.** The term of this agreement shall begin on the 5th day of February, 2024, and shall continue for two (2-1) years, renewable on same terms or changed as agreed to by both parties as provided in Section 2-425(e), of the Town of Fort Myers Beach Code of Ordinances.
2. **SCOPE OF SERVICES.** The Special Magistrate will provide the Town with professional services relating to code enforcement issues in accordance Article V-Code Enforcement, Division 2 of the Town of Fort Myers Beach Code of Ordinances and Chapter 162, Florida Statutes
3. **COMPENSATION.** Town shall compensate the Special Magistrate for services rendered as follows:
  - a. Fees associated with professional services will be billed at a rate of \$250.00 per hour, rounded up to the nearest quarter hour. This rate shall apply to all relevant services rendered by the Special Magistrate, to include conducting hearings, reasonable preparation for hearings, and reasonable post-hearing activities necessary such as preparing findings, orders, or other necessary post-hearing documents.
  - b. Out of pocket costs will be charged at cost, with no mark-up or multiplier. There would be no separately billed copying charges unless it is deemed necessary to make copies through a third-party copying firm.
  - c. Travel and travel time will not be billed to the Town.
  - d. Fees will be billed monthly based on the hours of work performed. Billing will be due on the fifteenth day of each month.
4. **EXPERIENCE & COMPETENCY.** Special Magistrate represents to the Town that she has relevant experience and competency to deliver the services identified herein. A copy of the Special Magistrate’s resume is attached as Exhibit A.

5. INDEPENDENT CONTRACTOR. It is agreed that Special Magistrate is providing the services pursuant to this Agreement as an independent contractor and is not an employee of the Town. Special Magistrate shall not be eligible to receive any benefits otherwise provided to employees of the Town. This is not an exclusive agreement. Special Magistrate is free to contract with other parties for similar services.

6. INDEMNIFICATION. Special Magistrate agrees to defend, indemnify, and hold the Town harmless for any and all claims, losses, or injuries that may arise out of or result from Special Magistrate's actions or omissions of action relating to the services to be performed under the terms of this agreement.

7. TERMINATION. The Town or Special Magistrate may terminate this agreement for any or no cause with thirty (30) days written notice. In the event of termination, Special Magistrate will be paid for all services rendered to the date of termination. At conclusion, the Town shall be entitled to all files created and maintained pursuant to this Agreement.

8. LIMITATION ON REPRESENTATION. During the term of this appointment Special Magistrate shall not act as an agent or attorney in any proceeding, application or matter before any commission, board, agent, or other office of the TOWN.

STATUTORY REQUIRED PROVISION. Pursuant to Florida Statutes, required statutory contract clauses will be a part of and incorporated into this Agreement by virtue of an Addendum, dated February 5, 2024.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

\_\_\_\_\_  
Monica Schmucker, Esq.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mayor Dan Allers

\_\_\_\_\_  
Date

Approved as to form:

ATTEST:

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Town Clerk

# Monica Schmucker, Esquire

875 Oak Street • Fort Myers Beach, Florida 33931 • monica@snllegal.com • (574) 261-5375

## **EDUCATION**

**University of Notre Dame Law School**, Notre Dame, Indiana

2009 – 2012

### ***Juris Doctor***

- Cum Laude
- CALI's Excellence for the Future Award and Notre Dame's Dean's Award: Labor and Employment Law
- ABA Section of Labor and Employment Law & Bloomberg BNA Award for Excellence in the Study of Labor and Employment Law
- Dean's List
- Notre Dame Journal of International, Comparative, and Human Rights Law, Founding Member, Editor
- Summer in London, International Law Programme; 2010
- International Law Society, Treasurer; 2010-2011
- Hispanic Law Students Association
- Student Bar Association, Social Committee

**Florida International University**, Miami, Florida

2000 – 2002

### ***Bachelor of Arts, International Relations***

- Minor in English
- Certificate in Latin American and Caribbean Studies

**Miami-Dade College**, Miami, Florida

1997 – 1999

### ***Associate of Arts, Pre-Bachelor of Arts***

- Distinguished member of Phi Theta Kappa: International Honor Society, Assistant Vice President of Service
- Study Abroad, Florence, Italy; 1998
- Received a full Honors Scholarship and graduated with Distinguished Honors

## **BAR ADMISSION**

Florida (2016), Middle District of Florida; **Inactive:** Indiana (2012), Northern District of Indiana, Southern District of Indiana

## **OTHER CERTIFICATIONS AND PROFESSIONAL QUALIFICATIONS**

Florida Supreme Court Certified Circuit Court Mediator; Florida Qualified Arbitrator; Title Insurance Agent

## **EXPERIENCE**

**Schmucker & Lavy Legal, PLLC**, North Fort Myers, Florida

2023-present

### ***Partner (Mediations, Arbitrations, Real Estate Transactions, and Litigation)***

- Conduct mediations and arbitrations
- Assist with real estate transactions and document preparation
- Handle Hurricane Ian insurance claims for homeowners and business owners, including litigation where warranted

**Henderson, Franklin, Starnes & Holt, P.A.**, Fort Myers, Florida

2020-2023

### ***Stockholder; Attorney at Law (Litigation)***

- Litigated and defended clients against negligence claims and lawsuits
- Represented homeowners and business owners, assisting them with their Hurricane Ian insurance claims
- Managed large caseloads in a fast-paced, medium-size general practice law firm, handling cases mostly involving insurance defense of bodily injury claims, focusing on premises liability, vehicle negligence, and first party property
- Developed strategy and performed all necessary tasks throughout all stages in litigation
- Engaged in client development, including presenting seminars and continuing education courses
- Supervised associate attorneys in handling their caseloads through all stages of litigation, strategy development, and reporting
- Conducted mediations and arbitrations

**Cole, Scott & Kissane, PA**, Bonita Springs and Fort Myers, Florida

2016-2020

### ***Partner; Associate Attorney (Defense Litigation)***

- Litigated and defended clients against negligence claims and lawsuits
- Managed large caseloads in a fast-paced, large litigation firm, mostly involving insurance defense of bodily injury claims, focusing on premises liability, vehicle negligence, wrongful death, and general liability
- Developed strategy and performed all necessary tasks throughout all stages in litigation
- Met and exceeded monthly projections of billable hours while maintaining high quality standards for work produced, providing efficient and particularized service for each specific case, and achieving sincere client satisfaction
- Engaged in client development, including presenting seminars and continuing education courses
- Trained and supervised associate attorneys in handling their entire large caseloads throughout all stages of litigation, strategy development, reporting, and billing

**Metzger Rosta, LLP**, Noblesville, Indiana

2014-2016

### ***Associate Attorney (Defense Litigation)***

- Handled large caseloads in a fast-paced, small litigation firm, mostly involving insurance defense, dram shop and premises liability, vehicle negligence, and subrogation, and including some family law, employment law, and general practice litigation
- Drafted and filed pleadings and motions, conducted discovery and depositions, attended court hearings and mediations, conducted bench trials, and performed all other litigation tasks necessary

**Harrison College, Paralegal Studies Department and Criminal Justice Department**, Indianapolis, Indiana

2014-2016

### ***Instructor***

- Instructed online paralegal courses and on-the-ground, evening criminal justice courses

## Monica Schmucker, Esquire

### Office of the Indiana Attorney General, Licensing Enforcement and Homeowner Protection Unit, Indianapolis, Indiana 2012-2014 *Deputy Attorney General*

- Addressed consumer complaints pertaining to mortgage servicing and origination, provided mediation for consumers facing issues related to mortgage servicing, and assisted with loss mitigation options for consumers facing foreclosure
- Investigated allegations of violations of law against mortgage servicers and originators and brought forth appropriate litigation enforcing such laws
- Brought administrative actions against real estate licensees who violated laws and non-licensees practicing without a license
- Filed civil suits to enforce laws against foreclosure consultants or persons involved in other real estate-related scams
- Supervised several case analysts and investigators who assisted in the investigation of consumer complaints

### LaPorte Superior Court 1, Michigan City, Indiana 2012 *Judicial Law Clerk for Judge Kathleen Lang*

- Observed the various cases and hearings before the court
- Researched legal issues and wrote legal memoranda advising the Judge of results of research

### University of Notre Dame Law School, Notre Dame, Indiana 2012 *Research Assistant to Professor G. Robert Blakey*

- Co-wrote law review article about state of mind requirements in statutory interpretation
- Researched the history of organized crime and what led to the drafting of RICO
- Wrote footnotes for G. Robert Blakey's article about RICO's Evolution, Scope, and Rationale

### Notre Dame Clinical Law Center (Legal Aid Clinic), Notre Dame, Indiana Spring 2012 *Certified Legal Intern*

- Represented clients and made decisions regarding litigation and other legal matters involved in assigned cases
- Drafted and filed legal documents with the court, including complaints, motions, orders, and notices
- Attended hearings and conferences, being solely responsible for arguments at such hearings
- Negotiated settlements, interviewed clients, and conducted depositions

### Wooden & McLaughlin, LLP, Indianapolis, Indiana Summer 2011 *Summer Associate*

- Assisted attorneys with legal research and wrote legal memoranda with results of research in a variety of practice areas, including employment law, vicarious liability, mortgage recovery, asbestos, securities regulations, and environmental regulations regarding wetland mitigation systems
- Participated in commercial real estate closings, depositions, and settlement conferences, and assisted in damages calculations

### University of Notre Dame Law School, Notre Dame, Indiana Spring, Summer 2010 *Research Assistant to Professor Stephen Smith*

- Researched Sex Offender Statutes in Indiana, their many amendments, and *ex post facto* prohibition in both the Indiana and United States Constitution
- Researched how federal courts read *mens rea* requirements into statutes
- Wrote legal memoranda regarding results of research

### Miami Dade County Public Schools, Campbell Drive Middle School, Miami, Florida 2004 – 2009 *Literacy (Language Arts, Reading, English) Teacher*

- Created and implemented lesson plans to promote literacy in struggling readers and achieve learning gains
- Worked in a *School Improvement Zone* school, requiring additional school hours, days, and professional development hours
- Worked with Special Education students in a regular classroom setting as an inclusion teacher

#### *Grade-Level Team Leader*

- Planned, actualized, and oversaw all grade-level activities, including fundraisers, fieldtrips, T-shirt design and sales, and such
- Devised and executed disciplinary measures for all students in the grade level
- Acted as a liaison between administrators and teachers in the grade level
- Conducted weekly team meetings to communicate team and school issues with teachers
- Created themed units, held collaborative planning sessions for all grade-level teachers, and organized teacher workshops

#### *Drama Teacher/ Drama Club Sponsor*

- Exposed economically disadvantaged students to fine arts, stirred interest, and encouraged participation
- Acted as director; producer; stage manager; sound engineer; and set, prop, and costume designer for student performances
- Planned fieldtrips to view live productions in local theatres

### Miami Dade College, Kendall Campus, Miami, Florida 2004 – 2009 *Adult Education: Instructor of English for Speakers of Other Languages*

- Taught English to non-English speaking professional adults, including five different levels of grammar, reading, writing, conversation, workplace skills, and civics
- Developed and presented curriculum for the vocational English program
- Prepared students to pass a mandatory standardized state exam each semester

## LANGUAGES

English, Spanish, basic study of Italian and Portuguese

## ASSOCIATIONS

Lee County Bar Association; Calusa Inn of Court, *Barrister*; Fort Myers Beach Woman's Club *Past President /Social Committee Chair*; Friends of Lover's Key; Fort Myers Beach Elementary PTO; Ad-Hoc Committee Member for the Rebuild of Beach School. Former: Fort Myers Beach Nuisance Abatement Board, *Chair*; Lee County Association for Women Lawyers.

## ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

This CONTRACT is between the TOWN OF FORT MYERS BEACH, (hereinafter the

“TOWN”), and the State of Florida, Division of Administrative Hearings (DOAH).

WHEREAS, Section 120.65, Florida Statutes, authorizes DOAH to provide Administrative Law Judges (ALJs) on a contract basis to any governmental entity;

WHEREAS, the TOWN desires to use the services of DOAH’s ALJs to conduct hearings for code enforcement hearings for which ALJs may adjudicate violations, liens, and enforcement as provided by Chapter 162, Florida Statutes and the TOWN Code of Ordinances; and

NOW, THEREFORE, the parties, for valuable consideration and the mutual promises between them, agree as follows:

1. Scope of Services. The foregoing Recitals are hereby incorporated herein as if fully restated. DOAH agrees to make ALJs available to the TOWN. The ALJs will be full-time judges employed by the State of Florida, Division of Administrative Hearings, and are experts in the adjudication of administrative disputes.
2. Compensation. The fiscal year 2003-2004 General Appropriation Act, Chapter 2003-397, Laws of Florida, requires DOAH to renegotiate its contracts for ALJ services annually so that the hourly rate charged is based on a total – cost recovery methodology. The rate has been determined to be \$200.00 per hour beginning October 1, 2023. DOAH will notify the TOWN of the amended hourly rate on or about the first day of September of each year. That rate will become effective on the first day of October of that same year. The TOWN agrees to compensate DOAH for each hour actually worked, and subsequently, at the hourly rate determined in accordance with the Florida Legislature’s directive. This rate will apply for ALJ services in preparing for hearings, traveling to hearings, conducting hearings, and preparing Recommended Orders.

## ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

3. Expenses. The TOWN agrees to pay the actual travel expenses, if required, of the assigned ALJ in the amount provided pursuant to Chapter 112, Florida Statutes. DOAH will submit invoices monthly and the TOWN agrees to remit payment monthly in accordance with Chapter 218, Part VII, Florida Statutes. DOAH agrees to provide the TOWN an itemized statement of the charges and costs in the invoice. Unless otherwise requested the parties agree that hearings will be held electronically when possible negating the need for the payment of travel expense.
4. Contract Management. Megan Silver, Executive Director & Administrative Law Judge, and Patricia Kenyon, Operations Manager, will provide contract management services under this Contract for DOAH.
5. Term. This contract is for a term of one (1) year and will automatically renew for succeeding yearly periods one year from the date last signed. This contract may be amended from time to time by mutual agreement of the parties, and may be terminated by either party for the convenience of that party upon thirty (30) days' written notice.
6. Request for Services. To initiate a proceeding, the TOWN shall send a letter to the Chief Judge, Division of Administrative Hearings, requesting the assignment of an ALJ and shall include with such request a copy of the relevant agency action letter, claim asserted and/or request for hearing, as well as any code provisions or other local procedure that governs the type of hearing requested. DOAH shall assign an ALJ promptly after receipt of the letter.
7. Effective Date. This Contract will become effective on the date the last signature is made.
8. Notices. All notices required or permitted by this Contract shall be in writing, and shall be deemed to have been duly given if mailed first-class, certified postage prepaid, addressed as follows:

To The Entity



ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

Town Manager  
Town of Fort Myers Beach  
2525 Estero Boulevard  
Fort Myers Beach, Florida 33931  
239-765-0202

To: DOAH  
State of Florida, Division of Administrative Hearings  
Attn: Patricia Kenyon, Operations Manager  
1230 Apalachee Parkway  
Tallahassee, FL 32301  
850-488-9675

WHEREUPON, the parties have executed this Contract as follows:

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk  
Approved by the Town Council on the \_\_\_\_ day of \_\_\_\_\_, 2024

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE TOWN OF FORT  
MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, Town Attorney

ADMINISTRATIVE LAW JUDGE SERVICES CONTRACT

STATE OF FLORIDA, DIVISION  
OF ADMINISTRATIVE HEARINGS

\_\_\_\_\_  
Megan S. Silver  
Executive Director & Administrative Law Judge

\_\_\_\_\_  
Date

**TOWN OF FORT MYERS BEACH, FLORIDA**  
**CONTRACT ADDENDUM**

**THIS STANDARD CONTRACT ADDENDUM** is made and entered into this 5th\_ day of February, 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Monica Schmucker of Schmucker & Lavy Legal, PLLC hereinafter referred to as “Contractor”, concerning that certain Agreement for Special Magistrate Services, approved by the Town Council of the Town of Fort Myers Beach on February 5, 2024.

**WITNESSETH:**

**WHEREAS**, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning a contractor’s compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern” and any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

**2. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2525 ESTERO BLVD.  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
AMY@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but

(Last Rev. 12/23)

not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with

Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services". Pursuant to section 268.101(7), F.S.: "In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause."

**8. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

**9. Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

(Last Rev. 12/23)

**10. Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11. Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**12. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

**13. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**14. Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:** Monica Schmucker

\_\_\_\_\_  
**Print Name:** Monica Schmucker

**Company:** Schmucker & Lavy Legal, PLLC

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

(Last Rev. 12/23)

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**Vose Law Firm, Town Attorney**

(Last Rev. 12/23)



1. **Requested Motion:**

**Meeting Date: February 5, 2024**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND STEWART MINE MATERIALS FOR THE PURCHASE OF 170,000 TONS OF BEACH COMPATIBLE SAND FOR \$2,014,500.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The purpose of this request is to purchase beach compatible sand that meets the Town's specifications: All dune and beach fill sediment shall be free of construction debris, rocks, or other foreign matter, and shall not contain, on average, greater than 3% fines (i.e., silt and clay) (passing the #230 sieve); and shall not contain, on average, greater than 1% coarse material (retained on the #4 sieve); and shall have a mean grain size ranging from 0.25 mm to 0.35 mm and a moist Munsell 10yr color-value/chroma of 8/1 or lighter.

The vendor, Stewart Materials, will be responsible for providing the beach compatible sand that meets the Town's specifications for the Beach.

Beach compatible sand is needed to restore the Town's beaches from Hurricane Ian impacts, including but not limited to repair and restoring beach accesses, construction of a berm to protect upland properties along segments of beach that did not qualify for the FEMA emergency berm, filling in scours, and renourishment of the segment of beach known as Carlos Point Beach.

**What the action accomplishes:**

The sand purchased will help restore the Town's beaches by filling in scours caused by Hurricane Ian, by providing a protective berm for upland properties, and by raising the elevation of the beach providing critical habitat for endangered and threatened species including sea turtles and shorebirds.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental  
Services

5. **Background:**

Hurricane Ian devastated Fort Myers Beach causing substantial erosion of the beach. Over 220,000 cubic yards of sand were lost from the beach. In addition, beach accesses were compromised, and the loss of elevation along the beach has left upland properties vulnerable to king tides and future storms.

**Attachments:**

1. 24-31 Stewart Mine Materials NS CDC 240130
2. Town of Ft Myers Beach - Beach sand 2024

**Financial Impact:**

The cost of the sand purchase from Stewart Mine will be paid for by the FDEM Grant Agreement Number: D1502.

The Environmental Project Manager has provided the Finance Director with written justification of the need to purchase the needed sand from Stewart Mine Materials and the Finance Director

agrees with the stated justification that Stewart Materials is the only Florida Department of Environmental Protection approved upland sand source with a moist Munsell 10YR color-value/chroma of 8/1 or lighter to match native beach sand.

The needed purchase of the sand from Stewart Materials exceeds \$20,000 and requires approval from the Town Council.

6. **Alternative Action**

Do not restore beach accesses, construct a berm, and restore Carlos Point Beach to pre-hurricane Ian conditions.

7. **Management Recommendations:**

Approve the sole source purchase of beach compatible sand from Stewart Mine.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services  
Frankie Kropacek, Operations & Compliance Director  
Joe Onzick, Finance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/25/2024  
Approved - 1/26/2024  
Approved - 1/26/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024

## **RESOLUTION NUMBER 24-31**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SOLE SOURCE PURCHASE AGREEMENT BETWEEN THE TOWN AND STEWART MATERIALS LLC FOR THE PURCHASE OF 170,000 TONS OF BEACH COMPATIBLE SAND FOR \$2,014,500.00 AS A SOLE SOURCE PROVIDER; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, beach compatible sand is needed to restore the Town's beaches from Hurricane Ian impacts, including but not limited to repair of or restoring beach accesses, construction of a berm to protect upland properties along segments of beach that did not qualify for the FEMA emergency berm, filling in scours, and renourishment of the segment of beach known as Carlos Point Beach; and

**WHEREAS**, Section 2-480(c) of the Town of Fort Myers Beach Code of Ordinances permits the award of a contract without competition when the Finance Director, in conjunction with a department director determines in writing after conducting a good faith review of available sources, that there is only one source for the required product; and

**WHEREAS**, the Environmental Project Manager has provided the Finance Director with written justification of the need to purchase the needed sand from Stewart Materials LLC and the Finance Director agrees with the stated justification that Stewart Materials LLC is the only Florida Department of Environmental Protection approved upland sand source with a moist Munsell 10YR color-value/chroma of 8/1 or lighter to match native beach sand; and

**WHEREAS**, the needed purchase of the sand from Stewart Materials LLC exceeds \$20,000 and requires approval from the Town Council; and

**WHEREAS**, the Town Council has determined it is in the best interest of the Town to approve the requested sole source purchase agreement with Stewart Materials LLC.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council hereby approves the sole source purchase agreement between the Town and Stewart Materials LLC, for the purchase of 170,000 tons of beach compatible sand for a cost of \$2,014,500.00. A copy of the Sole Source Purchase Agreement is attached hereto as Attachment “A”.

The foregoing Resolution was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Vacant, Council Member        | N/A   |
| Karen Woodson, Council Member | _____ |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.



## Approved FDOT Aggregate Source Base and Stabilization Materials

**Sand    Shell    Screenings    Topsoil    Fill**

Date Proposed: January 16, 2024

Proposed to: Town of Ft Myers Beach

Company Address: 2525 Estero Blvd, Fort Myers Beach, FL 33931

Contact Name: Chadd Chustz

Phone: \_\_\_\_\_

Cell: 239-462-8127

Email: [chadd@fmbgov.com](mailto:chadd@fmbgov.com)

Mine Site: Immokalee

Town of Ft Myers Beach

Project Name

Ft Myers Beach, FL

Project Location/County/Zip

2/1/2024

Approximate Start/End Date of Project

| NO.          | DESCRIPTION | QTY     | UNIT    | UNIT PRICE | TOTAL PRICE            |
|--------------|-------------|---------|---------|------------|------------------------|
| 1            | Beach Sand  | 170,000 | +/- Ton | \$ 11.85   | \$ 2,014,500.00        |
| 2            |             |         | +/- Ton | \$ -       | \$ -                   |
| 3            |             |         | +/- Ton | \$ -       | \$ -                   |
| <b>TOTAL</b> |             |         |         |            | <b>\$ 2,014,500.00</b> |

### Daily Volumes Subject to Availability

All prices, unless otherwise noted, are F.O.B. at seller's mine source. Applicable taxes are NOT included in the price of material. This proposal is valid for 60 days from the Date Proposed. This proposal will become null and void if purchaser does not submit a purchase order to seller matching the terms of this quote (including price, quantities, and period of time over which purchases are to be made) within 30 days of purchaser entering into a contract after bid award for the project referenced in this quote. This quote does not apply to any contract extensions for such referenced project – purchaser must request additional quotes for any such contract extensions. This proposal may be withdrawn at any time by seller prior to unconditional written acceptance by purchaser. Seller is not responsible for any delays not caused solely by Seller. In addition to these terms, all bids, proposals, orders, contracts, and agreements relating to the purchase and sale of sand, rock, general fill and/or other aggregate materials from Stewart Materials, LLC are subject to the "General Terms and Conditions" attached hereto (page 2) and incorporated herein by reference.

The undersigned accepts the above quotation:

STEWART MATERIALS, LLC

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

By Amanda Stewart

Title VP of Sales

Date 1/16/2024



## GENERAL TERMS AND CONDITIONS

In addition to the terms and conditions contained in the bid, proposal, order, contract, or agreement you have obtained from us regarding the sale/purchase of rock, sand, fill, and/or any other aggregate material (collectively, "Aggregate"), the following terms and conditions (collectively, "Terms") shall apply:

1. As used herein: (i) "we", "our", or "us" shall mean Stewart Materials, LLC and its directors, officers, employees, owners, affiliates, and subsidiaries; and (ii) "you" or "your" refers to all individuals and/or entities that have obtained a bid, proposal, order, contract, or agreement from us or who are purchasing or have purchased Aggregate from us.
2. You shall be deemed to have read and irrevocably and unconditionally agreed to these Terms as posted on our website before accepting a bid or proposal for the sale of Aggregate, placing an order for Aggregate, or purchasing Aggregate from us. Additionally, you acknowledge and agree that: (i) all bids, proposals, orders, contracts, or agreements relating to the sale/purchase of Aggregate from us are subject to these Terms; (ii) these Terms may be amended from time to time and all such bids, proposals, orders, contracts, or agreements are subject to the Terms in effect and published by us as of the date such bids, proposals, orders, contracts, or agreements are entered into; (iii) any amendments or changes to these Terms shall be effective immediately upon publication by us; and (iv) it is your responsibility to request the then current Terms published by us.
3. Under Florida's Construction Lien Laws (Florida Statutes Sections 713.001-713.37) we are classified as a materialman. Our standard practice is to provide a proposal setting out pricing for the specific job request and general information, such as our payment terms, which are net thirty (30) days from the date of the applicable statement. Unless otherwise stated in writing, a proposal from us is valid for sixty (60) days from date issued. Upon agreement to the terms set forth in our proposal and the required completed job information sheet and notice to owner information, we will set up your order and hauling can commence. In the absence of a returned signed proposal, ordering or taking delivery of Aggregate from us after receipt of a proposal shall be deemed your unconditional acceptance to the terms of the proposal and these Terms as if the proposal had been signed by you.
4. Our terms are FOB our mine sites. Once your hauler generates a ticket at our weight scale at our mine site(s) (whether or not your hauler takes physical possession of the ticket generated) and your hauler leaves our mine site(s), you are responsible for payment.
5. We are not responsible for overweight trucks.
6. Without a written manifest/dispatch on file in our scale house at the mine site(s), we will not be held responsible for incorrect materials or destinations and tickets will not be changed.
7. Requests for copies of tickets should be emailed to amanda@stewartmaterials.com and will be supplied as time permits. Before requesting a copy of a ticket from us, we suggest you first attempt to retrieve the tickets from your hauler.
8. Payment terms are net thirty (30) days from the date of the applicable statement or invoice and interest accrues at one and a half percent (1.5%) per month (eighteen percent (18%) per annum) from the due date. In the event of non-payment per the Terms, you agree to be obligated and liable to us, and to reimburse us immediately upon demand, for all costs of collection including reasonable attorney's fees, whether or not suit is filed, and through all efforts regarding collection including any appeal and collection efforts.
9. Accounts not paid within net thirty (30) days will be placed on hold until said account is brought current. No advance notice will be given to you if your account is placed on hold.
10. Any discrepancies on tickets must be brought to our attention within ten (10) calendar days from the date of invoice.
11. No terms not included herein have been or will be accepted by us unless in writing and signed by us.
12. If no valid sales tax exemption certificate is provided to us, you will be charged applicable sales tax.
13. We will be excused from entire or part performance under any bids, proposals, orders, contracts, or agreements to the extent such performance is prevented by an event of Force Majeure. As used herein, the term "Force Majeure" will include, but shall not be limited to, any of the following: allocations, expropriations, requisitions, priorities, restraints, or other acts of governmental, civil, military, or naval authorities (whether acting legally or otherwise); pandemic; acts of God or the elements; perils or accidents of the sea or other waters; cave-in, flood, windstorm, hurricane, or other damage from the elements; labor strike; riot; inability to obtain, or delay in obtaining necessary equipment or materials; inability or failure to obtain, delay in obtaining, or loss of any governmental authorizations, approvals, or permits; any federal, state, or local law or any order, rule, or regulation of any governmental authority; litigation; catastrophic failure or breakage in hull, machinery, plant, or equipment; acts of war, hostilities, interferences of public enemies or belligerents; fire or explosion; or any cause whatsoever beyond our reasonable control whether of the kind enumerated or otherwise. Such excuse from performance will continue until such Force Majeure event is eliminated or ceases to exist.
14. You agree to provide us with certificate(s) of insurance evidencing your general liability and workers compensation coverage upon request.
15. We do not make any representations or warranties of any kind whatsoever with respect to any sand, rock, general fill and/or other aggregate materials purchased or acquired from us, whether express or implied, and specifically disclaims any implied warranties, whether of merchantability, suitability, fitness for a particular use or purpose, or otherwise for said aggregate materials.

Page 2

1. **Requested Motion:**

**Meeting Date: February 5, 2024**

Approve the special event permit for the 2024 Shrimp Festival 5K run and parade, contingent on approval of FDOT, FMB Fire District, Lee County Sheriffs Office regarding the event and closure of the Matanzas Pass Bridge.

**Why the action is necessary:**

Council approval is needed to approve the special event permit and to apply for a permit from the Florida Department of Transportation to close the Mantanzas Pass Bridge.

**What the action accomplishes:**

The action would allow the Shrimp Festival 5K run and parade to occur as it has in the past.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Jeff Hauge, Culture, Parks &  
Recreation Director

5. **Background:**

Shrimp Fest has been a long tradition on Fort Myers Beach. The 5K run and parade have been a part of that tradition.

**Attachments:**

1. Special Event Application - Shimp Fest parage and 5K Run 2024
2. Matanzas Bridge North Detour
3. Matanzas Bridge Location
4. Shrimp Festival Event Schedule
5. Town of Ft Myers Beach Detour Route Map Shrimp Fest 2024
6. Shrimp Fest Temp Road Permit 2024
7. Shrimp Fest 5K Run Route

**Financial Impact:**

6. **Alternative Action**

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Jeff Hauge, Culture, Parks & Recreation Director  
Jeff Hauge, Culture, Parks & Recreation Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/26/2024  
Approved - 1/29/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024



# *Town of Fort Myers Beach*

## *Special Event Application Checklist*

2525 Estero Boulevard, Fort Myers Beach, Florida 33931  
Tel: (239) 765-0202 ext. 1303 \* Email: [Specialevents@fmbgov.com](mailto:Specialevents@fmbgov.com)

- ☐ All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.
- ☐ Detailed description of entire event including set up and breakdown
- ☐ Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder
- ☐ Site plan – marked off with placement of objects (chairs, tables, tents, etc.)
- ☐ Parking Plan – if applicable
- ☐ A copy of the 500 foot notification letter for any amplification along with the mailing list
- ☐ Letters of permission if using someone else's property for event.
- ☐ A **completed** application is to be turned in 45 days **prior** to the event or a \$5.00 per day cost will be added to the permit cost.
- ☐ If Town Council action is required the **completed** application must be turned in 60 days prior to the event in order to get put on the Council agenda to be brought forth to Council, also any application turned in after the 60 days a 10% additional charge to the permit will be added.





## Town of Fort Myers Beach

2525 Estero Boulevard, Fort Myers Beach, Florida 33931  
Tel: (239) 765-0202 Email: [Specialevents@fmbgov.com](mailto:Specialevents@fmbgov.com)

Name of event Fort Myers Beach Shrimp Fest Festival

Date(s) and times of event: March 9, 2024 8:00am – 9:00pm – March 10, 2024 8:00am – 7:00pm

Address of event Old San Carlos Blvd from 3<sup>rd</sup> Street to Bayside Veterans Park, Mantanzas Pass Bridge

Parade: Estero Blvd (Library to Bayside Veterans Park (Saturday 9:00am – 12:00pm))

Expected # of participants/attendees 20,000

Sponsoring Organization Town of Fort Myers Beach

Organization address 2525 Estero Blvd, Fort Myers Beach, FL 33931

Contact Person/Phone# Jeff Hauge 239-788-7766

E-mail jhaug@fmbgov.com

Amplified Music Y ☒ N ☐ 500 Ft Notifications ☐ Copy of Letter ☐

Renting Town Property Y ☐ N ☒ Renting Parking Spaces Y ☐ N ☒

How many Spaces? ☐ How many hours ☐

Extension of Premises? ☐ N ☒ ABT Form ☐ **How many days?** ☐ (Over 3 days need to go to Council)

Letters of Permission to use Parking ☐ Parking Plan ☐

Site Plan ☐ Insurance ☐ (Naming Town of FMB as Certificate Holder)

Requesting Water Y ☐ N ☒ Electric Y ☐ N ☒

**Requires Council Approval:**

Waiver of open container Y ☒ N ☒ Waiver of Town parking fees Y ☐ N ☒

Waiver of Noise Ordinance Y ☒ N ☐ Recurring Event Y ☐ N ☒

Applicant Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

**This permit is subject to the applicant meeting all requirements contained in Fort Myers Beach Code of Ordinance Book Part 2 Chapter 22 and in compliance with all items in the special event application.**



**Applicant to Complete:**

**Company managing trash removal: Waste Management**

**No. of dumpsters:** 1 **Type of dumpsters:** 20 yard

**Who is responsible for clean-up and payment: Town of Fort Myers Beach**

City right-of-way Parking Use: No Number of spaces:           

**To be completed by Town Hall employees:**

**FMB Public Works:**

**Public Works remarks:** \_\_\_\_\_

**Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**FMB Environment Science: Tel (239)765-0202**

**FMB Environmental Sciences remarks:** \_\_\_\_\_

**Approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Please forward the completed application and site plan along with the individual approval request to each identified agency below. Once complete return all to our office.**

**Florida DEP:** DEP now provides an online application process for minor event approval

Self Certification for CCCL Permit Guidance Document: <http://www.dep.state.fl.us/beaches/>

**FOR MAJOR EVENTS ONLY CONTACT**

**Kelly Cramer**

**Tel (239)770-7502 Fax(850)412-0590**

**Email: [kelly.cramer@floridadep.gov](mailto:kelly.cramer@floridadep.gov)**

**Florida DEP remarks:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Check list: Application** \_\_\_\_\_ **Site Plan** \_\_\_\_\_ **Description** \_\_\_\_\_

**Florida DEP approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Turtle Time Inc.:** Eve Haverfield

**Tel (239)481-5566 [eve@turtletime.org](mailto:eve@turtletime.org)**

**Turtle Season is May 1 through October 31**

**Turtle Time remarks:** \_\_\_\_\_

\_\_\_\_\_

**Turtle Time approval:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**FORT MYERS BEACH FIRE DEPT**

100 Voorhis Street • Fort Myers Beach, Florida 33931

Tel (239) 590-4210

Fire Guards: (how many?) \_\_\_\_\_

Fee: \_\_\_\_\_

Flammable Vegetation: \_\_\_\_\_

First Aid Equipment: \_\_\_\_\_

Fire Extinguishing Equipment: \_\_\_\_\_

Special Arrangements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Approval Signature

\_\_\_\_\_  
Date

[prevention@fmbfire.org](mailto:prevention@fmbfire.org) – For Fire Department Handbook and additional application.

**LEE COUNTY SHERIFF'S DEPT**

15650 Pine Ridge Road, Fort Myers, FL 33908

Tel (239)477-1830 Fax (239)432-0268

Parking: \_\_\_\_\_

Deputies (how many?) \_\_\_\_\_

Traffic Control: \_\_\_\_\_

\_\_\_\_\_

Fees: \_\_\_\_\_

Special Arrangements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Approval Signature

\_\_\_\_\_  
Date



# Fort Myers Beach Fire Control District

## Life Safety Branch

100 Voorhis Street · Fort Myers Beach, Florida 33931

Phone (239) 590-4210 • Email: prevention@FMBFirefl.gov

## Special Events Application and Guidebook

### Event Type:

|                                                                                                                                               |                                                                |                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|--------------------------------------------|
| <input type="checkbox"/> Small Outdoor/Indoor Event                                                                                           | <input checked="" type="checkbox"/> Large Outdoor/Indoor Event | <input type="checkbox"/> Firework Display  |
| Date of Application: January 29, 2024                                                                                                         |                                                                | Date of Event: March 9 – March 10, 2024    |
| Location: Festival – Old San Carlos (3 <sup>rd</sup> Street to Bayside Veterans Park). Parade: Estero Blvd (Library to Bayside Veterans Park) |                                                                |                                            |
| Event Start Date/Time: March 9, 2024 8:00am                                                                                                   |                                                                | Event End Date/Time: March 10, 2024 7:00pm |
| Setup Date: March 8 <sup>th</sup> , 2024                                                                                                      | Setup Time: 9:00am                                             | Inspection Time:                           |
| Event Sponsor: Town of Fort Myers Beach & Fort Myers Beach Lions Club                                                                         |                                                                |                                            |
| Sponsor Contact: Jeff Hauge                                                                                                                   | Sponsor Phone #: 239-788-7766                                  | Sponsor Email: jhauge@fmbgov.com           |
| Anticipated Number of Attendees: 20,000                                                                                                       |                                                                | Anticipated Number of Event Workers: 30    |
| Will there be carnival or mechanical rides: No                                                                                                |                                                                | Number of Stages: 0                        |
| Total Number of Vendors: 50                                                                                                                   |                                                                | Total Number of Hot Food Vendors: 0        |
| Number of Tents larger than 20 x 20: 0                                                                                                        |                                                                | Number of 10 x 10 Tents: 50                |

Every vendor with a booth will receive a fire inspection and is responsible for paying an inspection fee. Please list the contact information for the responsible party below.

**Please Note:** If the event sponsor elects not to pay the vendor's inspection fee, a list of vendors, with full contact information, must be provided to the Fort Myers Beach Fire District. This information shall include contact name, number, and e-mail. All inspection fees will be due at time of service, and must be paid prior to release of any approvals.

Event applications submitted less than thirty (30) days prior to the event will be subject to additional fees. An expedited review may be requested and will be based upon availability, additional fees will apply.

Applications shall include the following:

1. A legible site plan to include proposed layout of the event; fire hydrant locations; fire/emergency access; and distances to any structures.
2. A life safety evaluation may be required based on the size of the event in accordance with the firecode.
3. All vendors should review FMBFD guidelines, on our website at [www.FMBFirefl.gov](http://www.FMBFirefl.gov)
4. Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

Submitting Party Name (Print)

Submitting Party Name (Sign)

Date:

## **OUTDOOR FESTIVAL and SPECIAL EVENT GUIDEBOOK**

The purpose of this guidebook is to establish responsibilities for event promoters, sponsors, and vendors.

**Event Sponsor:** The Event Sponsor assumes overall responsibility for overseeing the setup and activities of the event, and ensures compliance with all applicable fire and life safety codes.

The Event Sponsor shall:

1. Ensure completion and approval of all required permits from the Fort Myers Beach Fire District, Town of Fort Myers Beach and/or Lee County.
2. Provide a site plan to the FMBFD with the following information:
  - a. Name of all streets and areas that are included in the event.
  - b. Location(s) of fire lanes (minimum 20 feet) width.
  - c. Location of all stages, non-food booth vendors, food vendors, and all displays. Provide details for cooking operations and displays that use heat-producing appliances.
  - d. Identify all emergency exits.
  - e. Identify any fire hydrants that are in the vicinity of the event.
  - f. A list of all food vendors with the type of food and cooking method is required.
  - g. Event Sponsor is responsible for distributing a copy of the Fire District's requirements to the hot food vendors.
  - h. Event radios (if used) shall be provided with a list of assigned channels.
  - i. **PARADE FLOATS:** Refer to float inspection/checklist provided on page 6 of this document.

**Event Vendors:** Event Vendors are responsible for the safe operation of their booth, display and/or attraction. All vendors shall coordinate with the Event Sponsor on the event setup, take down times, and ensure their setup complies with the following:

1. Fire lanes, fire department connections, and building access is clear and unobstructed.
2. Be prepared, at any time, for a fire inspection and correct any cited deficiencies prior to event start time.
3. Shall ensure all fire and life safety code requirements are maintained for the duration of the event.

**Fire Department Special Event Staff:** FMBFD staff will conduct an inspection on the special event prior to the scheduled start day and time. If required, correction notices shall be issued and a follow-up inspection will be required prior to opening. Fire inspections will include, but is not limited to, the following:

1. Hot food vendors – cooking operations, setup, extinguishing systems, fire extinguishers.
2. Fire Department Access – minimum 20 foot width; vertical clearance of 13.5 foot.
3. Access to fire hydrants, fire department connections, fire alarm panels, and command centers.
4. Event egress – accessible exits, required signage.
5. Rides and displays – inspect for safety and proper state certification tags.
6. Generators and propane tanks – location of fuel, stable base provided.
7. Stages – location of stage setup, extension cords used, fire extinguisher provided.
8. Non-Food vendors – setup, required fire extinguisher provided operations.
9. Beer and wine gardens – setup, exits marked, required fire extinguisher provided.
10. Pyrotechnic displays and open flame effects. **REQUIRES SEPARATE PERMIT** – Refer to permit application/checklist provided on page 8 of this document.

**Pyrotechnic Displays and Open Flame Effects:** Pyrotechnic displays require a separate permit from the FMBFD. Refer to permit application and checklist provided on page 7 of this document. The FMBFD shall review all open flame and theatrical flame effects. Open flame effects shall include, but are not limited to the following:

1. Fire dancing
2. Stage props and effects
3. Fire eating
4. Magic acts

**Access for Fire Apparatus:** During large events, it is important to maintain access points for apparatus. This includes not only fire trucks for suppression, but also other emergency vehicles including medical units. To ensure a safe event, all fire access requirements shall be enforced at all times.

Access through the event shall include the following:

1. A designated fire lane, no less than 20 feet wide with a vertical clearance of no less than 13.5 feet.
2. Access roads that exceed 150 feet with no exit, shall be provided with a means to turn around. A FMBFD representative shall approve all turning radiuses.
3. Any designated fire accesses shall be clearly identified with signage indicating “Fire Access – No Parking”.

**Access to Structures:** Access to structures and walkways shall be provided as required by FMBFD. Identified access points shall be reviewed at the time of permit submittal and may vary depending on the building and the venue. Access to the following shall be required:

1. All exterior doors and openings
2. Fire control rooms
3. Fire pump rooms
4. Parking structures
5. Exterior utility distribution vaults

**Access to Water Supplies:** Event Sponsors, Vendors, and all other event staff shall be required to maintain a 15-foot clearance around all fire hydrants and other water supply connections. If a setup is found to be blocking access to water supplies the set-up shall be immediately relocated. Access to the following shall be maintained at all times:

1. Fire Hydrants
2. Fire Department Connections
3. Post indicator valves – fire backflows – OS&Y valves

**Event Egress:** This section shall apply to two (2) types of events:

1. Fenced events – commonly located in parks or other large open areas.
2. Blocked streets – commonly done at events where main streets and cross streets are closed.

**Fenced Events:** These events typically take place in a park or other large open area where the designated area for the event is closed off by temporary fencing.

1. The number of exits shall be in addition to what is defined as the main entrance of the event. Three (3) exits shall be provided when the site accommodates 1,000 to 3,000 attendees and four (4) exits shall be provided when the site accommodates more than 3,000 attendees.
2. Exits shall be spaced equally along the perimeter of the fence. The maximum travel distance between exits shall not exceed 400 feet of travel. Additional exits shall be added, if needed.
3. The width of exits on temporary fencing shall be no less than 48 inches or approximately one (1) panel width.
  - A. A member of security shall staff every exit. The security provider shall be able to provide a gate assignment roster upon request.
4. Emergency exits shall be marked by one (1) of the following:
  - A. Exit signs shall have a white background with contrasting red letters.
  - B. Exit signs shall measure, at a minimum, 18 inches x 24 inches.
  - C. Sign letters shall measure 12 inches in height.
  - D. Signs shall be placed at the top center of exit panels.

**Blocked Streets:** Some events will require that main or cross streets be blocked from vehicular traffic. These types of closures shall account for fire and emergency vehicles and public egress.

1. Exits shall be located at each end of any street closure. Cross streets shall also have emergency exit access.
2. A fire lane, no less than 20 feet wide and no less than 13.5 feet high, shall be maintained as designed by FMBFD.



## **TENTS, CANOPIES and TEMPORARY MEMBRANE STRUCTURES**

Tents and canopies used for occupancy and/or cooking operations are subject to a fire inspection.

**Sources of Ignition:** Smoking is prohibited in or around tents, canopies, and temporary membrane structures. “No Smoking” signs shall be clearly posted. Fireworks, open flames, and any other device that is capable of igniting combustible materials shall not be used in any area in or around tents, canopies, and temporary membrane structures as well as around any combustible material. **Propane heaters are not permitted inside any enclosed area.**

### **Applications for any tent, canopy, or temporary membrane structure shall include the following:**

1. A site plan with the proposed location of the tent including measurements showing distances to surrounding buildings, and/or property lines. A minimum 20-foot separation and fire access is required.
2. Proposed floor plan of the tent, showing the location and number of exits, fire extinguishers, stages, seating arrangements, tables and, any other items.
3. Certificates of flame retardant shall be submitted with the application and should be the manufacturers’ documentation attesting to the certification.
4. Any cooking and/or open flames.
5. Heaters and ventilation.
6. Items specific to the event should be included for review.

### **FMBFD MAY REQUEST APPLICANTS TO SUBMIT A LIFE SAFETY EVALUATION ALONG WITH A SPECIAL EVENT APPLICATION. Life Safety Evaluation:**

1. Name of event, participants, and projected number of attendees.
2. Access and egress movement, including crowd density problems.
3. Medical emergency mitigation plan.
4. Fire hazards.
5. Permanent and temporary structural systems.
6. Severe weather mitigation plan.
7. Civil or other disturbances mitigation plan.
8. Mitigation plan for a hazardous material incident within or near the facility.
9. Relationships among facility management, event participants, emergency response agencies, and others that have a role in the events taking place in the facility.
- 10.10.

**Please ensure that all items are addressed, any missing and/or incomplete evaluations will result in a delay and/or denial of the submitted application.**

### **TENT INSPECTION CHECKLIST**

|                          |                                                                                                                                                                                                                                                                                                                                  |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Fire extinguishers shall be provided by each vendor with a current state inspection tag from a licensed contractor. (Minimum size permitted is 2A:10BC). Operations conducting deep-frying shall have a K Class fire extinguisher with a current state inspection tag.                                                           |
| <input type="checkbox"/> | Propane tanks shall be installed not less than 5 feet from tents, properly secured, and identified.                                                                                                                                                                                                                              |
| <input type="checkbox"/> | “No Smoking” signs shall be clearly posted.                                                                                                                                                                                                                                                                                      |
| <input type="checkbox"/> | Tents larger than 10x10 shall have the manufacturer’s flame retardant tag affixed and visible.                                                                                                                                                                                                                                   |
| <input type="checkbox"/> | Cooking under tents will be permitted <b><u>ONLY</u></b> when a manufacturer’s flame retardant tag is affixed to the tent, the tent is not enclosed (on any side), and only persons preparing food are permitted under the tent. Any size tent that fails to have the affixed flame retardant tag may not be used to cook under. |
| <input type="checkbox"/> | Heavy duty <u>grounded type only</u> extension cords may be used. Wiring shall not be frayed, damaged, or spliced.                                                                                                                                                                                                               |
| <input type="checkbox"/> | Temporary lights or lamps may be used, but must be UL Listed. Wiring shall not be frayed, damaged, or spliced.                                                                                                                                                                                                                   |
| <input type="checkbox"/> | Exit signs and/or emergency lights (if required) must be clearly visible.                                                                                                                                                                                                                                                        |
| <input type="checkbox"/> | Occupant load sign (if required) must be clearly visible.                                                                                                                                                                                                                                                                        |
| <input type="checkbox"/> | Tents shall not obstruct any fire department access.                                                                                                                                                                                                                                                                             |

Please be advised that FMBFD inspects tents for the safety of all parties involved. These are minimum safety requirements and all parties must be in compliance.

## **HOT FOOD VENDOR REQUIREMENTS**

The use of food booths or food trucks is regulated by FMBFD. These requirements shall apply to single vendors, freestanding booths, and food trucks. Cooking within tents containing seating is subject to additional requirements. All food vendors are subject to inspection prior to the start of the event. ***Failure to comply with the following regulations may result in closure until compliance is met.***

**Flame Retardant Requirements:** All sidewalls, drops, and tops of tents and canopies, shall be of flame resistant material or treated with a flame retardant application as recommended by the manufacturer.

**Portable Fire Extinguishers:** Each food booth shall have, at a minimum, one (1) – 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. If there will be any deep fat frying or cooking that produces grease-laden vapors, a Class K fire extinguisher with a current state inspection tag from a licensed contractor, shall be provided in addition to the ABC type.

**Vendor Location:** Food booths shall have a clearance of at least 20 feet on two (2) sides. The booth shall not be located within 10 feet of any rides or devices. Cooking that produces sparks and/or grease-laden vapors shall not be conducted within 10 feet of a structure or combustible overhang.

**Cooking Appliances:** Any cooking appliance used shall be listed for its intended use.

1. Deep fat fryers are not permitted to be used under tents and shall be located at least 18 inches from the outside wall of the tent. If a fryer is to be used in conjunction with a Barbeque (BBQ), it shall be at least three (3) feet away from the BBQ. Use of fryers also requires a Class K fire extinguisher as outlined above.
2. BBQ's are not permitted to be used in food booths. In addition, any fuels are to be kept at least 10 feet away from any heat source. BBQ's that are in use shall be located at least 10 feet from a structure, combustible materials, and overhangs. BBQ's and other open flame devices located outside of a structure, shall be secured from falling and kept away from contact by the public.

**Smoking:** Smoking is prohibited at all times within food booths, or within 25 feet of any fuel source.

**Generators:** Generators shall be located a minimum of 20 feet from tents or canopies and isolated from the public by a means approved by the FMBFD.

1. Flammable liquid filled equipment shall not be used within temporary membrane structures, tents, or canopies.
2. Flammable and combustible liquids shall be stored outside and in approved/marked containers. Containers shall be located no less than 50 feet from temporary membrane structures, tents, or canopies.
3. Refueling shall be performed in an approved location not less than 20 feet from temporary membrane structures, tents, or canopies. **Refueling of hot generators is notpermitted.**
4. A 2A:10BC fire extinguisher with a current state inspection tag is required for any operation with a generator.

**Fuel:** Fuel tanks (LPG) shall be stored outside of the structure. The tanks shall be secured (to prevent tipping) and located away from any public contact. The size of the tank is restricted to 25 pounds, unless prior approval is received from the FMBFD. Propane tanks, fittings, and hoses will be checked to ensure there are no leaks.

### **FLOAT INSPECTION CHECKLIST - N/A**

It is recommended that owners and/or operators be advised of their compliance with these regulations.

|                          |                                                                                                                                                                                                                                            |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> | Exhaust pipes on vehicles shall not come in contact with anything flammable on floats.                                                                                                                                                     |
| <input type="checkbox"/> | Exhaust pipes shall be kept clear allowing for proper ventilation of fumes and preventing a carbon monoxide hazard.                                                                                                                        |
| <input type="checkbox"/> | All dried vegetation, or similar items being used shall be fire resistant or treated with fire retardant materials. Documentation shall be forwarded to FMBFD for review.                                                                  |
| <input type="checkbox"/> | No smoking is permitted on or around any floats.                                                                                                                                                                                           |
| <input type="checkbox"/> | No re-fueling of generator while generator is running or hot.                                                                                                                                                                              |
| <input type="checkbox"/> | All generators shall be secured and provided with a shut-off switch that is easily visible and accessible.                                                                                                                                 |
| <input type="checkbox"/> | Gasoline containers shall be UL listed type safety cans.                                                                                                                                                                                   |
| <input type="checkbox"/> | All pull behind trailers and floats shall be equipped with a 2A:10BC fire extinguisher with a current state inspection tag from a licensed contractor. The fire extinguisher shall be mounted so that it is visible and easily accessible. |
| <input type="checkbox"/> | All seating shall be properly secured to float.                                                                                                                                                                                            |
| <input type="checkbox"/> | Trailer hitches shall be secured in the locked position by a tie strap or bolt.                                                                                                                                                            |
| <input type="checkbox"/> | Trailers must have safety chains attached to tow vehicle.                                                                                                                                                                                  |
| <input type="checkbox"/> | All extension cords shall be listed and approved for outdoor use.                                                                                                                                                                          |

Please remember that this list is subject to change and additional fire and life safety requirements may be required.

## **PYROTECHNICS PERMIT APPLICATION**

Please be advised that application must be filed at least 30 days prior to the scheduled event. All permit fees must be paid prior to approval. Permits are non-transferable.

Date of Application: \_\_\_\_\_

Sponsoring Organization: \_\_\_\_\_

Phone/Emergency Contact Number: \_\_\_\_\_

Applicant/Company Name: \_\_\_\_\_

Phone/Emergency Contact Number: \_\_\_\_\_

Name and Address of technician: \_\_\_\_\_

Name(s) of assistants: \_\_\_\_\_

A copy of the technician's driver's license must be included along with a resume and three (3) references. Please include a copy of all assistants' drivers' licenses indicating they are a minimum of 18 years of age.

Date, Time and expected length of show: \_\_\_\_\_

Location of Display: \_\_\_\_\_

**(Attach aerial site map showing required fall out and safety zones)**

**DISCHARGE DETAILS:** Displays are only permitted to be electronically fired. Please provide detail on quantity, size, type, number of bursts (single/multiple) as well as a description of the display in the space below:

| QTY | Size | Type | # of burst | Description of Display |
|-----|------|------|------------|------------------------|
|     |      |      |            |                        |
|     |      |      |            |                        |
|     |      |      |            |                        |
|     |      |      |            |                        |

The following documents/information must be submitted along with completed application:

1. Event Itinerary
2. Security/Fire Watch Agreement (if required)
3. Coast Guard Application and Approval Letter (if required)
4. FAA Application and Approval Letter (if required)
5. Aerial Site Plan indicating minimum setbacks/required radius, per NFPA Standard

Notification shall be given prior to the Life Safety Division arriving at the site with transport vehicle. Final approval is subject to an onsite inspection. The FMBFD reserves the right to deny or revoke any permit for unsafe conditions, acts, or non-compliance with provisions of applicable standards. Shows may be cancelled or delayed based on changes in weather or other conditions as deemed necessary by the onsite Life Safety Division representative.

**ORDINANCE NO. 20-17**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
AMENDING CHAPTER 22 OF THE FORT MYERS BEACH CODE OF  
ORDINANCES ENTITLED "SPECIAL EVENTS"; AND AMENDING  
PROVISIONS OF CHAPTERS 6, 14, AND 34 OF THE FORT MYERS  
BEACH LAND DEVELOPMENT CODE, PERTAINING TO SPECIAL  
EVENTS; PROVIDING FOR SEVERABILITY; CODIFICATION;  
SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR  
AN EFFECTIVE DATE**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town Council desires to update the Chapters of the Town of Fort Myers Beach Code of Ordinances and Fort Myers Beach Land Development Code regulating special events to clarify, improve, simplify, and create consistency among sections of the Code of Ordinances and Land Development Code; and

**WHEREAS**, the Town also recognizes that both its economy and the quality of life of its residents are enriched by the proper regulation of special events and temporary uses; and

**WHEREAS**, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendment; and

**WHEREAS**, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

**WHEREAS**, on January 19, 2021 the Town Council held a second reading of the proposed Ordinance; and.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**<sup>1/</sup>

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

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<sup>1/</sup> Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Section 2. Chapter 22 of the Town of Fort Myers Beach Code of Ordinances entitled “Special Events” is hereby amended to read as follows:

## **Chapter 22 - Special Events**

### **Sec. 22-1. - Definitions.**

*Political demonstration.* A public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment to the Constitution of the United States.

*Special event.* ~~Any activity conducted on public or private property that will or has the potential to substantially affect the ordinary and customary use of beaches, public streets, rights of way, sidewalks, and other public forums, including any temporary activity conducted on private property that is not authorized by the certificate of use or certificate of occupancy issued for any business operating on the property where the activity is planned, or any temporary activity conducted on private property where the area of the activity coincides with parking spaces required for the operation of any business~~ An activity within the boundaries of the town of Fort Myers Beach which would inhibit the usual flow of pedestrian or vehicular travel or which occupies any public area or building so as to preempt use of said area by the general public or which deviates from the established use of said area or building, but such term does not include the following:

- (1) Any usual and customary noncommercial accessory use of a residential dwelling unit;
- (2) Any use or activity specifically approved by a development permit issued by the city; or
- (3) Private gatherings that will make no use of a public property other than for lawful parking;
- (4) ~~Any garage sale conducted in compliance with the requirements of this chapter.~~

### **Sec. 22-2. - Permit required.**

No person or entity ~~can initiate, sponsor, organize, promote,~~ may conduct ~~or advertise~~ a special event unless a permit has been obtained from the town.

**Sec. 22-3. - Exemptions from permit requirement.**

The following do not require a special event permit:

- (1) Private events that will make no use of a public property other than for lawful parking.
- (2) Events conducted solely for the purpose of exercising a group's first amendment right of free speech and/or assembly. If an event has any commercial aspect, or is a political demonstration as defined in section 22-1, or requires the closure of roadways, sidewalks or the use of Town or County staff, then this exemption will not apply.

**Sec. 22-4. - Fees.**

All fees that relate to special events and special events permits will be as stated in the current Town of Fort Myers Beach Fee Schedule.

**Sec. 22-5. - Permit fee exemption for special events conducted by the town.**

The town is exempt from all permit fees relating to special events conducted by the town.

**Sec. 22-6. – Types of events requiring a special event permit.**

The following types of events will require a special event permit. Events, other than these specifically listed, may also require a special event permit.

- (1) Carnivals, Fairs, Festivals and Circuses;
- (2) Farmer's Markets and Flea Markets;
- (3) Art Shows;
- (4) Running, Walking or Bicycling Events;
- (5) Concerts;
- (6) Fireworks;
- (7) Parades;

- (8) Similar events requiring off-site parking, street or sidewalk closures, sound amplification or use of public property or Town staff.

**Sec. 22-67. - General criteria and limitations.**

The following general criteria and limitations apply to special event permits:

- (1) The activity proposed must be compatible with the surrounding land uses.
- (2) An individual applicant may not receive a special event permit more than six times within a calendar year, provided, however, that the town council may grant businesses or entities approval for a recurring event permit that is not subject to this limitation (see section 22-7) and provided further that the town council has the authority to permit an individual applicant to exceed the six event annual limitation in its discretion.
- (3) ~~For any special event that will include a temporary use regulated by LDC chapter 34 (see LDC sections 34-3041 through 34-3051) a temporary use permit may also be required.~~ For any special event that will take place all or in part upon the beach will be subject to all requirements contained in ~~LDC section 14-11~~ this chapter and any requirements of state or federal agencies relating to activities that take place on the beach.
- (4) For any special event where alcoholic beverages will be sold, the applicant ~~must~~ may need to obtain a temporary one-day permit as ~~prescribed~~ described in LDC section 34-1264, as applicable. Applicants must obtain any required permits from the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
- (5) The following types of special events must be approved by the town council:
  - a. Special events with a duration of four days or more where alcohol will be served;
  - b. Special events with an anticipated attendance of more than 500 people;



c. Recurring special events (see section 22-76);

d. Any special event that includes a waiver of the town's open container regulations (see Code chapter 4, article IV);

e. Special events held annually, once initially approved by town council, may be administratively approved by the town manager (i.e., without formal action by town council) for subsequent years, so long as they do not include a noise ordinance waiver request ~~(see subsection (6)g)~~ of this section, or a material change in the nature of the annual special event. Material changes include an anticipated increase in attendance of ten percent or more, an increase of the area of the special event of ten percent or more; changes or additions to the parking plan for the special event; or other changes as determined in the sole discretion of the town manager;

f. Special events for which a waiver of ~~parking or other town~~ fees is requested. If the waiver was previously approved by the town council in conjunction with approval of a recurring special event or annual event and special event is subject to administrative approval, then the related waiver may also be administratively approved; and

g. Special events for which a waiver of the ~~Fort Myers Beach Noise Ordinance~~ noise regulations is requested.

h. Special events, which require the closure of streets or sidewalks.

(6) Special events that occur on or near the beach or dune.

a. Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases, this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases, the density of sea turtle nesting prevents certain activities from being conducted safely.

b. Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.

1. Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with §14-75 of the Fort Myers Beach Code of Ordinances.

2. Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

3. Based upon the information contained in the application and the site inspection, the application shall be approved or denied.

4. Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

i. During the sea turtle season (May 1 through October 31), special

event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

ii. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

iii. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the

individual responsible for the nest survey to verify any questionable areas.

5. A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

**Sec. 22-78. - Recurring special events.**

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

**Sec. 22-89. - Application requirements.**

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to

such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-67.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event four days or longer and where alcohol will be served requires approval by the Town Council.

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

(11) ~~Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required~~ All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

(13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits

established in ~~Code~~ Section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise regulations requires approval by the Town Council.

~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~

~~(15)~~ An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.

~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(17)~~ The town manager has the authority to require any reasonable additional information from the applicant that the town manager deems necessary.

#### **Sec. 22-~~910~~. - Review of application.**

Upon receipt of an application that contains all of the items listed in section 22-~~89~~ and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

(1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.

(2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.

(3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

**Sec. 22-1011. - Grounds for denial.**

(a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

(1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

(2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;

(3) The application contains a material falsehood or misrepresentation;

(4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;

(5) A fully executed prior application for a special event permit for the same time and place has been received, and a



special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;

(6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;

(7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;

(8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or

(9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

(b) If the special event application is denied, the applicant is not entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

**Sec. 22-~~11~~12. - Notification of denial and right of appeal.**

(a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.

(b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.

(c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as

provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

**Sec. ~~22-12~~13. - Litter.**

(a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (~~see section 22-14~~).

**Sec. ~~22-13~~14. - Security for unpaid expenses.**

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

**Sec. ~~22-14~~15. - Indemnification and liability insurance.**

(a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.

(b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

**~~Sec. 22-15. - Signage.~~**

~~(a) All signage relating to special events must comply with LDC chapter 30.~~

~~(b) Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be~~

~~approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~

~~(c) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

#### **Sec. 22-16. - Revocation.**

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code or the LDC.

Section 3. Section 6-366 of Chapter 6 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

#### **Sec. 6-366. - Location of construction near beaches.**

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter

the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:

a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.

b. Some temporary structures such as tents may be permitted through a ~~temporary use permit~~ for special events permit held on the beach, in accordance with ~~§ 14-11 of this LDC~~ Ch. 22 of the Code.

c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.

Section 4. Section 14-11 of Chapter 14 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

**~~Sec. 14-11. Special events on the beach.~~**

~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~

~~(b) Special events on the beach are temporary, short term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~

~~(e) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.~~

~~(d) Special events that occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle habitat, may contain special conditions for protection of the beach, dune and sea turtles. These conditions are in addition to the basic requirements of the town's special events permit provisions, which must still be met in full.~~

~~(1) Along with the regular application for an event permit, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.~~

~~(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.~~

~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~

~~(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:~~

~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion~~

~~of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~

~~b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68 E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922 4330.~~

~~c. All turtle nests will be marked with wooden stakes, flagging tape, and a FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.~~

~~(5) A violation of the special or standard conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this article.~~

~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

Section 5. Section 34-2 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

**Sec. 34-2. - Definitions**

\*\*\*

*Garage sale or yard sale* mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. ~~Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year.~~ See *Residential accessory use*.

\*\*\*

*Use, temporary* means a use or activity ~~which~~ that is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

\*\*\*

Section 6. Section 34-2441 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

**Sec. 34-2441.—Special events defined.**

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. Sec. 34-2442. Permits for special events.~~

~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~

~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~

~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Section 7. Section 34-3041 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

**Sec. 34-3041. - Generally.**

(a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of ~~§ 34-3050~~ this chapter. ~~Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22.~~ A temporary use permit must be obtained for the following uses in compliance with these requirements:

(1) Christmas tree sales lots for up to 45 days prior to the holiday;

(2) Holiday, seasonal or annual sales lots for up to 30 days;

(3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:

a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.

b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.

c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.

~~(4) Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.~~



(5) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(6) Temporary wireless communications facilities, as are necessary to meet demand, for up to six (6) months.

(7) One-day permits for consumption of alcohol on-premises associated with a temporary event.

(8) Other similar uses of a temporary nature.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All temporary uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and~~  
If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

b. ~~If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ~~*Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant. Signs. A sign permit may be required for any proposed signs.~~

(h) ~~*Damage to public right of way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right of way as a result of the event. In lieu of. Any proposed use, which exceeds the criteria or regulations of this code subdivision, may apply for a Special Event permit.~~

Section 8. Sections 34-3042, 34-3043, 34-3044, 34-3045, 34-3046, 34-3047, 34-3048, and 34-3055 of Chapter 34 of the Town of Fort Myers Beach Land Development Code are hereby repealed:

~~**Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.**~~

(a) ~~Location of amusement devices and other structures. Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

(b) ~~Off-street parking. Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

(c) ~~Hours of operation. The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

(d) ~~Special event permit. In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~**Sec. 34-3043. Christmas tree sales.**~~

(a) ~~Christmas tree sales may be permitted in any commercial district, provided that:~~

(1) ~~No parking lot required for another use shall be used for display of trees; and~~

(2) ~~Temporary off street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

(b) ~~The maximum length of time for display and open lot sales shall be 45 days.~~

**~~Sec. 34-3044. Temporary contractor's office and equipment storage shed.~~**

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

**~~Sec. 34-3045. Alcoholic beverages.~~**

~~Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

**~~Sec. 34-3046. Temporary use of mobile home.~~**

(a) ~~Rehabilitation or construction of residence following disaster.~~

(1) ~~When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~

(2) ~~The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b) Rehabilitation or construction of damaged business or commercial uses following disaster.~~

~~(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~

~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(e) Conditions for use:~~

~~(1) Required water and sanitary facilities must be provided.~~

~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

**~~Sec. 34-3047. Temporary telephone distribution equipment.~~**

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~

~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company.~~

~~Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

**~~Sec. 34-3048. Ancillary temporary uses in parking lots.~~**

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- ~~(1) Seasonal promotions.~~
- ~~(2) Sidewalk or parking lot sales.~~
- ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
- ~~(4) Tent sales.~~
- ~~(5) Flea markets by nonprofit organizations.~~
- ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~

~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

**~~Sec. 34-3055. Special events.~~**

~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~

~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Section 9. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 11. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

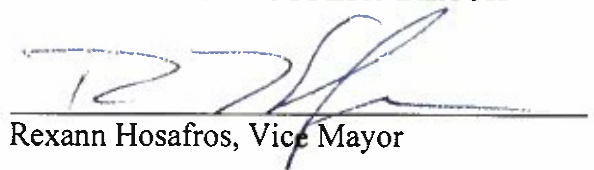
Section 12. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Council Member Allers, and upon being put to a roll call vote, the result was as follows:

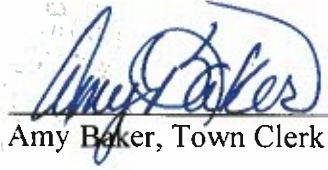
|                               |         |
|-------------------------------|---------|
| Raymond P. Murphy, Mayor      | Excused |
| Rexann Hosafros, Vice Mayor   | Aye     |
| Dan Allers, Council Member    | Aye     |
| Jim Atterholt, Council Member | Aye     |
| Bill Veach, Council Member    | Aye     |

ADOPTED this 19<sup>th</sup> day of January, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

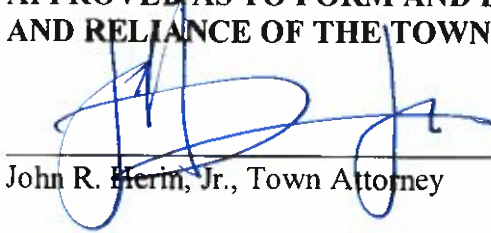
**TOWN OF FORT MYERS BEACH**

  
Rexann Hosafros, Vice Mayor

**ATTEST:**

  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:**

  
John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 21 day of January, 2021.











# Shrimp Festival Event Schedule

The Fort Myers Beach Lions Club Shrimp Festival is put on by the local Lions Club each year and raises money to support Lions missions to serve their community of those in need. Below you will find shortcuts to each of the events that take place. Some events take place prior to Shrimp Festival weekend.

## Pre-Festival Events

8:00 AM - 12:00 PM

### 3/2, Kids Shrimp Run

By Betty Rodriguez

## Shrimp Festival Weekend - Saturday

9:00 AM - 10:00 AM

### 5K Run

By Betty Rodriguez

10:00 AM

### Arts & Crafts Fair

By Lion Diane

10:00 AM - 12:00 PM

### Parade

By Jeff Hauge

10:00 AM

### Shrimp Crawl

By Anna Erickson

1:00 PM - 2:00 PM

### Queens Pageant

By Tracey Gore

# Shrimp Festival Weekend - Sunday

Shrimp Festival weekend events taking place on Sunday

10:00 AM

## Arts & Crafts Fair

By Lion Diane[READ MORE](#)

10:00 AM

## Shrimp Crawl

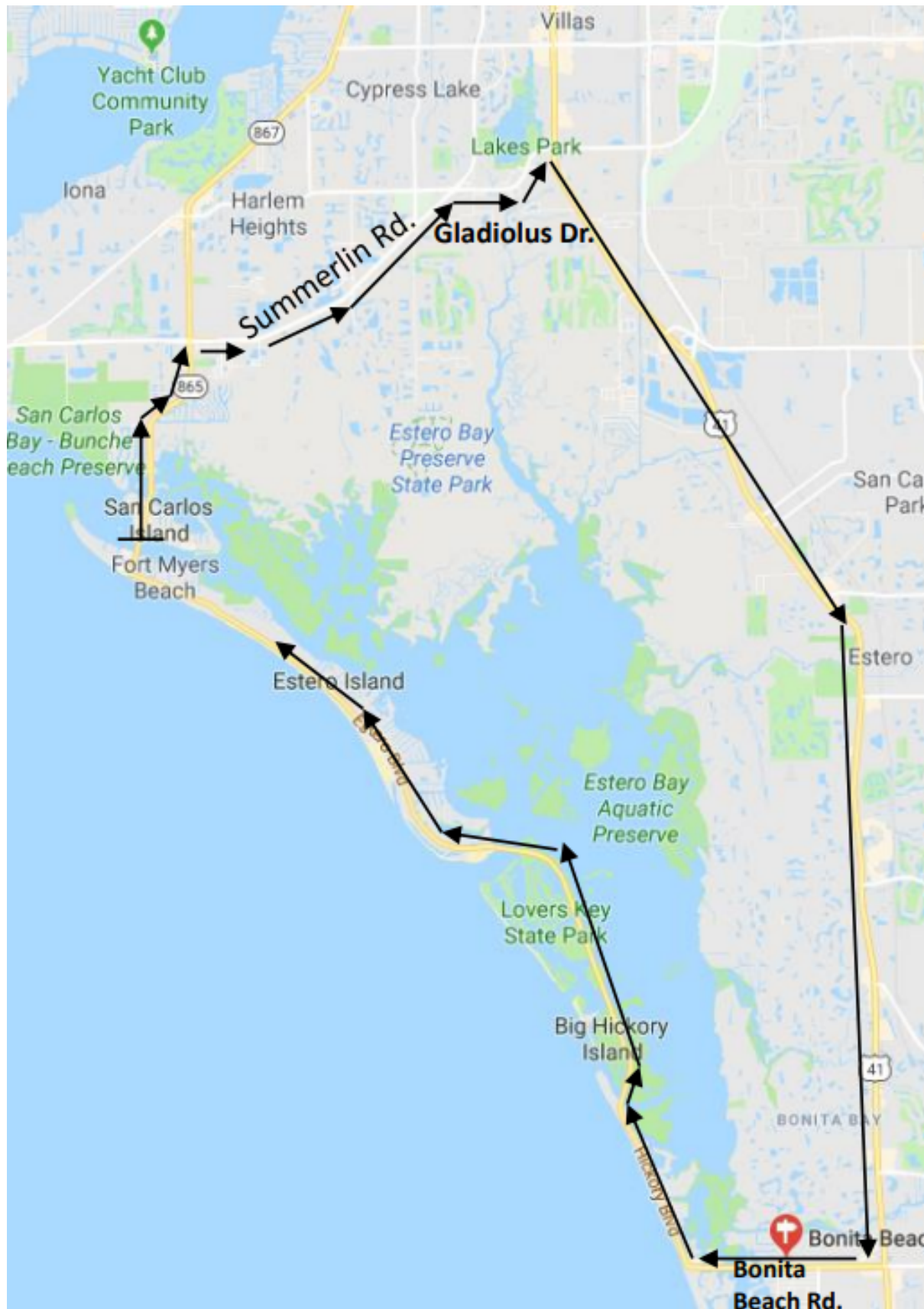
By Anna Erickson[READ MORE](#)

10:00 AM - 2:00 PM

## Blessing of the Fleet

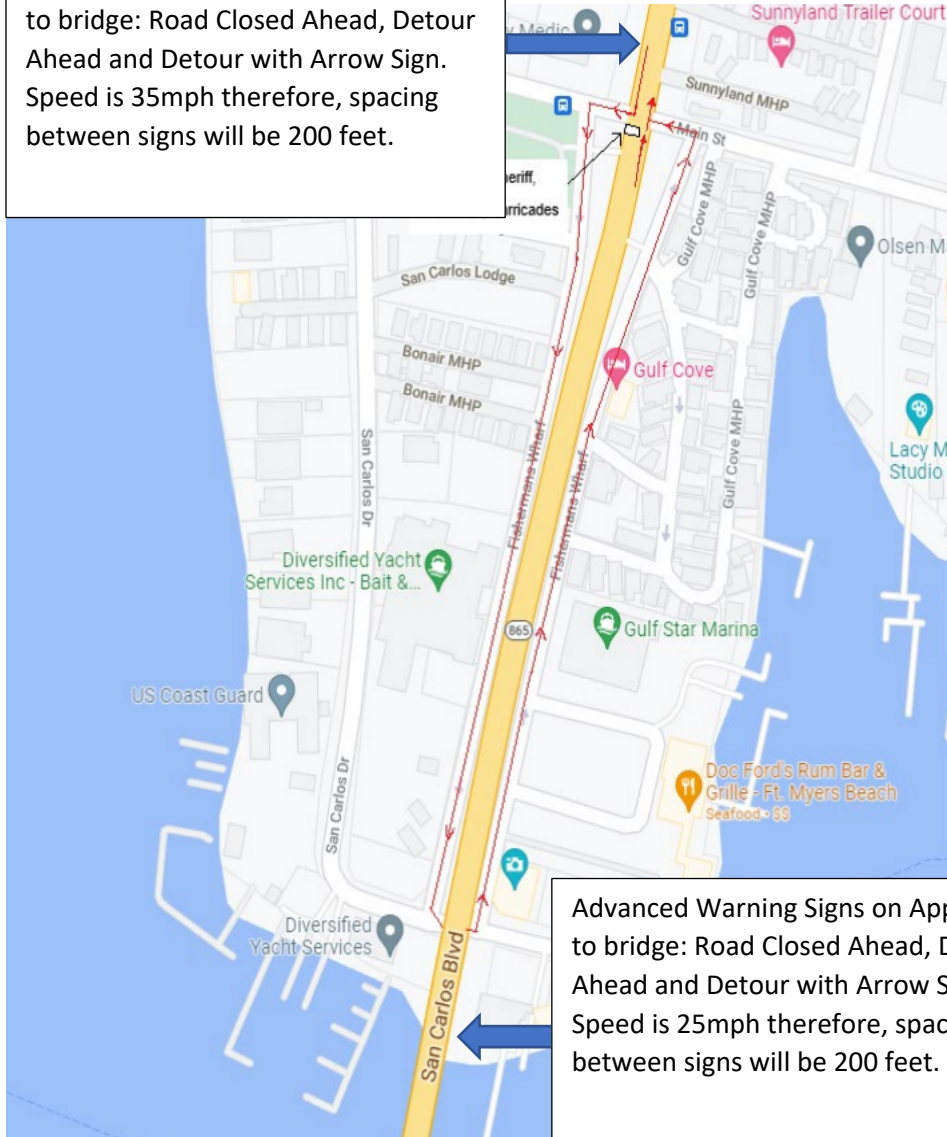
By[READ MORE](#)

Fort Myers Beach Shrimp Fest  
Parade and 5K Run  
3.9.24 – 3.10.24  
Detour Route



Fort Myers Beach Shrimp Fest  
Parade and 5K Run  
3.9.24 – 3.10.24  
Detour Route

Advanced Warning Signs on Approach to bridge: Road Closed Ahead, Detour Ahead and Detour with Arrow Sign. Speed is 35mph therefore, spacing between signs will be 200 feet.



Advanced Warning Signs on Approach to bridge: Road Closed Ahead, Detour Ahead and Detour with Arrow Sign. Speed is 25mph therefore, spacing between signs will be 200 feet.

**TEMPORARY CLOSING OF STATE ROAD PERMIT**Date: 1/29/2024

Permit No. \_\_\_\_\_

**Governmental Entity**

Approving Local Government: Town of Fort Myers Beach Contact Person Jeff Hauge  
Address 2525 Estero Blvd, Fort Myers  
Telephone 239-788-7766 Email jhaugue@fmbgov.com

**Organization Requesting Special Event**

Name of Organization Town of Fort Myers Beach Contact Person Jeff Hauge  
Address 2545 Estero Blvd, Fort Myers  
Telephone 239-788-7766 Email jhaugue@fmbgov.com

**Description of Special Event**

Event Title Fort Myers Beach Shrimp Festival Parade and 5K run Date of Event March 9, 2024  
Start Time 9:00am End Time 12:00pm  
Event Route (attach map) Parade will start at Bay Rd and Estero Blvd. Proceed North Bound to Old San Carlos BLVD  
5K run will start at Base of Mantanza Pass Bridge continuing over the bridge and south to Ohio Ave  
Detour Route (attach map) \_\_\_\_\_

**Law Enforcement Agency Responsible for Traffic Control**

Name of Agency Lee County Sheriff Department

**US Coast Guard Approval for Controlling Movable Bridge**

Not Applicable ☒  
Copy of USCG Approval Letter Attached ☐  
Bridge Location \_\_\_\_\_

The Permittee will assume all risk of and indemnify, defend and save harmless the State of Florida and the FDOT from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise of this event.

The Permittee shall be responsible to maintain the portion of the state road it occupies for the duration of this event, free of litter and providing a safe environment to the public.

**Signatures of Authorization**

|                                         |                 |            |
|-----------------------------------------|-----------------|------------|
| Event Coordinator <u>Jeff Hauge</u>     | Signature _____ | Date _____ |
| Law Enforcement<br>Name/Title _____     | Signature _____ | Date _____ |
| Government Official<br>Name/Title _____ | Signature _____ | Date _____ |

**FDOT Special Conditions****FDOT Authorization**

Name/Title \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

5K RUN  
3.9.24





1. **Requested Motion:**

**Meeting Date: February 5, 2024**

Authorize the Town Manager to execute approval of the Letter of Credit received from Persaud Properties, LLC as required by paragraph 3 of the Settlement Agreement between Persaud Properties, LLC and the Town of Fort Myers Beach, dated December 27, 2023.

**Why the action is necessary:**

The Town has received a Letter of Credit provided by Persaud Properties, LLC as required by Paragraph 3 of the Settlement Agreement. The requested action acknowledges receipt of the Letter of Credit. The Town Attorney has approved the Letter of Credit.

**What the action accomplishes:**

Consistency and implementation of the terms of the previously approved Settlement Agreement.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

The Town approved a Settlement Agreement with Persaud Properties, LLC regarding several recorded liens and outstanding fines. One term of the settlement agreement was the posting of a bond and letter of credit. A performance bond has been issued and the Town recently received the Letter of Credit. The Letter of Credit requires signature from the Town. The Town Manager is seeking authorization to sign the Letter of Credit.

**Attachments:**

1. Persaud Letter of Credit
2. FMB Code Enforcement Settlement Agreement - Persaud 1.4.24

**Financial Impact:**

As stated in the Settlement Agreement

6. **Alternative Action**

Authorize the Mayor to sign the Letter of Credit

7. **Management Recommendations:**

Concur

8. **Recommended Approval:**

Amy Baker, Town Clerk  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/29/2024  
Approved - 1/30/2024  
Approved - 1/30/2024  
Final Approval - 1/30/2024

Town of Fort Myers Beach  
Attn: Amy Baker  
2525 Estero Blvd.  
Fort Myers, FL 33931

RE: PERSAUD PROPERTIES FL INVESTMENTS LLC

To whom it may concern:

Enclosed please find Letter of Credit # 2024-01 in the amount of \$500,000.00, issued in favor of Town of Fort Myers Beach.

Thank you,

Seacoast National Bank  
Document Services Department



**IRREVOCABLE  
STANDBY LETTER OF CREDIT  
NO: 2024-01**

Beneficiary: Town of Fort Myers Beach, a Political Subdivision of the State of Florida

Expiration Date: **January 22, 2025**

Project Name: Persaud Properties Compliance Bond

Developer/Applicant: Persaud Properties FL Investments LLC      U.S. Funds **\$500,000.00**

1. We hereby open Irrevocable Standby Letter of Credit #2024-01 in favor of the Town of Fort Myers Beach in the aggregate amount not to exceed \$500,000.00 USD. This amount represents the required good faith payment posted for one year per the settlement agreement between Persaud Properties FL Investments LLC and the Town of Fort Myers Beach as approved by the Town Council on December 18, 2023.

2. The funds are payable to Town of Fort Myers Beach at sight when accompanied by the following:

a. The original letter of credit and any amendments approved by the Town of Fort Myers Beach.

b. A sworn statement, executed by the Town of Fort Myers Beach Town Manager, stating:

Persaud Properties FL Investments LLC has failed to comply with the terms and conditions of the Settlement Agreement between Persaud Properties FL Investments LLC and the Town of Fort Myers Beach, as approved by the Town Council on December 18, 2023. More specifically, Persaud Properties FL Investments LLC is in violation of the Settlement Agreement as described in Section 4 of the Settlement Agreement which states:

“The parties agree that the determination as to whether Persaud is in violation of this Agreement for failure to fulfill its obligations under this Agreement, as contemplated by Paragraph 3, shall be made through the code enforcement process in Chapter 2, Article V of the Town’s Land Development Code. The issuance of a notice of violation under section 2-424 stays and holds in abeyance any determination relative to forfeiture of the Good Faith Payment until such time as the existence of the violation identified in the notice is determined by the Special Magistrate during a hearing governed by section 2-425, and the exhaustion of any appeals or the time for appeals has passed. If the Special Magistrate determines that a violation does exist, and Persaud chooses not to exercise his right to appeal, Persaud will have seven (7) days from

the date of the Special Magistrate's written order to correct the violation as directed by the Special Magistrate. Only if the violation is not corrected within these seven (7) days, as determined by the Special Magistrate, will it be found that Persaud is in violation of this Agreement (the "Verified Violation") and the Good Faith Payment shall be forfeited to the Town. Persaud is entitled to a refund of the Good Faith Payment if there have been no Verified Violations as of the one (1) year anniversary of the date this Agreement is approved by Town Council."

As a result of this default, the Town of Fort Myers Beach requests a draw under Letter of Credit #2024-01 in the amount of \$500,000.00 USD.

3. All sight drafts drawn under this Letter must bear upon their face the words: "DRAWN UNDER SEACOAST NATIONAL BANK OF IRREVOCABLE STANDBY LETTER OF CREDIT # 2024-01 ISSUED TO THE TOWN OF FORT MYERS BEACH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA." Any partial amounts drawn under this Letter will be endorsed on its reverse side by the negotiating, issuing, confirming, or honoring bank.
4. Presentation and payment under this Letter of Credit is restricted to the following location in Florida: SEACOAST NATIONAL BANK, 815 Colorado Avenue, Stuart, FL 34994. Presentation of the items listed above may also be made to this address by express mail.
5. Action, whether payment or dishonor, in response to the Town of Fort Myers Beach's request for a sight draft must be completed within three business days after the Letter is presented at the location identified above.
6. It is a condition of this Letter that the reasons for dishonor will be clearly explained in writing by the dishonoring party within three business days after the Letter is presented at the location identified above.
7. This Letter will expire on January 22, 2025, which will be the one-year anniversary of the accepting date of the agreement.
8. This Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits," International Chamber of Commerce Publication No. 600 (2007) revision, and to the provisions of Florida law. If a conflict between the Uniform Customs and Practice for Documentary Credits and Florida law should arise, then Florida law will prevail. If a conflict between the law of another State or country and Florida law should arise, then Florida law will prevail.
9. Florida law will control any action taken under this Letter.
10. The venue for any action under this Letter of Credit is Lee County, Florida.
11. This Letter sets forth in full the terms of our undertaking and may not be modified.



IRREVOCABLE BANK LETTER OF CREDIT  
EVIDENCE OF AUTHORITY

DATED: January 22, 2024

• This document certifies that Lorraine M. Patterson, AVP, Document Services Team Lead for SEACOAST NATIONAL BANK, has the necessary authority to execute Irrevocable Standby Letter of Credit Number 2024-01, in the amount of \$500,000.00 USD issued on January 18, 2024, for the benefit of The Town of Fort Myers Beach, Florida, Board of County Commissioners and under the account of Persaud Properties FL Investments LLC.

SEACOAST NATIONAL BANK

Witnesses:

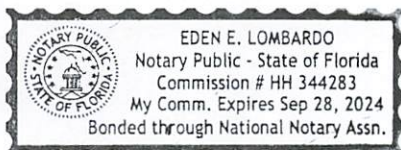
Gary Anders  
Ednel

BY: Lorraine M. Patterson  
Lorraine M. Patterson  
AVP, Document Services Team Lead

ACKNOWLEDGMENT

STATE OF Florida  
COUNTY OF Seminole

The forgoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 26th day of Jan, 2024, Lorraine Patterson, AVP, Document Services Team Lead on behalf of Seacoast National Bank. She is personally known to me or has produced the following identification Ednel.



Ednel  
Notary Public

**THIS PAGE COMPLETED BY THE TOWN OF FORT MYERS BEACH OFFICIALS**

**TOWN MANAGER ON BEHALF OF THE  
TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA**

By: \_\_\_\_\_  
Town Manager

The foregoing Agreement is approved and accepted by, for and on behalf of The Town of Fort Myers Beach, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

**ATTEST:  
AMY BAKER, TOWN CLERK**

By: \_\_\_\_\_  
Deputy Clerk Signature

**AFFIX  
CLERK'S SEAL  
HERE**

**APPROVED AS TO FORM FOR THE  
RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

By: \_\_\_\_\_  
Town Attorney

**FORT MYERS BEACH CODE ENFORCEMENT  
SETTLEMENT AGREEMENT**

This **SETTLEMENT AGREEMENT** ("Agreement") is entered into this 27<sup>th</sup> day of December, 2023, by and between, Persaud Properties FL Investments, LLC, a Florida limited liability company, ("Persaud") and the Town of Fort Myers Beach ("Town"), and collectively Persaud and Town are referred to herein as the "Parties."

**RECITALS**

**WHEREAS**, Persaud is the current owner of certain parcels of real property located at 1028 Estero Boulevard (STRAP Number 24-46-23-W3-00017.0000) and 1046 Estero Boulevard (STRAP Number 24-46-23-W3-00016.0000) (collectively referred to herein as the "Sunset Beach Properties"); and

**WHEREAS**, all violations on the Sunset Beach Properties have been abated, and there are no existing violations on the Sunset Beach Properties; and

**WHEREAS**, Town filed seven (7) code enforcement liens against Persaud, as a result of Persaud's noncompliance with Fort Myers Beach Code on one or more of the Sunset Beach Properties, which are summarized on Exhibit "A" and collectively referred to herein as the "Liens"; and

**WHEREAS**, there are three (3) pending code enforcement cases for which a Code Enforcement Order has been issued but no lien has been recorded, as a result of Persaud's noncompliance with Fort Myers Beach Code on one or more of the Sunset Beach Properties, which are summarized on Exhibit "B" and collectively referred to herein as the "Pending Fines"; and

**WHEREAS**, Persaud is the current owner of certain parcels of real property located at 3050 Estero Boulevard (STRAP Number 29-46-24-W1-01000.0020) and 3056 Estero Boulevard (STRAP Number 29-46-24-W1-01000.0010), all of which have since been submitted to the condominium form of ownership with common elements assigned STRAP Number 29-46-24-W1-01000.00CE (collectively referred to herein as the "Junkanoo Residential Properties"); and

**WHEREAS**, the Parties entered into a settlement agreement relative to the state case filed in the Twentieth Judicial Circuit in and for Lee County, Florida, Case No. 17-CA-000219 relative to the Junkanoo Residential Properties (the "Settlement Agreement"), the terms of which contemplate a penalty/fine, though neither Party is aware of any such fines being imposed (hereinafter the "Proposed Fines"); and

**WHEREAS**, Persaud has been working diligently to comply with the terms of the Settlement Agreement but, at present, is unable to secure financing to fix the damage to the Junkanoo Residential Properties caused by Hurricane Ian due to the Liens encumbering all properties owned by Persaud, including the Junkanoo Residential Properties; and

**WHEREAS**, Persaud made a proposal of settlement in exchange for a release of the Liens,

dismissal of the Pending Fines, and agreement not to impose any Proposed Fines to the extent such is an available remedy to the Town, and the Town has accepted the proposed settlement.

**NOW, THEREFORE**, in exchange for the mutual promises contained herein and other good and valuable consideration, the Parties hereby agree as follows:

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

2. **SETTLEMENT AMOUNT.** Persaud agrees to pay the Town the sum of Two Hundred Fifty Thousand Dollars and 00/100 (\$250,000.00) in full settlement of all outstanding code enforcement matters associated with the Sunset Beach Properties and the Junkanoo Residential Properties and in exchange for a release of the Liens, dismissal of the Pending Fines, and agreement not to impose any Proposed Fines to the extent such is an available remedy to the Town, including but not limited to attorneys' fees and other costs incurred by the Town (the "Settlement Amount").

3. **GOOD FAITH PAYMENT.** Persaud agrees to:

a. Operate the Sunset Beach Properties and the Junkanoo Residential Properties in accordance with the Town's codes and ordinances for so long as it holds title to the Sunset Beach Properties and the Junkanoo Residential Properties, respectively, or one (1) year, whichever is less, and

b. Apply for the permit(s) necessary to have the stump removed from the Sunset Beach Properties within sixty (60) days after the approval of this Agreement by the Town and have the stump removed within thirty (30) days after receipt of all necessary permits, and

c. Pay the Town the sum of Five Hundred Thousand Dollars and 00/100 (\$500,000.00) or provide a performance bond in the same amount by a bonding company and in a form agreed to by the Town,

as a good faith security for his performance of same (the "Good Faith Payment"). If Persaud complies with the terms of this paragraph for a period of one (1) year, the Good Faith Payment, in its entirety, will be returned to Persaud. If Persaud does not comply with the terms of this paragraph during the one (1) year period from the date of this Agreement, the Good Faith Payment will be forfeited to the Town.

4. **COMPLIANCE.** The parties agree that the determination as to whether Persaud is in violation of this Agreement for failure to fulfill its obligations under this Agreement, as contemplated by Paragraph 3, shall be made through the code enforcement process in Chapter 2, Article V of the Town's Land Development Code. The issuance of a notice of violation under section 2-424 stays and holds in abeyance any determination relative to forfeiture of the Good Faith Payment until such time as the existence of the violation identified in the notice is determined by the Special Magistrate during a hearing governed by section 2-425, and the exhaustion of any appeals or the time for appeals has passed. If the Special Magistrate determines that a violation does exist, and Persaud chooses not to exercise his right to appeal, Persaud will have seven (7)

days from the date of the Special Magistrate's written order to correct the violation as directed by the Special Magistrate. Only if the violation is not corrected within these seven (7) days, as determined by the Special Magistrate, will it be found that Persaud is in violation of this Agreement (the "Verified Violation") and the Good Faith Payment shall be forfeited to the Town. Persaud is entitled to a refund of the Good Faith Payment if there have been no Verified Violations as of the one (1) year anniversary of the date this Agreement is approved by Town Council.

**5. PAYMENT AND ESCROW TERMS.** Persaud will deposit the Settlement Amount (Paragraph 2) and the Good Faith Payment (Paragraph 3) in the Trust Account of Roetzel & Andress, LPA, 2320 First Street, Suite 1000, Fort Myers, FL 33901 (the "Escrow Agent"), within thirty (30) days after the approval of this Agreement by the Town. The Settlement Amount will be promptly thereafter released by the Escrow Agent to the Town, but the Good Faith Payment will remain in the Trust Account until released as contemplated in this Agreement. In the event the Escrow Agent is in doubt as to its duties and liabilities under the provisions of this Agreement, the Escrow Agent may, in its sole discretion, continue to hold the Good Faith Payment until the Parties mutually agree in writing to disbursement of the Good Faith Payment, or until a judgment of a court of competent jurisdiction determines the rights of the Parties to the Good Faith Payment, or it may interplead the Good Faith Payment with the Clerk of the Circuit Court, and upon notifying all Parties concerning such action, all liability on the part of the Escrow Agent will fully cease and terminate, except to the extent of accounting for the Good Faith Payment delivered out of escrow. In the event of any suit between the Parties involving the Escrow Agent is made a Party by virtue of acting as the Escrow Agent, or in the event of any suit involving the Escrow Agent interpleads the Good Faith Payment, the Escrow Agent will be entitled to recover reasonable attorneys' fees and costs incurred, such fees and costs to be charged and assessed as court costs and paid from the Good Faith Payment, or held by the Clerk of the Circuit Court, as the case may be. Both Parties agree that the Escrow Agent will not be liable to any Party or person whomsoever for misdelivery to the Town or Persaud of the Good Faith Payment, unless such misdelivery is due to willful breach of this Agreement or gross negligence on the part of the Escrow Agent, nor will the Escrow Agent be liable for the failure of any financial institution in which the Good Faith Payment is placed. The Parties agree that the status of the Escrow Agent as counsel for the Town or Persaud, as the case may be, does not disqualify such law firm from representing such Party in connection with this transaction and in any dispute that may arise between the Parties concerning this transaction, including any dispute or controversy with respect to the Good Faith Payment. It will not be necessary for the Escrow Agent to execute this Agreement or any amendments to this Agreement. By delivery to and acceptance by the Escrow Agent of a fully executed copy of this Agreement along with the Good Faith Payment, the Escrow Agent agrees to be bound by the terms and provisions of this Agreement specifically relating to the Good Faith Payment. However, no amendments to this Agreement will adversely affect or impair the rights or duties, or increase the liability of the Escrow Agent hereunder without the Escrow Agent's prior written approval.

**6. RECORDATION OF SATISFACTION.** Within fourteen (14) days after the Town's receipt of the Settlement Amount, the Town will prepare and record a satisfaction and release as to all Liens, the Pending Fines, and the Proposed Fines in the Public Records of Lee County, Florida at the Town's sole cost and expense.

**7. WAIVER OF DEFENSES AND RELEASE OF THE TOWN.** Persaud has voluntarily dismissed the federal case filed in the United States District Court for the Middle District

of Florida, Case No. 2:21-cv-384-JLB-NPM, together with the federal appeal filed in the United States Court of Appeals for the Eleventh Circuit, Case No. 23-10881. Persaud has voluntarily dismissed all claims arising out of the state cases filed in the Twentieth Judicial Circuit in and for Lee County, Florida, Case No. 17-CA-000219 and Case No. 17-CA-001026. Persaud has waived all causes of actions, damages, attorneys' fees, and litigation costs that arose, could have been brought, or could be brought as a result of the decision of the Second District Court of Appeals in *Persaud Properties FL Investments, LLC v. Town of Ft. Myers Beach*, 310 So. 3d 493 (2020), reh'g denied (Jan. 20, 2021) (the "Lawsuit"). Persaud will waive and not otherwise seek, and will release the Town from damages, attorneys' fees, and costs related to actions of the Town that could have been or were brought or may be brought in the future related to operative nucleus of facts in the cases specified in this paragraph.

8. **ENTIRE AGREEMENT.** The Parties acknowledge that this Agreement constitutes the entire agreement between them regarding the settlement of their dispute and any prior statements, whether oral or written, are merged herein. This Agreement may not be modified or amended without a written instrument signed by the party against whom enforcement is sought.

9. **AUTHORITY.** The signatories to this Agreement are expressly authorized to resolve their dispute as set forth herein and by their signatures here represent and affirm their authority to execute this Agreement.

10. **GOVERNING LAW.** The law of the State of Florida shall apply to this Agreement. Any dispute regarding this Agreement shall be litigated exclusively in the state courts of Lee County. The parties expressly agree that no action between the parties may be filed in, or removed to, Federal Court, and consent to exclusive jurisdiction and venue in the Circuit Court in Lee County and waive any objections thereto.

**[Signatures on following pages.]**



WHEREFORE, this Agreement is entered into as of the date of last execution below.

Kat Kalish

Signature of Witness #1

Kat Kalish

Print or type name

Cristian Mino

Signature of Witness #2

CRISTIAN MINO

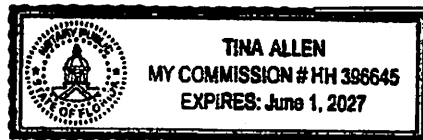
Print or type name

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 21 day of December, 2023, by Terry Persaud, Manager, of Persaud Properties FL Investments, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Notary Seal]



Tina Allen

Notary Public

Tina Allen

Name typed, printed or stamped

My Commission Expires: June 1 2027

FORT MYERS BEACH, FLORIDA

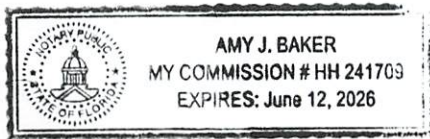


Dan Allers, Mayor

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 3<sup>rd</sup> day of January, 2024, by Dan Allers, Mayor, Town of Fort Myers Beach, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Notary Seal]



  
\_\_\_\_\_  
Notary Public

Amy J. Baker  
Name typed, printed or stamped  
My Commission Expires: 6/12/26

ATTEST:

  
\_\_\_\_\_  
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE  
OF THE TOWN OF FORT MYERS BEACH ONLY:

  
\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

**EXHIBIT "A"**  
**LIENS**

|   | <b>Case<br/>Number</b> | <b>Violation Address</b> | <b>Lien Recording<br/>Information</b> |
|---|------------------------|--------------------------|---------------------------------------|
| 1 | CE17-0659              | 1046 Estero Boulevard    | 2019000067153                         |
| 2 | CE17-0707              | 1046 Estero Boulevard    | 2019000136816                         |
| 3 | CE18-0234              | 1028 Estero Boulevard    | 2019000067165                         |
| 4 | CE18-0235              | 1046 Estero Boulevard    | 2019000067117                         |
| 5 | CE18-0446              | 1046 Estero Boulevard    | 2020000038310                         |
| 6 | CE20-0017              | 1046 Estero Boulevard    | 2020000061959<br>2021000069005        |
| 7 | CE20-0018              | 1028 Estero Boulevard    | 2020000061962<br>2021000098193        |

**EXHIBIT "B"**  
**PENDING FINES**

|   | <b>Case<br/>Number</b> | <b>Violation Address</b> | <b>Order Recording<br/>Information</b> |
|---|------------------------|--------------------------|----------------------------------------|
| 1 | 20220462               | 1028 Estero Boulevard    | 2022000239193                          |
| 2 | 20220652               | 1046 Estero Boulevard    | 2022000239107                          |
| 3 | 20220655               | 1046 Estero Boulevard    | 2022000239209                          |

20527901 \_10

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

Approve and Authorize the Mayor to Execute a Settlement Agreement with Florida Audubon Society, Squeeze Me Inn, LLC and Texas Hold'Em, LLC related to Case No. 23-CA-5506, Filed in the Twentieth Judicial Circuit, In and For Lee County, Florida.

**Why the action is necessary:**

Would provide for resolution of the dispute and end litigation.

**What the action accomplishes:**

Resolution of the dispute and termination of the litigation.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Nancy Stuparich, Town  
Attorney

5. **Background:**

Florida Audubon Society filed a writ of certiorari in April 2023 in court, challenging the Town Council's approval of Resolution 23-22, granting Special Exception SE20220103 and Variance VAR20220104 to allow the construction of a boardwalk / dune crossover to serve two adjoining properties and homes on the south side of Estero Boulevard. In addition to the Town, Squeeze Me Inn, LLC and Texas Hold'Em LLC were included as respondents in the court case. The Town is represented by insurance defense counsel in the case. A settlement has been proposed by the parties to the lawsuit, and a request has been made for approval by the Town and authorization for the Mayor to sign the settlement agreement once executed by the other parties.

**Attachments:**

1. Notice of Settlement and Stipulation of Dismissal
2. 1.31.24 Settlement Agreement Final

**Financial Impact:**

6. **Alternative Action**

Authorize the Mayor to sign the Settlement Agreement.

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk  
Gretchen R.H. Vose, Town Attorney  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created -

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

FLORIDA AUDUBON SOCIETY,

Petitioner,

Case No.: 23-CA-5506

v.

Lower Tribunal Case Nos:  
SEZ 2022 0103 and  
VAR 2022 0104

TOWN OF FORT MYERS BEACH,  
FLORIDA, SQUEEZE ME INN, LLC,  
And TEXAS HOLD 'EM, LLC,

Respondents.

\_\_\_\_\_/

**NOTICE OF SETTLEMENT AND STIPULATION OF DISMISSAL**

PLEASE TAKE NOTICE, that the parties have reached a settlement resolving all claims in this action.

In light of the settlement agreement entered into by the parties Petitioner, FLORIDA AUDUBON SOCIETY and Respondents, TOWN OF FORT MYERS BEACH, FLORIDA, SQUEEZE ME INN, LLC, and TEXAS HOLD 'EM, LLC, through their respective counsel, stipulate and agree as follows:

The parties have entered into a settlement agreement that achieves a full and final settlement of all of Petitioner claims against Respondents as set forth in Petitioner's Petition for Writ of Certiorari filed in this matter on April 7, 2023.

1. Upon formal execution of said agreement, Petitioner will file a notice of dismissal of this action.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the Florida Court's E-Filing Portal to **Richard Grosso, Esq.**, 6919 W. Broward Blvd, Plantation, FL 33317, Mailbox 142, Email: [richardgrosso1979@gmail.com](mailto:richardgrosso1979@gmail.com); **Paul R. Waters, Esq.**, **Nancy Stuparich, Esq.**, **Gretchen R.H. Vose, Esq.**, 324 W. Morse Blvd, Winter Park, FL 32789, Email: [bvose@voselaw.com](mailto:bvose@voselaw.com), [cdarcy@voselaw.com](mailto:cdarcy@voselaw.com), [mguidone@voselaw.com](mailto:mguidone@voselaw.com) on January 30, 2024.

LEWIS, LONGMAN & WALKER, P.A.  
By: /s/ Amy Taylor Petrick  
AMY TAYLOR PETRICK  
Florida Bar No. 0315590  
Primary Email: [apetrick@llw-law.com](mailto:apetrick@llw-law.com)  
Secondary Email: [bpennington@llw-law.com](mailto:bpennington@llw-law.com)  
ANDREW J. BAUMANN  
Florida Bar No. 0070610  
Primary Email: [abaumann@llw-law.com](mailto:abaumann@llw-law.com)  
Secondary Email: [kdawkins@llw-law.com](mailto:kdawkins@llw-law.com)  
Secondary Email: [mlozada@llw-law.com](mailto:mlozada@llw-law.com)  
360 South Rosemary Avenue, Suite 1100  
West Palm Beach, Florida 33401  
Telephone: 561-640-0820  
Facsimile: 561-640-8202  
Attorney for Squeeze Me Inn, LLC, and  
Texas Hold 'Em, LLC

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

FLORIDA AUDUBON SOCIETY,

Petitioner,

Case No.: 23-CA-5506

v.

Lower Tribunal Case Nos:  
SEZ 2022 0103 and  
VAR 2022 0104

TOWN OF FORT MYERS BEACH,  
FLORIDA, SQUEEZE ME INN, LLC,  
And TEXAS HOLD 'EM, LLC,

Respondents.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made by and between Petitioner Florida Audubon Society, (also known as Florida Audubon Society, Inc.), a non-profit Florida Corporation, and Respondents, Squeeze Me Inn, LLC, a Florida limited liability company, and Texas Hold ‘Em, LLC, a Florida limited liability company.

**RECITALS**

**WHEREAS**, Respondent, Squeeze Me Inn, LLC, owns record and legal title in fee simple to real property at 8170 Estero Boulevard, Fort Myers Beach, Florida 33931; and

**WHEREAS**, Respondent, Texas Hold ‘Em, LLC, owns record and legal title in fee simple to real property at 8150 Estero Boulevard, Fort Myers Beach, Florida, 33931; and

**WHEREAS**, Respondents received a Special Exception (SEZ 2022 0103) and a Variance (VAR 2022 0104) from the Town of Fort Myers Beach, on or about March 6, 2023, to authorize the development of a dune walkover on the shared property line between the two properties from the backyards of the properties to the sandy shores of the Gulf of Mexico; and

**WHEREAS**, Respondents received an environmental resource permit, sovereign submerged land authorization in the form of a lease, coastal construction control line permit, and associated variances from the Florida Department of Environmental Protection (“FDEP”), on or about May 9, 2019, through the issuance of a Consolidated Final Order which disposed of an administrative challenge brought by Florida Audubon Society, Inc. and Respondents, in Florida Division of Administrative Hearing Cases under case numbers 16-7148 and 16-7149; and

**WHEREAS**, Respondents filed an action to quiet title in the riparian property between their respective single family homes and the waters of the Gulf of Mexico in a case styled *Squeeze Me Inn, LLC, et. al. v. The State of Florida, Board of Trustees of the Internal Improvement Trust*



*Fund*, in the Twentieth Judicial Circuit Court in and for Lee County, Case Number 2020-CA-006681 (“the Quiet Title Action”); and

**WHEREAS**, Petitioner, Florida Audubon Society filed a Petition for Writ of Certiorari challenging the Town of Fort Myers Beach’s issuance of a Special Exception and Variance to Respondence, with the caption set forth above (“the Petition for Writ of Certiorari”); and

**WHEREAS**, the parties seek to bring a final resolution to all pending or currently anticipated litigation between the Parties regarding the dune walkover.

**NOW THEREFORE**, in consideration of \$10.00 and other good and valuable consideration, as set forth herein, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and by this reference are incorporated as material parts of this Agreement.
2. **Authority.** This Agreement is executed by the Parties and signed by persons with full and complete authority to bind the Parties. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he/she has the full power and authority to bind any corporation, partnership, non-profit organization or association, or any other entity for which the person purports to act hereunder.
3. **Exhibits.** All Exhibits referenced in this Agreement are hereby incorporated by referenced as material parts of this Agreement.
4. **Obligations of Squeeze Me Inn, LLC and Texas Hold ‘Em, LLC (collectively “the Homeowners”).**
  - a. **Temporary Closures of the Dune Walkover.** The Homeowners agree that the Dune Walkover will be closed to pedestrian traffic if the Homeowners receive notice from the Florida Fish and Wildlife Conservation Commission during Bird Nesting Season that a nest of an imperiled bird species including birds listed as threatened or endangered by state or federal wildlife agencies, has been identified within the 150-foot radius defined on **Exhibit A**. The parties agree that this Agreement is neither intended to nor capable of limiting the authority of the Florida Fish and Wildlife Conservation Commission to require stricter conservation or protection measures than established herein. The walkover shall remain closed until the Homeowners are notified that chicks in the nest have hatched and fledged, or the nest has been destroyed or abandoned, whichever occurs earliest. For the purposes of this Agreement, Bird Nesting Season is defined as the period between February 15 and September 1 of each year.
  - b. **Limitations on Activities During Nesting Season.** The Homeowners agree not to conduct activities within the area defined on **Exhibit B** that inhibit bird nesting during Bird Nesting Season, including, by way of example, the use of visual disturbance like pinwheels, kites, plastic owls, fireworks or the creation of excessive noise. The Homeowners additionally agree not to engage in sand-

raking within the 300 feet seaward of the Dune Walkover. The 300-foot area seaward of the Dune Walkover is defined on **Exhibit B**.

- c. **Dismissal of Quiet Title Action.** Within ten (10) calendar days of the dismissal of the pending Petition for Writ of Certiorari case, the Homeowners shall dismiss the Quiet Title Action.
- d. **License to Conduct Activities.** The Homeowners shall issue a license to Petitioner, to allow volunteers and staff from Petitioner, to engage in stewardship activities, such as research, monitoring, and observations, and to assist the Florida Fish and Wildlife Conservation Commission with its activities related to bird nesting sites on property owned or leased by the Homeowners between their backyards and the waters of the Gulf of Mexico.
  - i. For the purposes of this Agreement, the Homeowners' backyards are defined as the raked sandy areas landward of the lagoon, identified on Exhibit A.
  - ii. The license shall be in the form attached hereto as **Exhibit C**, to be executed within five days of the effective date of this Agreement.
  - iii. Petitioner acknowledges and understands that title to the property between the Homeowners' backyards and the Gulf of Mexico is disputed, and the Homeowners currently have a submerged land lease for use of the area under the Dune Walkover from the state of Florida, and that the Homeowners do not guarantee the effectiveness of the license, as compared to the ownership interests in the property, if any, of the State of Florida Board Trustees of the Internal Improvement Fund.
  - iv. Petitioner acknowledges and understands that the license may be revoked if the Homeowners are determined not to be the owners of the property that forms the subject of the license, or if local, state, or federal agencies require the removal of the Dune Walkover and/or prevent its repair or replacement.
  - v. Petitioner acknowledges and understands that, notwithstanding the issuance of the license, individual volunteers and staff may be prohibited from accessing the property that forms the subject of the license if they engage in criminal conduct, including but not limited to vandalism or assault against the Homeowners, other authorized users of the Dune Walkover, or their guests and invitees.
  - vi. Petitioner acknowledges for itself, its members, and its representatives that access to and use of the Respondents' Parcel is done at its own risk and shall not give rise to any liability on the part of the Respondent. Petitioner AGREES TO HOLD HARMLESS LICENSOR, ITS OFFICERS, MEMBERS, REPRESENTATIVES, AND EMPLOYEES, from and against any loss, costs, damages, claims, assessments, fines and/or penalties (including reasonable attorney's fees) (together referred to as "Losses") which may be incurred by

Petitioner, its officers, members and/or employees as a result of the negligence or tort by Respondents or Respondents' employees, agents or contractors which may arise out of this Agreement or the License granted under this Agreement, except to the extent such Losses is occasioned by the negligence of the Respondents or Respondents' employees, agents or contractors.

- e. **Encouragement to Other Property Owners.** Within seven calendar days of the execution of this agreement, the Homeowners agree to transmit the letter attached hereto as **Exhibit D** to the property owners identified in said exhibit, informing them of the settlement agreement and encouraging them to re-authorize Petitioner to conduct stewardship activities on their property.

**5. Obligations of Petitioner.**

- a. Petitioner agrees to dismiss the Petition for Writ of Certiorari within ten (10) calendar days of the execution of this Agreement. Petitioner agrees to waive, release, acquit, discharge, indemnify, and hold the Homeowners harmless from any and all claims, counterclaims, defenses, actions, causes of action, suits, controversies, agreements, promises, and demands whatsoever that Petitioner ever had, now has, or may have in the future, in law or in equity, for, upon, or by reason of any claim raised or which could have been raised by the Parties related to the Dune Walkover, so long as the Homeowners remain in compliance with all conditions of their governmental approvals for the Dune Walkover. The release set forth in this Paragraph does not apply to any rights granted by or arising from this Agreement, including without limitation any action to enforce this Agreement. As part of this Release, Petitioner agrees that it will not, under any name or through any of its representatives, challenge in any way, including without limitation the filing of administrative, legal, or equitable challenges, petitions, claims, or suits objecting to or seeking to invalidate or overturn any existing or future permit, lease, variance, waiver, or other authorization the Homeowners may have for the Dune Walkover in the same form, footprint and condition existing on the date of this Agreement.
- 6. Enforcement.** The terms of this Agreement may be enforced by the Parties through any and all remedies provided in law or in equity.
- 7. Governing Law; Venue.** This Agreement, and any issues relating to it or its subject matter shall be construed, interpreted, enforced, and governed in accordance with and governed by the substantive laws of the State of Florida. Venue for any action arising out of relating to this Agreement shall be solely in the circuit court in and for Lee County, Florida.
- 8. Further Understandings and Agreements.** This Agreement constitutes the entire understanding between the Parties with respect to the settlement of the matters addressed herein. All prior negotiations and understanding, whether verbal or written between said parties, collectively, jointly, and/or severally, and their agents,

employees, and representatives are merged herein and fully set forth. Each Party hereto acknowledges, represents, and warrants that, except as expressly set out in this Agreement, no representation of fact or law has been made by those released hereby, or their counsel, or any other person, and that this Agreement is not based upon any unstated representation(s), the undersigned or their counsel having investigated to the fullest extent possible the factual and legal issues involved in this matter.

- 9. Effective Date.** This Agreement becomes effective on the date of the last signature affixed below. This Agreement shall be binding upon and shall inure to the benefit of the Parties. This Agreement is not intended to benefit Third Parties, except that the conditions requiring the Parties to dismiss litigation shall apply to and benefit all parties to said litigation.
- 10. Amendment.** This Agreement or any part hereof may not be changed, amended, waived, discharged, or terminated, except by an instrument in writing, executed by all Parties affected by such amendment.
- 11. Attorney's Fees and Costs.** Each party shall be responsible for their respective attorney's fees and costs.
- 12. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and need not be signed by more than one of the parties and all of which shall constitute one and the same agreement. The Parties further agree that each Party shall execute and deliver all other appropriate supplemental agreements and other instruments, and take any other action necessary, to make this Agreement fully and legally effective, binding, and enforceable as between the and as against third parties.
- 13. Survivability.** All provisions that logically ought to survive termination of this Agreement shall survive.

**IN WITNESS WHEREOF,** the Parties hereto intending to be legally bound, have executed this Agreement to be effective upon the execution by all parties and as provided in this Agreement.

**RESPONDENT**

**SQUEEZE ME INN, LLC**

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF LEE

Sworn to and subscribed before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization  
this \_\_\_\_ day of \_\_\_\_\_, 202\_ by \_\_\_\_\_, who is personally  
known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

\_\_\_\_\_  
NOTARY (print name)

My commission expires: \_\_\_\_\_

**RESPONDENT**

**TEXAS HOLD 'EM, LLC**

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF LEE

Sworn to and subscribed before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization  
this \_\_\_\_ day of \_\_\_\_\_, 202\_ by \_\_\_\_\_, who is personally  
known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

\_\_\_\_\_  
NOTARY (print name)

My commission expires: \_\_\_\_\_

**PETITIONER**

**FLORIDA AUDUBON SOCIETY, INC.**

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF LEE

Sworn to and subscribed before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization  
this \_\_\_\_ day of \_\_\_\_\_, 202\_ by \_\_\_\_\_, who is personally  
known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC, State of Florida

\_\_\_\_\_  
NOTARY (print name)

My commission expires: \_\_\_\_\_

**ATTACHMENT A**





**ATTACHMENT B**



Castle Beach

© 2023 Google



**ATTACHMENT C**



## **LICENSE AGREEMENT**

**STATE OF FLORIDA**

**COUNTY OF LEE**

**KNOW ALL PERSONS BY THESE PRESENTS THAT SQUEEZE ME INN, LLC** ("Licensor"), a Florida Limited Liability Company, in consideration of the sum of Ten Dollars and other good and valuable consideration paid by **FLORIDA AUDUBON SOCIETY, INC.**, ("Licensee"), a non-profit corporation under the Laws of the State of Florida, whose mailing address is 4500 Biscayne Boulevard, Suite 350 Miami, Florida 33137, to Licensor, the receipt and sufficiency of which is hereby acknowledged by Licensor, does hereby grant unto Licensee the right and license ("License") to conduct imperiled bird conservation activities in conjunction with the State of Florida Fish and Wildlife Conservation Commission on that certain parcel of land ("License Parcel") located within Fort Myers Beach, Florida, which License Parcel is more particularly described in EXHIBIT "A" attached hereto and made a part hereof, together with the right of ingress and egress along and upon said License Parcel for the purpose of conducting said conservation activities. The term "imperiled birds" includes birds listed as threatened, endangered by state or federal wildlife agencies.

Licensee acknowledges that the rights provided herein do not extend to access to or ingress and egress on, to, or over the dune walkover constructed on the License Parcel, or the raked sand back yard of the License Parcel, or the single-family home constructed thereon, but is instead limited to the sandy beach-dune system seaward of the lagoon indicated on the graphic attached hereto as EXHIBIT "A."

Licensee acknowledges that Licensor claims ownership of title to portions of the natural area depicted on EXHIBIT "A". Licensee further agrees that its rights under this License may be revoked, voided, or invalidated by the finding of any court of competent jurisdiction that the property is not owned by the Licensor.

Licensee acknowledges that this License shall be effective for so long as the Dune Walkover depicted in EXHIBIT "B", which is attached hereto and made a part hereof, exists. Should the Dune Walkover, or the permits, authorizations, leases, variance, or waivers, authorizing its existence, or renewals thereof, be disapproved, revoked, extinguished, and the Dune Walkover be removed, or cease to exist for any other reason, this License shall terminate.

Licensee further agrees that use of the License Parcel shall be limited to imperiled bird conservation activities performed in conjunction with the State of Florida Fish and Wildlife Conservation Commission and for no other purpose, and shall further comply with all federal, state, and local regulations governing such conduct.

Licensee further acknowledges for itself, its members, and its representatives that access to and use of the License Parcel is done at its own risk and shall not give rise to any liability on the part of the Licensor. LICENSEE AGREES TO HOLD HARMLESS LICENSOR, ITS OFFICERS, MEMBERS, REPRESENTATIVES, AND EMPLOYEES, from and against any loss, costs, damages, claims, assessments, fines and/or penalties (including reasonable attorney's fees) (together referred to as "Losses") which may be incurred by Licensor, its officers, members and/or employees as a result of the negligence or tort by Licensee or Licensee's employees, agents or contractors which may arise out of the granting of this License, except to the extent such Losses is occasioned by the negligence of the Licensor or Licensor's employees, agents or contractors.

IN WITNESS WHEREOF, the undersigned have executed and delivered this License Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_

**Licensor:**

**SQUEEZE ME INN, LLC**

**By:**\_\_\_\_\_

ATTEST:

By:\_\_\_\_\_

STATE OF FLORIDA       )  
                                  )SS  
COUNTY OF LEE        )

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as managing member of Squeeze Me Inn, LLC. He is personally known to me/produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
(typed, printed or stamped name of notary public)  
Notary Public  
State of Florida  
My Commission Expires \_\_\_\_\_

**Licensee:**

**FLORIDA AUDUBON SOCIETY, INC., a Florida  
non-profit Corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

STATE OF FLORIDA       )  
                                      )SS  
COUNTY OF LEE        )

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of Florida Audubon Society, Inc., on behalf of said corporation. He/She is personally known to me/produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
(typed, printed or stamped name of notary public)  
Notary Public  
State of Florida  
My Commission Expires \_\_\_\_\_

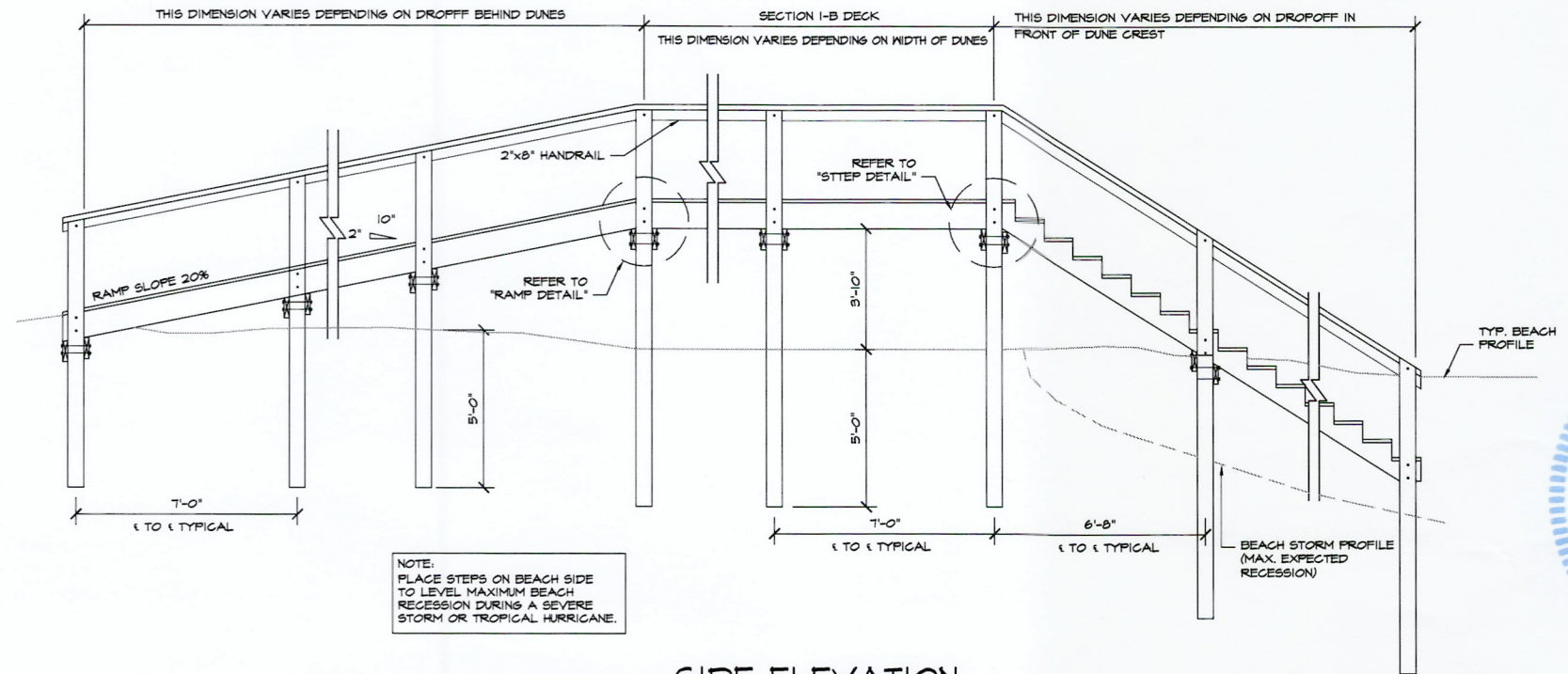




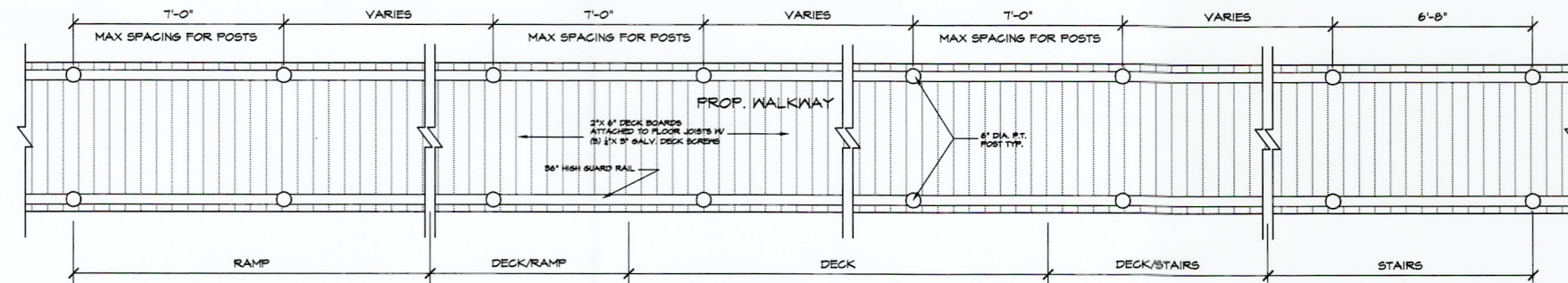




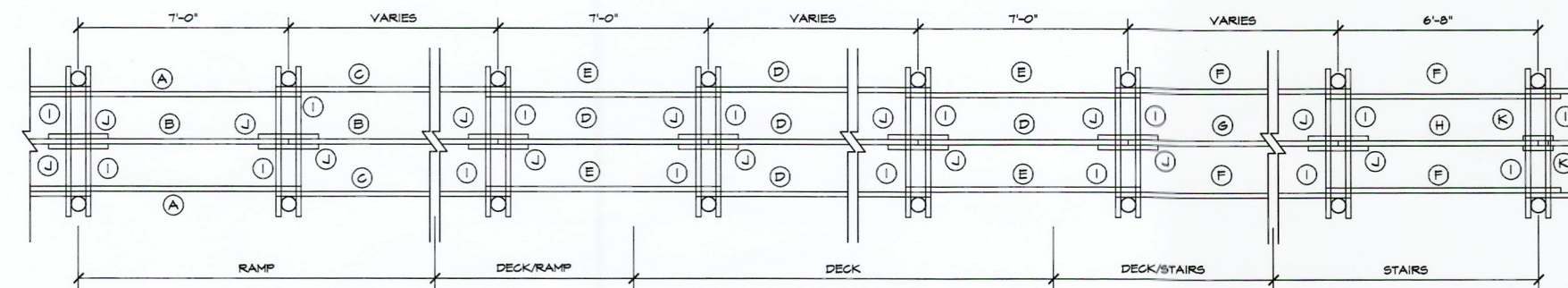
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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>APPLICABLE CODES:</b><br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) RESIDENTIAL<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) MECHANICAL<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) PLUMBING<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) ENERGY CONSERVATION<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) ACCESSIBILITY<br><input checked="" type="checkbox"/> 2014 FLORIDA FIRE PREVENTION CODE, FIFTH EDITION<br><input checked="" type="checkbox"/> 2011 NATIONAL ELECTRICAL CODE<br><input checked="" type="checkbox"/> NATIONAL FIRE PROTECTION CODE, NFPA 101 (LIFE SAFETY)<br><input type="checkbox"/> NATIONAL FIRE PROTECTION CODE, NFPA 13 (FIRE SPRINKLERS)<br><input type="checkbox"/> NATIONAL FIRE PROTECTION CODE, NFPA 72 |  | <b>WIND SPEED:</b><br><input checked="" type="checkbox"/> 170 MPH+ULTIMATE DESIGN WIND SPEED (3-SECOND GUST)<br><input checked="" type="checkbox"/> 182 MPH+NOMINAL DESIGN WIND SPEED (FASTEST MILE)                                                                                                 |
| <b>BUILDING OCCUPANCY CLASSIFICATION:</b><br><input type="checkbox"/> GROUP A - ASSEMBLY<br><input type="checkbox"/> GROUP B - BUSINESS<br><input type="checkbox"/> GROUP D - DAY CARE CENTER<br><input type="checkbox"/> GROUP E - EDUCATIONAL<br><input type="checkbox"/> GROUP F - FACTORY INDUSTRIAL<br><input type="checkbox"/> GROUP H - HAZARDOUS<br><input type="checkbox"/> GROUP I - INSTITUTIONAL<br><input type="checkbox"/> GROUP M - MERCANTILE<br><input checked="" type="checkbox"/> GROUP R - RESIDENTIAL<br><input type="checkbox"/> GROUP S - STORAGE                                                                                                                                                                                                                                                                                                                                                                         |  | <b>SURFACE ROUGHNESS CATEGORY:</b><br><input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D<br><br><b>EXPOSURE CATEGORY:</b><br><input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D                                    |
| <b>BUILDING CONSTRUCTION TYPE:</b><br><input type="checkbox"/> TYPE I-A <input type="checkbox"/> TYPE I-B <input type="checkbox"/> TYPE IV<br><input type="checkbox"/> TYPE I-B <input type="checkbox"/> TYPE III-A <input type="checkbox"/> TYPE V-A<br><input type="checkbox"/> TYPE II-A <input type="checkbox"/> TYPE III-B <input checked="" type="checkbox"/> TYPE V-B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | <b>MINDBORNE DEBRIS REGION:</b><br><input type="checkbox"/> NO<br><input checked="" type="checkbox"/> YES<br><input checked="" type="checkbox"/> NOT APPLICABLE<br><input type="checkbox"/> IMPACT RESISTANT COVERING<br><input type="checkbox"/> COMBINATION OF IMPACT RESISTANT GLAZING & COVERING |
| <b>RISK CATEGORY:</b><br><input type="checkbox"/> I <input checked="" type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | <b>INTERNAL PRESSURE COEFFICIENTS:</b><br><input type="checkbox"/> 0.00 (OPEN)<br><input checked="" type="checkbox"/> +0.18, -0.18 (ENCLOSED)<br><input type="checkbox"/> +0.35, -0.35, (PARTIALLY ENCLOSED)                                                                                         |
| <b>WIND LOADS:</b><br>(WIND LOADS ARE BASED ON CH. 26 THRU 30 OF ASCE 7)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | <b>COMPONENTS AND CLADDING PRESSURES:</b><br>ZONE 1: +31.0 / -51.4<br>ZONE 2: +35.6 / -44.2<br>ZONE 3: +34.0 / -154.5<br>ZONE 4: +64.7 / -70.4<br>ZONE 5: +64.7 / -84.5                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | <b>GEOTECHNICAL INFO:</b><br>(FOUNDATIONS ARE BASED ON A MINIMUM SOIL BEARING CAPACITY OF 2000 PSI)                                                                                                                                                                                                  |



SIDE ELEVATION  
SCALE: 3/8" = 1'-0"



FLOOR PLAN  
SCALE: 1/2" = 1'-0"



FRAMING DETAIL  
SCALE: 1/2" = 1'-0"

|                                |               |                   |
|--------------------------------|---------------|-------------------|
| A                              | 2"x10"x 1'-4" |                   |
| B                              | 2"x10"x 1'-6" |                   |
| C                              | 2"x10"x 8'-4" |                   |
| D                              | 2"x10"x 1'-0" |                   |
| E                              | 2"x10"x 1'-3" |                   |
| F                              | 2"x10"x 4'-0" | NOTCHED FOR STEPS |
| G                              | 2"x10"x 8'-6" | NOTCHED FOR STEPS |
| H                              | 2"x10"x 8'-4" | NOTCHED FOR STEPS |
| <b><u>BENT DIMENSION</u></b>   |               |                   |
| I                              | 2"x10"x 6'-6" |                   |
| <b><u>SPLICE DIMENSION</u></b> |               |                   |
| J                              | 2"x10"x 2'-0" |                   |
| K                              | 2"x10"x 1'-6" |                   |

ALL SPLICE BLOCKS TO BE NAILED TO STRINGERS TO PROVIDE BOTH LATERAL SUPPORT AT JOINTS AND BEARING SUPPORT. ALL PILE BOLTED CONNECTIONS TO BE 1/2"x12" HEX. BOLT WITH NUT AND WASHER.



IF ANY ORDERS OR CHARGES EXIST AT THESE DRAWINGS OR SPECIFICATIONS, THE CONTRACTOR AND/OR OWNER SHALL WITHIN 30 DAYS, AFTER RECEIPT OF THE DRAWINGS, ADVISE US IN WRITING OF THE SAME. WITHOUT US BEING ADVISED IN WRITING OF THE SAME, WE SHALL HOLD US, LUS ENGINEERING, LLC RESPONSIBLE FOR THE RESULTS AND COSTS OF RECTIFYING THE SAME.

LUS ENGINEERING, LLC DOES NOT ASSUME ANY RESPONSIBILITY FOR SUPERVISION OF CONSTRUCTION OR REVIEW OF SHOP DRAWINGS. THE CONTRACTOR AND SUB-CONTRACTORS SHALL STRICTLY ADHERE TO ALL FLORIDA BUILDING CODES, ALL ORDINANCES, AND ALL AGREEMENTS BY LOCAL BUILDING DEPARTMENTS.

THE MAXIMUM LIABILITY TO LUS ENGINEERING, LLC SHALL NOT EXCEED THE FEE PAID TO LUS ENGINEERING, LLC FOR THESE PLANS.

[illegible]

APPROVED  
7/26/16  
ROBERT W. CASE  
FLORIDA P.E. #44643  
VALID ONLY WITH SEAL

**IG  
EYING**

CA NO.: 6853  
CA NO.: 29005  
LB1057

2572 West State Road 426  
Suite 2064, Oviedo, FL 32765  
Phone: (321) 244-0402  
facsimile: (321) 244-9419

**LLS**  
ENGINEERING  
LAND SURVEYING

21430 Palm Beach Blvd.  
Miyazaki, Fla. 33190  
Phone: (239) 693-9244  
Facsimile: (239) 693-9628

**PROPOSED WALKWAY FOR ROOD/KROMER**  
8150-8170 ESTERO BLVD FORT MYERS BEACH, FL  
**PLAN AND ELEVATION**

SCALE:  
3/8" = 1'-0"

DATE:  
JUNE 16, 2016

SHEET

# A1







## SKETCH AND DESCRIPTION

### EASEMENT AREA DESCRIPTION

That part of the sovereign lands of the State of Florida that lie within the following described area, being that part of Lot 19, GRAND OLE MAN SUBDIVISION, being a subdivision of part of Sections 3 and 10, Township 47 South, Range 24 East, according to the plat thereof as recorded in Plat Book 29, Page 26, Public Records of Lee County, Florida described as follows: Commence at the Northeast corner of said Lot 19; thence S00°14'07"W, along the East line of said Lot 19, a distance of 216.93' to the Mean High Water Line of a Lagoon of the Gulf of Mexico for the Point of Beginning; thence continue S00°14'07"W, along said East line of Lot 19, a distance of 121.74 feet to the Mean High Water Line of a Lagoon of the Gulf of Mexico; thence S77°00'50"W, along said Mean High Water Line a distance of 2.57 feet; thence N00°14'07"E a distance of 122.18 feet to the Mean High Water Line of a Lagoon of the Gulf of Mexico; thence N86°52'16"E, along said Mean High Water Line, a distance of 2.50 feet to the Point of Beginning; containing 304.9 square feet.

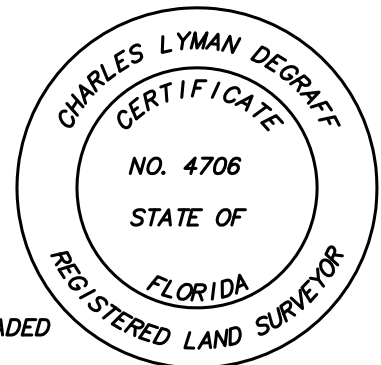


### NOT A FIELD SURVEY

REVISION 1: REVISE COORDIANTES

SURVEYOR'S NOTES:  
STATE PLANE COORDINATE OBTAINED FROM GOOGLE EARTH  
COORDINATES CONVERTED TO STATE PLANE COORDINATES  
BY NGS PROGRAM SPC.

SHORELINE 1000 FEET EACH SIDE OF PROPERTY IS 0% SEAWALLED/BULKHEADED



NOT A FIELD SURVEY

(SIGNED) \_\_\_\_\_  
CHARLES L. DEGRAFF PSM #4706

REFER TO SHEET 2 FOR SKETCH OF DESCRIPTION

The seal appearing on this document was authorized by Charles DeGraff PSM 4706 on 12/04/2015.

THIS SKETCH AND DESCRIPTION IS IN COMPLIANCE WITH THE MINIMUM TECHNICAL STANDARDS  
PURSUANT TO RULES 5J-17.050 THROUGH 5J-17.052, FLORIDA ADMINISTRATIVE CODE.

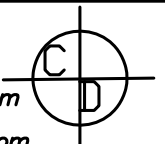
SHEET 1 OF 3

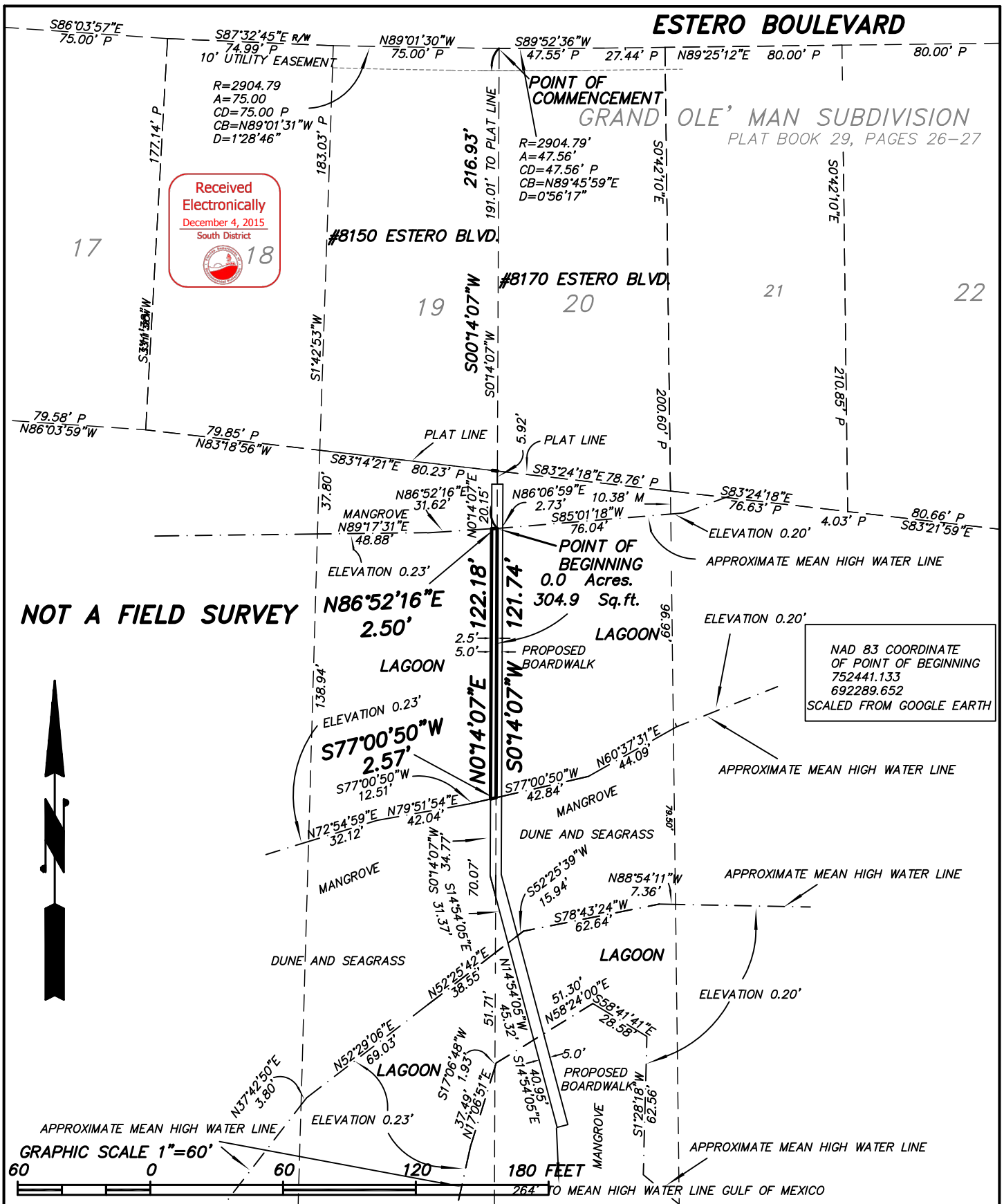
**CHARLES DEGRAFF LAND SURVEYOR**

Land Surveyors and Mappers  
301 Hazeltine Drive, Debary, Florida 32713

Phone (239) 699-8572  
Email [charles.degraff@gmail.com](mailto:charles.degraff@gmail.com)

Web [www.surveycapexcoral.com](http://www.surveycapexcoral.com)





REFER TO SHEET 1 OF 2 FOR DESCRIPTION, LOCATION MAP AND SURVEYOR'S NOTES.

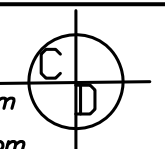
The seal appearing on this document was authorized by Charles DeGraff PSM 4706 on 12/04/2015.

SHEET 2 OF 3

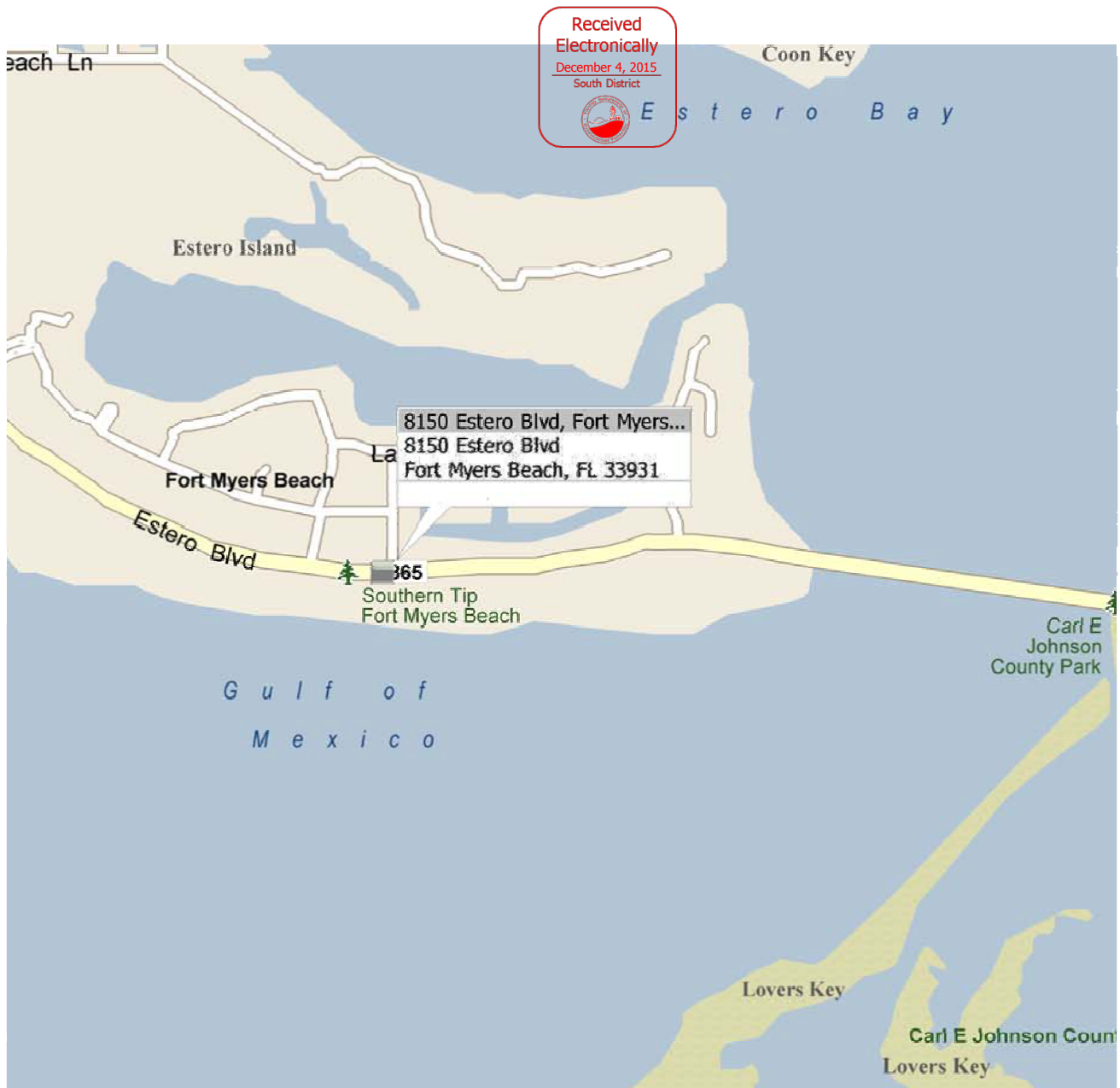
**CHARLES DEGRAFF LAND SURVEYOR**

Land Surveyors and Mappers  
301 Hazeltine Drive, Debarry, Florida 32713

Phone (239) 699-8572  
Email charles.degraff@gmail.com  
Web www.surveycapcoral.com



**LOCATION MAP  
NO SCALE**



**NOT A FIELD SURVEY  
REFER TO SHEETS 1&2 FOR SKETCH AND DESCRIPTION**

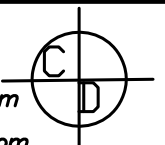
**SHEET 3 of 3**

**CHARLES DEGRAFF LAND SURVEYOR**

*Land Surveyors and Mappers  
301 Hazeltine Drive, Debary, Florida 32713*

*Phone (239) 699-8572  
Email [charles.degraff@gmail.com](mailto:charles.degraff@gmail.com)*

*Web [www.surveycapcoral.com](http://www.surveycapcoral.com)*



## **LICENSE AGREEMENT**

**STATE OF FLORIDA**

**COUNTY OF LEE**

**KNOW ALL PERSONS BY THESE PRESENTS THAT TEXAS HOLD'EM, LLC** ("Licensor"), a Florida Limited Liability Company, in consideration of the sum of Ten Dollars and other good and valuable consideration paid by **FLORIDA AUDUBON SOCIETY, INC.**, ("Licensee"), a non-profit corporation under the Laws of the State of Florida, whose mailing address is 4500 Biscayne Boulevard, Suite 350 Miami, Florida 33137, to Licensor, the receipt and sufficiency of which is hereby acknowledged by Licensor, does hereby grant unto Licensee the right and license ("License") to conduct imperiled bird conservation activities in conjunction with the State of Florida Fish and Wildlife Conservation Commission on that certain parcel of land ("License Parcel") located within Fort Myers Beach, Florida, which License Parcel is more particularly described in EXHIBIT "A" attached hereto and made a part hereof, together with the right of ingress and egress along and upon said License Parcel for the purpose of conducting said conservation activities. The term "imperiled birds" includes birds listed as threatened, endangered by state or federal wildlife agencies.

Licensee acknowledges that the rights provided herein do not extend to access to or ingress and egress on, to, or over the dune walkover constructed on the License Parcel, or the raked sand back yard of the License Parcel, or the single-family home constructed thereon, but is instead limited to the sandy beach-dune system seaward of the lagoon indicated on the graphic attached hereto as EXHIBIT "A."

Licensee acknowledges that Licensor claims ownership of title to portions of the natural area depicted on EXHIBIT "A". Licensee further agrees that its rights under this License may be revoked, voided, or invalidated by the finding of any court of competent jurisdiction that the property is not owned by the Licensor.

Licensee acknowledges that this License shall be effective for so long as the Dune Walkover depicted in EXHIBIT "B", which is attached hereto and made a part hereof, exists. Should the Dune Walkover, or the permits, authorizations, leases, variance, or waivers, authorizing its existence, or renewals thereof, be disapproved, revoked, extinguished, and the Dune Walkover be removed, or cease to exist for any other reason, this License shall terminate.

Licensee further agrees that use of the License Parcel shall be limited to imperiled bird conservation activities performed in conjunction with the State of Florida Fish and Wildlife Conservation Commission and for no other purpose, and shall further comply with all federal, state, and local regulations governing such conduct.

Licensee further acknowledges for itself, its members, and its representatives that access to and use of the License Parcel is done at its own risk and shall not give rise to any liability on the part of the Licensor. **LICENSEE AGREES TO HOLD HARMLESS LICENSOR, ITS OFFICERS, MEMBERS, REPRESENTATIVES, AND EMPLOYEES**, from and against any loss, costs, damages, claims, assessments, fines and/or penalties (including reasonable attorney's fees) (together referred to as "Losses") which may be incurred by Licensor, its officers, members and/or employees as a result of the negligence or tort by Licensee or Licensee's employees, agents or contractors which may arise out of the granting of this License, except to the extent such Losses is occasioned by the negligence of the Licensor or Licensor's employees, agents or contractors.

IN WITNESS WHEREOF, the undersigned have executed and delivered this License Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_

**Licensor:**

**TEXAS HOLD'EM, LLC**

**By:**\_\_\_\_\_

ATTEST:

By:\_\_\_\_\_

STATE OF FLORIDA       )  
                                  )SS  
COUNTY OF LEE        )

The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_, as managing member of Texas Hold'em, LLC. He is personally known to me/produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
(typed, printed or stamped name of notary public)  
Notary Public  
State of Florida  
My Commission Expires \_\_\_\_\_



**Licensee:**

**FLORIDA AUDUBON SOCIETY, INC., a Florida  
non-profit Corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

STATE OF FLORIDA       )  
                                      )SS  
COUNTY OF LEE        )

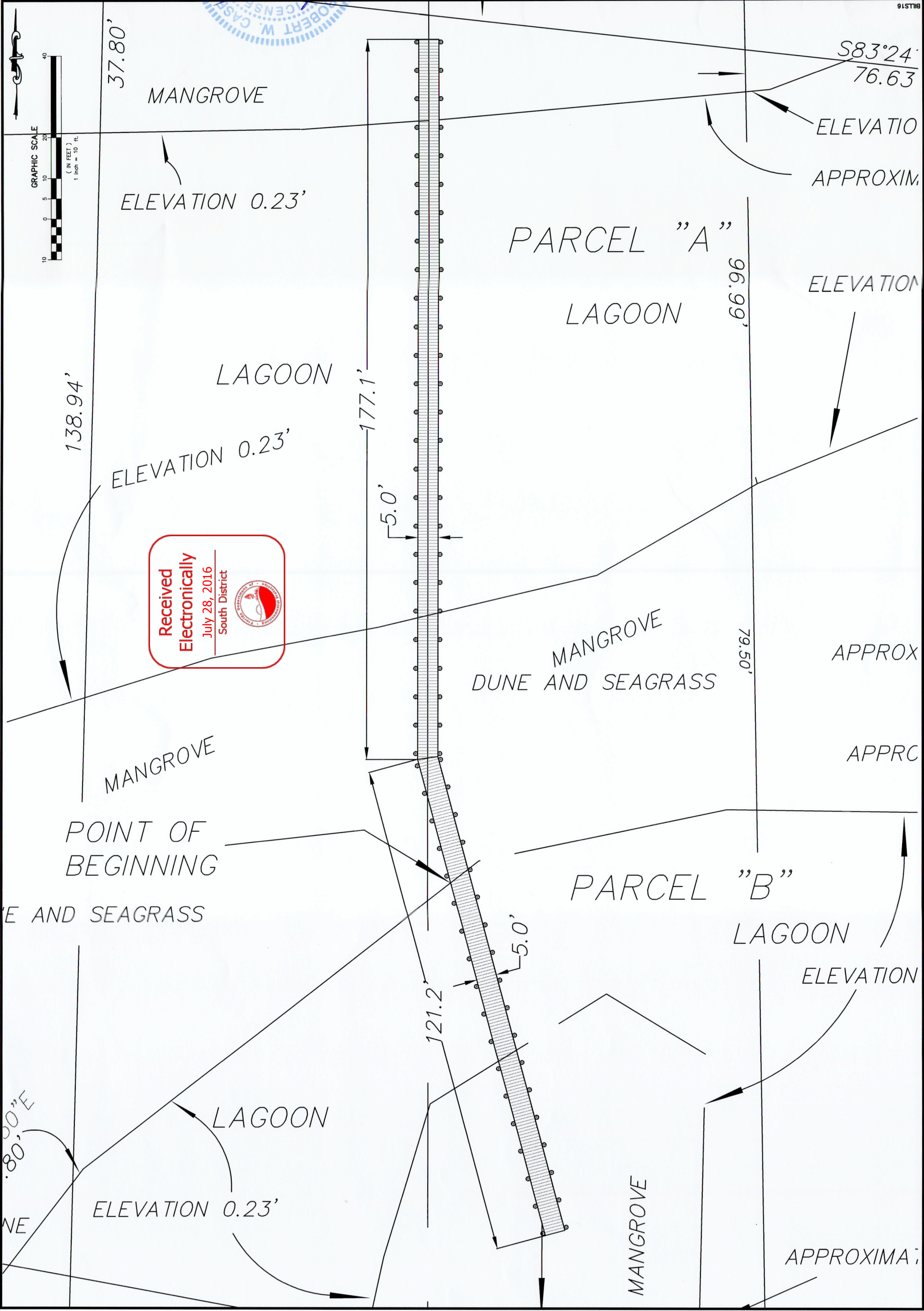
The foregoing instrument was acknowledged before me by means of \_\_\_\_ physical presence or \_\_\_\_ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by \_\_\_\_\_, as \_\_\_\_\_ of Florida Audubon Society, Inc., on behalf of said corporation. He/She is personally known to me/produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
(typed, printed or stamped name of notary public)  
Notary Public  
State of Florida  
My Commission Expires \_\_\_\_\_



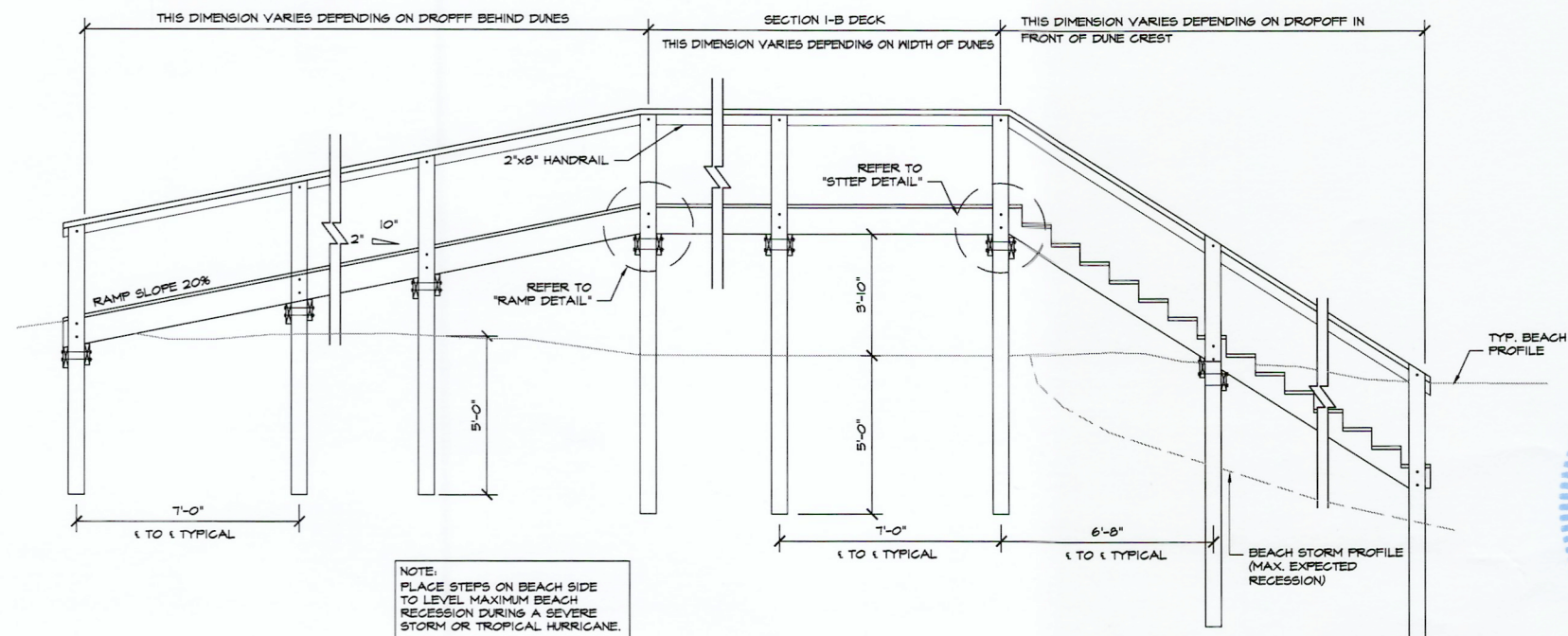




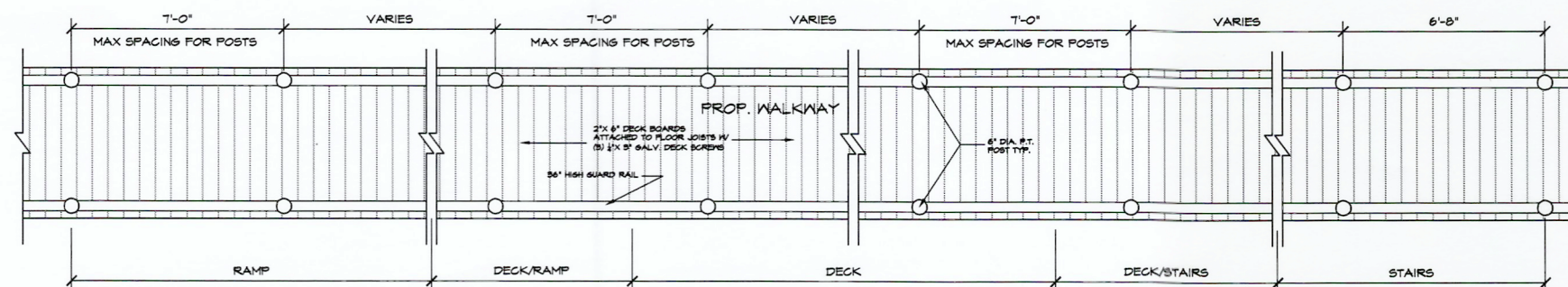
**EXHIBIT  
B**



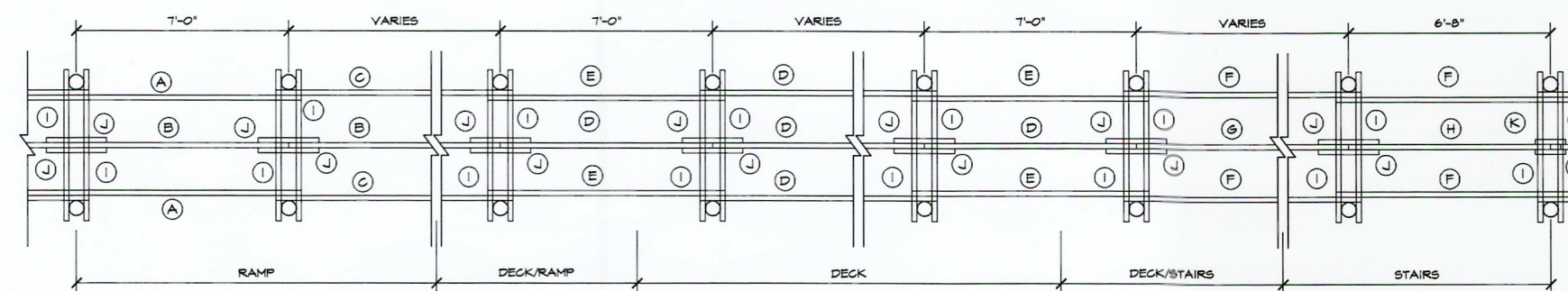
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>APPLICABLE CODES:</b><br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) RESIDENTIAL<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) MECHANICAL<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) PLUMBING<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) ENERGY CONSERVATION<br><input checked="" type="checkbox"/> FLORIDA BUILDING CODE, FIFTH EDITION, (2014) ACCESSIBILITY<br><input checked="" type="checkbox"/> 2014 FLORIDA FIRE PREVENTION CODE, FIFTH EDITION<br><input checked="" type="checkbox"/> 2011 NATIONAL ELECTRICAL CODE<br><input checked="" type="checkbox"/> NATIONAL FIRE PROTECTION CODE, NFPA 101 (LIFE SAFETY)<br><input type="checkbox"/> NATIONAL FIRE PROTECTION CODE, NFPA 13 (FIRE SPRINKLERS)<br><input type="checkbox"/> NATIONAL FIRE PROTECTION CODE, NFPA 72 | <b>WIND SPEED:</b><br><input checked="" type="checkbox"/> 170 MPH+ULTIMATE DESIGN WIND SPEED (3-SECOND GUST)<br><input checked="" type="checkbox"/> 132 MPH+NOMINAL DESIGN WIND SPEED (FASTEST MILE)<br><br><b>SURFACE ROUGHNESS CATEGORY:</b><br><input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D<br><br><b>EXPOSURE CATEGORY:</b><br><input type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D<br><br><b>WINDBORNE DEBRIS REGION:</b><br><input type="checkbox"/> NO<br><input checked="" type="checkbox"/> YES<br><input checked="" type="checkbox"/> NOT APPLICABLE<br><input type="checkbox"/> IMPACT RESISTANT COVERING<br><input type="checkbox"/> COMBINATION OF IMPACT RESISTANT GLAZING & COVERINGS |
| <b>BUILDING OCCUPANCY CLASSIFICATION:</b><br><input type="checkbox"/> GROUP A - ASSEMBLY<br><input type="checkbox"/> GROUP B - BUSINESS<br><input type="checkbox"/> GROUP D - DAY CARE CENTER<br><input type="checkbox"/> GROUP E - EDUCATIONAL<br><input type="checkbox"/> GROUP F - FACTORY INDUSTRIAL<br><input type="checkbox"/> GROUP H - HAZARDOUS<br><input type="checkbox"/> GROUP I - INSTITUTIONAL<br><input type="checkbox"/> GROUP M - MERCANTILE<br><input checked="" type="checkbox"/> GROUP R - RESIDENTIAL<br><input type="checkbox"/> GROUP S - STORAGE                                                                                                                                                                                                                                                                                                                                                                         | <b>INTERNAL PRESSURE COEFFICIENTS:</b><br><input type="checkbox"/> 0.00 (OPEN)<br><input checked="" type="checkbox"/> +0.18, -0.18 (ENCLOSED)<br><input type="checkbox"/> +0.35, -0.35 (PARTIALLY ENCLOSED)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>BUILDING CONSTRUCTION TYPE:</b><br><input type="checkbox"/> TYPE I-A <input type="checkbox"/> TYPE II-B <input type="checkbox"/> TYPE IV<br><input type="checkbox"/> TYPE I-B <input type="checkbox"/> TYPE III-A <input type="checkbox"/> TYPE V-A<br><input type="checkbox"/> TYPE II-A <input type="checkbox"/> TYPE III-B <input checked="" type="checkbox"/> TYPE V-B<br><br><b>RISK CATEGORY:</b><br><input type="checkbox"/> I <input checked="" type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV<br><br><b>WIND LOADS:</b><br>(WIND LOADS ARE BASED ON CH. 26 THRU 30 OF ASCE 7)                                                                                                                                                                                                                                                                                                                         | <b>COMPONENTS AND CLADDING PRESSURES:</b><br>ZONE 1: +31.0 / -31.1<br>ZONE 2: +35.6 / -44.2<br>ZONE 3: +39.0 / -154.5<br>ZONE 4: +64.7 / -70.4<br>ZONE 5: +64.7 / -84.5<br><br><b>GEOTECHNICAL INFO:</b><br>(FOUNDATIONS ARE BASED ON A MINIMUM SOIL BEARING CAPACITY OF 2000 PSI)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



SIDE ELEVATION  
SCALE: 3/8" = 1'-0"



FLOOR PLAN  
SCALE: 1/2" = 1'-0"



FRAMING DETAIL  
SCALE: 1/2" = 1'-0"

| <u>STRINGER DIMENSIONS</u> |               |
|----------------------------|---------------|
| A                          | 2"x10"x 7'-4" |
| B                          | 2"x10"x 7'-6" |
| C                          | 2"x10"x 8'-4" |
| D                          | 2"x10"x 7'-0" |
| E                          | 2"x10"x 7'-3" |
| F                          | 2"x10"x 4'-0" |
| G                          | 2"x10"x 8'-6" |
| H                          | 2"x10"x 8'-4" |
| <u>BENT DIMENSION</u>      |               |
| I                          | 2"x10"x 6'-6" |
| <u>SPLICE DIMENSION</u>    |               |
| J                          | 2"x10"x 2'-0" |
| K                          | 2"x10"x 1'-6" |

ALL SPLICE BLOCKS TO BE NAILED TO STRINGERS TO PROVIDE BOTH LATERAL  
SUPPORT AT JOINTS AND BEARING SUPPORT. ALL PILE BOLT CONNECTIONS  
TO BE 1/2"x12" HEX. BOLT WITH NUT AND WASHER.

Received  
Electronically  
July 28, 2016  

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South District



IF ANY DAMAGES OR CHARGES EXIST IN THESE DRAWINGS OR SPECIFICATIONS, THE CONTRACTOR AND/OR OWNER SHALL RETURN DATA WITHIN RECEIPT OF THESE DRAWINGS, AND PRIOR TO CONSTRUCTION, NOTIFY US. US ENGINEERS, LLC, IN WRITING, OF SAID DAMAGE OR CHARGES AND WE WILL BE HELD FULLY RESPONSIBLE FOR THE RESULTS AND COSTS OF RECTIFYING THE SAME.

[illegible]

APPROVED  
7/26/16  
ROBERT W. CASE  
FLORIDA P.E. #44643

CA NO.: 6853  
A NO.: 29005  
LB1057

**ING  
RVEYING**

ENGINEER  
LAND SUR

**IS**  
Beach Blvd.  
20  
693-9244

**L** 21430 Palm E  
Alva, Fla. 339  
Phone: (239)

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H, FL  
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**ALKWAY**  
**TERO BLVD**  
**AND**

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PROP  
8150  
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SCALE:  
3/8" = 1'-0"

DATE:  
JUNE 16, 2016

SHEET

A1



WOOD FRAMED WALKWAY

GENERAL

- 1. This building/structure has been designed in accordance with the Fifth Edition (2014) of the Florida Building Codes, and Section 1609 for design pressures generated by a three second gust design wind velocity of design 160 mph, (124 mph fastest mile wind velocity). Structural calculations, including gravity loads, as necessary to confirm compliance with the Fifth Edition (2014) of the Florida Building Code, have been performed.
- 2. The owner, his agent, or general contractor is responsible for field supervision, construction administration, review and approval of all shop drawings, verification on-site of all dimensions and elevations, and strict compliance with these construction documents as approved by Lee County.
- 3. These plans are intended to be mastered. The repetitive use of these plans for permitting is approved.
- 4. All windows, doors, and other such systems, components and cladding shall be designed in accordance with Section 1609 of the Fifth Edition (2014) of the Florida Building Code for design pressures generated by a three second gust design wind velocity of 160 mph, (124 mph fastest mile wind velocity), see "Design Parameters" for specific pressures.

FASTENERS & CONNECTORS

- 1. Approved connectors, anchors and other fastening devices not included in the Florida Building Code shall be installed in accordance with the manufacturer's recommendations.
- 2. Where fasteners are not otherwise specified fasteners shall be provided in accordance with Table 2304.9.1 of the Fifth Edition (2014) of the Florida Building Code. Nails, screws, or bolts shall be able to resist the forces in this Code.
- 3. Unless otherwise stated, sizes given for nails are common wire nails. For example, 8d = 2 1/2 inches long x 0.131-inch diameter. See Table 12.3B, columns 2, 3, and 4, in the National Design Specifications for Wood Construction. Metal plates, connectors, screws, bolts and nails exposed directly to the weather or subject to salt corrosion in coastal areas, as determined by the Building Official, shall be stainless steel, or hot dipped galvanized after the fastener or connector is fabricated to form a zinc coating not less than 1 oz per sq ft, or hot dipped galvanized with a minimum coating of 1.8 oz per sq ft of steel meeting the requirements of ASTM A 90 Triple Spot Test.

WOOD GENERAL

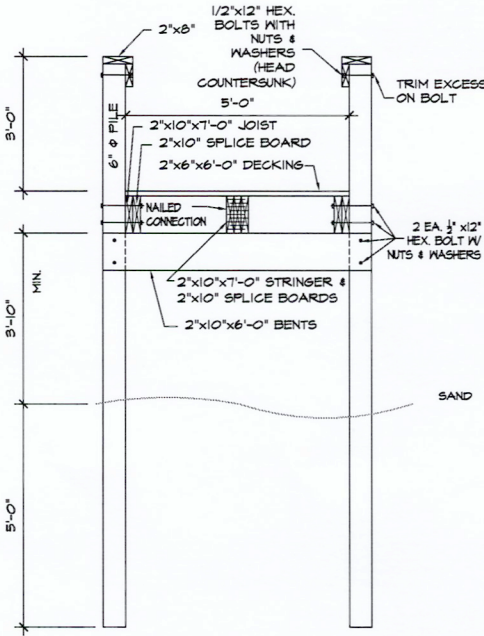
- 1. All wood construction shall comply with the latest NFPA and AITC Specifications and Recommendations.
- 2. Lumber standard shall be American Softwood Lumber Standard PS 20-70, 54S, 19% moisture or as required by structural design.
- 3. Structural lumber (roof beams, headers, columns, exterior wall studs to be Southern Pine No. 2 KD 15 with a Fb=1,300 PSI E=1,600,000 PSI, and Fv = 95 PSI.
- 4. Glue laminated timber shall conform with ASTM D-3737 and AITC 117. Roof beams shall be designated 24F-VI or 24F-EI.
- 5. Plywood for sheathing shall be APA rated sheathing as per plans and shall bear the APA Mark.
- 6. Wood in contact with concrete, masonry and/or exposed to weather shall be protected or pressure treated in accordance with AITC-109.

WOOD FLOORS

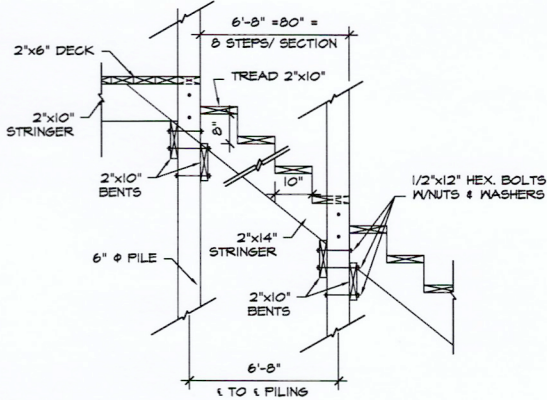
- 1. Floor joists shall be of Group II species lumber and sized in accordance with the National Forest Products Association's (NFA) Span Tables for Joists and Rafters. Trussed floor joists shall be in accordance with accepted engineering practice.
- 2. Floor trusses shall be in accordance with TPI Design Specifications for Metal Plate Connected Parallel Chord Wood Trusses. Top chords shall be of Group II species lumber. Floor trusses shall also be in accordance with Fifth Edition (2014) FBC Sec. 2303.4, R502.11.4., and R502.10.1.
- 3. Floor sheathing shall be 19/32-inch minimum C-D sheathing grade plywood (wood structural panels), or equivalent. The sheathing shall be installed with long dimension perpendicular to framing and with end joints staggered. See Detail Sheets.
- 4. Floor framing shall be spaced not more than 24 inches on center for 23/32-inch plywood (wood structural panels) sheathing and not more than 20 inches on center for other floor sheathing. In no case shall spacing exceed span ratings shown on sheathing panels.
- 5. The floor joists/trusses shall be fastened to the sill plate or top plate in accordance with Florida Building Code and these plans and specifications. In addition, uplift connectors shall be provided to resist uplift loads.
- 6. Provide bracing in the first two framing spaces at each end of floor system, spaced 4 feet on center maximum. Bracing members shall be full depth of joist or truss. No other blocking is required except as chosen to create a stronger diaphragm.
- 7. Fasten floor sheathing to panels to framing and blocking with 10d common or 10d hot dipped galvanized box nails at the following spacing:
  - a. 6 inches on center at all panel edges.
  - b. 12 inches on center at all intermediate framing.

WINDLOAD CONNECTORS SCHEDULE

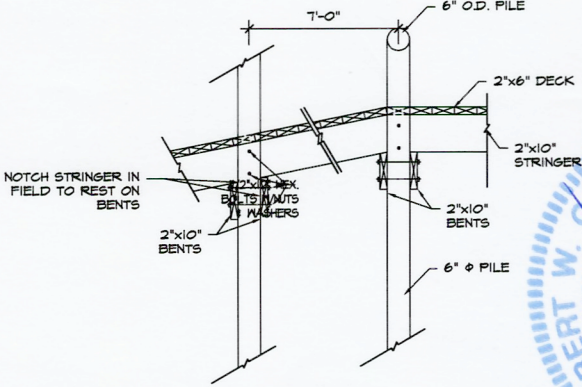
| LABEL | MANUFACTURER |            | DESCRIPTION                     | FASTENERS                        |
|-------|--------------|------------|---------------------------------|----------------------------------|
|       | USP          | SIMPSON    |                                 |                                  |
| ①     | (2) TDx5     | (2) HD2A/5 | WOOD TO WOOD UPLIFT CONN. ASSY. | (4) 3/4" MB                      |
| ②     | HTA24        | HETA24     | TRUSS/RAFTER ANCHOR             | 10-10dx1-1/2"                    |
| ③     | TP4X         | SPH4       | TOP/BOTTOM PLATE ANCHORS        | 10-10d                           |
| ④     | HC10         | H10        | HURRICANE CLIP                  | 9-10d - 9-10d                    |
| ⑤     | RT22T        | HTS24      | TRUSS/RAFTER TIES               | 18-16d (24-16d W/ SIMPSON STRAP) |
| ⑥     | TDx5         | HD2A/5     | ANCHOR DOWN                     | (2)5/8"MB - (1)5/8"AB            |
| ⑦     | RT30F        | LTA30      | TRUSS/RAFTER TIES               | 18-16d                           |
| ⑧     | SHA6         | N/A        | MAS. UPLIFT CONNECTOR           | (2)3/4"MB - (4)1/2"AB            |
| ⑨     | HTA20        | HETA20     | TRUSS ANCHOR, HIGH UPLIFT       | 16-10dx1-1/2"                    |
| ⑩     | PA23         | PA23       | FURLIN ANCHOR                   | 18-16d                           |
| ⑪     | HC10-2       | H10-2      | HURRICANE CLIP                  | 9-10d - 9-10d                    |
| ⑫     | USC3F        | N/A        | TRUSS/RAFTER TIES               | (8) 16d - (4) 3/4" A.B.          |



TYPICAL SECTION I-B DECK  
SCALE: 1/2"=1'-0"



TYPICAL STEPS DETAILS  
SCALE: 1/2"=1'-0"



TYPICAL RAMP DETAILS  
SCALE: 1/2"=1'-0"

1. WOOD
- ALL WOOD TO BE PRESURE TREATED IN ACCORDANCE WITH AMERICAN WOOD PRESERVERS ASSOCIATION STANDARD C-2. THE PRESERVATIVE USED SHOULD BE A WATERBORNE PRESERVATIVE SUCH AS TYPE B OR C OR EQUIVALENT AS COVERED IN FEDERAL SPECIFICATION TT-N-555 AND ANFA STANDARDS PS C2, AND C14. THE TYPE WOOD TO BE USED DEPENDS ON THE QUALITY OF THE CONSTRUCTION DESIRED. A SUITABLE IN EXPENSIVE WOOD FOR CONSTRUCTION WOULD BE SOUTHERN PINE. HIGHER GRADE AND MORE EXPENSIVE WOOD WOULD BE GREENHEART OR BASRA LOCUS. "ROUGH CUT" LUMBER CAN BE USED ON ALL LUMBER IN THE SUBSTRUCTURE WHILE "DRESSED" (I.E. SURFACED) LUMBER SHOULD BE USED ON THE FLOORING AND HANDRAILS.
2. HARDWARE
- ALL BOLTS AND OTHER HARDWARE TO BE HOT DIPPED GALVANIZED.
3. NAILS
- ALL NAILS TO BE GALVANIZED.
- GENERAL NOTES:
- 1. BOLTS IN HANDRAILS SHALL HAVE NUT END TOWARD POST. COUNTERSINK SO THAT BOLT DOES NOT PROJECT BEYOND POST. TRIM EXCESS OF PROJECTING BOLTS HAVE FASTENING.
  - 2. USE BOLTS FOR ALL CONNECTIONS TO POSTS.
  - 3. DO NOT ENCASE BOTTOMS OF PILING IN CONCRETE. THIS WOULD TERMED OBJECTIONABLE CONSTRUCTION IN OBTAINING A PERMIT FROM BUREAU OF BEACHES AND SHORES.
  - 4. SOME MAY FIND THE PITCH OF THE STEPS (8 ON 10) TOO STEEP, LIKEWISE THE RAMP SLOPE (20%) IS TOO STEEP FOR HANDICAP ACCESS (8.33% RECOMMENDED). THE DESIGN MAY BE MODIFIED ACCORDINGLY.
  - 5. CHECK WITH LOCAL BUILDING OFFICIAL TO MAKE SURE THE DESIGN CONTAINED HEREIN, OR AS MODIFIED, CONFORMS TO LOCAL CODES AND ORDINANCES.

Received  
Electronically  
July 28, 2016  
South District



PROPOSED WALKWAY FOR ROOD/KROMER  
8150-8170 ESTERO BLVD FORT MYERS BEACH, FL

DETAILS AND NOTES

SCALE:  
1/4" = 1'-0"

DATE:  
JUNE 18, 2016

SHEET  
**A2**

APPROVED  
7/26/17

ROBERT W. CASE  
FLORIDA P.E. #44643

2572 West Bayshore Road, 4th Floor  
Suite 2064, Orlando, FL 32765  
Phone: (321) 244-0002  
Facsimile: (321) 244-9413

LEE COUNTY  
ENGINEERING  
LAND SURVEYING

LIS

21409 Fort Myers Beach Blvd.  
Ave. Fla. 33920  
Phone: (239) 693-9244  
Facsimile: (239) 693-9828

STATE OF FLORIDA  
PROFESSIONAL ENGINEER

ROBERT W. CASE



## SKETCH AND DESCRIPTION

### EASEMENT AREA DESCRIPTION

That part of the sovereign lands of the State of Florida that lie within the following described area, being that part of Lot 19, GRAND OLE MAN SUBDIVISION, being a subdivision of part of Sections 3 and 10, Township 47 South, Range 24 East, according to the plat thereof as recorded in Plat Book 29, Page 26, Public Records of Lee County, Florida described as follows: Commence at the Northeast corner of said Lot 19; thence S00°14'07"W, along the East line of said Lot 19, a distance of 216.93' to the Mean High Water Line of a Lagoon of the Gulf of Mexico for the Point of Beginning; thence continue S00°14'07"W, along said East line of Lot 19, a distance of 121.74 feet to the Mean High Water Line of a Lagoon of the Gulf of Mexico; thence S77°00'50"W, along said Mean High Water Line a distance of 2.57 feet; thence N00°14'07"E a distance of 122.18 feet to the Mean High Water Line of a Lagoon of the Gulf of Mexico; thence N86°52'16"E, along said Mean High Water Line, a distance of 2.50 feet to the Point of Beginning; containing 304.9 square feet.

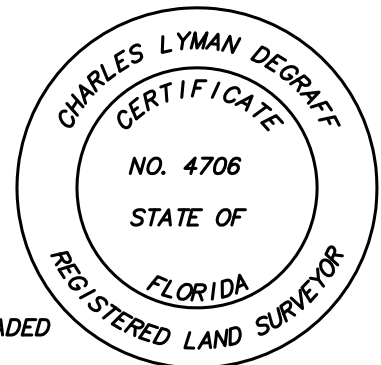


### NOT A FIELD SURVEY

REVISION 1: REVISE COORDIANTES

SURVEYOR'S NOTES:  
STATE PLANE COORDINATE OBTAINED FROM GOOGLE EARTH  
COORDINATES CONVERTED TO STATE PLANE COORDINATES  
BY NGS PROGRAM SPC.

SHORELINE 1000 FEET EACH SIDE OF PROPERTY IS 0% SEAWALLED/BULKHEADED



NOT A FIELD SURVEY

(SIGNED) \_\_\_\_\_  
CHARLES L. DEGRAFF PSM #4706

REFER TO SHEET 2 FOR SKETCH OF DESCRIPTION

The seal appearing on this document was authorized by Charles DeGraff PSM 4706 on 12/04/2015.

THIS SKETCH AND DESCRIPTION IS IN COMPLIANCE WITH THE MINIMUM TECHNICAL STANDARDS  
PURSUANT TO RULES 5J-17.050 THROUGH 5J-17.052, FLORIDA ADMINISTRATIVE CODE.

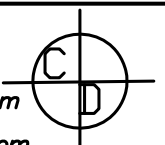
SHEET 1 OF 3

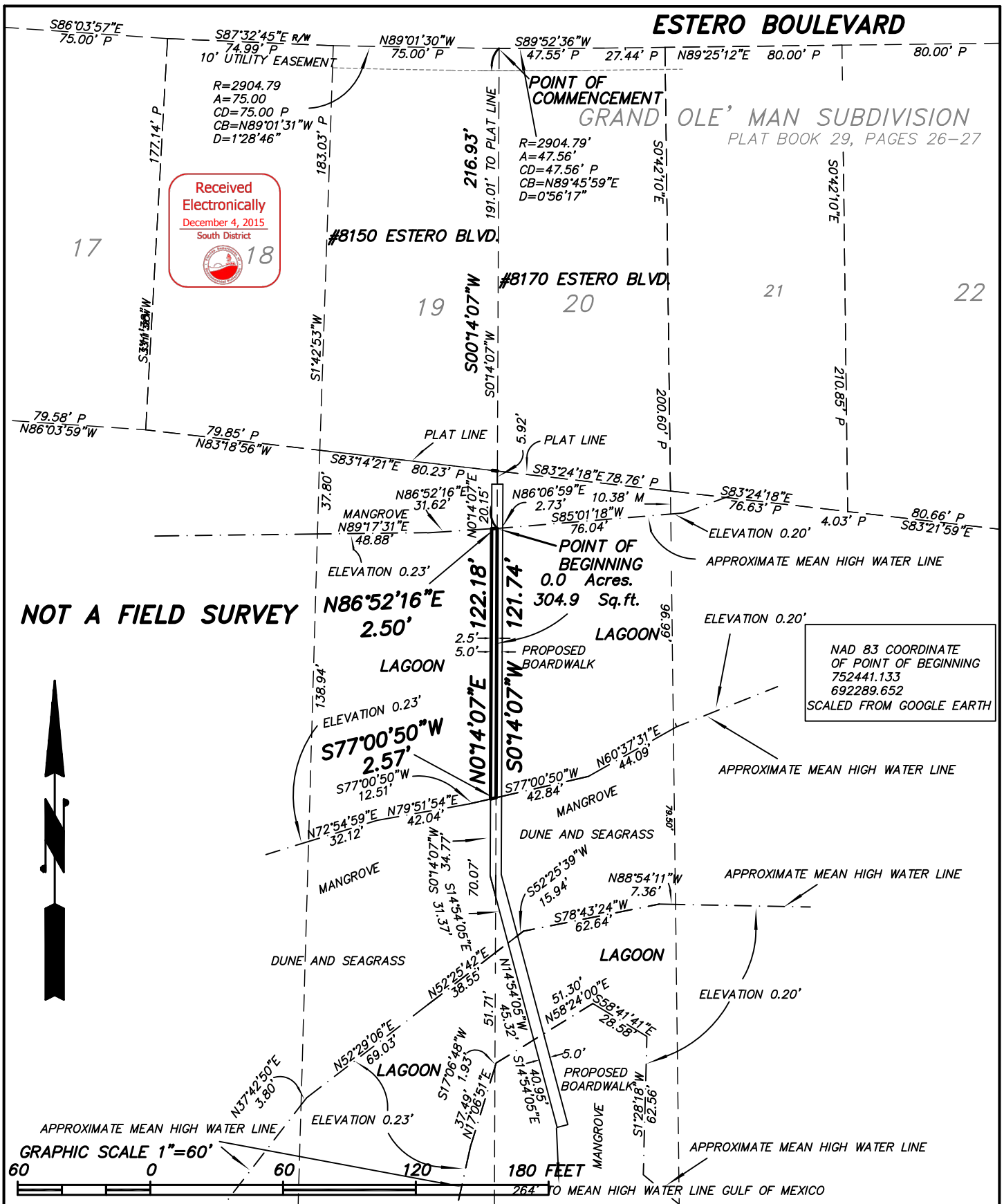
**CHARLES DEGRAFF LAND SURVEYOR**

Land Surveyors and Mappers  
301 Hazeltine Drive, Debary, Florida 32713

Phone (239) 699-8572  
Email [charles.degraff@gmail.com](mailto:charles.degraff@gmail.com)

Web [www.surveycapexcoral.com](http://www.surveycapexcoral.com)





REFER TO SHEET 1 OF 2 FOR DESCRIPTION, LOCATION MAP AND SURVEYOR'S NOTES.

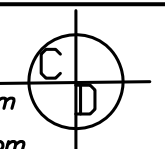
The seal appearing on this document was authorized by Charles DeGraff PSM 4706 on 12/04/2015.

SHEET 2 OF 3

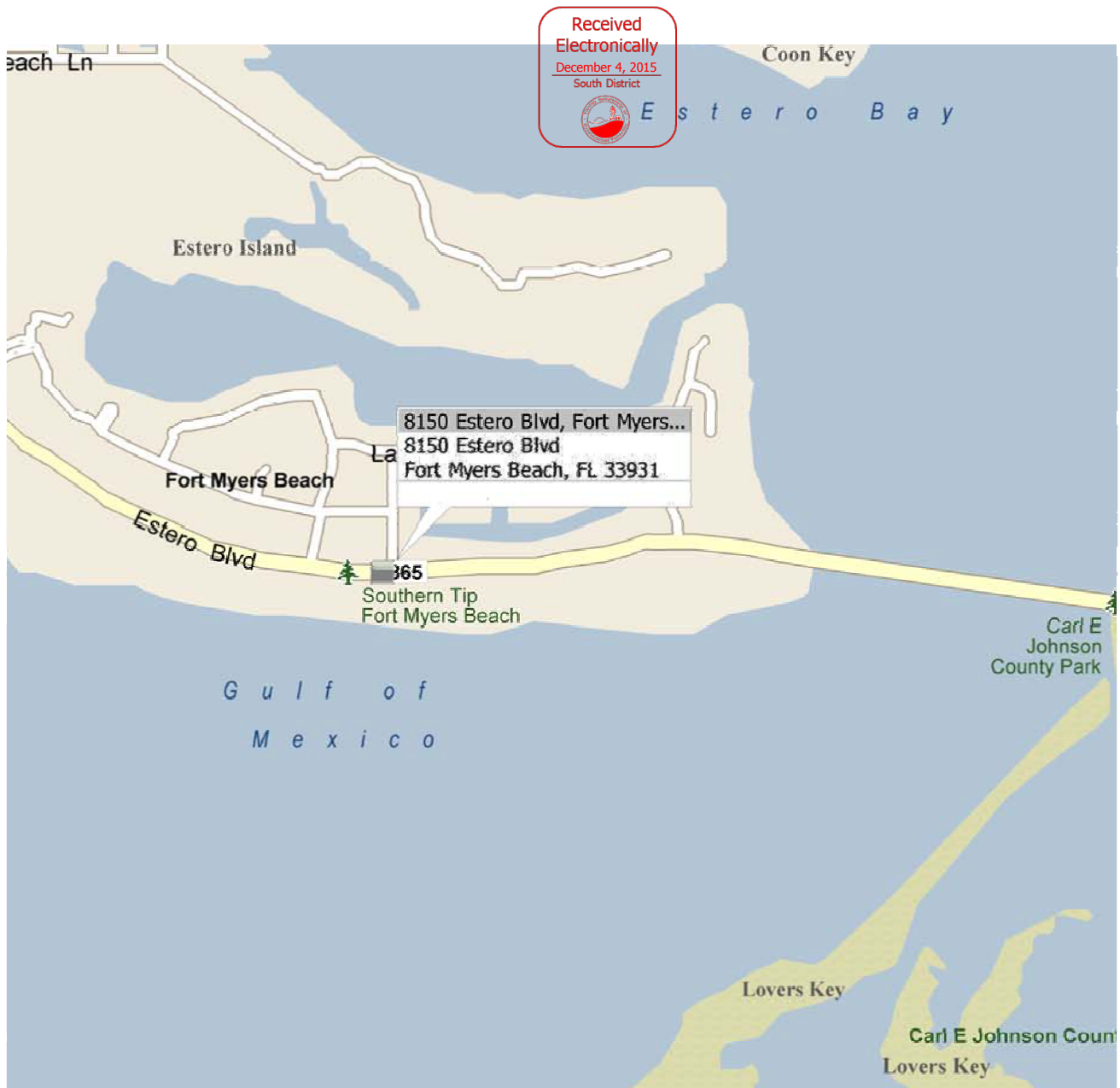
**CHARLES DEGRAFF LAND SURVEYOR**

Land Surveyors and Mappers  
301 Hazeltine Drive, Debarry, Florida 32713

Phone (239) 699-8572  
Email charles.degraff@gmail.com  
Web www.surveycapcoral.com



**LOCATION MAP  
NO SCALE**



**NOT A FIELD SURVEY  
REFER TO SHEETS 1&2 FOR SKETCH AND DESCRIPTION**

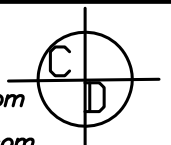
**SHEET 3 of 3**

**CHARLES DEGRAFF LAND SURVEYOR**

*Land Surveyors and Mappers  
301 Hazeltine Drive, Debary, Florida 32713*

*Phone (239) 699-8572  
Email [charles.degraff@gmail.com](mailto:charles.degraff@gmail.com)*

*Web [www.surveycap coral.com](http://www.surveycap coral.com)*





**ATTACHMENT D**

**ATTACHMENT D**

[DATE]

[PROPERTY OWNER NAME]

[PROPERTY OWNER ADDRESS]

RE: Florida Audubon Society, Inc. v. Squeeze Me Inn, LLC, et. al.,  
CASE NO.: 23-CA-5506

DEAR [PROPERTY OWNER NAME]:

We are writing to inform you that we have successfully settled the above-referenced lawsuit with the Florida Audubon Society, Inc. ("Audubon") challenging our dune walkover.

In light of the settlement and in an effort to restore the community's relationship with Audubon and support bird conservation in Fort Myers Beach, we encourage you to restore Audubon's access to your property for the purpose of assisting the Florida Fish & Wildlife Conservation Commission's shorebird nesting and seabird monitoring programs, if you have previously denied access to Audubon as a result of the litigation. While the litigation regarding the dune walkover has strained relationships between the community and the Audubon, we acknowledge the many benefits the Audubon's conservation efforts have contributed to the community and look forward to a cooperative relationship with the Audubon moving forward.

Please contact Audubon President, Julie Wraithmell, at [Julie.Wraithmell@audubon.org](mailto:Julie.Wraithmell@audubon.org), and inform her that Audubon is again welcome to access your property to assist FFWCC's conservation programs and thank Audubon for its resolution of the above-referenced lawsuit. Additionally, please forward this message to any other homeowners you may have contacted.

Thank you for your support.

Squeeze Me Inn, LLC

Texas Hold 'Em, LLC

---

Kurt Kroemer  
8150 Estero Boulevard

---

Ed Rood  
8170 Estero Boulevard

### ADDRESSEES

| Address                       | Contact                                  | Email                                                                          |
|-------------------------------|------------------------------------------|--------------------------------------------------------------------------------|
| 8246, Estero Boulevard, 33931 | James Andrew Cameron                     | <a href="mailto:jamesandrewcameron@gmail.com">jamesandrewcameron@gmail.com</a> |
| 8350, Estero Boulevard, 33931 | Carlos Pointe Beach Club; Robert Galvani | <a href="mailto:galvanoni@ameritech.net">galvanoni@ameritech.net</a>           |
| 8098, Estero Boulevard, 33931 | John Frederick Cameron                   | <a href="mailto:businessformsetc@icloud.com">businessformsetc@icloud.com</a>   |
| 8044, Estero Boulevard, 33931 | Martin McLoughlin                        | <a href="mailto:marty@pssrack.com">marty@pssrack.com</a>                       |
| 8170, Estero Boulevard, 33931 | Squeeze Me Inn                           | <a href="mailto:info@squeezemeinn.com">info@squeezemeinn.com</a>               |
| 8124, Estero Boulevard, 33931 | Dennis Prock                             | <a href="mailto:dprock@prockops.com">dprock@prockops.com</a>                   |
| 7700, Estero Boulevard, 33931 | Eden House; Norm Rowe                    | <a href="mailto:normrowe1@gmail.com">normrowe1@gmail.com</a>                   |
| 8403, Estero Boulevard, 33931 | Islands End; Mike Bureau                 | <a href="mailto:mjbureau1@ameritech.net">mjbureau1@ameritech.net</a>           |
| 8402, Estero Boulevard, 33931 | Islands End; Mike Bureau                 | <a href="mailto:mjbureau1@ameritech.net">mjbureau1@ameritech.net</a>           |
| 8400, Estero Boulevard, 33931 | Islands End; Mike Bureau                 | <a href="mailto:mjbureau1@ameritech.net">mjbureau1@ameritech.net</a>           |
| 8180, Estero Boulevard, 33931 | Larry Den Herder Trust                   | <a href="mailto:larrydenherder@gmail.com">larrydenherder@gmail.com</a>         |
| 8002 Estero Boulevard, 33931  | Pascual and Maria Loffreno               | <a href="mailto:chris@loffreno.com">chris@loffreno.com</a>                     |
| 7986 Estero Boulevard, 33931  | Steve Bello                              | <a href="mailto:stevebellomd@icloud.com">stevebellomd@icloud.com</a>           |
| 7820 Estero Boulevard, 33931  | Jerry Prosnick                           | <a href="mailto:jerryprosnick@gmail.com">jerryprosnick@gmail.com</a>           |
| 8030 Estero Boulevard, 33931  | NexGenProp LLC; Steven Brodie            | <a href="mailto:drstevengbrodie@gmail.com">drstevengbrodie@gmail.com</a>       |
| 8300 Estero Boulevard, 33931  | Castle Beach; Sharon Hegstrom            | <a href="mailto:mommzie@aol.com">mommzie@aol.com</a>                           |
| 8200 Estero Boulevard 33931   | Jennifer L Drenth Trust; Ken Drenth      | <a href="mailto:kdrenth@comcast.net">kdrenth@comcast.net</a>                   |

1. **Requested Motion:**

**Meeting Date: February 5, 2024**

Second Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The ordinance must be amended to change conditions of approval.

**What the action accomplishes:**

Amending the conditions will allow the applicant to utilize areas on the beach parcel later into the evening

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

Original CPD Approval: May 21<sup>st</sup>, 2018 (Ord. 18-04)

- 27 Conditions of Approval included

Amendment to CPD (Ord. 23-09): August 7<sup>th</sup>, 2023

- Amendment to Condition of Approval #14, removing language which forbade the development of parcels 1, 2, 3 and 5, allowing for future Councils to consider construction in those areas in conformity with the Comprehensive Plan and LDC.

**Attachments:**

1. Ordinance 24-01
2. Receipt of publication Ord. 24-01 TPI CPD
3. Business Impact Estimate - Ordinance 24-01 - Margaritaville
4. Council Staff Report --Second Reading
5. Revised Applicant Narrative
6. Application
7. For Reference: The Whale 23-80, SEZ Amendment
8. For Reference: The Whale Resolution 13-09
9. 2nd TC postcard 1170 estero blvd

**Financial Impact:**

unknown

**6. Alternative Action**

Request revision of proposed language change

**7. Management Recommendations:**

Determine whether change to conditions is appropriate.

**8. Recommended Approval:**

Jason Smalley, Senior Planner  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/29/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024

## **ORDINANCE 24-01**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, TPI-FMB LLC and Steve Hartsell with Pavese Law Firm, applicants and agents for the property owners, generally located at 1170, 1180/1192, 1204/1206 Estero Boulevard, 251 Crescent St, 1150 Fifth St. and other unaddressed parcels, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0070 (MCP parcel #3), 24-46-23-W3-00006.0000 (MCP parcel #1), 24-46-23-W3-00206.0060 (MCP parcel #1), 24-46-23-W3-00009.0000 (MCP parcels #2 AND #5), 19-46-24-W4-U0494.2609 (MCP parcel #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP parcel #2), 19-46-24-W4-0140B.0070 (MCP parcels #2 AND #5), 19-46-24-W4-U0496.2608 (MCP parcel #2), AND 19-46-24-W4-U0498.2607 (MCP parcels #2 AND #6) in the Town of Fort Myers Beach, filed applications to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning as amended by Ordinance 23-09; and

**WHEREAS**, Ordinance 18-04 rezoned the property from the Commercial Planned Development (CPD), Downtown, and Environmentally Critical (EC) zoning districts to CPD with Master Concept Plan (MCP) in order to develop a hotel resort and associated facilities, on 5.1+/- acres more or less property, located at 1170, 1180/1192, 1204/1206 Estero Boulevard in the Town of Fort Myers Beach; and

**WHEREAS**, the subject property is located in the Pedestrian Commercial and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

**WHEREAS**, with the exception of portions of Town or County right-of-way, the applicant has indicated the subject property is under common control and Tom Torgerson serves as the managing member for each ownership listed in the public records of Lee County Property Appraiser; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on December 19, 2023; and

**WHEREAS**, at the December 19, 2023 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

**WHEREAS**, at the December 19, 2023 public hearing the LPA recommended approval by a 6-0 vote with one member abstaining based on a finding that the approval is in compliance and consistent with the comprehensive plan and the Land Development Code; and

**WHEREAS**, on January 8, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised in an appropriate publication 10 days prior to the Town Council on January 8, 2024; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

**WHEREAS**, a Business Impact Estimate has been prepared and published on the Town's website; and

**WHEREAS**, with the following terms, conditions, and requirements which the Town Council finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

**WHEREAS**, Exhibit B is the approved Master Concept Plan, updated per the adopted original Ordinance 18-04 and consistent with Condition #9; and



**WHEREAS**, the Town Council finds that this request to APPROVE/ APPROVE WITH CONDITIONS/ DENY, is a unique and individual application which does not set precedent for future development or rezoning applications.

**Deviation #1**

Deviation from LDC Section 34-1803(a) which establishes equivalency factors for converting allowable dwelling units to hotel rooms. The equivalency remains at three, a total of 254 hotel rooms (224 rooms on Parcel 1 and 30 rooms on Parcel 2) per the revised Master Concept Plan pages dated 5/2018 are authorized due to exceptional circumstances and unique public benefit on record to include view corridor and permanent perpetual transfer of density and development rights from the VE zone to the AE zone.

**Deviation #2**

Deviation from LDC Section 34-675(b) which limits building heights as follows: 3 stories and 30 feet along Crescent Street and Fifth Street; 3 stories and 40 feet along the south side of Estero Boulevard; to allow the main resort building which fronts on Estero, Crescent and Fifth to be 4 stories and 38 feet, 10 inches feet above average base flood elevation and along the south side of Estero Boulevard of 4 stories, and other buildings to be at the lesser heights as shown on the Master Concept Plan.

**Deviation #3**

Deviations from LDC Section 34-675(c) which limits floor area ratio (FAR) to 1.4 for properties fronting on Estero Boulevard and to 1.0 for all other properties in the CPD to allow a FAR of 1.55 on Parcel 1 and Parcel 2 and Parcel 3.

**Deviation #4**

Deviation from the LDC Section 10-416(d)(2) which requires a Type D buffer (15 feet wide with 5 trees and staggered hedges to form a 3-foot visual screen between parking and a right-of-way) - to replace the Type D buffer with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on the Master Concept Plan.

**Findings for the rezoning:**

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested (see LDC 34-85 and 34-216) ordinance 24-01:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.

- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
  - Policy 4-C-4 on building heights taller than the standard height limit
  - Policy 4-C-6 on hotel/motel densities
  - Policy 4-C-8 on density transfers
  - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

**WHEREAS,** the Town Council made the following formal findings before making final decisions on the four requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

1. Deviations #1, #2, and #3 are being partially approved only due to the exceptional circumstances presented by the coordinated redevelopment of several critical parcels in the downtown zoning district in furtherance of policies in the Comprehensive Plan and design guidance provided by the Old San Carlos Boulevard / Crescent Street Master Plan. Key public benefits offered by the applicant include a perpetual view corridor along 324 feet of the beach side Estero Boulevard across the beach club resulting from a permanent transfer of density and development rights from the VE zone to the AE zone; and a second perpetual view corridor at the foot of the Matanzas Pass Bridge resulting from the permanent transfer of density and development rights, no buildings on Parcel 3, and the donation of Parcel 4 to the Town of Fort Myers Beach.
2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area, including building height, traffic flow, and intensity of use.
3. The proposed development, as modified by these deviations, clearly exceeds all standards

of the Fort Myers Beach Comprehensive Plan.

4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
6. The general intent of the LDC to protect public health, safety, and welfare will be preserved and promoted with these deviations.
7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

**WHEREAS**, the Town Council finds that this application to APPROVE/ APPROVE WITH CONDITIONS/ DENY Ordinance 24-01 and amend conditions of approval of the commercial planned development zoning as amended by Ordinance 23-09, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the request to approve the Town of Fort Myers Beach's Ordinance no. 24-01 and amend the conditions of approval for the commercial planned development zoning as amended by Ordinance 23-09, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-01 is adopted by this vote and the schedule of uses and the amended conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a roll call vote, the result was as follows:

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Vacant, Council Member        | N/A   |
| Karen Woodson, Council Member | _____ |

ADOPTED this \_\_\_\_\_ day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this \_\_\_\_\_ day of February 2024.

**EXHIBITS**

Exhibit A – Conditions of Approval as Amended in Ord. 23-09 and 24-01

Exhibit B – MCP with Amended Beach Club Area Map with Description

**Exhibit A CONDITIONS OF APPROVAL AS AMENDED IN ORD. 23-09 & 24-01**  
**[DELETIONS cross-hatched; ADDITIONS bold underlined>]**

This project area includes six (6) parcels as demonstrated in MCP X-103-BNDY.01 Boundary Survey. Parcels 1, 2 and 3 are to be rezoned to Commercial Planned Development (CPD). Parcels 4, 5, and 6 will retain their existing zoning classifications. All parcels are included in the Master Concept Plan and subject to the conditions as outlined below:

- 1** Parcels 1, 2, and 3 are authorized for a maximum of 254 hotel rooms. Parcel 1 is approved for a maximum of 224 hotel rooms. Parcel 2 is approved for a maximum of 30 hotel rooms. Parcel 3 is approved for surface parking only and no other improvements or hotel rooms, other than an accessory surface parking lot, is permitted. The transfer of density and development rights of Parcel 3 is permanent and binding.
- 2** The CPD is authorized to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC, as depicted on the Master Concept Plan, and as described:
  - a. The main resort building on Parcel 1 may be up to 4 stories and up to 38 feet, 10 inches above base flood elevation, provided that the highest points of the roofline and any architectural features across the property shall not exceed 52 feet from 4.5 feet above mean sea level elevation.
  - b. The larger building on Parcel 2 may be up to 4 stories, provided that the highest points of the roofline and any architectural features shall be a height of 52 feet, 4 inches or less, above existing typical ground level. Approved building heights for all buildings on Parcel 2 are shown in the Master Concept Plan.
  - c. No buildings or vertical structures are permitted on Parcel 3. The transfer of density and developments rights on Parcel 3 is permanent and binding.
- 3** The CPD is authorized to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC. The total land area of Parcel 1, 2, and 3 may be utilized for the floor area ratio calculation of 1.55. The square footage of the proposed buildings may be clustered as depicted on the Master Concept Plan and includes:
  - a. The constructed floor area ratio on Parcel 3 and 5 shall be 0.0. Buildings, or any other improvements other than improvements associated with an at surface grade parking lot on Parcel 3 and a pool security fence on Parcel 5, are prohibited on these parcels.
- 4** The CPD is authorized to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan as revised through May 2018, subject to the following requirements:

- a. Prior to obtaining any development orders, the landowner will dedicate to the town/public a perpetual public sidewalk easement to accommodate a sidewalk of seven (7) feet in width on the south side of Fifth Street where the MCP shows portions of the proposed sidewalk on private land.
- b. The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan, prior to the issuance of any temporary certificates of occupancy including for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard, except for such deviations as granted by the Town when reviewing and approving the Master Concept Plan. The landowner will maintain the tree yards and street trees in perpetuity.
- c. The street trees shown along Estero Boulevard will be located closer to the curb if, prior to approval of the Development Order, but no later than January 2019 and with appropriate documentation of coordination, FDOT and Lee County approves the new 1.5-foot lateral offset standard alignment of the Florida Department of Transportation.
- d. Prior to Development Order application, the landowner will document their efforts to the Town to seek approval from Lee County to re-route stormwater from the existing drainage inlet on Estero Boulevard into the resort's stormwater system so that roots from street trees on this block cannot interfere with any underground exfiltration trench. The conveyance of the Estero Boulevard drainage into the resort stormwater system will only be constructed if there are no adverse impacts or backflow into the existing system.
- e. No buffer vegetation may be planted in any public right-of-way or any sidewalk easement other than depicted on the Town approved Master Concept Plan.
- f. While the Town approved Master Concept Plan provides conceptual approval of under-building screening of parking areas, as required by LDC 34-992 (d)(1); a compliance and enforcement determination of the materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) and 34-992(d)(2) of the LDC. At the concurrence of the land owner, the Town Manager may allow occasional segments of latticework to be replaced by an opaque screen to allow works of art to be displayed in place of climbing vegetation.
- g. If at the end of the one (1) year plant establishment period from the end of the Temporary Certificate of Occupancy, the buffer plantings and climbing vegetation planted on the latticework do not visually

screen activities in the ground story, the Town Manager will require corrective action. Corrective actions may include, but are not limited to, different vegetation, different management techniques, and supplemental screening behind the latticework, among other practices. The property owner will take corrective action within 30-days of written notification from the Town regarding the deficiencies in the buffer. Failure to respond to any 30-day written notice shall constitute an appealable \$500 per incident per day civil violation.

- 5 The approved property development regulations for this CPD are presented in the attached Exhibit A, which will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district.
6. The approved schedule of uses for this CPD is limited to the following:

| Parcel 1 (Bay Side)                                                                                                                                                                                                                                                                                                                                                                                               | Parcel 2 (Gulf Side)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Parcel 3                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>LODGING</b> use group:</p> <p><b>Hotel</b></p> <p><b>Uses Accessory to</b></p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-505-COP.01 &amp; X-506-COP.02</p> <p>Parking Lot, Accessory</p> <p>Subordinate Uses</p> <p>Temporary Uses, if permitted by Ch. 34</p> <p><b>MARINE</b> use group</p> <p>No Marina Uses</p> | <p><b>LODGING</b> use group:</p> <p><b>Hotel</b></p> <p><b>RETAIL</b> use group:</p> <p><b>Recreation Facilities, Commercial</b> (limited to 325 total people per day who are not staying at the hotel)</p> <p><b>Restaurant</b></p> <p><b>Commercial Accessory Uses:</b></p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets <u><b>X-505-COP.01 &amp; X-506-COP.02</b></u></p> <p><del>X-506-COP.01 &amp; X-507-COP.02</del></p> <p>Subordinate Commercial</p> <p>Water-oriented Rentals</p> <p><b>MARINE</b> use group:<br/>(if permitted by Chapter 27)</p> <p><b>Parasailing Operations</b></p> <p><b>Office Personal Watercraft</b></p> <p><b>Operations Office</b></p> | <p><b>LODGING</b> use group:</p> <p><b>Uses Accessory to</b></p> <p>Parking Lot, Accessory<br/>(the only use permitted on Parcel 3)</p> |



7. The property owner is responsible for accounting and enforcement of the per day limitation of 325 non-resort guests at the aquatic venue or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a \$500 per day per incident civil violation.
- 8 This CPD approves structures up to the following square-footage maximum on Parcels 1 and 2 which are entirely landward of the 1978 coastal construction control line and within the CPD zoning district boundary:
  - a. **Hotel**
    1. 250,783 SF, of which up to 96,085 SF could be guest units and up to 95,751 SF could be ground-story parking.
    2. 224 guest units to be on bay-side Parcel 1 (above parking) and up to 84,745 square feet could be guest units.
    3. 30 guest units to be on gulf-side Parcel 2 and up to 11,340 square feet.
  - b. **Restaurant on Parcel 2**
    1. 15,870 SF for a restaurant, of which 1,514 SF would be a bar; plus, an additional 1,364 SF for outdoor seating and an additional 2,000 SF for indoor storage
  - c. **Beach Club on Parcel 2**
    1. 3,786 SF for an ancillary restaurant
    2. 2,508 SF in an existing building for ancillary restrooms and lockers
  - d. **Pedestrian Bridges between Parcels 1- 2 if approved by Lee County**
    1. 2,691 SF for the access area required for a publicly accessible pedestrian bridge;
    2. 1,380 SF for the pedestrian bridge that is not included in the FAR.
- 9 Redevelopment and future uses on the subject property must be consistent with the attached Master Concept Plan as approved by the Town Council as part of this request. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid. All development activities and future uses must comply with all the requirements of the Town of Fort Myers Beach Land Development Code at the time of Development Order approval, except as explicitly modified by this CPD approval. Lot lines

shown on existing plats must be vacated or replatted, as appropriate and as administratively determined by the Town Attorney, prior to issuance of Development Orders. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD. This CPD's new Master Concept Plan consists of these 26 sheets:

- a. X-G01 - Cover Sheet
- b. X-101-FLU - Future Land Use and Project Boundary
- c. X-103-BNDY.00 - Boundary Survey (1 of 2)
- d. X-103-BNDY.01 - Boundary Survey (2 of 2)
- e. X-104-DA - Developable Area Exhibit
- f. X-105-MCP.00- *Floor Area Ratio* First Floor
- g. X-106-MCP.01 - Floor Area Ratio Second Floor
- h. X-107-MCP.02- Floor Area Ratio Third Floor
- i. X-108-MCP.03 - Floor Area Ratio Fourth Floor
- j. X-109-MCP.00 - Master Concept Plan First Floor
- k. X-110-MCP.01 - Master Concept Plan Second Floor
- l. X-111-MCP.02 - Master Concept Plan Third Floor
- m. X-112-MCP.03 - Master Concept Plan Fourth Floor
- n. X-113-MCP.04 - Master Concept Plan Deviations and Notes
- o. X-114-MCP.05 - Master Concept Plan Building Height
- p. X-A201 -Exterior Elevations
- q. X-A202 -Exterior Elevations
- r. X-A203 - Exterior Elevations
- s. X-A301 - Building Sections
- t. X-501 - Parking Locations and Calculations
- u. X-502-RW.00 - Right-of-way and sidewalk/buffer plan
- v. X-503-RW.01 - Right-of-way and sidewalk/buffer plan
- w. X-504-RW.02 - Right-of-way and sidewalk/buffer plan
- x. X-505-COP.01 - Consumption on Premises Diagrams
- y. X-506-COP.02 - Consumption on Premises Diagrams Pedestrian Circulation
- z. X-507-VT-Visibility Triangles

- 10** A pedestrian bridge across Estero Boulevard is shown on the Master Concept Plan. Conceptual approval of this bridge is subject to the following requirements for design, approval, and operation:

- a. The pedestrian bridge must be constructed simultaneously with the buildings it connects.
  - b. The elevated terrace on the second story of the main resort building on Parcel 1 must include a public ADA compliant access for public use.
  - c. Visible publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the pedestrian bridge. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building, with clear signage indicating the public's access and rights to use these restrooms and pedestrian bridge, if approved, without a fee or charge.
  - d. In order to guarantee the general public's permanent right to use the bridge and the adjoining stairways, elevators, and restrooms, the landowner must execute an instrument that guarantees this access in a form suitable to the Town Attorney.
  - e. Before constructing the bridge over Estero Boulevard, the landowner must obtain review and approval from Lee County and must enter into a formal agreement with Lee County regarding design, maintenance, liability, operations, future changes, and other relevant details. The bridge design must allow and not interfere with nor prevent all elements necessary for a traffic signal and grade level pedestrian crosswalk at the Estero Boulevard-Crescent Street intersection. If necessary, FDOT review and approval must be obtained.
  - f. All FDOT and Lee County approvals must be received by the applicant prior to approval by the Town. The Town's approval shall be limited to aesthetic and non-structural design.
- 11** Sheet X-109-MCP.00 of the Master Concept Plan identifies certain important features on Parcels 2 and 6 (the beach-side parcels) that will require separate critical actions by the Town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:
- a. As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of Town-maintained Beach Access #36. Understanding that the Town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating Parcel 6 to the Town and constructing on it a new public street replacing Canal Street. The new public street will also be providing beach access and public parking spaces on 67 feet wide new rectangular

right-of-way beginning at Estero Boulevard. The Town Manager or designee shall be responsible for design approval of the new street. The new street will be completed on or before twelve (12) months following the issuance of a Development Order.

- b. The landowner has also agreed to construct and dedicate a five-foot wide perpetual public access easement for a new pedestrian beach access at the "north" end of Parcel 2 that meets ADA accessibility requirements and the Town Manager's specifications as to design, surfacing and signage. The easement shall be constructed, completed, and open to the public on or before twenty-four (24) months following the issuance of the associated Development Order. During construction of the project the property owner shall maintain a minimum of one 25' wide ADA accessible beach access from Estero to the end of the property at or near the water.
- c. The landowner will execute instruments to complete donations, the easement(s) for new pedestrian beach access easement and Parcel 6, in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105; and:
  - i. The landowner either completes the construction of the new street or allows continued public use of Canal Street or Temporary Beach Access until the new street is completed.
  - ii. The Town will not issue development orders for demolition, site work, or new buildings on Parcels 1 or 2 unless the Town agrees to vacate both rights-of-way and related or associated property transfers are executed.
  - iii. After the new street is constructed by the applicant and turned over to the Town, Parcel 6 will no longer be subject to any requirements of this CPD.

**12** The beach club on Parcel 2 must meet these additional requirements:

- a. To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate three view corridors from Estero Boulevard to the beach (two totaling 319 feet; one totaling five feet) that total at least 324 feet along Estero Boulevard.
- b. Any perimeter fence on the beach side of Estero Boulevard must be at least 80 percent transparent, must be placed within a landscaped planting area at least five (5) feet wide, and shall be maintained at a height of three (3) feet. If the Florida Building Code requires a taller fence at this location, the Fort Myers Beach Building Official shall adjust the fence height accordingly.

- c. A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.
- d. A detailed landscaping plan showing the location and type of all plantings, including beach plantings adjacent to the existing retaining wall, must be provided with the development order application for the beach club.
- e. Directional signage approved by the Town as to design, installation methodology, and location shall be erected along Estero Boulevard that advises the public of both new public beach accesses.
- f. The beach club and its ancillary uses may operate only from 7:00 a.m. to **10:00 p.m.** **When the aquatic venue is closed, the other outdoor patios and related areas of the beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 9:00 p.m.** ~~one hour after sunset, but never later than 9 pm. That is the Beach Club's hours of operation unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.~~
- g. To implement the applicant's commitment to limit access to the **aquatic venue** ~~beach club~~ to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.
- h. The beach club and aquatic venue shall provide no less than one security personnel per 200 guests.
- i. All necessary dune plantings and walkovers shall be provided in compliance with Town codes and ordinances.

**13.** The following transportation and access features are shown on the Master Concept Plan and are an integral part of this approval:

- a. All existing vehicular access points on Estero Boulevard shall be closed except the access to the one new public street on Parcel 6.
- b. The one and only access point on Crescent Street will be an entrance-only driveway near the intersection with Fifth Street, which will be the main entrance for resort guests.
- c. Access points on Fifth Street are limited to the one main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 1, plus two existing driveways to the surface parking lot on Parcel 3.

**14.** ~~Prior to the Town issuing any development orders for demolition, site work, or new buildings on Parcel 2, the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town in perpetuity that acknowledges that this CPD approval has consumed all allowable density~~

~~and intensity on Parcels 1, 2, 3, and 5 and that no **No** additional development may occur beyond that which is approved by this CPD **without prior approval of the Town Council**. Prior to issuance of a temporary or final certificate of completion on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcels 2 and 3 on which structures or pavement are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcels 2 and 3 to that which is approved by this CPD and to maintain all areas on which buildings and pavement are not constructed and as shown on the Master Concept Plan, only for outdoor recreation area on Parcel 2 and a single-level surface parking lot on Parcel 3, but specifically excluding any additional parking facilities, buildings, and other similar structures or any additional improvements **require that any future changes to this CPD must comply with the Fort Myers Beach Plan and LDC in effect at the time of any future application**.~~

15. Development order plans must identify the location of 359 off-street parking spaces within the area now identified for parking on Parcels 1 and 3. The public parking spaces to be constructed on Parcel 6 cannot be counted toward the 359 spaces reserved for resort parking.
  - a. None of the 359 spaces are eligible for joint-use agreements or sharing agreements that would allow any of these spaces to substitute for off-street parking that is required by the LDC for businesses located outside this CPD's Master Concept Plan.
  - b. Prior to the issuance of a Temporary Certificate of Occupancy, the applicant will also construct or provide 75 dedicated parking spaces at an off-site location along the trolley route from the Beach Park & Ride facility to be available for the entire resorts parking needs within 2.8 miles of Parcel 1.
  - c. Three or more years after issuance of the resort's certificate of occupancy, the applicant may request to modify this condition to eliminate some or all of these off-site parking spaces upon a convincing showing that this condition requires more parking spaces than are needed for the entire resorts parking needs.
  - d. Identify to the Town if any shared use parking agreements are currently in existence and will be terminated to meet this CPD condition.

16. Development order plans must demonstrate that vehicles can be accommodated by a multi-vehicle parking mechanism per parking spot. Valet parking must be managed so that vehicles are never stacked on Crescent Street or 5<sup>th</sup> Street waiting to access the valet area. The property owner shall install No Stop/Stand signs on Crescent and 5th Street.
17. Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time.  
Murals are permitted in compliance with LDC regulations.
18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:
  - a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
  - b. Alcoholic beverages and ~~amplified music~~ in the beach club are limited to 7:00 a.m. to **10:00 p.m.** ~~one hour after sunset, but not later than 9:00 p.m.~~ Expansion of COP onto the sandy beach seaward of the seawall is prohibited.
  - c. Amplified music on the outdoor terrace on Parcel 1 is limited 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m.
  - d. Amplified music in the unenclosed hotel restaurant and bar on Parcel 2 are limited to 7:00 a.m. to midnight.
  - e. Alcoholic beverages may not be served at locations other than those shown on the Master Concept Plan unless approved by special use permit, special exception or by administrative approval, as provided in 34-1264 of the LDC.



19. Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner shall evaluate the receiving of drainage from the intersection of Crescent and Fifth for suitability and consistency with SFWMD requirements. Provided these two components can be combined under those requirements, the landowner will design and construct the project to receive stormwater from the intersection of Crescent Street and Fifth Street into and through the project's stormwater system, including cost of upsizing the project stormwater system. In order to be considered feasible, any routing of stormwater from the intersection of Crescent and Fifth Streets must accommodate the project's design as approved by this CPD and it shall be borne by the property owner. The property owner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review and concurrent with filing with the **SFWMD**.
20. In order to provide an additional view corridor along the approach to the Town from the Matanzas Pass Bridge, the applicant has offered, and the Town has accepted the following changes to the Master Concept Plan:
- a. No buildings will be constructed on Parcel 3 in perpetuity. Parcel 3 shall remain as a 21-space surface parking lot for the resort because all development rights on Parcel 3 are being used on Parcels 1 and 2. ~~Parcel 3 will be included in the covenants and conservation easement described in Condition 14.~~ Landscape buffers shall be done in accordance with MCP X-504-RW.02.
  - b. No buildings will be constructed on Parcel 4 by the applicant and the existing building will be removed. Parcel 4 will be donated by the applicant to the Town for civic, public purposes and will include a reverter in the event the parcel is not used for such civic, public purposes. The demolition and re-grading of the property will be completed no later than September 30<sup>th</sup>, 2018. The Town shall receive Parcel 4 within 60 calendar days of the issuance of all necessary approvals related to the development order and approvals of the pedestrian bridge. After the existing building is removed by the applicant and the property transfer is completed, Parcel 4 will no longer be subject to any requirements of this CPD. Demolition of Parcel 4 may be completed prior to development order being issued.

21. Barring a direct hurricane or other Acts of God and governmental-related delays, Parcel 1 and the Parcel 1 main hotel shall be completed and open for operation within three years of the issuance of a development order approval. All other portions, phases, and uses shall be in operation within five years of issuance of a development order approval. A Development Order application for development of Parcel 1 shall be submitted no later than 270 calendar days from effective date of the rezoning ordinance.
22. Additional approvals of special events are allowed. Application for such special event approvals shall be submitted through the Town's adopted Special Event processes and may temporarily alter hours of operation, amplified music limits, and public user capacity, among other items.
23. Bicycle racks for public use will be provided as shown on the Master Concept Plan. All bicycles and similar alternative transportation options shall be provided within the approved development footprint. Operations of any bicycle loan business or operation shall require the returning of bicycles to the CPD properties on a daily basis; as well as comply with Town Codes and provide education materials about Town codes and regulations to bicycle users.
24. Construction staging shall be authorized when in compliance with all applicable Town codes, except that concrete delivery/pumping for the building's foundations and terrace may occur no earlier than 4:00 am. No staging shall be permitted on Parcel 4 or Parcel 6 after donation to the Town. No other approvals are inferred from approval of the CPD. The landowner or developer shall be responsible for submittal of any requests for additional staging or construction management approvals from the Town Council.
25. Any violation of the CPD conditions of approval or deviations shall constitute a \$500 per day per incident civil violation.
26. The applicant has offered to provide residents of the Fort Myers Beach community a "Discount Plan," which provides a 25 percent discount on food, alcohol and non-alcohol beverages, Family Beach Club Admission, and retail store purchases, to anyone with a valid FL Driver's License with a home address in zip code 33931.
27. Per LDC Section 34-216(b)(5), the revised Master Concept Plan must be submitted to the director reflecting all modifications to the deviations and conditions as made herein by the Town Council.

### **Findings Regarding the Conditions**

1. All recommended special conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

**From:** [Gannett Legals Public Notices 4](#)  
**To:** [Amy Baker](#)  
**Subject:** RE: 9738628 For Legal Publication on or before: Wednesday, January 17, 2024 Ord. 24-01 TPI CPD  
**Date:** Friday, January 12, 2024 11:47:03 AM  
**Attachments:** [image010.png](#)  
[image011.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)  
[image015.png](#)  
[image016.png](#)  
**Importance:** High

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Hello,

All orders, prepaid or via invoice, are subject to a 3.99% service fee if paid with a credit card. As an incentive for customers, we provide a discount off the order cost equal to the 3.99% service fee if you pay with ACH. Pay by ACH and Save!

Your notice is scheduled to publish Jan 17 in the News Press. The total cost of your ad is \$228.46, which includes a publisher affidavit that will be mailed to you after the last date of publication. **Please review your proof carefully and advise of any corrections (or cancellation) needed. Your notice is scheduled to run per your request, and will publish unless you advise otherwise – YOU WILL BE INVOICED VIA MAIL FOR COST.**

\*NOTE: We are not legally trained, and it is your responsibility to make sure your ad meets the requirements of your State/County/Court, which includes wording and publication dates. Please verify all information is correct. If your ad is not compliant with applicable law/requirements and needs to be re-published, you will be responsible for all additional fees incurred.

**NOTICE OF PUBLIC HEARINGS**  
Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at 9:00 AM on February 5, 2024 regarding the ordinance listed below. This meeting and public hearings will take place at the Town Hall, 2731 Oak Street, Fort Myers Beach, FL 33931.

**ORDINANCE NO. 24-01**  
**AN ORDINANCE OF THE TOWN**  
**OF FORT MYERS BEACH,**

FLORIDA AMENDING TOWN OF  
FORT MYERS BEACH ORDINANCE NO. 23-09, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW,

## SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202.

Jan 17, 2024

\*\*\*\*\* IMPORTANT \*\*\*\*\* IMPORTANT \*\*\*\*\*

If you would like to utilize our NEW online self-serve ad portal to place your legal notices, please visit your local publication's website. There, click LEGALS, and then GET STARTED. There, you can conveniently submit, preview, and pay for your notices, anytime, 24/7.

Thank you,

**Erin Oettinger**

Team Lead – Public Notices



Office: 844-254-5287

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**From:** Amy Baker <Amy@fmbgov.com>

**Sent:** Friday, January 12, 2024 9:52 AM

**To:** LEGALS, FNP <FNPLEGALS@gannett.com>

**Cc:** Jason Freeman <JasonF@fmbgov.com>; Jason Smalley <jsmalley@fmbgov.com>

**Subject:** 9738628 For Legal Publication on or before: Wednesday, January 17, 2024 Ord. 24-01 TPI  
CPD

**Town of Fort Myers Beach Account #6543**

**(239) 765-0202**

**Publish on or before: Wednesday, January 17, 2024**

### **NOTICE OF PUBLIC HEARINGS**

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing at a meeting beginning at **9:00 AM** on **February 5, 2024** regarding the ordinance listed below. This meeting and public hearings will take place at the **Town Hall, 2731 Oak Street, Fort Myers Beach, FL 33931.**

#### **ORDINANCE NO. 24-01**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 23-09, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR**



## AN EFFECTIVE DATE.

If any person should choose to appeal a decision made at this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based.

Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you are in need of reasonable accommodation, contact Town Hall at 239-765-0202.



**Amy Baker**

Town Clerk

Town of Fort Myers Beach

2525 Estero Boulevard

Fort Myers Beach, FL. 33931

(239) 765-0202, Ext. 1400

[FMBgov.com](http://FMBgov.com)



Think Green. Please print this e-mail only if necessary.

*Please Note: Florida has very broad public records laws. Most written communications to and from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications may be subject to public disclosure.*

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

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# **Business Impact Estimate**

Proposed ordinance's title/reference:

**Ordinance 24-01 Amendment of CPD Conditions of Approval**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
  - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
  - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
  - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

**1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):**

The proposed ordinance amends CPD Conditions of Approval approved in Town of Fort Myers Beach ordinances 18-04 and 23-09, allowing extended hours for guests/ non-guests/ alcohol sales within the parcels collectively known as the "Beach Club"

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

Any costs incurred by the applicant will be to further their commercial business, this has been requested by the applicant themselves.

Ordinance 24-01 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The proposed changes to the applicant's CPD Conditions of Approval will be relevant only to the applicant and their lot/ business.

4. Additional information the governing body deems useful (if any):

N/A



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT

### STAFF REPORT

**TYPE OF CASE:** CPD AMENDMENT

**CASE NUMBER:** CPD20230227

**CASE NAME:** 1170 Estero Blvd (incl. all associated Margaritaville CPD properties); requesting an amendment of Ord. 18-04 'Conditions of Approval' #6; #12 (f) and (g); and #18 (a) and (b).

**SECOND COUNCIL HEARING DATE:** February 5th, 2024, at 9 AM

**STAFF RECOMMENDATION:** N/A

**PREPARED/  
SUBMITTED BY:** Jason Smalley- Senior Planner

#### **I. APPLICATION SUMMARY**

Applicant/Owner: TPI-FMB LLC

Request: The applicant is requesting an amendment of Ord. 18-04 'Conditions of Approval' #6, 12(f) & (g) and 18(a) & (b), extending hours of operation an additional 2 hours for the Beach Club and its ancillary uses from 7am to 11pm, and limiting amplified music past 10pm while clarifying that the Town's noise ordinance would apply to the new hours; allowing for other outdoor areas covered by the Consumption on Premises (COP) approval to be utilized for private events when the aquatic venue is closed; change 12(g) references from "beach club" to "aquatic venue;" and correct page references to the COP areas in the Master Concept Plan (MCP).

Subject property: See attached Master Concept Plan

Physical Address: 1170, 1180/ 1192, 1204/ 1206 Estero Blvd; 251 Crescent St; 1150 Fifth St.; and Unaddressed parcels

STRAP #: 24-46-23-W3-00205.0070 (MCP parcel #3); 24-46-23-W3-00006.0000 (MCP parcel #1); 24-46-23-W3-00206.0060 (MCP parcel #1); 24-46-23-W3-00009.0000 (MCP parcels # 2 and #5); 19-46-24-W4-U0496.2608 (MCP parcel #2) and 19-46-24-W4-U0498.2607 (MCP parcels #2 and #6)

FLU: Pedestrian Commercial

Zoning: Commercial Planned Development (CPD)

Adjacent zoning and land uses:

North: COMMERCIAL PLANNED DEVELOPMENT (CPD)  
Hotel

South: DOWNTOWN  
Crescent Beach Park

East: DOWNTOWN  
Residential/ Hotel

West: DOWNTOWN  
Commercial/ Times Square

**II. FIRST COUNCIL DISCUSSION AND OUTCOME**

Discussion generally centered around what activities could be held on the “Beach Club” lot and the applicant’s compromise in asking to extend alcohol sales and amplified music until 9 PM with a closing time of 10 PM, one hour earlier than their previous ask before LPA.

The applicant confirmed that any activities being held on the Beach Club after normal hours would be considered to be a “private event” as described in the CPD amendment.

The Town Council voted 3-0 with one abstention and one vacant seat not voting, the voting members recommended approval and to move the request to its final reading.

**III. BACKGROUND AND ANALYSIS**

Background:

Original CPD Approval: May 21<sup>st</sup>, 2018 (Ord. 18-04)

- 27 Conditions of Approval included

Amendment to CPD (Ord. 23-09): August 7<sup>th</sup>, 2023

- Amendment to Condition of Approval #14, removing language which forbade the development of parcels 1, 2, 3 and 5, allowing for future Councils to consider construction in those areas in conformity with the Comprehensive Plan and LDC.

Analysis:

**Condition of Approval #6 and #18(a):** Minor correction of page references in the Master Concept Plan detailing the approved COP areas. Staff has confirmed that the referenced Master Concept Plan (dated May 21<sup>st</sup>, 2018; Morris-Depew Assoc., Inc.) pages were incorrectly cited in multiple places within prior ordinances.

**Condition of Approval #12 (f) & (g):**

- **12(f):** While retaining the daily limits on non-resort guests at the aquatic venue on parcel 2, the applicant is requesting the ability to utilize the COP areas defined in the MCP, for private events after the aquatic venue closes.

The applicant is proposing to limit amplified music to no later than 9pm on parcel 2, except that amplified music may be played from 7am to 12am-midnight in the unenclosed hotel restaurant and bar.

The applicant is proposing that limits on noise should be addressed through the Town's noise ordinance (sec. 14-23, Table-1)

- **12(g):** This change seems to clarify that the aquatic venue is subject to the limits of 325 non-guest users, rather than the "Beach Club."

**Condition of Approval #18(b):** The proposed changes would extend the sale of alcoholic beverages within the approved COP areas to 10pm to match their proposed amendment to Condition of Approval #12(f). The removal of language regarding amplified music is also addressed by #12(f).

**IV. LPA OUTCOME**

At the December 19<sup>th</sup> LPA hearing the LPA made a motion to recommend approval of the ordinance amendments with the following conditions:

- 1) #6 and 18(a) recommend approval as requested, they are needed corrections.
- 2) #12(f) & (g) which pertain to the extended hours and amplified music are approve with recommendation of conditions:

- a. A mapped plan of how mitigation will occur for private events at the venue,
  - b. Define private event.
  - c. Asked that the applicant ensure compliance with sea turtle ordinance for extended hours and lighting.
  - d. Asked for a clear updated map, identifying the aquatic venue/pool and beach club areas.
  - e. Provide capacity limit for private events.
  - f. Allow amplified music to play till 10 PM and operation till 11.
- 3) Recommend approval of 18(a) & (b) for extension of COP with the preceding conditions.

## **V. EXHIBITS**

Exhibit A – Conditions of Approval as Amended in Ord. 23-09 and 24-01

Exhibit B – MCP with Amended Beach Club Area Map with Description



**Exhibit 6-5**  
**TPI-FMB CPD AMENDMENT**

## **NARRATIVE**

### **INTRODUCTION**

Margaritaville CPD Ord.# 23-09, Condition #7, limits non-resort guest use of the aquatic venue on Parcel 2 to a maximum 325 non-resort guests:

7. The property owner is responsible for accounting and enforcement of ***the per day limitation of 325 non-resort guests at the aquatic venue*** or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a \$500 per day per incident civil violation.

During hours when the aquatic venue on Parcel 2 is closed, the other beautiful outdoor areas of the beach club would otherwise be vacant. TPI FMB proposes to use those other beach club outdoor areas for private events (including food and beverage services within the permitted COP areas on the MCP for Parcel 2) and to moderately increase the hours of operation from 9:00 PM to 11:00 PM. Condition #7 remains unchanged, but this requires amending Ord.#23-09, Conditions #12.f. and 12.g. and 18.a. and 18.b. (and Condition #6 as noted at the end of this Narrative)[See additions **bold underlined**; deletions **cross-hatched**]:

12. *The beach club on Parcel 2 must meet these additional requirements:*

...

- f. *The beach club and its ancillary uses may operate only from 7 am to 11 pm. **The aquatic venue is limited by Condition 7 to 325 non-resort guests. When the aquatic venue is closed, the other outdoor patios and related areas of the Parcel 2 beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 10 PM except as provided in Condition 18.d. Since this venue is open air, with regard to music or noise the Town's Noise Ordinance (Code of Ordinances §14-23; Table-1) will be enforced.**~~one hour after sunset, but never later than 9 pm. That is the Beach Club's hours of operation. unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.~~*

- g. *To implement the applicant's commitment to limit access to the aquatic venue beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.*

....

*18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:*

*a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on **Sheets X-505-COP.01 and X-506-COP.02** ~~Sheets X-506-COP.01 and X-507-COP.02~~. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.*

*b. Alcoholic beverages ~~and amplified music~~ in the beach club are limited to 7:00 a.m. to **11:00 p.m.** ~~one hour after sunset, but not later than 9:00 p.m.~~ Expansion of COP onto the sandy beach seaward of the seawall is prohibited.*

***[The remainder of Condition 18 is unchanged]***

**EXPLANATION:    Conditions 12.f. and 12.g. and 18.a. and 18.b.**

TPI recently requested changes to the Margaritaville CPD due to Hurricane Ian changed circumstances with the devastation to the community and impacts on the local economy. Those changes were approved in Ord. #23-09. Recently TPI noticed an inconsistency in the reference to the MCP plan pagination in Condition #6 which needs to be addressed. At the same time, there is ambiguity about the private event use of outdoor beach club areas after the aquatic venue is closed which operational issues should also be clarified.

As TPI is getting closer to opening and operating Margaritaville they are addressing some of the specific operational conditions related to the beach club, restaurants, and ancillary uses. Once it is completed, the beach club will represent a magnificently landscaped area, perfectly suited for evening receptions for various Southwest Florida civic, corporate, community, and other similar groups seeking a venue for various social gatherings. On those days, the beach club and its food and beverage services could be made available between the hours of 5 PM (after which the pool and aquatic venue would be closed) to 11 PM with the further limitation that no amplified music would be available past 10 PM. Since this venue is open air, regarding music or noise the Town's Noise Ordinance (Town of Fort Myers Beach Code of Ordinances §14-23; Table-1) will be enforced.

Presently Condition 12.f. requires the closure of the beach club after 9 PM unless special events are requested consistent with LDC 34–1264. As a practical matter limiting the use of this beautiful venue only until 9 PM serves no practical purpose. The beach club resource is in the Commercial District of the Town of Fort Myers Beach within an area that will already be actively used after 9 PM. Allowing it to be open until 11 PM will be consistent with the other restaurant and bar activities that occur in this commercial part of the town and will complement the other evening activities in this area.

A restaurant is already located there and will be active during the same hours. The COP areas have already been identified in the Master Concept Plan and will remain consistent. Allowing the flexibility for the additional two hours of operation will more efficiently use the beautiful resources of the beach club as a complement to other Times Square pedestrian-oriented activities. There will be no additional impact to the area since the parking for the beach club and ancillary uses is already provided for in the CPD.

Minor clarification amendments to Conditions #12 and 18 would allow for this [deletions-crosshatched; additions **bold underlined**]:

12. *The beach club on Parcel 2 must meet these additional requirements:*

...

f. *The beach club and its ancillary uses may operate only from 7am to **11 pm. The aquatic venue is limited by Condition 7 to 325 non-resort guests. When the aquatic venue is closed the other outdoor patios and related areas of the Parcel 2 beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 10 PM except as provided in Condition 18. d. Since this venue is open air, with regard to music or noise the Town's Noise Ordinance (Code of Ordinances §14-23; Table-1) will be enforced.**~~one hour after sunset, but never later than 9 pm. That~~*

~~is the Beach Club's hours of operation, unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.]~~

- g. *To implement the applicant's commitment to limit access to the **aquatic venue beach club** to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.*

■ ■ ■

*18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:*

- a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on **Sheets X-505-COP.01 and X-506-COP.02** ~~Sheets X-506-COP.01 and X-507-COP.02~~. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
- b. ~~Alcoholic beverages and amplified music~~ in the beach club are limited to 7:00 a.m. to **11:00 p.m.** ~~one hour after sunset, but not later than 9:00 p.m.~~ Expansion of COP onto the sandy beach seaward of the seawall is prohibited.

***[The remainder of Condition 18 is unchanged]***

////////////////////////////////////

**[Clean Version – Clarified Conditions 12 and 18]**

12. The beach club on Parcel 2 must meet these additional requirements:

...

- f. The beach club and its ancillary uses may operate only from 7am to 11 pm. The aquatic venue is limited by Condition 7 to 325 non-resort

guests. When the aquatic venue is closed the other outdoor patios and related areas of the Parcel 2 beach club (limited to locations shown on the MCP as COP areas) may be used for private events. No amplified music is permitted past 10 PM. Since this venue is open air, with regard to music or noise the Town's Noise Ordinance (Code of Ordinances §14-23; Table-1) will be enforced.

- g. To implement the applicant's commitment to limit access to the aquatic venue to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.

...

18. Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:

- a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-505-COP.01 and X-506-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
- b. Alcoholic beverages in the beach club are limited to 7:00 a.m. to 11:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.

**EXPLANATION:    Condition #6**

As noted previously above, while reviewing the recent amendments to the Margaritaville CPD ordinance TPI also recognized that in Condition 6 the references to the MCP pages related to Consumption On Premises (COP) were inaccurate and ought to be changed so that the correct references in the Use for Parcel 1 are also correctly

referenced for the COP Use on Parcel 2 (which, in Ord.#23-09, do not accurately reflect the correct MCP pages). Those proposed changes are shown in the condition below:

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]***

6. The approved schedule of uses for this CPD is limited to the following:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Parcel 1 (Bay Side)</b></p> <p><b>LODGING</b> use group:</p> <p><b>Hotel</b></p> <p><b>Uses Accessory to</b></p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-505-COP.01 &amp; X-506- COP.02</p> <p>Parking Lot, Accessory</p> <p>Subordinate Uses</p> <p>Temporary Uses, if permitted by Ch. 34</p> <p><b>MARINE</b> use group</p> <p>No Marina Uses</p> | <p><b>Parcel 2 (Gulf Side)</b></p> <p><b>LODGING</b> use group:</p> <p><b>Hotel</b></p> <p><b>RETAIL</b> use group:</p> <p><b>Recreation Facilities,</b><br/><b>Commercial</b> (limited to 325 total people per day who are not staying at the hotel)</p> <p><b>Restaurant</b></p> <p><b>Commercial Accessory Uses:</b></p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets <u><b>X-505-COP.01 &amp; X-506-COP.02</b></u></p> <p><del>X-506-COP.01 &amp; X-507-COP.02</del></p> <p>Subordinate Commercial</p> <p>Water-oriented Rentals</p> <p><b>MARINE</b> use group:<br/>(if permitted by Chapter 27)</p> <p><b>Parasailing Operations</b></p> <p><b>Office Personal Watercraft Operations Office</b></p> | <p><b>Parcel 3</b></p> <p><b>LODGING</b> use group:</p> <p><b>Uses Accessory to</b></p> <p>Parking Lot, Accessory<br/>(the only use permitted on Parcel 3)</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|

## **LDC JUSTIFICATION**

According to LDC Section 34-1(a) the purpose and intent of the Land Development Code is:

... to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach, to recognize and promote real property rights, and to provide:

- (1) For efficiency and economy in the process of development;
- (2) For the appropriate and best use of land; ...

*(Emphasis supplied)*. When considering rezonings LDC Section 34-85(b) calls for the Town Council to consider (among others):

- (1) Whether there exists an error or ambiguity which must be corrected.
- (2) Whether there exist changed or changing conditions which make approval of the request appropriate.

***[Particularly Condition 6, discussed last below, makes references to the MCP pages related to Consumption On Premises (COP) that are inaccurate and ought to be changed so that the correct COP references shown in the Use for Parcel 1 are also correctly referenced for the COP Use on Parcel 2. Additionally, there is ambiguity in Condition 12(f) & (g) about whether the outdoor areas and related services of the beach club can be used for private events when the aquatic venue is closed.]***

...

- (8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

***[The performance and locational standards were demonstrated to be met when the CPD was originally approved. The request proposed is simply to more efficiently use the approved facilities by moderately expanding the hours of operation to better use the approved beach club facilities.]***

...

- (11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.



***[TPI submits that the proposal to allow the beach club facilities to remain open for another two hours is consistent with and complementary to the evening activities expected throughout the pedestrian-oriented Times Square beachside restaurant and recreational area.]***

- (12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

***[As previously noted, the activities have already been shown not to place undue burdens on the transportation and other services and facilities, and the proposed change to the hours of operation will simply allow the use of an existing activity site in this pedestrian-oriented area.]***

- (13) For planned development rezonings, see § 34-216 for additional considerations.

LDC §34-216(a):

- (2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:
- a. The proposed use or mix of uses is appropriate at the subject location;
  - b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
  - c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
  - d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
    1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

POLICY 4-B-6 "PEDESTRIAN COMMERCIAL: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) ....

Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. ... [Emphasis supplied]

POLICY 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the following principles shall apply:

...

- ii. Where new or expanded commercial uses are encouraged, as in the "Pedestrian Commercial" category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.

***[The Margaritaville Resort property is located largely in the Pedestrian Commercial FLU Category. Policies 4-B-6 and 4-C-3 call for the property to contribute to the pedestrian oriented public realm in this activity center in close proximity to Times Square. These new beachfront recreational and entertainment facilities are uniquely situated to provide those kinds of pedestrian-oriented services in a complementary fashion to the other pedestrian oriented activities and services located in the Times Square area. Allowing the hours of operation to more closely match the activity level of the Times Square area just makes good sense and efficient use of the existing facilities.]***

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category. ***[N/A for this amendment]***
3. Policy 4-C-4 on building heights taller than the standard height limit. ***[N/A for this amendment]***
4. Policy 4-C-8 on density transfers. ***[N/A for this amendment]***
5. Policy 4-E-1 on pre-disaster buildback. ***[N/A for this amendment]***

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.  
***[N/A for this amendment]***

## **CONCLUSION**

In conclusion, TPI submits that these minor changes will correct an existing error or ambiguity and will remain consistent with the Town's LDC and Comprehensive Plan as well as being consistent with the overall theme and concept approved in the Margaritaville CPD. TPI respectfully urges the Town to approve the changes proposed.



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to [zoningpermits@fmbgov.com](mailto:zoningpermits@fmbgov.com). Please do not submit the instructions at the end of the application.

1170, 1180/1192 Estero Blvd., portions of Estero Blvd., right-of-way and access undetermined,  
Site Address: more or less (See attached location map).

STRAP Number: Parcels 2 & 5: 19-46-24-W4-0140B.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-U0498.2606, 24-46-23-W3-00009.0000

Applicant: TPI-FMB, LLC - Steven C. Hartsell, Authorized Applicant Phone: 239-336-6244

Contact Name: c/o Steven C. Hartsell, Esquire Phone: 239-336-6244

Email: stevehartsell@paveselaw.com Fax: 239-332-2243

Current Zoning District: Commercial Planned Development (CPD)

Future Land Use Map (FLUM) Category: Pedestrian Commercial FLU

FLUM Density Range: See Ordinance #23-09 Platted Overlay: ☐ YES ☒ NO

### ACTION REQUESTED

- ☐ Special Exception
- ☐ Variance
- ☐ Conventional Rezoning
- ☒ Planned Development ☒ Commercial ☐ Residential
- ☐ Master Concept Plan Extension
- ☐ Appeal of Administrative Action
- ☐ Vacation of Platted Right-of-way and Easement
- ☐ Other – cite LDC Section: \_\_\_\_\_

### SUPPLEMENTAL FORM REQUIRED

- PH-A
- PH-B
- PH-C
- PH-D
- PH-E
- PH-F
- PH-G
- attach on separate sheet

### PART I – General Information

A. **Applicant\***: TPI-FMB, LLC - Steven C. Hartsell, Authorized Applicant Phone: 239-336-6244

*\*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: Post Office Drawer 1507, Fort Myers, FL 33902-1507

Email: stevehartsell@paveselaw.com Fax: 239-332-2243

Contact Name: Steven C. Hartsell, Esquire Phone: 239-336-6244



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

**B. Relationship of Applicant to subject property:**

- |                                                     |                                                         |                                              |
|-----------------------------------------------------|---------------------------------------------------------|----------------------------------------------|
| <input checked="" type="checkbox"/> Owner*          | <input type="checkbox"/> Land Trust*                    | <input type="checkbox"/> Partnership*        |
| <input type="checkbox"/> Corporation*               | <input type="checkbox"/> Association*                   | <input type="checkbox"/> Condominium*        |
| <input type="checkbox"/> Subdivision*               | <input type="checkbox"/> Timeshare Condo*               | <input type="checkbox"/> Contract Purchaser* |
| <input type="checkbox"/> Authorized Representative* | <input type="checkbox"/> Other* (please indicate) _____ |                                              |

*\*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.  
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

**C. Authorized Agent(s).** Please list the name of Agent authorized to receive correspondence Agents

Name: Steven C. Hartsell, Esquire Phone: 239-336-6244  
Address: Pavese Law Firm, Post Office Drawer 1507, Fort Myers, FL 33902-1507  
Email: stevehartsell@paveselaw.com Fax: 239-332-2243

**D. Other Agent(s).** Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: N/A Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

### PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section \_\_\_\_\_ - \_\_\_\_\_
- ☐ Conventional Rezoning from \_\_\_\_\_ to \_\_\_\_\_
- ☐ Planned Development
- ☐ Rezoning from \_\_\_\_\_ to ☐ Commercial PD ☐ Residential PD
- ☒ Amendment. List the project number: DCI17-001
- ☐ Extension/reinstatement of Master Concept Plan. List project number: type text here



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

\_\_\_\_\_

### PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

### AFFIDAVIT

#### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, \_\_\_\_\_ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that  
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was certified and subscribed before me by means of \_\_\_\_ physical  
presence OR \_\_\_\_ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_, ☐ who is personally known to me OR ☐ who has produced  
\_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public Signature

### PART V Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

### DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## COMMUNITY DEVELOPMENT DEPARTMENT

### APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

TPI-FMB, LLC, a Florida limited liability corporation  
Owned by: Torgerson Properties, Inc., a Minnesota for profit corporation  
Thomas R. Torgerson, Manager, 103 15th Ave. NW #200, Willmar, MN 56201  
John Damemann, 100% owner of Torgerson Properties, Inc.

80.9%

TPI-FMB, LLC, a Florida limited liability corporation  
Owned by: TPI-FMB Investment, LLC, a Florida limited liability corporation  
Thomas R. Torgerson, Manager, 103 15th Ave. NW #200, Willmar, MN 56201  
Thomas R. Torgerson, 100% owner of TPI-FMB Investment, LLC

19.1%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

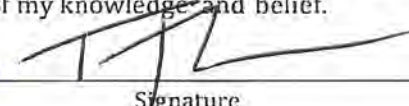
Date of Contract: \_\_\_\_\_

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

| Name  | Address |
|-------|---------|
| _____ | _____   |
| _____ | _____   |
| _____ | _____   |

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

✓   
\_\_\_\_\_  
Signature

TPI-FMB, LLC, a Florida limited liability company  
Thomas R. Torgerson, Manager  
\_\_\_\_\_  
Printed Name

### AFFIDAVIT

#### APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Thomas R. Torgerson (name), as Manager (title)  
of TPI-FMB, LLC, a Florida limited liability corporation (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

TPI-FMB, LLC, a Florida limited liability corporation  
Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Thomas R. Torgerson  
Typed or Printed Name

Manager  
Title

10-27-23  
Date

STATE OF Minnesota COUNTY OF Kandiyohi

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 27<sup>th</sup> day of October, 2023, by Thomas R. Torgerson, ☒ who is personally known to me OR ☐ who has produced



Kathleen A. Ciampi  
Notary Public Signature

### PART VI- Property Information

#### A. Legal Description:

STRAP: 19-46-24-W4-0140B.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-0498.2606, 24-46-23-W3-00009.0000

Property Address: 1170, 1180/1192 Estero Blvd., portions of Estero Blvd., right-of-way and access undetermined, more or less (See attached location map)

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_ Unit: \_\_\_\_\_ Block: \_\_\_\_\_ Lot(s): \_\_\_\_\_

#### B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

### C. Property Dimensions:

Width (please provide an average width if irregular in shape) \_\_\_\_\_ +/- 395.00 feet

Depth (please provide an average width if irregular in shape) \_\_\_\_\_ +/- 301.09 avg feet

Frontage on street: \_\_\_\_\_ +/- 395.00 feet. Frontage on waterbody: \_\_\_\_\_ 0.00 feet

Total land area: \_\_\_\_\_ +/- 1.80 ☒ acres ☐ square feet

### D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

West on San Carls Blvd. across the Sky Bridge. Continue on San Carlos Blvd. until  
it curves to the left, transitioning into Estero Blvd. Parcels 2 & 5 are on the right-hand  
of Estero Blvd. just beyond the pedestrian overpass for the Margaritaville resort  
currently under construction.

☒ Attach Area Location Map as Exhibit 6-3

### E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

### F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

### G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Mixed Residential

☐ Boulevard

☒ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay

**DESCRIPTION - PARCEL NO. 2**

PARCEL OF LAND LYING IN PARTIALLY IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND PARTIALLY IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED LANDS, PORTIONS OF "CRESCENT PARK", INCLUDING A PORTION OF CANAL STREET AND THE 12-FOOT-WIDE STRIP OF LAND SHOWN ALONG THE WEST SIDE OF LOTS 2, 3, 6, AND 7, BLOCK B, ON SAID PLAT OF "CRESCENT PARK", AS RECORDED IN PLAT BOOK 4, PAGE 39, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "E", CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER"; THENCE S.0°41'08"E. ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD AND THE POINT-OF-BEGINNING OF THIS DESCRIPTION; THENCE S.70°35'51"E. A DISTANCE OF 270.05 FEET TO A POINT ON THE NORTH LINE OF LOT 4, BLOCK "A" OF SAID "CRESCENT PARK"; THENCE S.19°24'09"W. A DISTANCE OF 174.90 FEET TO A POINT ALONG THE COASTAL CONSTRUCTION SET-BACK LINE AS DESCRIBED IN PLAT BOOK 31, PAGE 1 THROUGH 21, INCLUSIVE, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE N.67°11'13"W ALONG SAID SET-BACK LINE, FOR A DISTANCE OF 393.39 FEET; THENCE N.19°24'24"E. FOR A DISTANCE OF 151.50 FEET TO AN INTERSECTION WITH THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD; THENCE S.70°35'51"E. ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 122.63 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION.

CONTAINING 1.47 ACRES, MORE OR LESS.

**DESCRIPTION - PARCEL NO. 5**

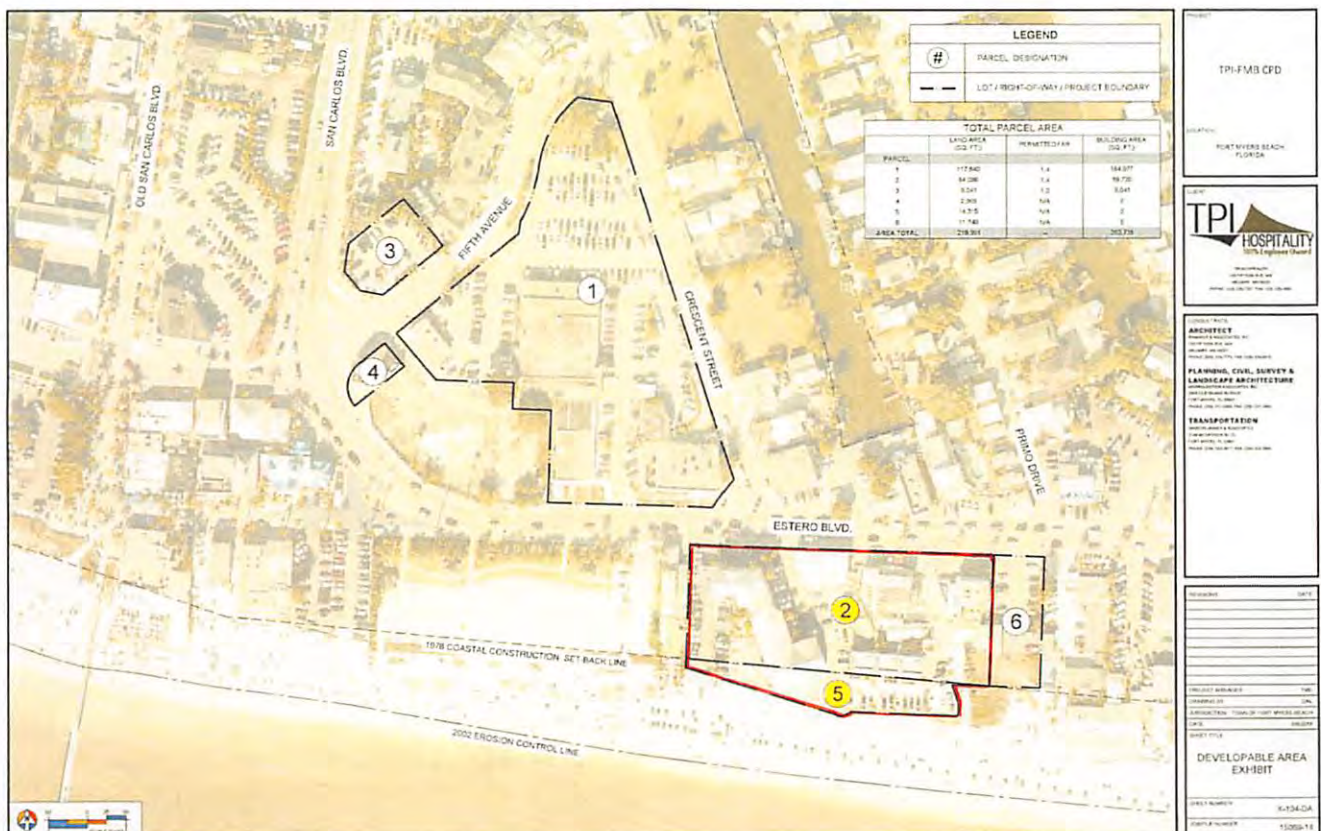
PARCEL OF LAND LYING IN PARTIALLY IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND PARTIALLY IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, SAID PARCEL ENCOMPASSING UNPLATTED LANDS, PORTIONS OF "CRESCENT PARK", INCLUDING A PORTION OF CANAL STREET AND THE 12 FOOT WIDE STRIP OF LAND SHOWN ALONG THE WEST SIDE OF LOTS 2, 3, 6 AND 7, BLOCK B, ON SAID PLAT OF "CRESCENT PARK", AS RECORDED IN PLAT BOOK 4, PAGE 39, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF BLOCK "E", CRESCENT PARK ADDITION, AS RECORDED IN PLAT BOOK 4, PAGE 46, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID CORNER LYING AT THE INTERSECTION OF THE SECTION LINE COMMON TO SAID SECTIONS 19 AND 24 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD AS SHOWN ON THE SAID PLAT OF "BUSINESS CENTER"; THENCE S.0°41'08"E. ALONG THE SAID SECTION LINE, A DISTANCE OF 53.15 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID ESTERO BOULEVARD ; THENCE S.70°35'51"E. A DISTANCE OF 337.05 FEET TO THE NORTHEAST CORNER OF LOT 3, BLOCK "A" OF SAID "CRESCENT PARK"; THENCE S.19°24'09"W.



ALONG THE EASTERLY LINES OF SAID LOT 3 AND LOT 7, OF SAID BLOCK "A", A DISTANCE OF 175.23 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 7; THENCE N.70°35'51"W. ALONG THE SOUTH LINE OF SAID LOT 7 AND LOT 6 A DISTANCE OF 67.00 FEET TO THE POINT-OF-BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING N.70°35'51"W. ALONG THE SOUTH LINE OF SAID LOT 6 AND ITS NORTHWESTERLY EXTENSION ACROSS THE RIGHT-OF-WAY OF SAID CANAL STREET FOR A DISTANCE OF 48.26 FEET TO THE NORTHEAST CORNER OF LOT 9, BLOCK "B" OF SAID "CRESCENT PARK"; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT 9 FOR THE NEXT TWO COURSES; S.0°47'09"E. A DISTANCE OF 26.69 FEET; THENCE S.19°35'15"W. A DISTANCE OF 15.41 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY EXTENSION OF THE SEAWARD FACE OF AN EXISTING CONCRETE RETAINING WALL; THENCE ALONG THE SAID SEAWARD FACE AND ITS NORTHWESTERLY EXTENSION FOR THE NEXT EIGHT (8) COURSES; N.69°51'54"W. A DISTANCE OF 1.52 FEET; THENCE N.88°24'04"W. FOR A DISTANCE OF 1.34 FEET; THENCE N.71°18'46"W. A DISTANCE OF 7.35 FEET; THENCE N.54°54'52"W, A DISTANCE OF 1.35 FEET; THENCE N.70°40'41"W. A DISTANCE OF 47.63 FEET; THENCE N.69°59'37"W. A DISTANCE OF 76.43 FEET; THENCE S.84°21'17"W. A DISTANCE OF 15.65 FEET; THENCE N.54°51'19"W. A DISTANCE OF 211.87 FEET; THENCE N.19°24'24"E., LEAVING SAID SEAWARD FACE OF THE CONCRETE SEAWALL, A DISTANCE OF 12.72 FEET TO AN INTERSECTION WITH THE COASTAL CONSTRUCTION SET-BACK LINE AS DESCRIBED IN PLAT BOOK 31, PAGE 1 THROUGH 21, INCLUSIVE, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.67°11'13"E. ALONG SAID COASTAL CONSTRUCTION CONTROL LINE, A DISTANCE OF 393.39 FEET; THENCE LEAVING SAID SET-BACK LINE S.19°24'09"W. FOR A DISTANCE OF 0.34 FEET TO THE SAID POINT-OF-BEGINNING OF THIS DESCRIPTION.

CONTAINING 0.33 ACRES, MORE OR LESS.







|                             |  |
|-----------------------------|--|
| PROJECT                     |  |
| TPI-FMB CPD                 |  |
| LOCATION                    |  |
| FORT MYERS BEACH<br>FLORIDA |  |

CLIENT:

**TPI**  **HOSPITALITY**  
100% Employee Owned

TPI-HOSPITALITY  
103 FIFTEEN AVE, NW  
WALLHART, MI 48091  
PHONE (313) 236-7127, FAX (313) 235-4663

**CONSULTANTS:**

**ARCHITECT**  
BANKARD & ASSOCIATES, INC.  
155 FIFTEEN AVE. NW  
WILMUNA, NJ 08251  
PHONE (202) 255-7775, FAX (202) 235-8873

**PLANNING, CIVIL, SURVEY &  
LANDSCAPE ARCHITECTURE**  
MORRIS-DEFFORD ASSOCIATES, INC.  
2814 CLEVELAND AVENUE  
KENTWOOD, FL 32849  
PHONE (278) 357-3883, FAX (278) 357-5984

**TRANSPORTATION**  
DAVID PLANNING & ASSOCIATES  
7146 W. GREGORY BLVD.  
FORT MYERS, FL 33907  
PHONE (239) 332-2617, FAX (239) 332-2645

|                                                                 |          |
|-----------------------------------------------------------------|----------|
| REVISONS                                                        | DATE     |
|                                                                 |          |
|                                                                 |          |
|                                                                 |          |
|                                                                 |          |
|                                                                 |          |
| PROJECT MANAGER                                                 | TIME     |
| DRAWING BY:                                                     | DAL      |
| JURISDICTION: TOWN OF FORT MYERS BEACH                          |          |
| DATE                                                            | 6/5/2014 |
| SHEET TITLE                                                     |          |
| <p style="text-align: center;">DEVELOPABLE AREA<br/>EXHIBIT</p> |          |
| SHEET NUMBER                                                    | X-104-DA |
| JOB/FILE NUMBER                                                 | 15069-14 |



[illegible][illegible]

THE DESCRIPTION SHOWN HEREIN ARE BASED ON:  
SURVEYS BASED ON DESCRIPTION PROVIDED BY THE CLIENT AND THE RECORDED PLAT OF "BUSINESS CENTER," AS RECORDED IN PLAT BOOKS 8 PAGES 1 & 2, AND CERTAIN PLOT SUBDIVISION, AS RECORDED IN PLAT BOOK 4 PAGE 8 AND 9, OF THE PUBLIC RECORDS OF DE LA CONCHA, FLORIDA.  
THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF A CURRENT TITLE SEARCH, ALL EASEMENTS AND RIGHT-OF-WAY TAKING AND OTHER ENCUMBRANCES SHOWN HEREIN ARE BASED ON PREVIOUS SURVEYS AND TITLE DOCUMENTS.  
THE EXISTENCE OF UNDERGROUND OR NONVISIBLE IMPROVEMENTS WAS NOT INVESTIGATED, UNLESS OTHERWISE SHOWN.  
COORDINATES SHOWN HEREIN ARE BASED ON FLORIDA DTD 83, NAD 83, ZONE 18J.00.  
THE EXISTENCE OF UNDERGROUND OR NONVISIBLE IMPROVEMENTS WAS NOT INVESTIGATED, UNLESS OTHERWISE SHOWN.  
ACCORDING TO FIRM MAP NO. 10710200-000, EFFECTIVE DATE OF AUGUST 28, 2009, THESE PARCELS OF LAND ARE LOCATED IN THE PUBLIC RECORDS OF DE LA CONCHA, FLORIDA, WITH A BEARING OF 11° 11' 02" E, 7.9400', SEE DRAWING FOR BASE FLOOD BOUNDARIES.  
CERTIFICATE OF AUTHORIZATION LICENSE NUMBER 0016861  
DATE OF LAST FIELD WORK: 10/24/2010 FIELD BOOK NO. FIELD PAGE 33  
UNLESS IT BEARS THE ORIGINAL, SIGNATURE AND RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, AND ALL SHEETS ARE INCLUDED, THIS MAP IS NOT VALID.

MARK A. HATFIELD P.S.M.  
FLORIDA CERT. NO. 4158

REVISION

|                 |               |
|-----------------|---------------|
| SHEET NUMBER    | X-102-BNDY.00 |
| JOB FILE NUMBER | 15089-14      |







Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

## *Town of Fort Myers Beach* COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-D

### Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre  
\$2000.00 PD Amendment minor (< acre total property area)  
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

|                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Project Name:</b> TPI-FMB CPD Amendment                                                                                                                                 |
| <b>Authorized Applicant:</b> Steven C. Hartsell, Esquire                                                                                                                   |
| <b>STRAP Number(s):</b> 19-46-24-W4-01408.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609,<br>19-46-24-W4-U0496.2608, 19-46-24-W4-U0498.2606, 24-46-23-W3-00009.0000. |

|                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Current Property Status:</b> Under construction                                                                                      |
| <b>Current Zoning:</b> Commercial Planned Development (CPD)                                                                             |
| <b>Future Land Use Map (FLUM) Category:</b> Pedestrian Commercial FLU                                                                   |
| <b>Platted Overlay?</b> <input type="checkbox"/> yes, <input checked="" type="checkbox"/> no <b>FLUM Density Range:</b> See Ord. #23-09 |

#### Requested Action:

|                                     |                                                          |
|-------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/>            | DRI (with rezoning)                                      |
| <input checked="" type="checkbox"/> | Planned Development (also check below)                   |
| <input type="checkbox"/>            | Rezoning from: _____ to: _____                           |
| <input checked="" type="checkbox"/> | Amendment to Master Concept Plan/attendant documentation |



Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

**PART I**  
**Narrative Statements**

**A. Comprehensive Plan Amendments (check one)**

|                                     |                                                                                                                                                                                   |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.                                                                             |
| <input type="checkbox"/>            | The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect) |
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**B. Phasing of Construction**

|                                          |                                                                                              |
|------------------------------------------|----------------------------------------------------------------------------------------------|
| <input type="checkbox"/>                 | The development is to be constructed in a single phase.                                      |
| <input type="checkbox"/>                 | The development is to be constructed in phases as follows: (describe proposed phasing below) |
|                                          |                                                                                              |
| No change proposed; See Ordinance #23-09 |                                                                                              |
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Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

**C. Comprehensive Plan Compliance.**

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

|                                          |
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|                                          |
| No change proposed; See Ordinance #23-09 |
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**D. Design Standards Compliance**

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

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| No change proposed; See Ordinance #23-09 |
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Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

### E. Decision-making Compliance

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

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| SEE ATTACHED NARRATIVE |
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### F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

|                                          |
|------------------------------------------|
| No change proposed; See Ordinance #23-09 |
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Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

**G. Administrative amendments to approved Master Concept Plan**

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

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| Not Applicable |
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**PART 2**  
**Submittal Requirements**

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

**Required Items**

Public Hearing Request Form

Supplement Form PH-D

Master Concept Plan.....No change proposed; see Ordinance #23-09

Traffic Impact Statement.....No change proposed; see Ordinance #23-09

Architectural Elevations.....No change proposed; see Ordinance #23-09

Schedule of Uses.....No change proposed; see Ordinance #23-09

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre

\$2000.00 PD Amendment minor (< acre total property area)

\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

# **MARGARITAVILLE CPD**

## **ORDINANCE #23-09**

## **ORDINANCE 23-09**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 18-04, AND AMENDING THE CONDITIONS FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1170, 1180/1192, 1204/1206 ESTERO BLVD., 251 CRESCENT ST., 1150 FIFTH ST. AND UNADDRESSED PARCELS, PARCELS GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W3-00205.0070 (MCP PARCEL #3), 24-46-23-W3-00006.0000 (MCP PARCEL #1), 24-46-23-W3-00206.0060 (MCP PARCEL #1), 24-46-23-W3-00009.0000 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0494.2609 (MCP PARCEL #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP PARCEL #2), 19-46-24-W4-0140B.0070 (MCP PARCELS #2 AND #5), 19-46-24-W4-U0496.2608 (MCP PARCEL #2), AND 19-46-24-W4-U0498.2607 (MCP PARCELS #2 AND #6) FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS,** Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS,** TPI-FMB LLC and Steve Hartsell with Pavese Law Firm, applicants and agents for the property owners, generally located at 1170, 1180/1192, 1204/1206 Estero Boulevard, 251 Crescent St, 1150 Fifth St. and other unaddressed parcels, parcels generally identified as STRAP numbers 24-46-23-W3-00205.0070 (MCP parcel #3), 24-46-23-W3-00006.0000 (MCP parcel #1), 24-46-23-W3-00206.0060 (MCP parcel #1), 24-46-23-W3-00009.0000 (MCP parcels #2 AND #5), 19-46-24-W4-U0494.2609 (MCP parcel #2), 24-46-23-W3-00205.0070, 19-46-24-W4-U0491.2610 (MCP parcel #2), 19-46-24-W4-0140B.0070 (MCP parcels #2 AND #5), 19-46-24-W4-U0496.2608 (MCP parcel #2), AND 19-46-24-W4-U0498.2607 (MCP parcels #2 AND #6) in the Town of Fort Myers Beach, filed applications to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning; and

**WHEREAS,** Ordinance 18-04 rezoned the property from the Commercial Planned Development (CPD), Downtown, and Environmentally Critical (EC) zoning districts to CPD with Master Concept Plan (MCP) in order to develop a hotel resort and associated facilities, on 5.1 +/- acres more or less property, located at 1170, 1180/1192, 1204/1206 Estero Boulevard in the Town of Fort Myers Beach; and

**WHEREAS,** the subject property is located in the Pedestrian Commercial and Recreation Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and



**WHEREAS**, with the exception of portions of Town or County right-of-way, the applicant has indicated the subject property is under common control and Tom Torgerson serves as the managing member for each ownership listed in the public records of Lee County Property Appraiser; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on May 09, 2023; and

**WHEREAS**, at the May 09, 2023 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) s. 34-85; and

**WHEREAS**, at the May 09, 2023 public hearing the LPA recommended approval by a 5-0 vote; and

**WHEREAS**, on June 20, 2023 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was legally advertised and held before the Town Council on August 7 2023; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

**WHEREAS**, with the following terms, conditions, and requirements which the Town Council finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

**WHEREAS**, Exhibit B is the approved Master Concept Plan, updated per the adopted original Ordinance 18-04; and

**WHEREAS**, the Town Council finds that this request to amend existing ordinance 18-04 for a CPD, is a unique and individual application which does not set precedent for future development or rezoning applications.

#### **Deviation #1**

Deviation from LDC Section 34-1803(a) which establishes equivalency factors for converting allowable dwelling units to hotel rooms. The equivalency remains at three, a total of 254 hotel rooms (224 rooms on Parcel 1 and 30 rooms on Parcel 2) per the revised Master Concept Plan pages dated 5/2018 are authorized due to exceptional circumstances and unique public benefit on record to include view corridor and permanent perpetual transfer of density and development rights from the VE zone to the AE zone.

#### **Deviation #2**

Deviation from LDC Section 34-675(b) which limits building heights as follows: 3 stories and 30 feet along Crescent Street and Fifth Street; 3 stories and 40 feet along the south side of Estero Boulevard; to allow the main resort building which fronts on Estero, Crescent and Fifth to be 4 stories and 38 feet, 10 inches feet above average base flood elevation and along the south side of Estero Boulevard of 4 stories, and other buildings to be at the lesser heights as shown on the Master Concept Plan.

#### **Deviation #3**

Deviations from LDC Section 34-675(c) which limits floor area ratio (FAR) to 1.4 for properties fronting on Estero Boulevard and to 1.0 for all other properties in the CPD to allow a FAR of 1.55 on Parcel 1 and Parcel 2 and Parcel 3.

#### **Deviation #4**

Deviation from the LDC Section 10-416(d)(2) which requires a Type D buffer (15 feet wide with 5 trees and staggered hedges to form a 3-foot visual screen between parking and a right-of-way) - to replace the Type D buffer with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on the Master Concept Plan.

#### **Findings for the rezoning:**

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested amendment to Commercial Planned Development (see LDC 34-85 and 34-216) ordinance 18-04:

- a. Minor ambiguities were resolved through the deviation process.
- b. Long-standing blighted conditions on the subject property can be ameliorated through approval of this rezoning.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.

- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- o. The rezoning meets all specific requirements of the Comprehensive Plan that are relevant to the request, including the following:
  - Policy 4-C-4 on building heights taller than the standard height limit
  - Policy 4-C-6 on hotel/motel densities
  - Policy 4-C-8 on density transfers
  - Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts

**WHEREAS**, the Town Council made the following formal findings before making final decisions on the four requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

- 1. Deviations #1, #2, and #3 are being partially approved only due to the exceptional circumstances presented by the coordinated redevelopment of several critical parcels in the downtown zoning district in furtherance of policies in the Comprehensive Plan and design guidance provided by the Old San Carlos Boulevard / Crescent Street Master Plan. Key public benefits offered by the applicant include a perpetual view corridor along 324 feet of the beach side Estero Boulevard across the beach club resulting from a permanent transfer of density and development rights from the VE zone to the AE zone; and a second perpetual view corridor at the foot of the Matanzas Pass Bridge resulting from the permanent transfer of density and development rights, no buildings on Parcel 3, and the donation of Parcel 4 to the Town of Fort Myers Beach.
- 2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area,

- including building height, traffic flow, and intensity of use.
3. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
  4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
  5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
  6. The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted with these deviations.
  7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
  8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

**WHEREAS**, the Town Council finds that this application to amend Ordinance 18-04 and amend conditions of approval of the commercial planned development zoning, **consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the request to amend Town of Fort Myers Beach's Ordinance no. 18-04 and amend the conditions of approval for the commercial planned development zoning, **does** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVE** the requested application.

Section 3. Town Ordinance 18-04 is amended by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

**THE FOREGOING ORDINANCE** was adopted by the Town Council upon a motion by Council Member King and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this 7<sup>th</sup> day of August 2023.

|                           |         |
|---------------------------|---------|
| Dan Allers, Mayor         | Recused |
| Jim Atterholt, Vice Mayor | Aye     |
| John R. King              | Aye     |
| Bill Veach                | Nay     |
| Karen Woodson             | Aye     |

**FORT MYERS BEACH TOWN COUNCIL**

**Dan Allers**

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Dan Allers, Mayor

**ATTEST:**

**Amy Baker**

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Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

**Gretchen R. H. "Becky" Vose**

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Gretchen R. H. Vose, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 19<sup>th</sup> day of September 2023.

## **Exhibit A CONDITIONS OF APPROVAL**

This project area includes six (6) parcels as demonstrated in MCP X-103-BNDY.01 Boundary Survey. Parcels 1, 2 and 3 are to be rezoned to Commercial Planned Development (CPD). Parcels 4, 5, and 6 will retain their existing zoning classifications. All parcels are included in the Master Concept Plan and subject to the conditions as outlined below:

- 1** Parcels 1, 2, and 3 are authorized for a maximum of 254 hotel rooms. Parcel 1 is approved for a maximum of 224 hotel rooms. Parcel 2 is approved for a maximum of 30 hotel rooms. Parcel 3 is approved for surface parking only and no other improvements or hotel rooms, other than an accessory surface parking lot, is permitted. The transfer of density and development rights of Parcel 3 is permanent and binding.
- 2** The CPD is authorized to allow building heights as follows, with these heights measured in accordance with 34-631 of the LDC, as depicted on the Master Concept Plan, and as described:
  - a. The main resort building on Parcel 1 may be up to 4 stories and up to 38 feet, 10 inches above base flood elevation, provided that the highest points of the roofline and any architectural features across the property shall not exceed 52 feet from 4.5 feet above mean sea level elevation.
  - b. The larger building on Parcel 2 may be up to 4 stories, provided that the highest points of the roofline and any architectural features shall be a height of 52 feet, 4 inches or less, above existing typical ground level. Approved building heights for all buildings on Parcel 2 are shown in the Master Concept Plan.
  - c. No buildings or vertical structures are permitted on Parcel 3. The transfer of density and developments rights on Parcel 3 is permanent and binding.
- 3** The CPD is authorized to allow floor area ratios as follows, measured in accordance with 34-633 of the LDC. The total land area of Parcel 1, 2, and 3 may be utilized for the floor area ratio calculation of 1.55. The square footage of the proposed buildings may be clustered as depicted on the Master Concept Plan and includes:
  - a. The constructed floor area ratio on Parcel 3 and 5 shall be 0.0. Buildings, or any other improvements other than improvements associated with an at surface grade parking lot on Parcel 3 and a pool security fence on Parcel 5, are prohibited on these parcels.
- 4** The CPD is authorized to replace the Type D buffer required by 10-416(d)(2) of the LDC with the buffer and sidewalk plan for Estero Boulevard, Crescent Street, and Fifth Street as shown on Sheets X-502-RW.00 through X-504-RW.02 of the Master Concept Plan as revised through May 2018, subject to the following requirements:

- a. Prior to obtaining any development orders, the landowner will dedicate to the town/public a perpetual public sidewalk easement to accommodate a sidewalk of seven (7) feet in width on the south side of Fifth Street where the MCP shows portions of the proposed sidewalk on private land.
- b. The landowner will construct the sidewalks, curbs, and tree yards and will plant the lawn and street trees, as shown on the Master Concept Plan, prior to the issuance of any temporary certificates of occupancy including for adjoining buildings. These improvements must meet technical specifications of the Town of Fort Myers Beach along Fifth Street and Crescent Street and of Lee County along Estero Boulevard, except for such deviations as granted by the Town when reviewing and approving the Master Concept Plan. The landowner will maintain the tree yards and street trees in perpetuity.
- c. The street trees shown along Estero Boulevard will be located closer to the curb if, prior to approval of the Development Order, but no later than January 2019 and with appropriate documentation of coordination, FDOT and Lee County approves the new 1.5-foot lateral offset standard alignment of the Florida Department of Transportation.
- d. Prior to Development Order application, the landowner will document their efforts to the Town to seek approval from Lee County to re-route stormwater from the existing drainage inlet on Estero Boulevard into the resort's stormwater system so that roots from street trees on this block cannot interfere with any underground exfiltration trench. The conveyance of the Estero Boulevard drainage into the resort stormwater system will only be constructed if there are no adverse impacts or backflow into the existing system.
- e. No buffer vegetation may be planted in any public right-of-way or any sidewalk easement other than depicted on the Town approved Master Concept Plan.
- f. While the Town approved Master Concept Plan provides conceptual approval of under-building screening of parking areas, as required by LDC 34-992 (d)(1); a compliance and enforcement determination of the materials, technical specifications, and minimum opacity of the latticework around the ground story are subject to approval of the Town Manager or designee, as required by 34-992(c) and 34-992(d)(2) of the LDC. At the concurrence of the land owner, the Town Manager may allow occasional segments of latticework to be replaced by an opaque screen to allow works of art to be displayed in place of climbing vegetation.
- g. If at the end of the one (1) year plant establishment period from the end of the Temporary Certificate of Occupancy, the buffer plantings and climbing vegetation planted on the latticework do not visually



screen activities in the ground story, the Town Manager will require corrective action. Corrective actions may include, but are not limited to, different vegetation, different management techniques, and supplemental screening behind the latticework, among other practices. The property owner will take corrective action within 30-days of written notification from the Town regarding the deficiencies in the buffer. Failure to respond to any 30-day written notice shall constitute an appealable \$500 per incident per day civil violation.

- 5 The approved property development regulations for this CPD are presented in the attached Exhibit A, which will be substituted during the permitting process for the property development regulations that the LDC provides for the DOWNTOWN zoning district.
- 6 The approved schedule of uses for this CPD is limited to the following:

| Parcel 1 (Bay Side)                                                                                                                                                                                                                                                                                                                                                                                               | Parcel 2 (Gulf Side)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Parcel 3                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>LODGING</b> use group:</p> <p><b>Hotel</b></p> <p><b>Uses Accessory to</b></p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-505-COP.01 &amp; X-506-COP.02</p> <p>Parking Lot, Accessory</p> <p>Subordinate Uses</p> <p>Temporary Uses, if permitted by Ch. 34</p> <p><b>MARINE</b> use group</p> <p>No Marina Uses</p> | <p><b>LODGING</b> use group:</p> <p><b>Hotel</b></p> <p><b>RETAIL</b> use group:</p> <p><b>Recreation Facilities, Commercial</b> (limited to 325 total people per day who are not staying at the hotel)</p> <p><b>Restaurant</b></p> <p><b>Commercial Accessory Uses:</b></p> <p>ATM</p> <p>Administrative Offices</p> <p>Consumption on Premises, outdoor service and seating limited to locations on Sheets X-506-COP.01 &amp; X-507-COP.02</p> <p>Subordinate Commercial</p> <p>Water-oriented Rentals</p> <p><b>MARINE</b> use group:</p> <p>(if permitted by Chapter 27)</p> <p><b>Parasailing Operations Office</b></p> <p><b>Personal Watercraft Operations Office</b></p> | <p><b>LODGING</b> use group:</p> <p><b>Uses Accessory to</b></p> <p>Parking Lot, Accessory</p> <p>(the only use permitted on Parcel 3)</p> |

7. The property owner is responsible for accounting and enforcement of the per day limitation of 325 non-resort guests at the aquatic venue or lesser number based upon Fire Department occupancy limitations; and, if requested, for providing records to the Town on demand for verification. Failure to provide records or limit non-hotel guests and/or hotel guests to the approved maximum limits per day shall constitute a \$500 per day per incident civil violation.
- 8 This CPD approves structures up to the following square-footage maximum on Parcels 1 and 2 which are entirely landward of the 1978 coastal construction control line and within the CPD zoning district boundary:
  - a. **Hotel**
    1. 250,783 SF, of which up to 96,085 SF could be guest units and up to 95,751 SF could be ground-story parking.
    2. 224 guest units to be on bay-side Parcel 1 (above parking) and up to 84,745 square feet could be guest units.
    3. 30 guest units to be on gulf-side Parcel 2 and up to 11,340 square feet.
  - b. **Restaurant on Parcel 2**
    1. 15,870 SF for a restaurant, of which 1,514 SF would be a bar; plus, an additional 1,364 SF for outdoor seating and an additional 2,000 SF for indoor storage
  - c. **Beach Club on Parcel 2**
    1. 3,786 SF for an ancillary restaurant
    2. 2,508 SF in an existing building for ancillary restrooms and lockers
  - d. **Pedestrian Bridges between Parcels 1- 2 if approved by Lee County**
    1. 2,691 SF for the access area required for a publicly accessible pedestrian bridge;
    2. 1,380 SF for the pedestrian bridge that is not included in the FAR.
- 9 Redevelopment and future uses on the subject property must be consistent with the attached Master Concept Plan as approved by the Town Council as part of this request. All prior Master Concept Plans, CPD zoning approvals, special conditions, and development agreements for the subject property are no longer valid. All development activities and future uses must comply with all the requirements of the Town of Fort Myers Beach Land Development Code at the time of Development Order approval, except as explicitly modified by this CPD approval. Lot lines

shown on existing plats must be vacated or replatted, as appropriate and as administratively determined by the Town Attorney, prior to issuance of Development Orders. If changes to this approval are requested, they will be reviewed as requests to formally modify this CPD. This CPD's new Master Concept Plan consists of these 26 sheets:

- a. X-G01 - Cover Sheet
- b. X-101-FLU - Future Land Use and Project Boundary
- c. X-103-BNDY.00 - Boundary Survey (1 of 2)
- d. X-103-BNDY.01 - Boundary Survey (2 of 2)
- e. X-104-DA - Developable Area Exhibit
- f. X-105-MCP.00- *Floor Area Ratio* First Floor
- g. X-106-MCP.01 - Floor Area Ratio Second Floor
- h. X-107-MCP.02- Floor Area Ratio Third Floor
- i. X-108-MCP.03 - Floor Area Ratio Fourth Floor
- j. X-109-MCP.00 - Master Concept Plan First Floor
- k. X-110-MCP.01 - Master Concept Plan Second Floor
- l. X-111-MCP.02 - Master Concept Plan Third Floor
- m. X-112-MCP.03 - Master Concept Plan Fourth Floor
- n. X-113-MCP.04 - Master Concept Plan Deviations and Notes
- o. X-114-MCP.05 - Master Concept Plan Building Height
- p. X-A201 -Exterior Elevations
- q. X-A202 -Exterior Elevations
- r. X-A203 - Exterior Elevations
- s. X-A301 - Building Sections
- t. X-501 - Parking Locations and Calculations
- u. X-502-RW.00 - Right-of-way and sidewalk/buffer plan
- v. X-503-RW.01 - Right-of-way and sidewalk/buffer plan
- w. X-504-RW.02 - Right-of-way and sidewalk/buffer plan
- x. X-505-COP.01 - Consumption on Premises Diagrams
- y. X-506-COP.02 - Consumption on Premises Diagrams Pedestrian Circulation
- z. X-507-VT-Visibility Triangles

- 10** A pedestrian bridge across Estero Boulevard is shown on the Master Concept Plan. Conceptual approval of this bridge is subject to the following requirements for design, approval, and operation:

- a. The pedestrian bridge must be constructed simultaneously with the buildings it connects.
  - b. The elevated terrace on the second story of the main resort building on Parcel 1 must include a public ADA compliant access for public use.
  - c. Visible publicly accessible stairwells and elevators on both sides of Estero Boulevard must connect the sidewalks to each end of the pedestrian bridge. The stairwell on Parcel 2 must provide access to publicly accessible restrooms in the restaurant building, with clear signage indicating the public's access and rights to use these restrooms and pedestrian bridge, if approved, without a fee or charge.
  - d. In order to guarantee the general public's permanent right to use the bridge and the adjoining stairways, elevators, and restrooms, the landowner must execute an instrument that guarantees this access in a form suitable to the Town Attorney.
  - e. Before constructing the bridge over Estero Boulevard, the landowner must obtain review and approval from Lee County and must enter into a formal agreement with Lee County regarding design, maintenance, liability, operations, future changes, and other relevant details. The bridge design must allow and not interfere with nor prevent all elements necessary for a traffic signal and grade level pedestrian crosswalk at the Estero Boulevard-Crescent Street intersection. If necessary, FDOT review and approval must be obtained.
  - f. All FDOT and Lee County approvals must be received by the applicant prior to approval by the Town. The Town's approval shall be limited to aesthetic and non-structural design.
- 11** Sheet X-109-MCP.00 of the Master Concept Plan identifies certain important features on Parcels 2 and 6 (the beach-side parcels) that will require separate critical actions by the Town and by the landowner at a later date. This sheet is being included in the Master Concept Plan with these understandings:
- a. As shown on Sheet X-105, the landowner intends to request the vacation of a narrow right-of way at the end of Crescent Street, plus the first 185 feet of Canal Street south of Estero Boulevard which is part of Town-maintained Beach Access #36. Understanding that the Town's Comprehensive Plan strictly limits vacations of rights-of-way in order to preserve future access to the water, the landowner has agreed to provide a net increase in public access by donating Parcel 6 to the Town and constructing on it a new public street replacing Canal Street. The new public street will also be providing beach access and public parking spaces on 67 feet wide new rectangular

right-of-way beginning at Estero Boulevard. The Town Manager or designee shall be responsible for design approval of the new street. The new street will be completed on or before twelve (12) months following the issuance of a Development Order.

- b. The landowner has also agreed to construct and dedicate a five-foot wide perpetual public access easement for a new pedestrian beach access at the "north" end of Parcel 2 that meets ADA accessibility requirements and the Town Manager's specifications as to design, surfacing and signage. The easement shall be constructed, completed, and open to the public on or before twenty-four (24) months following the issuance of the associated Development Order. During construction of the project the property owner shall maintain a minimum of one 25' wide ADA accessible beach access from Estero to the end of the property at or near the water.
- c. The landowner will execute instruments to complete donations, the easement(s) for new pedestrian beach access easement and Parcel 6, in a form suitable to the Town Attorney and will provide them to the Town Attorney, who will not record either instrument unless the Town Council formally vacates the two existing rights-of-way shown on Sheet X-105; and:
  - i. The landowner either completes the construction of the new street or allows continued public use of Canal Street or Temporary Beach Access until the new street is completed.
  - ii. The Town will not issue development orders for demolition, site work, or new buildings on Parcels 1 or 2 unless the Town agrees to vacate both rights-of-way and related or associated property transfers are executed.
  - iii. After the new street is constructed by the applicant and turned over to the Town, Parcel 6 will no longer be subject to any requirements of this CPD.

**12 The beach club on Parcel 2 must meet these additional requirements:**

- a. To allow the reduced building frontage on the south side of Estero Boulevard (see LDC 34-675), development order plans must demonstrate three view corridors from Estero Boulevard to the beach (two totaling 319 feet; one totaling five feet) that total at least 324 feet along Estero Boulevard.
- b. Any perimeter fence on the beach side of Estero Boulevard must be at least 80 percent transparent, must be placed within a landscaped planting area at least five (5) feet wide, and shall be maintained at a height of three (3) feet. If the Florida Building Code requires a taller fence at this location, the Fort Myers Beach Building Official shall adjust the fence height accordingly.

- c. A detailed lighting plan, including any lit signage, must be provided with the development order application for the beach club; this plan must comply with LDC requirements in 10-154(8) and 14-76 for sea turtle conservation.
- d. A detailed landscaping plan showing the location and type of all plantings, including beach plantings adjacent to the existing retaining wall, must be provided with the development order application for the beach club.
- e. Directional signage approved by the Town as to design, installation methodology, and location shall be erected along Estero Boulevard that advises the public of both new public beach accesses.
- f. The beach club and its ancillary uses may operate only from 7am to one hour after sunset, but never later than 9 pm. That is the Beach Clubs hours of operation unless otherwise temporarily altered in the Town's special event use regulations in Section 34-1264 of the LDC.
- g. To implement the applicant's commitment to limit access to the beach club to 325 people per day who are not staying at the hotel, the resort will be required to submit monthly reports to the Town within 10 days after the end of each month showing the number of non-guest admissions for each day; and shall provide such information on demand and allow Town officials immediate access to this information for the current day at a designated location in the resort.
- h. The beach club and aquatic venue shall provide no less than one security personnel per 200 guests.
- i. All necessary dune plantings and walkovers shall be provided in compliance with Town codes and ordinances.

**13** The following transportation and access features are shown on the Master Concept Plan and are an integral part of this approval:

- a. All existing vehicular access points on Estero Boulevard shall be closed except the access to the one new public street on Parcel 6.
- b. The one and only access point on Crescent Street will be an entrance-only driveway near the intersection with Fifth Street, which will be the main entrance for resort guests.
- c. Access points on Fifth Street are limited to the one main exit for resort guests and a separate entrance and exit for service vehicles on Parcel 1, plus two existing driveways to the surface parking lot on Parcel 3.

~~**14** Prior to the Town issuing any development orders for demolition, site work, or new buildings on Parcel 2, the landowner must execute and record a restrictive covenant in favor of and enforceable by the Town in perpetuity that acknowledges that this CPD approval has consumed all~~

~~allowable density and intensity on Parcels 1, 2, 3, and 5 and that no~~ **No** additional development may occur beyond that which is approved by this CPD **without prior approval of the Town Council**. ~~Prior to issuance of a temporary or final certificate of completion on Parcel 2 (but not later than 36 months after commencing construction), the landowner must convey to the Town a perpetual conservation easement in a form acceptable to the Town Attorney, which after acceptance will be recorded in the Public Records of Lee County, over those portions of Parcels 2 and 3 on which structures or pavement are not constructed or proposed to be constructed under the Master Concept Plan adopted as part of this CPD. The intent of this condition is to limit in perpetuity the density and intensity of Parcels 2 and 3 to that which is approved by this CPD and to maintain all areas on which buildings and pavement are not constructed and as shown on the Master Concept Plan, only for outdoor recreation area on Parcel 2 and a single-level surface parking lot on Parcel 3, but specifically excluding any additional parking facilities, buildings, and other similar structures or any additional improvements~~ **require that any future changes to this CPD must comply with the Fort Myers Beach Plan and LDC in effect at the time of any future application.**

- 15 Development order plans must identify the location of 359 off-street parking spaces within the area now identified for parking on Parcels 1 and 3. The public parking spaces to be constructed on Parcel 6 cannot be counted toward the 359 spaces reserved for resort parking.
  - a. None of the 359 spaces are eligible for joint-use agreements or sharing agreements that would allow any of these spaces to substitute for off-street parking that is required by the LDC for businesses located outside this CPD's Master Concept Plan.
  - b. Prior to the issuance of a Temporary Certificate of Occupancy, the applicant will also construct or provide 75 dedicated parking spaces at an off-site location along the trolley route from the Beach Park & Ride facility to be available for the entire resorts parking needs within 2.8 miles of Parcel 1.
  - c. Three or more years after issuance of the resort's certificate of occupancy, the applicant may request to modify this condition to eliminate some or all of these off-site parking spaces upon a convincing showing that this condition requires more parking spaces than are needed for the entire resorts parking needs.
  - d. Identify to the Town if any shared use parking agreements are currently in existence and will be terminated to meet this CPD condition.
- 16 Development order plans must demonstrate that vehicles can be accommodated by a multi-vehicle parking mechanism per parking spot. Valet parking must be managed so that vehicles are never stacked on Crescent Street or 5<sup>th</sup> Street waiting to access the valet area. The property owner shall install No Stop/Stand signs on Crescent and 5<sup>th</sup>

Street.

- 17 Individual signs may be placed on this site during and after development as may be allowed by the LDC regulations that are in effect at that time. Murals are permitted in compliance with LDC regulations.
- 18 Service of alcoholic beverages for on-premises consumption is approved at the locations shown on Sheets X-505-COP.01 and X-506-COP.02 of the Master Concept Plan, subject to these limitations:
  - a. Service to outdoor seating is permitted on the second story outdoor terrace on Parcel 1, in the public restaurant on Parcel 2, and in the beach club on Parcel 2 provided service remains in substantial compliance with the COP diagrams on Sheets X-506-COP.01 and X-507-COP.02. Beverages purchased in approved indoor or outdoor service areas on Parcels 1 or 2 shall not be carried across the pedestrian bridge. The designated service areas shall be identified separately from areas where consumption is permitted, but not part of a service and/or seating area.
  - b. Alcoholic beverages and amplified music in the beach club are limited to 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m. Expansion of COP onto the sandy beach seaward of the seawall is prohibited.
  - c. Amplified music on the outdoor terrace on Parcel 1 is limited 7:00 a.m. to one hour after sunset, but not later than 9:00 p.m.
  - d. Amplified music in unenclosed hotel restaurant and bar on Parcel 2 are limited to 7:00 a.m. to midnight.
  - e. Alcoholic beverages may not be served at locations other than those shown on the Master Concept Plan unless approved by special use permit, special exception or by administrative approval, as provided in 34-1264 of the LDC.
- 19 Prior to applying for a permit for the stormwater management system from the SFWMD, the landowner shall evaluate the receiving of drainage from the intersection of Crescent and Fifth for suitability and consistency with SFWMD requirements. Provided these two components can be combined under those requirements, the landowner will design and construct the project to receive stormwater from the intersection of Crescent Street and Fifth Street into and through the project's stormwater system, including cost of upsizing the project stormwater system. In order to be considered feasible, any routing of stormwater from the intersection of Crescent and Fifth Streets must accommodate the project's design as approved by this CPD and it shall be borne by the property owner. The property owner will provide copies of the SFWMD permit application, and all subsequent responses to requests for additional information, to the Town's stormwater consultant for review and concurrent with filing with the SFWMD.



- 20 In order to provide an additional view corridor along the approach to the Town from the Matanzas Pass Bridge, the applicant has offered and the Town has accepted the following changes to the Master Concept Plan:
- a. No buildings will be constructed on Parcel 3 in perpetuity. Parcel 3 shall remain as a 21-space surface parking lot for the resort because all development rights on Parcel 3 are being used on Parcels 1 and 2. ~~Parcel 3 will be included in the covenants and conservation easement described in Condition 14.~~ Landscape buffers shall be done in accordance with MCP X-504-RW.02.
  - b. No buildings will be constructed on Parcel 4 by the applicant and the existing building will be removed. Parcel 4 will be donated by the applicant to the Town for civic, public purposes and will include a reverter in the event the parcel is not used for such civic, public purposes. The demolition and re-grading of the property will be completed no later than September 30<sup>th</sup>, 2018. The Town shall receive Parcel 4 within 60 calendar days of the issuance of all necessary approvals related to the development order and approvals of the pedestrian bridge. After the existing building is removed by the applicant and the property transfer is completed, Parcel 4 will no longer be subject to any requirements of this CPD. Demolition of Parcel 4 may be completed prior to development order being issued.
- 21 Barring a direct hurricane or other Acts of God and governmental-related delays, Parcel 1 and the Parcel 1 main hotel shall be completed and open for operation within three years of the issuance of a development order approval. All other portions, phases, and uses shall be in operation within five years of issuance of a development order approval. A Development Order application for development of Parcel 1 shall be submitted no later than 270 calendar days from effective date of the rezoning ordinance.
- 22 Additional approvals of special events are allowed. Application for such special event approvals shall be submitted through the Town's adopted Special Event processes and may temporarily alter hours of operation, amplified music limits, and public user capacity, among other items.
- 23 Bicycle racks for public use will be provided as shown on the Master Concept Plan. All bicycles and similar alternative transportation options shall be provided within the approved development footprint. Operations of any bicycle loan business or operation shall require the returning of bicycles to the CPD properties on a daily basis; as well as comply with Town Codes and provide education materials about Town codes and regulations to bicycle users.
- 24 Construction staging shall be authorized when in compliance with all applicable Town codes, except that concrete delivery/pumping for the building's foundations and terrace may occur no earlier than 4:00 am. No staging shall be permitted on Parcel 4 or Parcel 6 after donation to the

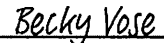
Town. No other approvals are inferred from approval of the CPD. The landowner or developer shall be responsible for submittal of any requests for additional staging or construction management approvals from the Town Council.

- 25 Any violation of the CPD conditions of approval or deviations shall constitute a \$500 per day per incident civil violation.
- 26 The applicant has offered to provide residents of the Fort Myers Beach community a "Discount Plan," which provides a 25 percent discount on food, alcohol and non-alcohol beverages, Family Beach Club Admission, and retail store purchases, to anyone with a valid FL Driver's License with a home address in zip code 33931.
- 27 Per LDC Section 34-216(b)(5), the revised Master Concept Plan must be submitted to the director reflecting all modifications to the deviations and conditions as made herein by the Town Council.

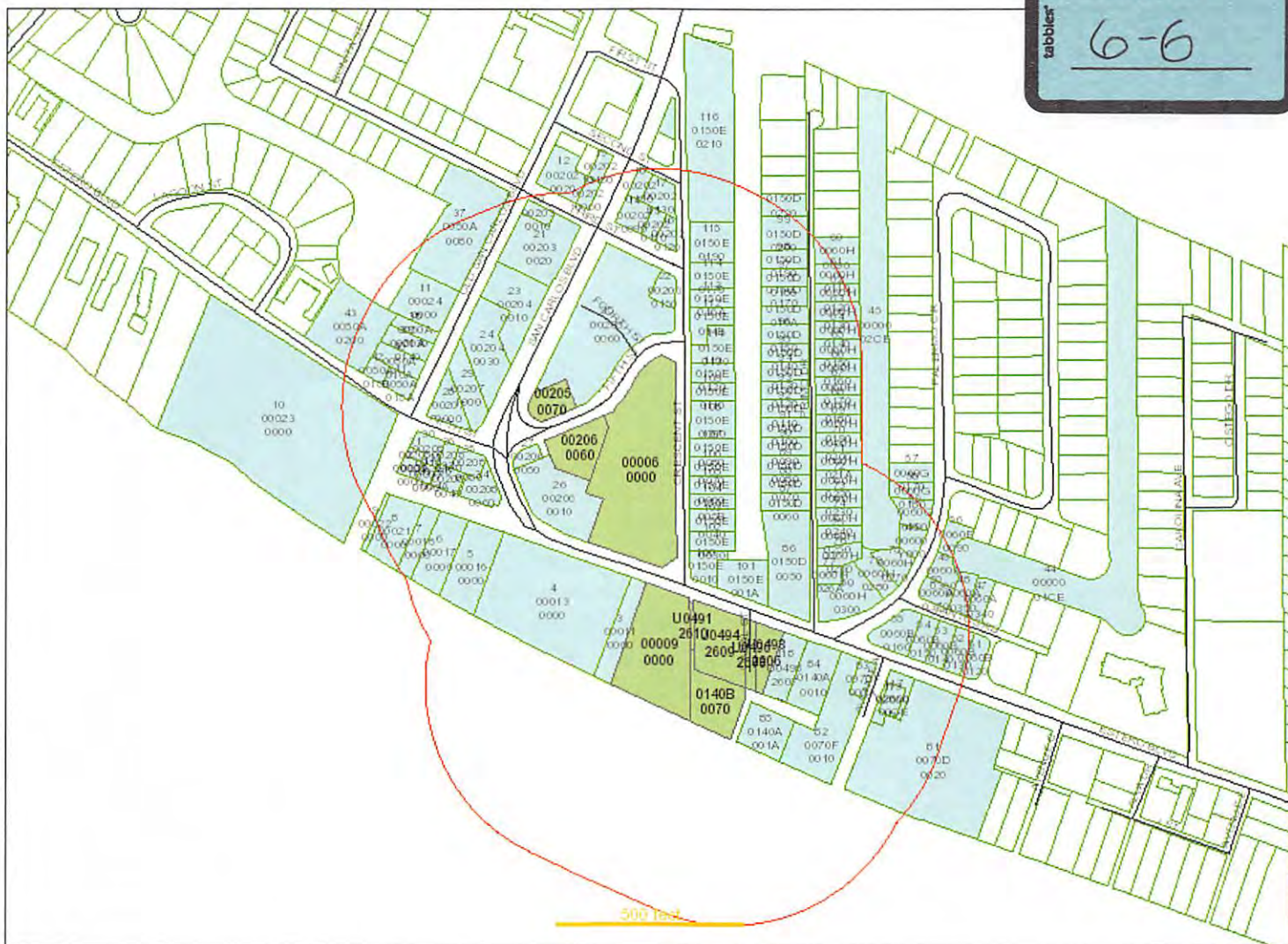
#### Findings Regarding the Conditions

1. All recommended special conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

Signature:   
Dan Allers (Sep 19, 2023 10:16 EDT)  
Email: allersd@fmbgov.com

Signature:   
Becky Vose (Sep 19, 2023 10:46 EDT)  
Email: bvose@voselaw.com

Signature:   
AMY BAKER (Sep 19, 2023 10:47 EDT)  
Email: AMY@FMBGOV.COM



Date of Report: October 09, 2023

Buffer Distance: 500 feet

Parcels Affected: 131

Subject Parcels: 19-46-24-W4-0140B.0070, 19-46-24-W4-U0491.2610, 19-46-24-W4-U0494.2609, 19-46-24-W4-U0496.2608, 19-46-24-W4-U0498.2606, 24-46-23-W3-00006.0000, 24-46-23-W3-00009.0000, 24-46-23-W3-00205.0070, 24-46-23-W3-00206.0060

To change, add or remove subject parcels please change the parcel selection in [GeoView](#)

[Click here to download the map image, mailing labels \(Avery 5161\) and CSV formatted information.](#)

| OWNER NAME AND ADDRESS                                                                     | STRAP AND LOCATION                                                      | LEGAL DESCRIPTION                                                                                              | MAP INDEX |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-----------|
| 1005 ESTERO LLC<br>1005 ESTERO BLVD<br>FORT MYERS BEACH FL 33931                           | 24-46-23-W3-00007.0000<br>1005 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | FRM SW COR BLK E CRESCENT<br>PK ADD ON E LI SEC<br>24 46 23 RUN NWLY AT INC                                    | 1         |
| KALYMNIOUS PARTNERSHIP LLP<br>1001 ESTERO BLVD<br>FORT MYERS BEACH FL 33931                | 24-46-23-W3-00008.0000<br>1001 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | FRM SW COR BLK E CRESCENT<br>PK ADD ON E LI SEC 24 RUN<br>NW 69 DEG 54 MIN WITH SEC                            | 2         |
| CLOWNFISH RESTAURANT<br>HOLDINGS<br>11201 COORPORATE CIRCLE N<br>SAINT PETERSBURG FL 33716 | 24-46-23-W3-00011.0000<br>1154 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | BEG SW COR BLK E CRESCENT<br>PARK ADD ON E LI SEC 24 S<br>ALG E LI SEC 53.24 FT TO S                           | 3         |
| LEE COUNTY<br>PO BOX 398<br>FORT MYERS FL 33902                                            | 24-46-23-W3-00013.0000<br>1100 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | PARL IN SE 1/4 SEC 24 TWN 46 R<br>23<br>S OF ESTERO BLVD AS DESC IN<br>INST #'S 201000023675 +<br>201000023676 | 4         |

|                                                                                                       |                                                                                    |                                                                                         |    |
|-------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|----|
| PRESAUD PROPERTIES FL<br>361 SEMINOLE WAY<br>FORT MYERS BEACH FL 33931                                | 24-46-23-W3-00016.0000<br>1046 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | FROM SW COR BLK E<br>CRESCENT<br>PK ADD ON E LI SEC 24 RUN<br>S ALG SD LI TO S LI CO RD | 5  |
| PERSAUD PROPERTIES FL INVESTME<br>361 SEMINOLE WAY<br>FORT MYERS BEACH FL 33931                       | 24-46-23-W3-00017.0000<br>1028 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | FROM SW COR BLK E CRES PK<br>ADD ON E LI SEC 24 RUN S<br>ALG SD LI TO S LI CO RD TH     | 6  |
| BENCIN ENTERPRISES INC<br>BEACH ACCOUNTING<br>17274 SAN CARLOS BLVD #202<br>FORT MYERS BEACH FL 33931 | 24-46-23-W3-00018.0000<br>1010 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | A PAR AS DESC<br>IN OR 1234 PG 1371                                                     | 7  |
| WHITAKER WILLIAM D &<br>15820 SAN ANTONIO CT<br>FORT MYERS FL 33908                                   | 24-46-23-W3-00021.0000<br>1000 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | PARL IN SE1/4 SEC 24 S OF<br>ESTERO BLVD+E OFSAN<br>CARLOS<br>DR DESC OR 1547 PG 1077   | 8  |
| LEE COUNTY<br>PO BOX 398<br>FORT MYERS FL 33902                                                       | 24-46-23-W3-00022.0000<br>10 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931      | BEG NW COR BLK 8 BUSINESS<br>CTR SUBD RUN NWLY ALG<br>EXTENED N LINE PIER ONLY          | 9  |
| LEE COUNTY<br>PO BOX 398<br>FORT MYERS FL 33902                                                       | 24-46-23-W3-00023.0000<br>950 ESTERO BLVD<br>FORT MYERS BEACH FL 33931             | BEG NW COR BLK 8 BUSINESS<br>CTR SUB RUN NWLY ALG<br>EXTEN NLI PIER ON 22.0000          | 10 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931                             | 24-46-23-W3-00024.0000<br>201 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | FROM NWLY COR BLK 8<br>BUSINESS CENTER SUBD RUN<br>NWLY ALG PROLONGATION OF             | 11 |
| HOUSEBOAT LLC<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931                                 | 24-46-23-W3-00202.0020<br>430 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | BUSINESS CENTER<br>BLK 2 PB 9 PG 9<br>LOTS 2 THRU 5                                     | 12 |
| MERSCHMAN I LLC<br>1421 E LAKE SHORE DR<br>SPRINGFIELD IL 62712                                       | 24-46-23-W3-00202.0060<br>1011 THIRD ST #1-4<br>FORT MYERS BEACH FL 33931          | BUSINESS CENTER<br>BLK.2 PB 9 PG 9<br>LOT 6                                             | 13 |
| HOUSEBOAT LLC<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931                                 | 24-46-23-W3-00202.0090<br>1037/1039 THIRD ST<br>FORT MYERS BEACH FL 33931          | BUSINESS CENTER<br>BLK 2 PB 9 PG 9<br>LOTS 9 + 10                                       | 14 |
| ALN BEACHVIEW LLC<br>615 CAPE CORAL PKWY W # 104<br>CAPE CORAL FL 33914                               | 24-46-23-W3-00202.0110<br>1041 THIRD ST<br>FORT MYERS BEACH FL 33931               | BUSINESS CENTER<br>BLK 2 PB 9 PG 9<br>LOT 11                                            | 15 |
| ALN BEACHVIEW LLC<br>151 MATANZAS ST UPSTAIRS<br>FORT MYERS BEACH FL 33931                            | 24-46-23-W3-00202.0120<br>1051 THIRD ST<br>FORT MYERS BEACH FL 33931               | BUSINESS CENTER<br>BLK.2 PB 9 PG 9<br>LOT 12 LESS OR2325/0292                           | 16 |
| FMB MATANZAS LLC<br>5880 STALEY RD<br>FORT MYERS FL 33905                                             | 24-46-23-W3-00202.0130<br>CORNER LOT<br>FORT MYERS BEACH FL 33931                  | BUSINESS CENTER<br>BLK.2 PB 9 PG 9 LOTS 13 + 14<br>LESS R/W OR 2311/2803                | 17 |
| FMB MATANZAS LLC<br>5880 STALEY RD<br>FORT MYERS FL 33905                                             | 24-46-23-W3-00202.0150<br>1042/1044 SECOND ST<br>FORT MYERS BEACH FL 33931         | BUSINESS CENTER<br>BLK.2 PB 9 PG 9 LOT 15<br>LESS R/W OR 2311/2803                      | 18 |
| PIERHOUSE-FT MYERS BEACH LTD<br>1000 ESTERO BLVD<br>FORT MYERS BEACH FL 33931                         | 24-46-23-W3-00202.0180<br>1030 SECOND ST<br>FORT MYERS BEACH FL 33931              | BUSINESS CENTER<br>BLK.2 PB 9 PG 9<br>LOT 18                                            | 19 |
| FREELAND FL HOLDINGS LLC<br>PO BOX 656<br>ANTIOCH TN 37011                                            | 24-46-23-W3-00203.0010<br>340 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | BUSINESS CENTER<br>BLK.3 PB 9 PG 9<br>LOT 1                                             | 20 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931                             | 24-46-23-W3-00203.0020<br>318/320 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | BUSINESS CENTER<br>BLK 3 PB 9 PG 9<br>LOTS 2 THRU 6 + LTS 22 +23<br>+ POR OF VAC ST     | 21 |
| LIGHTHOUSE ISLAND RESORT INC<br>1051 5TH ST<br>FORT MYERS BEACH FL 33931                              | 24-46-23-W3-00203.0150<br>1060 THIRD ST<br>FORT MYERS BEACH FL 33931               | BUSINESS CENTER<br>BLK.3 PB 9 PG 9<br>LOT 15 LES R/W OR2353/3036                        | 22 |



|                                                                                           |                                                                                |                                                                                                                                                         |    |
|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| STINGRAYS RAW BAR INC<br>250 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931             | 24-46-23-W3-00204.0010<br>250 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | BUSINESS CTR LTS 1 + 2 BLK<br>4 LOTS 1 THRU 5 BLK 5 W OF<br>ST RD 865 R/W + POR OF VAC<br>ST                                                            | 23 |
| DIANNE HOLLAND TRUST +<br>570 KULAIWI DR<br>WAILUKU HI 96793                              | 24-46-23-W3-00204.0030<br>200 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | BUSINESS CENTER<br>BLK 4 PB 9 PG 9 LTS 3 THRU<br>7 PT 8 + 9 + PT VAC ALLY                                                                               | 24 |
| LIGHTHOUSE ISLAND RESORT INC<br>1051 FIFTH ST<br>FORT MYERS BEACH FL 33931                | 24-46-23-W3-00205.0060<br>1051 FIFTH ST<br>FORT MYERS BEACH FL 33931           | PORTION OF BUSINESS CENTER<br>BLK 3 & 5 PB 9 PG 9<br>AND A PORTION OF VACATED<br>FOURTH ST AND PORTION OF<br>VACATED 5TH AVE<br>IN SEC 24 TWP 46 RNG 23 | 25 |
| LEE COUNTY<br>PO BOX 398<br>FORT MYERS FL 33902                                           | 24-46-23-W3-00206.0010<br>1113 ESTERO BLVD<br>FORT MYERS BEACH FL 33931        | BUSINESS CENTER<br>BLK 6 PB9 PG9 LTS 1-4 LESS<br>R/W + DESC OR 1904/4451                                                                                | 26 |
| LEE COUNTY<br>PO BOX 398<br>FORT MYERS FL 33902                                           | 24-46-23-W3-00206.0050<br>1054 FIFTH ST<br>FORT MYERS BEACH FL 33931           | BUSINESS CENTER<br>BLK 6 PB 9 PG 9<br>LOT 5 R/W OR 1154 PG 1510                                                                                         | 27 |
| 150 OLD SAN CARLOS BLVD LLC<br>4100 N 28TH TER<br>HOLLYWOOD FL 33020                      | 24-46-23-W3-00207.0000<br>150 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | BUSINESS CENTER<br>BLK 7 PB 9 PG 9<br>ALL BLK 7                                                                                                         | 28 |
| TOWN OF FORT MYERS BEACH<br>FINANCE DEPT<br>2525 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | 24-46-23-W3-00207.1000<br>OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | BUSINESS CENTER R/W OF<br>CENTER STREET LYING<br>BETWEEN BLK 7<br>BLK 7 PB 9 PG 9                                                                       | 29 |
| CHAVEZ CARLOS L TR<br>991 AQUA LN<br>FORT MYERS FL 33919                                  | 24-46-23-W3-00208.0010<br>80 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931  | BUSINESS CENTER<br>BLK.8 PB 9 PG 9<br>LOTS 1 + 2 LESS THE W 44                                                                                          | 30 |
| CHAVEZ CARLOS L TR<br>991 AQUA LN<br>FORT MYERS FL 33919                                  | 24-46-23-W3-00208.002A<br>50 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931  | BUSINESS CENTER<br>BLK 8 PB 9 PG 9<br>LOT PT 2                                                                                                          | 31 |
| BENSON BRADFORD J TR<br>927 PRESCOTT ST<br>FORT MYERS BEACH FL 33931                      | 24-46-23-W3-00208.0040<br>1021 ESTERO BLVD<br>FORT MYERS BEACH FL 33931        | BUSINESS CENTER<br>BLK.8 PB 9 PG 9<br>PT LOT 4 + ALL LOT 5                                                                                              | 32 |
| TOWN OF FORT MYERS BEACH<br>FINANCE DEPT<br>2525 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | 24-46-23-W3-00208.004A<br>EASEMENT<br>FORT MYERS BEACH FL 33931                | PT LOT 4 AREA 2 SE 1/4<br>BUSINESS CENTER PB 9 PG 9<br>IN OR 297 P 427                                                                                  | 33 |
| KLC SURF LLC<br>CHRISTOPHER PRIMEAU<br>4625 W EUCLID AVE<br>TAMPA FL 33629                | 24-46-23-W3-00208.0060<br>1035 ESTERO BLVD<br>FORT MYERS BEACH FL 33931        | BUSINESS CENTER<br>BLK.8 PB 9 PG 9 LT 7 +<br>LOT 6 LESS WLY 6 FT LESS ROW<br>OR3539 PG3351                                                              | 34 |
| BC III MASTERPIECE LLC<br>151 MATANZAS ST<br>FORT MYERS BEACH FL 33931                    | 24-46-23-W3-00208.0080<br>1028 FIFTH ST<br>FORT MYERS BEACH FL 33931           | BUSINESS CENTER<br>BLK 8 PB 9 PG 9<br>LOTS 8 + 9                                                                                                        | 35 |
| RFN CORP<br>2401 ESTERO BLVD<br>FORT MYERS BEACH FL 33931                                 | 24-46-23-W3-00208.0100<br>1018 FIFTH ST<br>FORT MYERS BEACH FL 33931           | BUSINESS CENTER<br>BLK 8 PB 9 PG 9<br>LOT 10                                                                                                            | 36 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931                 | 24-46-23-W3-0050A.0080<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | ISLAND SHORES UNIT 2<br>BLK A PB 9 PG 25<br>LOTS 1 THRU 12 + VAC LAGOON<br>R/W OR2858/1391 +<br>OR2660/2863 +2736/3702 +<br>BLK B PB 9 PG 40 LOT 1      | 37 |
| BAHAN SUZANNE E +<br>169 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931                 | 24-46-23-W3-0050A.0130<br>185 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | ISLAND SHORES UNIT 2<br>BLK A PB 9 PG 25<br>LOT 13 + PT LOT 14                                                                                          | 38 |

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| MAY SUZANNE E<br>PO BOX 61176<br>FORT MYERS FL 33906                               | <b>24-46-23-W3-0050A.0140</b><br>163 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | ISLAND SHORES UNIT 2<br>BLK A PB 9 PG 25<br>PT LOT 14 + LOT 15                      | 39 |
| JENKINS CARROLL ANNE<br>3063 NORFOLK CR 23 RR6<br>TILLSONBURG ON N4G 4G9<br>CANADA | <b>24-46-23-W3-0050A.016A</b><br>159/161 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931 | ISLAND SHORES UNIT 2<br>BLK.A PB 9 PG 25<br>LOTS 16 + PT OF LT 17                   | 40 |
| 151 OLD SAN CARLOS LLC<br>17840 SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931       | <b>24-46-23-W3-0050A.018A</b><br>151 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | ISLAND SHORES UNIT 2<br>BLK.A PB 9 PG 25<br>LOTS PT 18 + 19                         | 41 |
| BENSON BRADFORD J II TR<br>938 DEEP LAGOON LN<br>FORT MYERS FL 33919               | <b>24-46-23-W3-0050A.018B</b><br>959/963 ESTERO BLVD<br>FORT MYERS BEACH FL 33931         | ISLAND SHORES UNIT 2<br>BLK A<br>PT LOTS 17 18 + 19                                 | 42 |
| HOLIDAY COURT MOTEL LLC<br>PO BOX 1118<br>LABELLE FL 33975                         | <b>24-46-23-W3-0050A.0200</b><br>925 ESTERO BLVD<br>FORT MYERS BEACH FL 33931             | ISLAND SHORES UNIT 2<br>BLK A PB 9 PG 25<br>LOTS 20 THRU 26                         | 43 |
| VENETIAN GARDENS CANAL<br>PALERMO CIR<br>FORT MYERS BEACH FL 33931                 | <b>19-46-24-W4-00000.01CE</b><br>SUBMERGED<br>FORT MYERS BEACH FL 33931                   | VENETIAN GARDENS<br>PB 6 PG 70<br>RIO DEL LIDO CANAL                                | 44 |
| VENETIAN GARDENS CANAL<br>PALERMO CIR<br>FORT MYERS BEACH FL 33931                 | <b>19-46-24-W4-00000.02CE</b><br>SUBMERGED<br>FORT MYERS BEACH FL 33931                   | VENETIAN GARDENS<br>PB 6 PG 70<br>CANAL GRANDE CANAL                                | 45 |
| VAN BURGESS ROBERT<br>PO BOX 2717<br>FORT MYERS BEACH FL 33932                     | <b>19-46-24-W4-00600.Y000</b><br>125/127 PALERMO CIR<br>FORT MYERS BEACH FL 33931         | VENETIAN GARDENS<br>BLK Y PB 6 PG 70<br>ALL BLK Y EXC NLY 11 FT                     | 46 |
| WILCOX LANCE<br>1339 SANTOS RD<br>FORT MYERS BEACH FL 33931                        | <b>19-46-24-W4-0060A.0340</b><br>1339 SANTOS RD<br>FORT MYERS BEACH FL 33931              | VENETIAN GARDENS<br>BLK.A PB 6 PG 70<br>LOT 34                                      | 47 |
| PARILLA DAVID R TR<br>1335 SANTOS RD<br>FORT MYERS BEACH FL 33931                  | <b>19-46-24-W4-0060A.0350</b><br>1335 SANTOS RD<br>FORT MYERS BEACH FL 33931              | VENETIAN GARDENS<br>BLK A PB 6 PG 70<br>LOT 35                                      | 48 |
| CONNER CHARLES R & GAIL D<br>53 POMPANO ST<br>FORT MYERS BEACH FL 33931            | <b>19-46-24-W4-0060A.0360</b><br>126 PALERMO CIR<br>FORT MYERS BEACH FL 33931             | VENETIAN GARDENS<br>BLK A PB 6 PG 70<br>LOT 36 + S 1/2 OF BLK X<br>LESS THE N 20 FT | 49 |
| PARILLA DAVID R TR<br>1335 SANTOS RD<br>FORT MYERS BEACH FL 33931                  | <b>19-46-24-W4-0060A.0370</b><br>1321 SANTOS RD<br>FORT MYERS BEACH FL 33931              | VENETIAN GARDENS<br>BLK.A PB 6 PG 70<br>LOT 37                                      | 50 |
| KLC SURF LLC<br>CHRISTOPHER PRIMEAU<br>4625 W EUCLID AVE<br>TAMPA FL 33629         | <b>19-46-24-W4-0060B.0120</b><br>1365/1375 ESTERO BLVD<br>FORT MYERS BEACH FL 33931       | VENETIAN GARDENS<br>BLK B PB 6 PG 70<br>LOT 12                                      | 51 |
| LANI KAI LP<br>ROBERT G CONIDARIS<br>1400 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | <b>19-46-24-W4-0060B.0130</b><br>1345 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | VENETIAN GARDENS<br>BLK B PB 6 PG 70<br>LOT 13                                      | 52 |
| LANI KAI LP<br>ROBERT G CONIDARIS<br>1400 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | <b>19-46-24-W4-0060B.0140</b><br>1331 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | VENETIAN GARDENS<br>BLK B PB 6 PG 70<br>LOT 14                                      | 53 |
| LANI KAI LP<br>ROBERT G CONIDARIS<br>1400 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | <b>19-46-24-W4-0060B.0150</b><br>1325 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | VENETIAN GARDENS<br>BLK B PB 6 PG 70<br>LOTS 15                                     | 54 |
| 7-ELEVEN INC<br>CORP INCOME TAX DEPT<br>3200 HYACKBERRY RD<br>IRVING TX 75063      | <b>19-46-24-W4-0060B.0160</b><br>1301 ESTERO BLVD<br>FORT MYERS BEACH FL 33931            | VENETAIN GARDENS<br>BLK B PB 6 PG 70<br>LOTS 16 + 17                                | 55 |

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| STRICK RICHARD A &<br>5804 PARK RIDGE CT<br>FORT COLLINS CO 80528                                             | 19-46-24-W4-0060E.0090<br>130 PALERMO CIR<br>FORT MYERS BEACH FL 33931 | VENETIAN GARDENS PB 6/70<br>BLK E S 1/2 OF LOT 9 +<br>ALL OF BLK X LESS S 20 FT | 56 |
| DAY BILLY WAYNE<br>3708 SHANNON RUN TRL<br>LOUISVILLE KY 40299                                                | 19-46-24-W4-0060G.0170<br>155 PALERMO CIR<br>FORT MYERS BEACH FL 33931 | VENETIAN GARDENS<br>BLK G PB 6 PG 70<br>LOT 17                                  | 57 |
| LUMP THOMAS F & ANN C<br>145 PALERMO CIR<br>FORT MYERS BEACH FL 33931                                         | 19-46-24-W4-0060G.0180<br>145 PALERMO CIR<br>FORT MYERS BEACH FL 33931 | VENETIAN GARDENS<br>BLK.G PB 6 PG 70<br>LOT 18                                  | 58 |
| SLOMSKI STEVEN A &<br>PO BOX 2428 PMB 25382<br>PENSACOLA FL 32513                                             | 19-46-24-W4-0060G.0190<br>139 PALERMO CIR<br>FORT MYERS BEACH FL 33931 | VENETIAN GARDENS<br>BLK G PB 6 PG 70<br>LOT 19 NLY 11 FT BLK Y                  | 59 |
| ZINKOSKY CHARLES H &<br>7475 LOCKLIN<br>WEST BLOOMFIELD MI 48324                                              | 19-46-24-W4-0060H.0090<br>230 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 10 + S 1/2 LOT 9                    | 60 |
| MANNINO PATRICIA R<br>220 PRIMO DR<br>FORT MYERS BEACH FL 33931                                               | 19-46-24-W4-0060H.0110<br>220 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK.H PB 6 PG 70<br>LOT 11                                  | 61 |
| JGT LLC<br>5617 HARBOUR CIR<br>CAPE CORAL FL 33914                                                            | 19-46-24-W4-0060H.0120<br>218 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 12                                  | 62 |
| ANDERSON DEAN C &<br>904 7TH AVE NW<br>JAMESTOWN ND 58401                                                     | 19-46-24-W4-0060H.0130<br>214 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 13                                  | 63 |
| HALE ALOHA LLC<br>GEMA G HERNANDEZ<br>PO BOX 395<br>PANACEA FL 32346                                          | 19-46-24-W4-0060H.0140<br>212 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 14                                  | 64 |
| JACKSON SHARLENE V +<br>22 LOCH ERNE RD<br>MCDUGALL ON P2A 2W7<br>CANADA                                      | 19-46-24-W4-0060H.0150<br>200 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 15                                  | 65 |
| MORRIS CHARLES D<br>194 PRIMO DR<br>FORT MYERS BEACH FL 33931                                                 | 19-46-24-W4-0060H.0160<br>194 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 16                                  | 66 |
| TEKULVE LAYNE JOSEPH<br>PARAMOUNT LAWN AND<br>LANDSCAPE<br>8900 GLENDALE MILFORD RD # A1<br>LOVELAND OH 45140 | 19-46-24-W4-0060H.0170<br>190 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 17                                  | 67 |
| RILEY CHRISTOPHER M &<br>180 PRIMO DR<br>FORT MYERS BEACH FL 33931                                            | 19-46-24-W4-0060H.0180<br>180 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 18                                  | 68 |
| RILEY SUSAN K TR<br>180 PRIMO DR<br>FORT MYERS BEACH FL 33931                                                 | 19-46-24-W4-0060H.0190<br>170 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK.H PB 6 PG 70<br>LOTS 19                                 | 69 |
| BAILEY JAMES P & LANA C<br>162 PRIMO DR<br>FORT MYERS BEACH FL 33931                                          | 19-46-24-W4-0060H.0200<br>162 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LT 20                                   | 70 |
| SANDY BEACH L L C<br>PO BOX 5<br>BELMOND IA 50421                                                             | 19-46-24-W4-0060H.021A<br>150 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 21                                  | 71 |
| NEUMANN SHEILA<br>146 PRIMO DR<br>FORT MYERS BEACH FL 33931                                                   | 19-46-24-W4-0060H.0220<br>146 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 22                                  | 72 |
| 140 PRIMO LLC<br>SHEILA NEUMANN<br>146 PRIMO DR<br>FORT MYERS BEACH FL 33931                                  | 19-46-24-W4-0060H.0230<br>140 PRIMO DR<br>FORT MYERS BEACH FL 33931    | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 23                                  | 73 |

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| SEABIRD RESIDENTIAL LLC<br>1709 SW 47TH TER<br>CAPE CORAL FL 33914                 | 19-46-24-W4-0060H.0240<br>136 PRIMO DR<br>FORT MYERS BEACH FL 33931     | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 24                                                                             | 74 |
| HIGHLEY JAY E & MARY B<br>124 PRIMO DR<br>FORT MYERS BEACH FL 33931                | 19-46-24-W4-0060H.0250<br>124 PRIMO DR<br>FORT MYERS BEACH FL 33931     | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 25                                                                             | 75 |
| HIGHLEY MARY BETH TR<br>6620 ESTERO BLVD #1006<br>FORT MYERS BEACH FL 33931        | 19-46-24-W4-0060H.0260<br>122 PRIMO DR<br>FORT MYERS BEACH FL 33931     | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>PT LOT 26                                                                          | 76 |
| KWSH RE LLC<br>2601 MULBERRY AVE<br>MUSCATINE IA 52761                             | 19-46-24-W4-0060H.026A<br>120 PRIMO DR<br>FORT MYERS BEACH FL 33931     | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>PT LOTS 26 31 32                                                                   | 77 |
| ARLINGTON GREEN HOMES LLC<br>44 ALGONQUIN CT<br>MARCO ISLAND FL 34145              | 19-46-24-W4-0060H.0270<br>121 PALERMO CIR<br>FORT MYERS BEACH FL 33931  | VENETIAN GARDENS<br>BLK.H PB 6 PG 70<br>LOT 27                                                                             | 78 |
| KALIDINDI RAMA USHA +<br>44354 APACHE CIR<br>ASHBURN VA 20147                      | 19-46-24-W4-0060H.0280<br>117 PALERMO CIR<br>FORT MYERS BEACH FL 33931  | VENETIAN GARDENS<br>BLK H PB 6 PG 70<br>LOT 28 + PT LOTS 26 + 29                                                           | 79 |
| 1249 ESTERO ADVENTURES LLC<br>290 BAHIA VIA<br>FORT MYERS BEACH FL 33931           | 19-46-24-W4-0060H.0300<br>1249 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | VENETIAN GARDENS BLK H<br>PB 6 PG 70 LOTS 30 31+32<br>+ PT LT 29 OR2414/2433                                               | 80 |
| LANI KAI LP<br>ROBERT G CONIDARIS<br>1400 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | 19-46-24-W4-0070D.0020<br>1400 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | CRESCENT BEACH PB 4 PG 45<br>BLKS D + E + VAC R/W DESC<br>OR 1293 PG 1208                                                  | 81 |
| RIGHT CHOICE INVESTMENTS LLC<br>4448 KELLY DR<br>STERLING HEIGHTS MI 48314         | 19-46-24-W4-0070F.0010<br>1250 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | CRESCENT PARK LTS 1 + 2 +<br>ESTRY 2.5 FT LT 3 + CRESCENT<br>BEACH LTS 1-5 BLK F LESS<br>ESTRLY 45FT OF NRTHLY 2.7 LT<br>3 | 82 |
| OUR BEACH SAND LLC<br>12483 SUMMERWOOD DR<br>FORT MYERS FL 33908                   | 19-46-24-W4-0070F.001A<br>1270 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | CRESCENT BEACH BLK F<br>PB 4 PG 45 PT LOTS 1 2 & 3<br>DESC IN OR 1319 PG 1459                                              | 83 |
| GANIM PROPERTIES LLC<br>4666 MAIN ST<br>BRIDGEPORT CT 06606                        | 19-46-24-W4-0140A.0010<br>1240 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | CRESCENT PARK<br>PB 4 PG 39 BLK A<br>LOTS 1 + 2 + 8 + 9                                                                    | 84 |
| GANIM PROPERTIES LLC<br>4666 MAIN ST<br>BRIDGEPORT CT 06606                        | 19-46-24-W4-0140A.001A<br>200 CANAL ST<br>FORT MYERS BEACH FL           | CRESCENT PARK<br>PB 4 PG 39 BLK C<br>LOT 3 LESS E 2.5 FT                                                                   | 85 |
| TPI-FMB SUITES LLC<br>1207 ESTERO BLVD<br>FORT MYERS BEACH FL 33931                | 19-46-24-W4-0150D.0050<br>1207 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | CRESCENT PARK ADD<br>BLK D PB 4 PG 46<br>LOTS 1 THRU 5                                                                     | 86 |
| JAMES A + JEAN B BISCHOFF TRUS<br>JEFF MAAAS<br>20468 ARDORE LN<br>ESTERO FL 33928 | 19-46-24-W4-0150D.0060<br>141 PRIMO DR<br>FORT MYERS BEACH FL 33931     | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 6 +<br>VAC R/W + LAND ADJ CANAL                                                   | 87 |
| GRIFFIS LLC<br>9051 E CHICAGO RD<br>JEROME MI 49249                                | 19-46-24-W4-0150D.0070<br>143 PRIMO DR<br>FORT MYERS BEACH FL 33931     | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 7 +<br>VAC R/W + LAND ADJ CANAL                                                   | 88 |
| PATTON THOMAS D &<br>153 PRIMO DR<br>FORT MYERS BEACH FL 33931                     | 19-46-24-W4-0150D.0080<br>153 PRIMO DR<br>FORT MYERS BEACH FL 33931     | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 8 +<br>VAC R/W + LAND ADJ CANAL                                                   | 89 |
| ALMEIDA ROBERT M +<br>163 PRIMO DR<br>FORT MYERS BEACH FL 33931                    | 19-46-24-W4-0150D.0090<br>163 PRIMO DR<br>FORT MYERS BEACH FL 33931     | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 9 +<br>VAC R/W + LAND ADJ CANAL                                                   | 90 |
| BRIODY SUSAN S<br>167 PRIMO DR<br>FORT MYERS BEACH FL 33931                        | 19-46-24-W4-0150D.0100<br>167 PRIMO DR<br>FORT MYERS BEACH FL 33931     | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 10 +<br>VAC R/W + LAND ADJ CANAL                                                  | 91 |



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| TOWNLEY ARTHUR JAMES III<br>PO BOX 2452<br>FORT MYERS BEACH FL 33932          | <b>19-46-24-W4-0150D.0110</b><br>171 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 11 +<br>VAC R/W + LAND ADJ CANAL                                          | 92  |
| TOWNLEY ARTHUR J III<br>PO BOX 2452<br>FORT MYERS BEACH FL 33932              | <b>19-46-24-W4-0150D.0120</b><br>191 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LOTS 12 +<br>VAC R/W + LAND ADJ CANAL                                        | 93  |
| REDENIUS RICHARD R +<br>5218 WILLIAMS DR<br>FORT MYERS BEACH FL 33931         | <b>19-46-24-W4-0150D.0130</b><br>201 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 13 +<br>VAC R/W + LAND ADJ CANAL                                          | 94  |
| SWENSEN RICHARD D &<br>207 PRIMO DR<br>FORT MYERS BEACH FL 33931              | <b>19-46-24-W4-0150D.0140</b><br>207 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD BLK D<br>PB 4 PG 46 LT 14 + VAC<br>R/W + LAND ADJ CANAL                                          | 95  |
| ORONOCO ENTERPRISES LLC<br>10426 NW 28TH AVE<br>ORONOCO MN 55960              | <b>19-46-24-W4-0150D.0150</b><br>215 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 15 +<br>VAC R/W + LAND ADJ CANAL                                          | 96  |
| JM3 PROPERTIES LLC<br>14225 TULANE STE<br>BROOKFIELD WI 53005                 | <b>19-46-24-W4-0150D.0180</b><br>225 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 18 +<br>VAC R/W + LAND ADJ CANAL                                          | 97  |
| FMB 239 PRIMO LLC<br>PO BOX 2936<br>FORT MYERS BEACH FL 33932                 | <b>19-46-24-W4-0150D.0190</b><br>239 PRIMO DR<br>FORT MYERS BEACH FL 33931          | CRESCENT PARK ADD<br>BLK D PB 4 PG 46 LT 19 +<br>VAC R/W + LAND ADJ CANAL                                          | 98  |
| REDENIUS RICHARD R &<br>5218 WILLIAMS DR<br>FORT MYERS BEACH FL 33931         | <b>19-46-24-W4-0150D.0200</b><br>241/243 PRIMO DR<br>FORT MYERS BEACH FL 33931      | CRESCENT PARK ADD<br>BLK D PB 4/46 LT20+ LT 21<br>LES N10+VAC ST+LAND ADJ                                          | 99  |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | <b>19-46-24-W4-0150E.0010</b><br>1161/1165 ESTERO BLVD<br>FORT MYERS BEACH FL 33931 | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 PT LTS 1 + 2<br>OR0545/43LESR/W 2353/3036                                    | 100 |
| DEEP DISH DOUGH LLC<br>328 BUCKLIN ST<br>LA SALLE IL 61301                    | <b>19-46-24-W4-0150E.001A</b><br>1167 ESTERO BLVD<br>FORT MYERS BEACH FL 33931      | CRESCENT PARK ADD<br>BLK E PB 4 PG 46<br>BEG ON NLY SI CO RD 80 FT                                                 | 101 |
| MILLER CONRAD RE LLC<br>PO BOX 80490<br>FORT WAYNE IN 46898                   | <b>19-46-24-W4-0150E.0030</b><br>108/116 CRESCENT ST<br>FORT MYERS BEACH FL 33931   | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 LT 3                                                                         | 102 |
| INVESTMENTS OF FMB LLC<br>MARK DEIFT<br>560 NW 118 AVE<br>PLANTATION FL 33325 | <b>19-46-24-W4-0150E.0040</b><br>118/122 CRESCENT ST<br>FORT MYERS BEACH FL 33931   | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 LT 4 + S10<br>FT LOT 5 LES R/W2353/3036                                      | 103 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | <b>19-46-24-W4-0150E.005B</b><br>140 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E PB<br>4 PG 46 N 40 FT OF LOT 5 + 32.67<br>FT ADJ + VAC + ADJ CANAL<br>LESS R/W OR2353/3036 | 104 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | <b>19-46-24-W4-0150E.0060</b><br>150 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E PB<br>4 PG 46<br>LOT 6 + 32.67 FT ADJ + VAC +<br>ADJ CANAL LESS R/W<br>OR2353/3036         | 105 |
| RICHARD JOHN W +<br>152 CRESCENT ST<br>FORT MYERS BEACH FL 33931              | <b>19-46-24-W4-0150E.0070</b><br>152 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4 PG 46<br>LOT 7 +<br>VAC R/W + LAND ADJ<br>LESR/WOR2353/3036                        | 106 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | <b>19-46-24-W4-0150E.0080</b><br>170 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4 PG 46<br>LOT 8 +<br>VAC R/W + LAND ADJ<br>LESR/WOR2353/3036                        | 107 |
| RICHARD JOHN W TR<br>237 OLD SAN CARLOS BLVD<br>FORT MYERS BEACH FL 33931     | <b>19-46-24-W4-0150E.0090</b><br>202 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 LOTS 9 10 + VAC<br>+ LAND ADJ LESR/W2353/3036                                | 108 |

|                                                                          |                                                                                     |                                                                                                                                    |     |
|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|-----|
| 250 FMB LLC<br>4517 BRYWOOD DR<br>NAPLES FL 34119                        | <b>19-46-24-W4-0150E.0110</b><br>250 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4/46 LT 11 + VAC R/W<br>+ LAND ADJ CANAL LESS R/W                                                    | 109 |
| TORGERSON ASHLEE MICHELLE<br>PO BOX 5088<br>FORT MYERS BEACH FL 33932    | <b>19-46-24-W4-0150E.0120</b><br>270 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4/46 LT 12 VAC R/W +<br>LAND ADJ CANAL LESS R/W<br>DESC IN OR 2319/4512                              | 110 |
| GRANT JOSEPH H & DORIS M<br>320 CRESCENT ST<br>FORT MYERS BEACH FL 33931 | <b>19-46-24-W4-0150E.0130</b><br>300 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 LOT13+E40 FT LT<br>14+VAC LES R/W OR2366/2077                                                | 111 |
| GRANT JOE H<br>320 CRESCENT ST<br>FORT MYERS BEACH FL 33931              | <b>19-46-24-W4-0150E.014B</b><br>320 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 W 60 FT LT 14 +<br>LT 15 + VAC R/W + ADJ LESS<br>R/W DESC IN OR 2363/1290                    | 112 |
| LIGHTHOUSE ISLAND RESORT INC<br>1051 5TH ST<br>FORT MYERS BEACH FL 33931 | <b>19-46-24-W4-0150E.016A</b><br>332 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 LOT16+VAC R/W<br>+LAND ADJ CANAL                                                             | 113 |
| REICH EUGENE E TR<br>6115 POND VIEW DR<br>EXCELSIOR MN 55331             | <b>19-46-24-W4-0150E.0170</b><br>340 CRESCENT ST<br>FORT MYERS BEACH FL 33931       | CRESCENT PK ADD BLK E PB<br>4/46 LT 17 + S 20 FT OF LT<br>18 + VAC R/W LESS ROAD<br>OR 2328/3484                                   | 114 |
| CHIPPEWA LAND LLC<br>11577 HIBNER<br>HARTLAND MI 48353                   | <b>19-46-24-W4-0150E.0190</b><br>402/406 CRESCENT ST<br>FORT MYERS BEACH FL 33931   | CRESCENT PARK ADD BLK E<br>PB 4 PG 46 N 30 FT LOTS 18 + 19<br>+ S 30 FT LOT 20 LESS R/W<br>2353/3036<br>LESS R/W OR 2370/0201      | 115 |
| FMB MATANZAS LLC<br>5880 STALEY RD<br>FORT MYERS FL 33905                | <b>19-46-24-W4-0150E.0210</b><br>414/416 CRESCENT ST<br>FORT MYERS BEACH FL 33931   | CRESCENT PARK ADDN BLK E<br>PB4/46 PT LTS 20THRU25LT<br>26 LES R/W OR 2353 PG 3036 +<br>OR 3189 PG 3751                            | 116 |
| CRESCENT SHORE CONDO ASSOC<br>PO BOX 2990<br>FORT MYERS BEACH FL 33932   | <b>19-46-24-W4-02600.00CE</b><br>CRESCENT SHORE C/E<br>FORT MYERS BEACH FL 33931    | A CONDO LOCATED IN SEC 19<br>TWP 46 RGE 24 AS DESC IN<br>OR 1464 PG 445<br>COMMON ELEMENTS                                         | 117 |
| TOWN OF FORT MYERS BEACH<br>103 15TH AVE NW STE 200<br>WILLMAR MN 56201  | <b>19-46-24-W4-U0498.2607</b><br>ESTERO BLVD<br>FORT MYERS BEACH FL 33931           | PARCEL D AS DESC IN INST<br>2020000071854<br>INCLUDES LOTS 3 + 7 AS REC IN<br>PLAT BK 4 PG 39<br>AND DESC IN INST<br>2023000234096 | 118 |
| 1300 ESTERO BLVD LLC<br>32 BAYVIEW BLVD<br>FORT MYERS BEACH FL 33931     | <b>19-46-24-W4-02600.1010</b><br>1300 ESTERO BLVD #101<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNITS 101 102 + 103                                                                      | 119 |
| BEYER TAMMY E TR<br>9656 HALYARDS CT # 24<br>FORT MYERS FL 33919         | <b>19-46-24-W4-02600.1040</b><br>1300 ESTERO BLVD #104<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 104                                                                                 | 119 |
| ANDRESEN EDWIN TR<br>7960 PRESERVATION DR<br>INDIANAPOLIS IN 46278       | <b>19-46-24-W4-02600.1050</b><br>1300 ESTERO BLVD #105<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 105                                                                                 | 119 |
| BOCCELLA SALVATORE<br>4 POINT VIEW CT<br>SICKLERVILLE NJ 08081           | <b>19-46-24-W4-02600.1060</b><br>1300 ESTERO BLVD #106<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 106                                                                                 | 119 |
| JOHNSON NANCY ANN L/E<br>9 NANCY LN<br>FORT MYERS BEACH FL 33931         | <b>19-46-24-W4-02600.2010</b><br>1300 ESTERO BLVD #201<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 201                                                                                 | 119 |
| HECK LLC<br>15561 CATALPA COVE DR<br>FORT MYERS FL 33908                 | <b>19-46-24-W4-02600.2020</b><br>1300 ESTERO BLVD #202<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 202                                                                                 | 119 |

|                                                                      |                                                                                     |                                                    |     |
|----------------------------------------------------------------------|-------------------------------------------------------------------------------------|----------------------------------------------------|-----|
| CONANT DONNA TR<br>8122 S FOREST HILL CIR<br>FRANKLIN WI 53132       | <b>19-46-24-W4-02600.2030</b><br>1300 ESTERO BLVD #203<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 203 | 119 |
| DENNIS R + CYNTHIA L LOKEN TRU<br>106 ICHABOD LN<br>MANKATO MN 56001 | <b>19-46-24-W4-02600.2040</b><br>1300 ESTERO BLVD #204<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 204 | 119 |
| LANDOLFI STEVEN J<br>22 VETO ST<br>PROVIDENCE RI 02908               | <b>19-46-24-W4-02600.2050</b><br>1300 ESTERO BLVD #205<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 205 | 119 |
| NIEMEIER RYAN & SUMMER<br>106 S WALNUT ST<br>LA CRESCENT MN 55947    | <b>19-46-24-W4-02600.2060</b><br>1300 ESTERO BLVD #206<br>FORT MYERS BEACH FL 33931 | CRESCENT SHORE CONDO<br>OR 1464 PG 445<br>UNIT 206 | 119 |

1005 ESTERO LLC  
1005 ESTERO BLVD  
FORT MYERS BEACH FL 33931

KALYMNOUS PARTNERSHIP LLP  
1001 ESTERO BLVD  
FORT MYERS BEACH FL 33931

CLOWNFISH RESTAURANT HOLDINGS  
11201 COORPORATE CIRCLE N  
SAINT PETERSBURG FL 33716

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

PRESAUD PROPERTIES FL  
361 SEMINOLE WAY  
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME  
361 SEMINOLE WAY  
FORT MYERS BEACH FL 33931

BENCIN ENTERPRISES INC  
BEACH ACCOUNTING  
17274 SAN CARLOS BLVD #202  
FORT MYERS BEACH FL 33931

WHITAKER WILLIAM D &  
15820 SAN ANTONIO CT  
FORT MYERS FL 33908

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

MERSCHMAN I LLC  
1421 E LAKE SHORE DR  
SPRINGFIELD IL 62712

HOUSEBOAT LLC  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

ALN BEACHVIEW LLC  
615 CAPE CORAL PKWY W # 104  
CAPE CORAL FL 33914

ALN BEACHVIEW LLC  
151 MATANZAS ST UPSTAIRS  
FORT MYERS BEACH FL 33931

FMB MATANZAS LLC  
5880 STALEY RD  
FORT MYERS FL 33905

FMB MATANZAS LLC  
5880 STALEY RD  
FORT MYERS FL 33905

PIERHOUSE-FT MYERS BEACH LTD  
1000 ESTERO BLVD  
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC  
PO BOX 656  
ANTIOCH TN 37011

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC  
1051 5TH ST  
FORT MYERS BEACH FL 33931

STINGRAYS RAW BAR INC  
250 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

DIANNE HOLLAND TRUST +  
570 KULAIWI DR  
WAILUKU HI 96793

LIGHTHOUSE ISLAND RESORT INC  
1051 FIFTH ST  
FORT MYERS BEACH FL 33931

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

150 OLD SAN CARLOS BLVD LLC  
4100 N 28TH TER  
HOLLYWOOD FL 33020

TOWN OF FORT MYERS BEACH  
FINANCE DEPT  
2525 ESTERO BLVD  
FORT MYERS BEACH FL 33931

CHAVEZ CARLOS L TR  
991 AQUA LN  
FORT MYERS FL 33919

CHAVEZ CARLOS L TR  
991 AQUA LN  
FORT MYERS FL 33919

BENSON BRADFORD J TR  
927 PRESCOTT ST  
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH  
FINANCE DEPT  
2525 ESTERO BLVD  
FORT MYERS BEACH FL 33931

KLC SURF LLC  
CHRISTOPHER PRIMEAU  
4625 W EUCLID AVE  
TAMPA FL 33629

BC III MASTERPIECE LLC  
151 MATANZAS ST  
FORT MYERS BEACH FL 33931

RFN CORP  
2401 ESTERO BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

BAHAN SUZANNE E +  
169 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

MAY SUZANNE E  
PO BOX 61176  
FORT MYERS FL 33906

JENKINS CARROLL ANNE  
3063 NORFOLK CR 23 RR6  
TILLSONBURG ON N4G 4G9  
CANADA

151 OLD SAN CARLOS LLC  
17840 SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

BENSON BRADFORD J II TR  
938 DEEP LAGOON LN  
FORT MYERS FL 33919

HOLIDAY COURT MOTEL LLC  
PO BOX 1118  
LABELLE FL 33975

VENETIAN GARDENS CANAL  
PALERMO CIR  
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL  
PALERMO CIR  
FORT MYERS BEACH FL 33931

VAN BURGESS ROBERT  
PO BOX 2717  
FORT MYERS BEACH FL 33932

WILCOX LANCE  
1339 SANTOS RD  
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR  
1335 SANTOS RD  
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D  
53 POMPAÑO ST  
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR  
1335 SANTOS RD  
FORT MYERS BEACH FL 33931

KLC SURF LLC  
CHRISTOPHER PRIMEAU  
4625 W EUCLID AVE  
TAMPA FL 33629

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

7-ELEVEN INC  
CORP INCOME TAX DEPT  
3200 HYACKBERRY RD  
IRVING TX 75063

STRICK RICHARD A &  
5804 PARK RIDGE CT  
FORT COLLINS CO 80528

DAY BILLY WAYNE  
3708 SHANNON RUN TRL  
LOUISVILLE KY 40299

LUMP THOMAS F & ANN C  
145 PALERMO CIR  
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &  
PO BOX 2428 PMB 25382  
PENSACOLA FL 32513

ZINKOSKY CHARLES H &  
7475 LOCKLIN  
WEST BLOOMFIELD MI 48324

MANNINO PATRICIA R  
220 PRIMO DR  
FORT MYERS BEACH FL 33931

JGT LLC  
5617 HARBOUR CIR  
CAPE CORAL FL 33914

ANDERSON DEAN C &  
904 7TH AVE NW  
JAMESTOWN ND 58401

HALE ALOHA LLC  
GEMA G HERNANDEZ  
PO BOX 395  
PANACEA FL 32346

JACKSON SHARLENE V +  
22 LOCH ERNE RD  
MCDOUGALL ON P2A 2W7  
CANADA

MORRIS CHARLES D  
194 PRIMO DR  
FORT MYERS BEACH FL 33931

TEKULVE LAYNE JOSEPH  
PARAMOUNT LAWN AND LANDSCAPE  
8900 GLENDALE MILFORD RD # A1  
LOVELAND OH 45140

RILEY CHRISTOPHER M &  
180 PRIMO DR  
FORT MYERS BEACH FL 33931

RILEY SUSAN K TR  
180 PRIMO DR  
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C  
162 PRIMO DR  
FORT MYERS BEACH FL 33931

SANDY BEACH L L C  
PO BOX 5  
BELMOND IA 50421

NEUMANN SHEILA  
146 PRIMO DR  
FORT MYERS BEACH FL 33931

140 PRIMO LLC  
SHEILA NEUMANN  
146 PRIMO DR  
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC  
1709 SW 47TH TER  
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B  
124 PRIMO DR  
FORT MYERS BEACH FL 33931

HIGHLEY MARY BETH TR  
6620 ESTERO BLVD #1006  
FORT MYERS BEACH FL 33931

KWSH RE LLC  
2601 MULBERRY AVE  
MUSCATINE IA 52761

ARLINGTON GREEN HOMES LLC  
44 ALGONQUIN CT  
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +  
44354 APACHE CIR  
ASHBURN VA 20147

1249 ESTERO ADVENTURES LLC  
290 BAHIA VIA  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

RIGHT CHOICE INVESTMENTS LLC  
4448 KELLY DR  
STERLING HEIGHTS MI 48314

OUR BEACH SAND LLC  
12483 SUMMERWOOD DR  
FORT MYERS FL 33908

GANIM PROPERTIES LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

TPI-FMB SUITES LLC  
1207 ESTERO BLVD  
FORT MYERS BEACH FL 33931

JAMES A + JEAN B BISCHOFF TRUS  
JEFF MAAAS  
20468 ARDORE LN  
ESTERO FL 33928

GRIFFIS LLC  
9051 E CHICAGO RD  
JEROME MI 49249

PATTON THOMAS D &  
153 PRIMO DR  
FORT MYERS BEACH FL 33931

ALMEIDA ROBERT M +  
163 PRIMO DR  
FORT MYERS BEACH FL 33931

BRIODY SUSAN S  
167 PRIMO DR  
FORT MYERS BEACH FL 33931

TOWNLEY ARTHUR JAMES III  
PO BOX 2452  
FORT MYERS BEACH FL 33932

TOWNLEY ARTHUR J III  
PO BOX 2452  
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R +  
5218 WILLIAMS DR  
FORT MYERS BEACH FL 33931

SWENSEN RICHARD D &  
207 PRIMO DR  
FORT MYERS BEACH FL 33931

ORONOCO ENTERPRISES LLC  
10426 NW 28TH AVE  
ORONOCO MN 55960

JM3 PROPERTIES LLC  
14225 TULANE STE  
BROOKFIELD WI 53005

FMB 239 PRIMO LLC  
PO BOX 2936  
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R &  
5218 WILLIAMS DR  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931



DEEP DISH DOUGH LLC  
328 BUCKLIN ST  
LA SALLE IL 61301

MILLER CONRAD RE LLC  
PO BOX 80490  
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC  
MARK DEIFT  
560 NW 118 AVE  
PLANTATION FL 33325

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W +  
152 CRESCENT ST  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

250 FMB LLC  
4517 BRYWOOD DR  
NAPLES FL 34119

TORGERSON ASHLEE MICHELLE  
PO BOX 5088  
FORT MYERS BEACH FL 33932

GRANT JOSEPH H & DORIS M  
320 CRESCENT ST  
FORT MYERS BEACH FL 33931

GRANT JOE H  
320 CRESCENT ST  
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC  
1051 5TH ST  
FORT MYERS BEACH FL 33931

REICH EUGENE E TR  
6115 POND VIEW DR  
EXCELSIOR MN 55331

CHIPPEWA LAND LLC  
11577 HIBNER  
HARTLAND MI 48353

FMB MATANZAS LLC  
5880 STALEY RD  
FORT MYERS FL 33905

CRESCENT SHORE CONDO ASSOC  
PO BOX 2990  
FORT MYERS BEACH FL 33932

TOWN OF FORT MYERS BEACH  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

1300 ESTERO BLVD LLC  
32 BAYVIEW BLVD  
FORT MYERS BEACH FL 33931

BEYER TAMMY E TR  
9656 HALYARDS CT # 24  
FORT MYERS FL 33919

ANDRESEN EDWIN TR  
7960 PRESERVATION DR  
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE  
4 POINT VIEW CT  
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E  
9 NANCY LN  
FORT MYERS BEACH FL 33931

HECK LLC  
15561 CATALPA COVE DR  
FORT MYERS FL 33908

CONANT DONNA TR  
8122 S FOREST HILL CIR  
FRANKLIN WI 53132

DENNIS R + CYNTHIA L LOKEN TRU  
106 ICHABOD LN  
MANKATO MN 56001

LANDOLFI STEVEN J  
22 VETO ST  
PROVIDENCE RI 02908

NIEMEIER RYAN & SUMMER  
106 S WALNUT ST  
LA CRESCENT MN 55947

1005 ESTERO LLC  
1005 ESTERO BLVD  
FORT MYERS BEACH FL 33931

KALYMNOUS PARTNERSHIP LLP  
1001 ESTERO BLVD  
FORT MYERS BEACH FL 33931

CLOWNFISH RESTAURANT HOLDINGS  
11201 COORPORATE CIRCLE N  
SAINT PETERSBURG FL 33716

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

PRESAUD PROPERTIES FL  
361 SEMINOLE WAY  
FORT MYERS BEACH FL 33931

PERSAUD PROPERTIES FL INVESTME  
361 SEMINOLE WAY  
FORT MYERS BEACH FL 33931

BENCIN ENTERPRISES INC  
BEACH ACCOUNTING  
17274 SAN CARLOS BLVD #202  
FORT MYERS BEACH FL 33931

WHITAKER WILLIAM D &  
15820 SAN ANTONIO CT  
FORT MYERS FL 33908

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

HOUSEBOAT LLC  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

MERSCHMAN I LLC  
1421 E LAKE SHORE DR  
SPRINGFIELD IL 62712

HOUSEBOAT LLC  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

ALN BEACHVIEW LLC  
615 CAPE CORAL PKWY W # 104  
CAPE CORAL FL 33914

ALN BEACHVIEW LLC  
151 MATANZAS ST UPSTAIRS  
FORT MYERS BEACH FL 33931

FMB MATANZAS LLC  
5880 STALEY RD  
FORT MYERS FL 33905

FMB MATANZAS LLC  
5880 STALEY RD  
FORT MYERS FL 33905

PIERHOUSE-FT MYERS BEACH LTD  
1000 ESTERO BLVD  
FORT MYERS BEACH FL 33931

FREELAND FL HOLDINGS LLC  
PO BOX 656  
ANTIOCH TN 37011

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC  
1051 5TH ST  
FORT MYERS BEACH FL 33931

STINGRAYS RAW BAR INC  
250 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

DIANNE HOLLAND TRUST +  
570 KULAIWI DR  
WAILUKU HI 96793

LIGHTHOUSE ISLAND RESORT INC  
1051 FIFTH ST  
FORT MYERS BEACH FL 33931

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

LEE COUNTY  
PO BOX 398  
FORT MYERS FL 33902

150 OLD SAN CARLOS BLVD LLC  
4100 N 28TH TER  
HOLLYWOOD FL 33020

TOWN OF FORT MYERS BEACH  
FINANCE DEPT  
2525 ESTERO BLVD  
FORT MYERS BEACH FL 33931

CHAVEZ CARLOS L TR  
991 AQUA LN  
FORT MYERS FL 33919

CHAVEZ CARLOS L TR  
991 AQUA LN  
FORT MYERS FL 33919

BENSON BRADFORD J TR  
927 PRESCOTT ST  
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH  
FINANCE DEPT  
2525 ESTERO BLVD  
FORT MYERS BEACH FL 33931

KLC SURF LLC  
CHRISTOPHER PRIMEAU  
4625 W EUCLID AVE  
TAMPA FL 33629

BC III MASTERPIECE LLC  
151 MATANZAS ST  
FORT MYERS BEACH FL 33931

RFN CORP  
2401 ESTERO BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

BAHAN SUZANNE E +  
169 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

MAY SUZANNE E  
PO BOX 61176  
FORT MYERS FL 33906

JENKINS CARROLL ANNE  
3063 NORFOLK CR 23 RR6  
TILLSONBURG ON N4G 4G9  
CANADA

151 OLD SAN CARLOS LLC  
17840 SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

BENSON BRADFORD J II TR  
938 DEEP LAGOON LN  
FORT MYERS FL 33919

HOLIDAY COURT MOTEL LLC  
PO BOX 1118  
LABELLE FL 33975

VENETIAN GARDENS CANAL  
PALERMO CIR  
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL  
PALERMO CIR  
FORT MYERS BEACH FL 33931

VAN BURGESS ROBERT  
PO BOX 2717  
FORT MYERS BEACH FL 33932

WILCOX LANCE  
1339 SANTOS RD  
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR  
1335 SANTOS RD  
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D  
53 POMPAÑO ST  
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR  
1335 SANTOS RD  
FORT MYERS BEACH FL 33931

KLC SURF LLC  
CHRISTOPHER PRIMEAU  
4625 W EUCLID AVE  
TAMPA FL 33629

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

7-ELEVEN INC  
CORP INCOME TAX DEPT  
3200 HYACKBERRY RD  
IRVING TX 75063

STRICK RICHARD A &  
5804 PARK RIDGE CT  
FORT COLLINS CO 80528

DAY BILLY WAYNE  
3708 SHANNON RUN TRL  
LOUISVILLE KY 40299

LUMP THOMAS F & ANN C  
145 PALERMO CIR  
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &  
PO BOX 2428 PMB 25382  
PENSACOLA FL 32513

ZINKOSKY CHARLES H &  
7475 LOCKLIN  
WEST BLOOMFIELD MI 48324

MANNINO PATRICIA R  
220 PRIMO DR  
FORT MYERS BEACH FL 33931

JGT LLC  
5617 HARBOUR CIR  
CAPE CORAL FL 33914

ANDERSON DEAN C &  
904 7TH AVE NW  
JAMESTOWN ND 58401

HALE ALOHA LLC  
GEMA G HERNANDEZ  
PO BOX 395  
PANACEA FL 32346

JACKSON SHARLENE V +  
22 LOCH ERNE RD  
MCDOUGALL ON P2A 2W7  
CANADA

MORRIS CHARLES D  
194 PRIMO DR  
FORT MYERS BEACH FL 33931

TEKULVE LAYNE JOSEPH  
PARAMOUNT LAWN AND LANDSCAPE  
8900 GLENDALE MILFORD RD # A1  
LOVELAND OH 45140

RILEY CHRISTOPHER M &  
180 PRIMO DR  
FORT MYERS BEACH FL 33931

RILEY SUSAN K TR  
180 PRIMO DR  
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C  
162 PRIMO DR  
FORT MYERS BEACH FL 33931

SANDY BEACH L L C  
PO BOX 5  
BELMOND IA 50421

NEUMANN SHEILA  
146 PRIMO DR  
FORT MYERS BEACH FL 33931

140 PRIMO LLC  
SHEILA NEUMANN  
146 PRIMO DR  
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC  
1709 SW 47TH TER  
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B  
124 PRIMO DR  
FORT MYERS BEACH FL 33931

HIGHLEY MARY BETH TR  
6620 ESTERO BLVD #1006  
FORT MYERS BEACH FL 33931

KWSH RE LLC  
2601 MULBERRY AVE  
MUSCATINE IA 52761

ARLINGTON GREEN HOMES LLC  
44 ALGONQUIN CT  
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +  
44354 APACHE CIR  
ASHBURN VA 20147

1249 ESTERO ADVENTURES LLC  
290 BAHIA VIA  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

RIGHT CHOICE INVESTMENTS LLC  
4448 KELLY DR  
STERLING HEIGHTS MI 48314

OUR BEACH SAND LLC  
12483 SUMMERWOOD DR  
FORT MYERS FL 33908

GANIM PROPERTIES LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

TPI-FMB SUITES LLC  
1207 ESTERO BLVD  
FORT MYERS BEACH FL 33931

JAMES A + JEAN B BISCHOFF TRUS  
JEFF MAAAS  
20468 ARDORE LN  
ESTERO FL 33928

GRIFFIS LLC  
9051 E CHICAGO RD  
JEROME MI 49249

PATTON THOMAS D &  
153 PRIMO DR  
FORT MYERS BEACH FL 33931

ALMEIDA ROBERT M +  
163 PRIMO DR  
FORT MYERS BEACH FL 33931

BRIODY SUSAN S  
167 PRIMO DR  
FORT MYERS BEACH FL 33931

TOWNLEY ARTHUR JAMES III  
PO BOX 2452  
FORT MYERS BEACH FL 33932

TOWNLEY ARTHUR J III  
PO BOX 2452  
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R +  
5218 WILLIAMS DR  
FORT MYERS BEACH FL 33931

SWENSEN RICHARD D &  
207 PRIMO DR  
FORT MYERS BEACH FL 33931

ORONOCO ENTERPRISES LLC  
10426 NW 28TH AVE  
ORONOCO MN 55960

JM3 PROPERTIES LLC  
14225 TULANE STE  
BROOKFIELD WI 53005

FMB 239 PRIMO LLC  
PO BOX 2936  
FORT MYERS BEACH FL 33932

REDENIUS RICHARD R &  
5218 WILLIAMS DR  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

DEEP DISH DOUGH LLC  
328 BUCKLIN ST  
LA SALLE IL 61301

MILLER CONRAD RE LLC  
PO BOX 80490  
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC  
MARK DEIFT  
560 NW 118 AVE  
PLANTATION FL 33325

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W +  
152 CRESCENT ST  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

250 FMB LLC  
4517 BRYWOOD DR  
NAPLES FL 34119

TORGERSON ASHLEE MICHELLE  
PO BOX 5088  
FORT MYERS BEACH FL 33932

GRANT JOSEPH H & DORIS M  
320 CRESCENT ST  
FORT MYERS BEACH FL 33931

GRANT JOE H  
320 CRESCENT ST  
FORT MYERS BEACH FL 33931

LIGHTHOUSE ISLAND RESORT INC  
1051 5TH ST  
FORT MYERS BEACH FL 33931

REICH EUGENE E TR  
6115 POND VIEW DR  
EXCELSIOR MN 55331

CHIPPEWA LAND LLC  
11577 HIBNER  
HARTLAND MI 48353

FMB MATANZAS LLC  
5880 STALEY RD  
FORT MYERS FL 33905

CRESCENT SHORE CONDO ASSOC  
PO BOX 2990  
FORT MYERS BEACH FL 33932

TOWN OF FORT MYERS BEACH  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

1300 ESTERO BLVD LLC  
32 BAYVIEW BLVD  
FORT MYERS BEACH FL 33931

BEYER TAMMY E TR  
9656 HALYARDS CT # 24  
FORT MYERS FL 33919



ANDRESEN EDWIN TR  
7960 PRESERVATION DR  
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE  
4 POINT VIEW CT  
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E  
9 NANCY LN  
FORT MYERS BEACH FL 33931

HECK LLC  
15561 CATALPA COVE DR  
FORT MYERS FL 33908

CONANT DONNA TR  
8122 S FOREST HILL CIR  
FRANKLIN WI 53132

DENNIS R + CYNTHIA L LOKEN TRU  
106 ICHABOD LN  
MANKATO MN 56001

LANDOLFI STEVEN J  
22 VETO ST  
PROVIDENCE RI 02908

NIEMEIER RYAN & SUMMER  
106 S WALNUT ST  
LA CRESCENT MN 55947

## **RESOLUTION NUMBER 23-80**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230052 TO AMEND RESOLUTION 13-09 CONDITIONS OF APPROVAL WHICH LIMITED THE AREA OF CONSUMPTION ON PREMISES TO THE BUILDING AND DID NOT ALLOW LIVE MUSIC FOR THE PROPERTY LOCATED AT 1249 ESTERO BLVD.; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, applicant Greg von Krumreig, on behalf of owner Mike Miller, is requesting amendment of the Conditions of Approval for Res. 13-09, removing #1 *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and proposed new lower outdoor deck depicted on the attached Exhibit F.* and #3 *No live music is permitted. Outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*; and

**WHEREAS**, the STRAP number for the subject property is 19-46-24-W4-0060H.0300; and

**WHEREAS**, the Property is located in the "Pedestrian Commercial" category of the Future Land Use Map of the Comprehensive Plan and the "Downtown" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on June 13, 2023, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA voted 6-1 to recommend approval of the amendment with conditions; and

**WHEREAS**, on August 07, 2023 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-88 of the LDC; and

**WHEREAS**, the Town Council determined it is in the best interest of the Town to approve with conditions.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested amendment does meet the requirements of the Town Comprehensive Plan and LDC, and approving with conditions the amendment is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES WITH CONDITIONS amendment of Res. 13-09.

Section 3. In approving with conditions the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Whether there exist changed or changing conditions which make approval of the request appropriate.
- B. The testimony of any applicant.
- C. The recommendation of staff and of the local planning agency.
- D. The testimony of the public.
- E. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- F. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- G. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- H. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- I. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

Section 4. If the Town Council approves the requested amendment, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

B. The amendment of Conditions of Approval for Res. 13-09 shall be temporary for a period of 6 months from the date of this resolution or until construction of a new building has begun, whichever happens first.

C. Live music is allowed on 1249 Estero Blvd. but drums are not allowed as part of the entertainment.

D. Amplified music is allowed on 1249 Estero Blvd. until 6:30pm Sunday through Thursday, after which amplified music may not be louder than 65-decibels as long as the other conditions of approval are upheld.

E. Amplified music is allowed on 1249 Estero Blvd. Friday and Saturday and will be controlled by the Town's noise ordinance (LDC sec. 14-23; Table-1), as long as the other conditions of approval are upheld.

F. The variance shall only apply to the lot as shown on the provided site plan.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Council Member King, and upon being put to a roll vote, the result was as follows:

|                               |     |
|-------------------------------|-----|
| Dan Allers, Mayor             | Aye |
| Jim Atterholt, Vice Mayor     | Aye |
| John R. King, Council Member  | Aye |
| Bill Veach, Council Member    | Aye |
| Karen Woodson, Council Member | Aye |

ADOPTED this 7<sup>th</sup> day of August 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

**Dan Allers**

---

Dan Allers, Mayor

**ATTEST:**

**AMY BAKER**

---

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

**Becky Vose**

---

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 26<sup>th</sup> day of September 2023.

**Signature:** Dan Allers  
Dan Allers (Sep 26, 2023 12:46 EDT)  
**Email:** allersd@fmbgov.com

**Signature:** Becky Vose  
Becky Vose (Sep 26, 2023 17:55 EDT)  
**Email:** bvose@voselaw.com

**Signature:** Amy Baker  
AMY BAKER (Sep 28, 2023 15:20 EDT)  
**Email:** AMY@FMBGOV.COM

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 13- 09  
SEZ2013-0001 - The Beached Whale

WHEREAS, applicant Marty Harrity has requested approval of a Special Exception in the DOWNTOWN zoning district to permit outdoor consumption on premises to include 626 ± square feet of a proposed new deck at the front of the existing building on the subject property; and

WHEREAS, the subject property is located at 1249 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060H.0300 and the legal description of the subject property is VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 30 31+32+ PT LT 29; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 9, 2013; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 3, 2013, at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution 2013-003, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 30-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting variances, the Town Council makes the following findings of fact and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a Special Exception in the DOWNTOWN zoning district to permit outdoor consumption on premises to include 626 square feet or less of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

**CONDITIONS OF APPROVAL:**

1. *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and proposed new lower outdoor deck depicted on the attached Exhibit F.*

2. *Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for inside the building and 11:00 AM to 11:00 PM daily for the lower outdoor deck area.*
3. *No live music is permitted. Outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*
4. *Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(e).*
5. *All work proposed to be done will require Limited Review Development Order and any other permits determined to be necessary at the time of permitting.*
6. *No required parking spaces, including required ADA spaces, may extend into the Town or Lee County right-of-way.*
7. *The applicant shall provide an impervious retention area under the proposed outdoor deck to assist with stormwater retention.*
8. *The outdoor seating on the proposed outdoor deck will at all times comply with current building, fire and life safety codes for tables and chairs.*
9. *All doors providing access from the existing restaurant to the proposed outdoor deck must remained closed, aside from regular ingress and egress functions, when indoor music is being played.*

#### **FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do not** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources;
5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property;
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember List and seconded by Councilmember Raymond, and upon being put to a vote, the result was as follows:

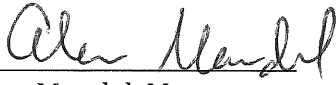
Alan Mandel, Mayor  
Jo List  
Dan Andre

AYE  
AYE  
AYE

Joe Kosinski, Vice Mayor  
Bob Raymond

ABSTAIN  
AYE

DULY PASSED AND ADOPTED THIS 3<sup>rd</sup> day of **JUNE, 2013.**

By:   
Alan Mandel, Mayor

Approved as to legal sufficiency:

By:   
Fowler, White, Boggs  
Town Attorney

ATTEST:

By:   
Michelle Mayher  
Town Clerk





Town of Fort Myers Beach  
Community Development Services - Planning Division  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

#### NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please check for meeting changes on our website [WWW.FMBGOV.com](http://WWW.FMBGOV.com).

TIME: 9 AM

DATE: 2<sup>nd</sup> Town Council February 5, 2024

CASE: CPD amendment 20230227

ADDRESS: 1170 Estero Blvd (all associated Margaritaville CPD properties)

APPLICANT: TPI-FMB LLC/ STEVEN C HARTSELL, ESQUIRE

REQUEST: The applicant is requesting an amendment of Ord. 23-09 'Conditions of Approval' #6; #12 (f) and (g); and #18 (a) and (b).

TOWN CONTACT: SARAH PROPST [SARAH.PROPST@FMBGOV.COM](mailto:SARAH.PROPST@FMBGOV.COM)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



Town of Fort Myers Beach  
Community Development Services - Planning Division  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

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Town of Fort Myers Beach  
Community Development Services - Planning Division  
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Fort Myers Beach, FL 33931

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CASE: CPD amendment 20230227

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Town of Fort Myers Beach  
Community Development Services - Planning Division  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

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Town of Fort Myers Beach  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

Town of Fort Myers Beach  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

Town of Fort Myers Beach  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»

1. **Requested Motion:**

**Meeting Date: February 5, 2024**

Second Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town Council decides rezoning requests.

**What the action accomplishes:**

Approval of the request will allow redevelopment of a convenience store in accordance with the MCP at 1301 Estero Blvd.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Planning &  
Zoning

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5. **Background:**

The applicant for 1301 Estero Blvd is requesting a rezoning from Downtown zoning to Commercial Planned Development for the redevelopment of a convenience store. The proposed development will have an entrance on Estero Blvd and an entrance on Palermo Circle and a dumpster enclosure with access off of Santos Rd. The site previously contained a 7-Eleven convenience store. The Downtown zoning does allow a convenience store use by-right. The applicant is requesting a CPD to develop the site rather than requesting multiple variances from the Land Development Code. At the first Town Council hearing the Town Council requested an additional deviation to allow the dumpster enclosure to be seven feet above grade.

**Attachments:**

1. Ordinance 24-02
2. Aff of Publication Ord 24-02
3. business-impact-estimate
4. Staff Report
5. Exhibit A MCP 01-03-24
6. Exhibit B TC postcard 2nd hearing
7. Exhibit C Complete application
8. Applicant Narrative -- Revised
9. \* Added 2.2.2-24 MCP 02-01-24

**Financial Impact:**

unknown

6. **Alternative Action**

Deny request

7. **Management Recommendations:**

Recommend approval with conditions

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning

Frankie Kropacek, Operations & Compliance Director

Nancy Stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 1/24/2024

Approved - 1/24/2024

Approved - 1/31/2024

Approved - 1/31/2024

Final Approval - 1/31/2024

## ORDINANCE 24-02

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, 7-Eleven Inc. and The Neighborhood Company, owner and agents for the property owner, located at 1301 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W4-0060B.0160 in the Town of Fort Myers Beach, filed applications to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store ; and

**WHEREAS**, the subject property is a single parcel located in the Pedestrian Commercial Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on January 9, 2024; and

**WHEREAS**, at the January 9, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) sec. 34-85; and

**WHEREAS**, at the January 9, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the variance by a 6-0 vote with one member abstaining; and

**WHEREAS**, on January 22, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

**WHEREAS**, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in an appropriate publication 10 days prior to the Town Council on February 5, 2024; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

**WHEREAS**, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

**WHEREAS**, a Business Impact Estimate has been prepared and published on the Town's website; and

**WHEREAS**, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

**WHEREAS**, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

**WHEREAS**, the Town Council finds that this request to rezone the property from the Downtown Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a convenience store, is a unique and individual application which does not set precedent for future development or rezoning applications.

**Deviation #1**

Deviation from LDC Section 34-706(d) which requires properties that front on Estero Blvd and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access from Palermo Circle and Estero Blvd.

**Deviation #2**

Deviation from LDC Section 34-2013(a)(3) which limits driveway apron width, at the property line, to 25 feet. The request is to allow a 60-foot-wide curb cut at Palermo Circle and a 35-foot-wide curb cut on Estero Blvd.

**Deviation #3**

Deviation from LDC Section 10-285 the minimum driveway separation requirements along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet

from the Estero Blvd/Palermo Circle intersection.

**Deviation #4**

Deviation from LDC Section 34-706(a) which requires parking to be located in the side or rear of the property. This deviation will allow the parking to be located closer to Palermo Circle than the primary structure.

**Deviation #5**

Deviation from LDC Section 34-2020(d)(2)i. 1. which requires a minimum of four spaces per 1,000 square feet, for a total of 14 spaces for the 3,500 square foot structure. To allow eight parking spaces.

**Deviation #6**

Deviation from LDC Section 34-705(a)(1) which requires buildings on Estero Blvd. to have at least 50% building frontage. The request would allow a building with at least 43% frontage along Estero Blvd.

**Deviation #7**

Deviation from LDC Section 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way.

**Deviation #8**

Deviation from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height, but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet in height.

**Findings for the rezoning:**

**WHEREAS**, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.

- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

**WHEREAS**, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

- 1. Deviations #1, #2, #3, #4, #5, #6, #7, #8 are being approved only due to the exceptional circumstances presented by the in furtherance of policies in the Comprehensive Plan.
- 2. All aspects of the proposed development, as limited by the special conditions being imposed by the Town Council, are compatible with the surrounding area including building height, traffic flow, and intensity of use.
- 3. The proposed development, as modified by these deviations, exceeds all standards of the Fort Myers Beach Comprehensive Plan.
- 4. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
- 5. Granting these deviations will enhance the achievement of the objectives of the proposed development.
- 6. The general intent of the LDC, to protect the public health, safety, and welfare, will be preserved and promoted with these deviations.
- 7. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
- 8. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.



**WHEREAS**, the Town Council finds that this application to approve Ordinance 24-02 which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the request to approve Town of Fort Myers Beach's Ordinance no. 24-02 and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-02 is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

**THE FOREGOING ORDINANCE** was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a vote, the result was as follows:

**DULY PASSED AND ADOPTED** on this \_\_\_\_ day of February 2024.

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Vacant, Council Member        | N/A   |
| Karen Woodson, Council Member | _____ |

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of February 2024.

## **Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE**

### Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230160 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. The parking space closest to Palermo Circle shall includes signage which warns drivers that they are backing into a right of way and to be aware of oncoming traffic.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

### Schedule of Use

Convenience store without gas pumps

**PROOF OF PUBLICATION**

Amy Baker  
Town Clerk  
Town Of Ft Myers Beach \_Legals  
2523 ESTERO BLVD  
FORT MYERS BEACH FL 33931-3354

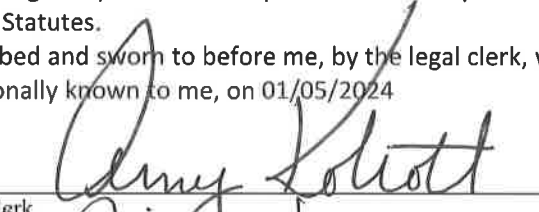
STATE OF WISCONSIN, COUNTY OF BROWN

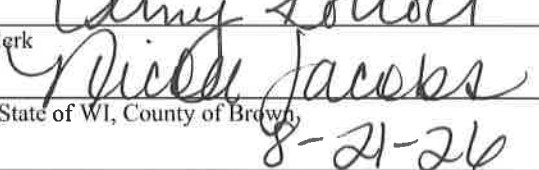
Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the News-Press, a daily newspaper published at Fort Myers in Lee County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Main Legal CLEGL, was published on the publicly accessible website of Lee County, Florida, or in a newspaper by print in the issues of, on:

01/05/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 01/05/2024

  
\_\_\_\_\_  
Legal Clerk

  
\_\_\_\_\_  
Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$552.00  
Order No: 9699512 # of Copies:  
Customer No: 1124390 1  
PO #: Ordinance 24-02; 1301 Estero 7-Eleven

**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*

**NICOLE JACOBS**  
Notary Public  
State of Wisconsin

# **NOTICE OF ZONING CHANGE**

The Town of Fort Myers Beach proposes to adopt the following ordinance:

## **ORDINANCE 24-02**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-02, WITH CONDITIONS FOR COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD., IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Two public hearings for the ordinance will be held on January 22, 2024, at 9 a.m. and on February 5, 2024 at 9 a.m. at town Hall Chambers at 2731 Oak Street, Fort Myers Beach, FL 33931.



## **Business Impact Estimate**

*This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the Town's website by the time notice of the proposed ordinance is published.*

Proposed ordinance's title/reference:

**Proposed Ordinance 24-02: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
  - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
  - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or

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<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.



d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

1. Summary of the proposed ordinance (must include a statement of the public purpose, such as serving the public health, safety, morals and welfare):

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 1301 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4-0060B.0160 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

The ordinance allows the development of a site, no compliance costs are likely to occur.

Ordinance 23-101 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The Town estimates that 1 private business will be impacted by this ordinance.



4. Additional information the governing body deems useful (if any):

*[You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: [City/Town/Village] staff solicited comments from businesses in the [City/Town/Village] as to the potential impact of the proposed ordinance by contacting the chamber of commerce, social media posting, direct mail or direct email, posting on [City/Town/Village] website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses].*





# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Commercial Planned Development

**CASE NUMBER:** DCI Rezoning, 20230160

**CASE NAME:** 1301 Estero Blvd, rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a convenience store.

**TOWN COUNCIL  
HEARING DATE** February 5, 2024 at 9 AM  
January 22, 2024 at 9 AM

**LPA  
HEARING DATE:** January 9, 2024 at 9 AM

**STAFF  
RECOMMENDATION:** Approve with conditions

**PREPARED/  
SUBMITTED BY:** Sarah Propst, AICP, PMP/ Jason Green AICP, CFM

### **I. APPLICATION SUMMARY**

Applicant/Owner: The Neighborhood Company/ 7-Eleven Inc.

Request: The applicant is requesting to rezone the property from Downtown Zoning to Commercial Planned Development for the redevelopment of a convenience store.

Subject property: See attached site plan

Physical Address: 1301 Estero Blvd

STRAP #: 19-46-24-W4-0060B.0160

FLU: Pedestrian Commercial

Zoning: Downtown

Adjacent zoning and land uses:

|        |                                                     |
|--------|-----------------------------------------------------|
| North: | Santos/ Mixed Residential<br>Multi-Family Residence |
| South: | Downtown/ Pedestrian Commercial<br>Commercial       |
| East:  | Downtown/ Pedestrian Commercial<br>Parking Lot      |
| West:  | Downtown/ Pedestrian Commercial<br>Restaurant       |

## **II. BACKGROUND AND ANALYSIS**

### **Background:**

The Neighborhood Company, applicant for 1301 Estero Blvd, 7-Eleven, is requesting a rezoning from Downtown zoning to Commercial Planned Development for the redevelopment of a convenience store. The proposed development will have an entrance on Estero Blvd and an entrance on Palermo Circle and a dumpster enclosure with access off of Santos Rd. The site previously contained a 7-Eleven convenience store, the Downtown zoning does allow a convenience store use by-right. The applicant is requesting a CPD to develop the site rather than requesting multiple variances from the Land Development Code. The requested deviations are listed below in this report.

### **Analysis:**

1301 Estero Blvd. has supported a convenience store in this location since 1965. The previous convenience store was approximately 2,100 square feet in size and appears to have provided eight compliant parking spaces and several noncompliant parking spaces. The curb cuts did not comply with the Town's road design requirements and very little landscaping was provided. The previous building did not meet current flood or building code requirements.

The proposed store is 3,500 square feet and will provide eight parking spaces. One of the parking spaces does not meet the minimum depth and two parking spaces will require backing into the Palermo Circle right of way. The proposed site will provide landscaping and compliant curb cut widths. The proposed building will meet all building regulations and will be designed to be FEMA compliant with dry floodproofing.

### **Requested Deviations:**

- 1) Relief from Sec. 34-706(d) which requires properties that front on Estero Blvd and have access to a secondary street, to take access from the secondary street, except when the requirement would prohibit reasonable access. The deviation allows driveway access from Palermo Circle and Estero Blvd.**

Applicant Justification: *The prior site condition provided for existing access*

*points (driveways) both onto Estero Blvd (Primary Street) and Palermo Circle (Secondary Street). Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Due to the unique triangular configuration of the subject property, which has been in place for decades and the need to redevelop the property to bring back the desired commercial convenience store use to the Town, it is necessary to continue to allow for access points from Estero Blvd., and Palermo Circle. Convenience stores rely heavily on customer vehicular traffic and truck deliveries, which require appropriately designed and safe traffic movement. Due to the physical limitations resulting from the triangular shape of the property the site plan continues access from Estero; however, the design has been improved to enhance functionality and safety.*

Staff Comment: The proposed deviation seems appropriate in this instance due to the irregular shape of the parcel. Truck deliveries on this particular parcel would be difficult to accommodate without the ability to enter one side and exit the opposite.

**2) Relief from Sec. 34-2013(a)(3) which limits driveway apron width, at the property line, to 25 feet. The request is to allow a 60-foot-wide curb cut at Palermo Circle and a 35-foot-wide curb cut on Estero Blvd.**

*Applicant Justification: The pre-Ian site design had non-conforming access (driveway) widths along Estero Blvd. and Palermo Circle. Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. In order to bring back the desired commercial convenience store use to Fort Myers Beach, the odd shaped lot configuration requires the need to maintain an access point wider than 25 feet along both Palermo Circle and Estero Blvd. The proposed MCP reduces the access point widths from over 100 feet to a maximum of 60 feet for Palermo Circle and 80 feet wide down to a maximum of 35 feet. This new configuration will improve circulation patterns, ensure safe and efficient truck maneuverability, and improve overall public safety conditions.*

Staff Comment: The irregular angle of the Palermo Circle entrance and the short width of the parking lot means that cars may need the additional entrance width to properly make turns and maneuver in the small parking lot.

**3) Relief from Sec. 10-285 the minimum driveway separation requirements along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet from the Estero Blvd/Palermo Circle intersection.**

*Applicant Justification: The proposed accessways onto Estero Boulevard and*

*Palermo Circle existed prior to Hurricane Ian and the destruction of the existing convenience store use. Relocation of the existing accessways to meet the distance separation from all surrounding street intersections or other accessways is impossible. Due to the unique triangular configuration of the subject property and the need to manage vehicular traffic and pedestrian connectivity to the site, the proposed site layout as detailed on the Master Concept Plan requires both accessways from Estero Blvd. and Palermo Circle to remain. The two accessways were non-conforming in terms of their location and overall width. The Estero Blvd. accessway was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Both accessways, pursuant to requested Deviation #2, will be significantly reduced in width. This will improve traffic circulation to and from the adjacent roadways. The proposed configuration, as detailed on the MCP, increases distance separation from all surrounding street intersection and accessways than what previously existed, thus working toward achieving general consistency of the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible.*

Staff Comment: The proposed location for the Palermo Circle entrance is likely the best scenario for this parcel, it is as far away from Estero Blvd without being too close to the Santos Rd. right of way. The location of the entrance from Estero Blvd could be further from Palermo Circle if the proposed building were closer to the Palermo Circle side of the property and the driveway were shifted to the southeast. However, the applicant has indicated that this site layout will not accommodate the proposed structure.

**4) Relief from Sec. 34-706(a) which requires parking to be located in the side or rear of the property. This deviation will allow the parking to be located closer to Palermo Circle than the primary structure.**

*Applicant Justification (full justification in application packet): The proposed redevelopment of the site has relocated the off-street parking to the western side of the site facing Palermo Circle, which is now the primary frontage and main entrance to the building. Although parking is not located in the side or rear yard, it has been relocated from the Estero Blvd. frontage. The reconfigured accessways into the site from Estero Blvd. and Palermo Circle have been reduced in width, allowing for more controlled vehicular movements in and out of the site. The new configuration removes the prior unsafe and undesirable off-street parking onto Estero Blvd. The closest parking stall proposed is more appropriately orientated parallel to Estero Blvd. and with a 10' separation from the Estero Blvd. This orientation also allows for the addition of an internal sidewalk connecting to the existing sidewalk along Estero Blvd., thus allowing for a safer, more pedestrian friendly site.*

Staff Comment: The proposed site layout has the parking to the side of the primary structure from the main roadway frontage, Estero Blvd. The parking is closer to Palermo Circle than the primary structure, however, the oddly shaped lot makes reorientation of the building and relocation of the parking lot challenging.

- 5) Relief from Sec. 34-2020(d)(2)i.1. which requires a minimum of four spaces per 1,000 square feet, for a total of 14 spaces for the 3,500 square foot structure. To allow eight parking spaces.**

*Applicant Justification (full justification in application packet): The site is located within an area of the town (Downtown zoning district) considered a “park-once” district and allows for a reduction of required vehicle parking by a multiplier of 67%. Through this multiplier, the required number of vehicle parking spaces would be reduced to a total of 5 spaces. However, LDC Sec. 34-953 states that requests for a rezoning to a Commercial Planned Development (CPD) zoning district require that building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district. Following this requirement means the proposed convenience store is required to revert to providing a minimum of 14 vehicle parking spaces. This is counterproductive to the desired “park-once” intent the town is seeking for this area. Reverting to the CB requirements results in the applicant’s inability to apply the parking reduction multiplier and burdens the site with excessive off-street parking in this more urbanized area of the town.*

*The applicant desires to meet the intent of being within the Downton “park-once” district by seeking a reduction in the number of off-street vehicle spaces from 14 to 8. Due to the unique triangular configuration of the subject property, the need to manage vehicular traffic and pedestrian connectivity to the site, and the need to support the proposed convenience store use results in the need to maintain a minimum of 8 parking spaces. The applicant also sees the benefit of and wants to promote the use of alternative modes of transportation to their development. The applicant is accomplishing this by designating an area for 2 bicycle racks, each able to hold 4 bicycles.*

**Staff Comment:** The applicant justification for providing fewer parking spaces does seem appropriate in this location. The Downtown reduction would apply to this property, if a rezoning to CPD were not being requested.

- 6) Relief from Sec. 34-705(a)(1) which requires buildings on Estero Blvd. to have at least 50% building frontage. The request would allow a building with at least 43% frontage along Estero Blvd.**

*Applicant Justification(full justification in application packet): The unique triangular shape of the lot presents a design challenge when attempting to meet the 50% Estero Blvd. frontage requirement. The requested deviation will allow for the frontage requirement to be reduced to 43% on Estero Blvd. The proposed site configuration locates the building where the property is the widest, removes off-street parking from the Estero Blvd. frontage, reduces the width of the vehicular access points from Estero Blvd. and Palermo Circle, and allows for an internal sidewalk from the entrance of the 7-Eleven to the sidewalk along Estero Blvd. This site configuration also brings the building closer to Estero Blvd., establishes a much safer, more pedestrian friendly environment and encourages*

*pedestrian connectivity in a heavily traveled, walkable area of the island.*

Staff Comment: The irregular shape of the lot makes this requirement difficult to meet. Staff and the applicant did discuss other layout options which would accomplish the 50% building frontage. Per the applicant, the other layout options were not able to accommodate the proposed building size and all of the necessary site features.

- 7) Relief from Sec. 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way.**

*Applicant Justification: Prior to Hurricane Ian, the convenience store's parking configuration required vehicles to back into the Palermo Circle, a local street, and Estero Boulevard, an arterial roadway, rights-of-ways in order to exit the site. The unique triangular shape of the lot presents a design challenge for access and the required parking of vehicles. The lot and redevelopment of the prior use does not provide sufficient room to allow for all spaces to leave in a forward motion into Palermo Circle right-of-way. The proposed reconfiguration of the site has created a defined two-way access from Estero Boulevard as well as Palermo Circle to improve vehicle maneuvering to and from the property. The site configuration has also allowed for improved pedestrian safety and connectivity from the right-of-way to the use. The proposed parking spaces, which are located on a property within the Pedestrian Commercial future land use category, do not unduly interfere with a critical congested road segment (Estero Boulevard) and do not affect normal usage of any existing or proposed sidewalks along Palermo Circle. The requested deviation to allow vehicles to back out of the most northern parking spaces into Palermo Circle, a local street, will not negatively impact the health, safety, and welfare of the community.*

Staff Comment: The irregular shape and small size of the lot makes this requirement difficult to meet. The previous site included several spaces that backed onto Estero Blvd and Palermo Circle. This is an improvement on the previous layout however staff recommends that the parking space includes signage warning drivers that they are backing into a right of way.

- 8) Relief from LDC Section 34-1744(b)(4)d, which requires that for sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 48 inches in height, but must not exceed six feet in height. The deviation would allow the refuse container screening (enclosure) to be a maximum of seven (7) feet in height.**

*Applicant Justification: This deviation request is a result of the Town Council's overall motion to allow the height of the proposed dumpster enclosure to be*

*increased to a maximum of 7 feet in height. The deviation will help alleviate the concern of refuse and recyclable materials and containers being visible from adjacent properties.*

Staff Comment: This deviation does not cause any nuisance or harm and was a request of the Town Council.

Neighborhood Compatibility:

Many of the previously existing commercial and residential properties in the area were destroyed by hurricane Ian. Very few structures remain standing. The proposed development will be more compliant than the previous development and will conform in many aspects. This convenience store use has been in existence in this area for many decades and is not likely to have an adverse impact on the neighborhood.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

*No errors or ambiguities exist.*

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

*The previous structure was destroyed by Hurricane Ian and redevelopment of the oddly shaped site makes the requests appropriate.*

(3) The impact of a proposed change on the intent of this chapter.

*No impact on the intent of this chapter will occur.*

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

*The proposed development is in compliance with the intent and intensity of the district and the use is allowed in the Downtown zoning district. The proposed site development will create more pedestrian safe sidewalks where an open apron previously existed, this is consistent with several pedestrian related objectives of the comprehensive plan. The redevelopment of a commercial use in the Pedestrian Commercial district is supported by the comprehensive plan. The new structure will be dry floodproofed and designed to current building and flood requirements which is supported by the comprehensive plan.*

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

*The proposed development will meet performance standards set for the in 34-2031.  
There are no special location standards for convenience stores.*

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

*The urban services exist in this location.*

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

*The request will have no impact on environmentally critical areas and natural resources.*

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

*The proposed use has been in existence in this location for many decades. It is not anticipated to have any detrimental impacts on existing or planned uses.*

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

*This use in this location will not place additional burden on the transportation network or other facilities and services.*

(13) For planned development rezonings, see [§ 34-216](#) for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

*The proposed use and requested deviations for the CPD comply with the Comprehensive Plan.*

(2) This chapter.

*The proposed use complies with this chapter except in regard to the deviations.*

(3) Any other applicable town ordinances or codes.

*The proposed request complies with the town ordinances and codes, except in regard to the deviations.*

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

#### Sec. 34-216 Findings:

a. The proposed use or mix of uses is appropriate at the subject location;

*The use is allowed by right in this location.*



b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;  
*Sufficient safeguards are provided for the public interest.*

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;  
*All conditions are related to the impacts on the public interest.*

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.  
*Not applicable.*

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.  
*Not applicable.*

3. Policy 4-C-4 on building heights taller than the standard height limit.  
*Not applicable.*

4. Policy 4-C-8 on density transfers.  
*Not applicable.*

5. Policy 4-E-1 on pre-disaster buildback.  
*Not applicable.*

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.  
*The proposed development is similar in size and use to the previous development and is expected to have no adverse impact on traffic.*

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and

*The requested deviations allow the development of the site, and are primarily due to the odd shape of the parcel.*

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

*The proposed deviations preserve the public health. The parking space that backs into Palermo Circle is a safety concern, however signage warning of oncoming traffic is required in the conditions.*

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

The deviations are not a detriment to the public interest and the proposed site is an

improvement over the previous development.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.  
*The deviations are consistent with the comprehensive plan.*

### **III. RECOMMENDATION**

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230160 with the attached conditions.

At the January 9<sup>th</sup> LPA hearing, the LPA recommended 6-0, with one member abstaining, to approve the request with conditions.

At the January 22<sup>nd</sup> Town Council hearing the Town Council asked that an additional deviation be requested to allow a dumpster enclosure up to seven feet in height. The Town Council scheduled a second hearing for February 5<sup>th</sup>, 2024.

### **IV. CONDITIONS OF APPROVAL**

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. The parking space closest to Palermo Circle shall include signage which warns drivers that they are backing into a right of way and to be aware of oncoming traffic.
4. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

#### **Staff Report Exhibits:**

A – Master Concept Plan

B – Letter to Adjacent Property Owners

C – Complete Application

| OPEN SPACE         |          |          |
|--------------------|----------|----------|
|                    | REQUIRED | PROVIDED |
| MINIMUM PERCENTAGE | 0        | 16%      |
| MINIMUM AREA       | 0 AC     | 0.049 AC |

1. THE BUILDING SHALL BE A MAXIMUM OF 3,500 +/- SQUARE FEET.
2. PROJECT WILL BE DEVELOPED IN ONE PHASE.
3. WATER MANAGEMENT REQUIREMENTS FOR REDEVELOPMENT PROJECTS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT THE TIME OF D.O.
4. THE EXACT BUILDING AND SITE IMPROVEMENT CONFIGURATIONS ARE PRELIMINARY IN NATURE AND SUBJECT TO CHANGE. THE FINAL DESIGN AND IMPROVEMENT DETAILS SHALL BE DEFINED AS PART OF THE DEVELOPMENT ORDER (DO) PROCESS.
5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 34 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
6. NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT. NO PROTECTED SPECIES SURVEY IS REQUIRED AS PROPERTY IS LESS THAN ONE (1) ACRE PER LDC SEC. 10-473.
7. ANY PROPOSED STRUCTURE LOCATED IN A SPECIAL FLOOD HAZARD AREA (SFHA) WITH COMMERCIAL SPACE BELOW THE BASE FLOOD ELEVATION (AT GROUND LEVEL) WILL BE PROPERLY DRY-FLOODPROOFED IN ACCORDANCE WITH LDC ARTICLE IV, FLOODPLAN REGULATIONS AND LDC SECTION 34-631(C). THE DRY-FLOODPROOFING SHALL INCLUDE FASTENING DESIGNED TO BE 'VISUALLY UNOBTUSIVE' AND INTEGRATED INTO THE DESIGN OF THE PRINCIPAL FACADES.

1. RETAIL STORE, SMALL TO INCLUDE: CONVENIENCE STORES, NO FUEL PUMPS  
(OPEN 24 HOURS / 7 DAYS)

1. 8 VEHICLE PARKING SPACES FOR CONVENIENCE FOOD AND BEVERAGE STORES.
2. 8 BICYCLE PARKING SPACES.

1. SEEKS RELIEF FROM LDC SECTION 34-706(D), WHICH REQUIRES THAT WHEN PROPERTIES FRONTING ON ESTERO BOULEVARD, EXISTING DRIVEWAY AND PARKING SPACES SHALL BE RELOCATED FROM ESTERO BOULEVARD TO SECONDARY STREETS, EXCEPT WHERE THESE REQUIREMENTS WOULD PROHIBIT ALL REASONABLE ACCESS TO A PROPERTY. THE DEVIATION WOULD ALLOW DRIVEWAYS TO REMAIN THAT CONNECT TO ESTERO BOULEVARD AND PALMERO CIRCLE.
2. SEEKS RELIEF FROM SECTION 34-2013 (A)(3) WHICH STATES THAT THE MAXIMUM WIDTH AT THE PROPERTY FOR PARKING LOT ACCESS IS 25 FEET. THE DEVIATION WOULD ALLOW FOR A MAXIMUM PARKING LOT ACCESS WIDTH AT THE PROPERTY LINE OF 60 FEET ALONG PALERMO CIRCLE AND 35 FEET ALONG ESTERO BLVD.
3. SEEKS RELIEF FROM THE DRIVEWAY SEPARATION REQUIREMENTS OF LDC SECTION 10-285 ALONG PALERMO CIRCLE. THE DEVIATION WOULD ALLOW DRIVEWAY (VEHICLE ACCESS) SEPARATION ALONG ESTERO BOULEVARD TO BE APPROXIMATELY 141 FEET FROM THE ADJACENT ACCESS POINT TO THE EAST AND APPROXIMATELY 52 FEET FROM THE ESTERO BLVD/PALERMO INTERSECTION. THE DEVIATION WOULD ALSO ALLOW DRIVEWAY (VEHICLE) SEPARATION ALONG PALERMO CIRCLE TO BE APPROXIMATELY 52 FEET FROM THE SANTOS ROAD INTERSECTION AND APPROXIMATELY 105 FEET FROM THE ESTERO BLVD/PALERMO CIRCLE INTERSECTION.
4. SEEKS RELIEF FROM LDC SECTION 34-706(A) WHICH REQUIRES OFF-STREET PARKING LOT TO BE PLACED IN THE SIDE OR REAR YARDS. THE DEVIATION WOULD ALLOW THE OFF-STREET PARKING TO BE LOCATED AND ORIENTATED TOWARD THE PALERMO CIRCLE FRONTAGE.
5. SEEKS RELIEF FROM LDC SECTION 34-2020(D)(2)1.1 WHICH REQUIRES A MINIMUM OF FOUR SPACES PER 1,000 SQUARE FEET OF TOTAL FLOOR AREA OR 14 PARKING SPACES FOR THE PROPOSED MAX. 3,500 SQUARE FEET OF CONVENIENCE STORE TOTAL FLOOR AREA. THE DEVIATION WOULD ALLOW FOR A REDUCTION IN THE MINIMUM REQUIRED PARKING SPACES TO 8 PARKING SPACES.
6. SEEKS RELIEF FROM LDC SECTION 34-705(A)(1) WHICH REQUIRES BUILDING FRONTAGES ON ESTERO BOULEVARD TO BE AT LEAST 50 PERCENT OF THE LOT FRONTAGE. THE DEVIATION WOULD ALLOW FOR THE BUILDING FRONTAGE ON ESTERO BOULEVARD TO BE AT LEAST 43 PERCENT OF THE LOT FRONTAGE.
7. SEEKS RELIEF FROM LDC SECTION 34-2015(5) WHICH REQUIRES SUFFICIENT MANUEVERING ROOM TO ALLOW AN EXITING VEHICLE TO LEAVE THE PARKING LOT IN A FORWARD MOTION. THE DEVIATION WOULD ALLOW FOR VEHICLES TO LEAVE THE MOST NORTHERN PARKING SPACES IN A REVERSE MOTION INTO THE PALERMO CIRCLE RIGHT-OF-WAY.

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.  
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29  
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED  
SURVEYOR PRIOR TO USE.

TO BLVD. COMMERCIAL PLANNED  
DEVELOPMENT

---

MASTER CONCEPT PLAN

BRANDON M. FREY, P.E.  
FL. LICENSE NO. 86651  
FL. COA # 29226





Town of Fort Myers Beach  
Community Development Services - Planning Division  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

#### NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please make sure to check for any changes in the meeting location by visiting our website at [WWW.FMBGOV.COM](http://WWW.FMBGOV.COM)

TIME: 9 AM  
DATE: February 5, 2024  
CASE: DCI20230160  
ADDRESS: 1301 Estero Blvd  
APPLICANT: Kenrick Gallander AICP  
REQUEST: The applicant is requesting to rezone from Downtown to Commercial Planned Development for the redevelopment of a 7-Eleven convenience store.

TOWN CONTACT: SARAH PROPST [SARAH.PROPST@FMBGOV.COM](mailto:SARAH.PROPST@FMBGOV.COM)

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach  
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Fort Myers Beach, FL 33931

Town of Fort Myers Beach  
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Fort Myers Beach, FL 33931

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

Town of Fort Myers Beach  
2525 Estero Blvd,  
Fort Myers Beach, FL 33931

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»  
«MailAddress»  
«MailCity», «MailState», «MailZip»



August 25, 2023

Town of Fort Myers Beach  
Community Development Department  
2525 Estero Blvd.  
Ft Myers Beach, FL 33931

**Subject: 1301 Estero Blvd Commercial Planned Development (CPD) – Submittal #1  
A Planned Development Rezone Application**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, J.R. Evans Engineering, P.A. an Application for a Planned Development associated with the subject property located at 1301 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property from Downtown to Commercial Planned Development (CPD) to allow flexibility to redevelop the subject property and rebuild a desired 3,500 +/- SF convenience store.

Please find attached the following items to this cover letter consistent with application submittal checklist:

1. Application Filing Fee;
2. Application for Public Hearing:
  - Disclosure of Interest Affidavit & Authorization Form;
  - Letter of Authorization;
  - Exhibit 6-1 – STRAP # and Legal Description (Platted Lots)
  - Exhibit 6-2 – Boundary Survey;
  - Exhibit 6-3 – Area Location Map;
  - Exhibit 6-6 – List of Surrounding Property Owners within 500';
  - Exhibit 6-7– Map Surrounding Property Owners within 500'; and
  - Mailing Labels Surrounding Property Owners within 500';
3. Planned Development Zoning - Supplement PH-D:
  - Narrative:
    - o Background & Request
    - o Proposed Use/Development
    - o Location, Site Design, & Compatibility
    - o Supplement PH-D Section A: Comprehensive Plan Amendments
    - o Supplement PH-D Section B: Phasing of Construction
    - o Supplement PH-D Section C: Comp Plan Compliance
    - o Supplement PH-D Section D: Design Standards Compliance:
    - o Supplement PH-D Section E: Decision-making Compliance
    - o Conclusion



- Schedule of Deviations and Justifications;
- Master Concept Plan;
- Architectural Elevations; and
- Schedule of Uses.

We look forward to your review and are available to answer questions related to this application.

Sincerely,

**The Neighborhood Company**

Kenrick Gallander, AICP  
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Creighton Construction & Management  
Elizabeth Fountain  
Daniel Mumford  
File: #230031.01.01



**1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)  
Planned Development Rezone**

**FILING FEE**

Town Fee Schedule 2023:

- PD Rezone = \$8,000

**TOTAL: \$8,000**





## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to [zoningpermits@fmbgov.com](mailto:zoningpermits@fmbgov.com). Please do not submit the instructions at the end of the application.

Site Address: 1301 Estero Blvd., Ft Myers Beach, FL 33931

STRAP Number: 19-46-24-W4-0060B.0160

Applicant: The Neighborhood Company Phone: 850-803-5621

Contact Name: Kenrick S. Gallander, AICP Phone: \_\_\_\_\_

Email: kg@theneighborhood.company Fax: \_\_\_\_\_

Current Zoning District: Downtown

Future Land Use Map (FLUM) Category: Pedestrian Commercial

FLUM Density Range: \_\_\_\_\_ Platted Overlay: ☐ YES ☒ NO

### ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☒ Planned Development ☒ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: \_\_\_\_\_

### SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

### PART I – General Information

A. Applicant\*: The Neighborhood Company Phone: 850-803-5621

*\*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

*Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 5618 Whispering Willow Way, Fort Myers, FL 33908

Email: kg@theneighborhood.company Fax: \_\_\_\_\_

Contact Name: Kenrick Gallander Phone: 850-803-5621



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- |                                                                                                                        |                                           |                                              |
|------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Owner*                                                                                        | <input type="checkbox"/> Land Trust*      | <input type="checkbox"/> Partnership*        |
| <input type="checkbox"/> Corporation*                                                                                  | <input type="checkbox"/> Association*     | <input type="checkbox"/> Condominium*        |
| <input type="checkbox"/> Subdivision*                                                                                  | <input type="checkbox"/> Timeshare Condo* | <input type="checkbox"/> Contract Purchaser* |
| <input checked="" type="checkbox"/> Authorized Representative* <input type="checkbox"/> Other* (please indicate) _____ |                                           |                                              |

*\*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.  
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Kenrick Gallander, AICP Phone: 850-803-5621  
Address: 5618 Whispering Willow Way, Ft Myers, FL 33908  
Email: kg@theneighborhood.company Fax: \_\_\_\_\_

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Elizabeth Fountain, P.E. Phone: 239-405-9148  
Address: 9961 Interstate Commerce Dr. #230, Fort Myers, FL 33913  
Email: Elizabeth@jrevansengineering.com Fax: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_ Fax: \_\_\_\_\_

### PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section \_\_\_\_\_ - \_\_\_\_\_
- ☐ Conventional Rezoning from \_\_\_\_\_ to \_\_\_\_\_
- ☒ Planned Development
- ☒ Rezoning from Downtown to ☒ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: \_\_\_\_\_
- ☐ Extension/reinstatement of Master Concept Plan. List project number: \_\_\_\_\_



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation      ☐ Right-of-Way      ☐ Easement
- ☐ Other. Please Explain: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

### PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

Code Section: \_\_\_\_\_ Description: \_\_\_\_\_

### PART IV – Property Ownership (Single Owner)

- ☐ Single Owner (individual or husband and wife)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

### AFFIDAVIT

#### APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, \_\_\_\_\_ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The foregoing instrument was certified and subscribed before me by means of \_\_\_\_\_ physical presence OR \_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_ ☐ who is personally known to me OR ☐ who has produced

\_\_\_\_\_ as identification.

(SEAL)

Notary Public Signature \_\_\_\_\_

### PART V

#### Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

☒ Complete Disclosure of Interest Form (see below)

☐ Attach list of property owners as Exhibit 5-1

☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3

☐ Letter of Opinion - Exhibit 5-4

#### DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

7-Eleven, INC- 3200 Hackberry Rd Irving, TX 75063

Percentage of Stock

100%

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: \_\_\_\_\_

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name

Address

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

### AFFIDAVIT

**APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE**

I, Grant Distel (name), as Sr. Director of Development (title)  
of 7-Eleven Inc. (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT  
APPLICATION for PUBLIC HEARING

7-Eleven Inc

Name of Entity (corporation, partnership, LLP, LLC, etc)

*Grant Distel*

Signature

Sr Director of Development

Title

Grant Distel

Typed or Printed Name

Date

STATE OF FLORIDA COUNTY OF LEE

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 15 day of AUGUST, 2023, by GRANT DISTEL, ☒ who is personally known to me OR ☐ who has produced \_\_\_\_\_ as identification.



*Kelli J Frost*  
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W4-0060B.0160

Property Address: 1301 Estero Blvd., Ft Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: Venetain Gardens Blk B

Book: 6 Page: 70 Unit: \_\_\_\_\_ Block: \_\_\_\_\_ Lot(s): 16 & 17

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions: **SEE SURVEY.**

Width (please provide an average width if irregular in shape) \_\_\_\_\_ feet

Depth (please provide an average width if irregular in shape) \_\_\_\_\_ feet

Frontage on street: \_\_\_\_\_ feet. Frontage on waterbody: \_\_\_\_\_ feet

Total land area: 10,677 +/- \_\_\_\_\_ ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

The site is approximately 0.2 miles south and east of the Matanzas Pass Bridge on  
Estero Blvd. at the corner of Estero Blvd. and Palermo Circle.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Mixed Residential

☐ Boulevard

☒ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay





## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

### EXPLANATORY NOTES

**Please do not print, copy and submit these instructions**

Please submit required applications, supplemental information, exhibits and documents to [zoningpermits@fmbgov.com](mailto:zoningpermits@fmbgov.com).

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

#### Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

#### Explanatory Notes – Part II

Indicate the requested action.

#### Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

#### Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

### Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

### Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



## COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

### Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



THE NEIGHBORHOOD  
COMPANY

I Grant Distel, as authorized member of 7-Eleven, Inc. owner of property located at 1301 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 19-46-24-W4-0060B.0160, hereby authorizes The Neighborhood Company regarding the above-referenced property to serve as agent for the Town of Ft Myers Beach Planned Development Rezone Application.

7-Eleven, Inc.

By: 

Print Name: Grant Distel

Title: Sr. Director of Development

STATE OF FLORIDA  
CITY OF LEE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 15 day of AUGUST, 2023 by GRANT DISTEL, as SR. DIRECTOR OF DEVELOPMENT of 7-ELEVEN, INC, on behalf of the company(s), who ☐ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)



  
Notary Public, State of FLORIDA  
Print Name: Kelli J Frost  
My Commission Expires: 2-26-24



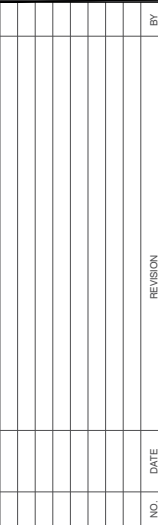
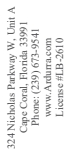
**1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)  
Planned Development Rezone**

**EXHIBIT 6-1: STRAP# & LEGAL DESCRIPTION**

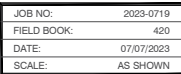
- STRAP#: 19-46-24-W4-0060B.0160
- Description: (*Instr. No. 2006000352023*)
  - o Lots 16 and 17, Block B, Venetian Gardens, according to the plat thereof as recorded in Plat Book 6, Page 70, Public Records of Lee County, Florida.



Lots 16 and 17, Block B, Venetian Gardens, according to the plat thereof as recorded in Plat Book 6, Page 70  
Public Records of Lee County, Florida.



SECTION 19, TOWNSHIP 46 S, RANGE 24 E



DRAWN BY  
MW

Page 344

1. MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.
2. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
3. 1. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED, UNLESS OTHERWISE SHOWN.
4. NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR DIGITAL SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER (P.S.M.).
5. COORDINATES SHOWN HEREON ARE IN REFERENCE TO THE NORTH AMERICAN VERTICAL DATUM 1988 (N.A.D.88) AND BASED ON NATIONAL GEODETIC SURVEY BENCHMARK (872-3366 TIDAL).
6. THE NATIONAL FLOOD INSURANCE INFORMATION:  
COMMUNITY NUMBER: 126673  
PANEL NUMBER: 12071 C 054  
SUFFIX: G  
EFFECTIVE DATE: 11/17/2022  
FIRM ZONE: AE I1 AND AE I2  
BASE FLOOD ELEVATION: EL '1' AND EL '2' (N.A.D.88)  
(FIRM PANEL LISTED ABOVE SHOULD BE CONSULTED FOR VERIFICATION OF ALL FLOOD RELEVANT INFORMATION)  
BEARINGS ARE BASED ON THE NORTHERLY RIGHT OF WAY OF ESTERO BOULEVARD, BEING N70°27'31" W
7. DATE OF LAST FIELD WORK : JULY 7, 2023.
8. RECORDING INSTRUMENTS LISTED HEREON SHOULD BE CONSULTED AND REVIEWED FOR ADDITIONAL INFORMATION.
9. THIS INSTRUMENT WAS COMPLETED WITHOUT THE BENEFIT OF AN UP TO DATE TITLE COMMITMENT.
10. ADDITIONS TO OR DELETIONS FROM SURVEY OR REPORTS BY OTHER THAN THE SIGNING SURVEYOR AND MAPPER ARE PROHIBITED BY LAW WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SIGNING SURVEYOR AND MAPPER. COPYRIGHT 2023, ARDURRA GROUP, INC., ALL RIGHTS RESERVED. WITHOUT THE WRITTEN CONSENT OF ARDURRA GROUP, INC. COORDINATES SHOWN HEREON ARE IN REFERENCE TO THE FLORIDA WEST STATE PLANE COORDINATE SYSTEM (ZONE 0602) (NAD 83 2011) AND DETERMINED USING THE FDOT PERMANENT SURVEY STATIONATION DATA (PSPN).
11. NO BUILDINGS, NO CEMETERIES, NO HISTORICAL MONUMENTS, NO GAPS OR GORES, PROPERTY MATHEMATICALLY CLOSED, AND NO EARTH MOVING.
12. THIS INSTRUMENT WAS COMPLETED USING THE HEADS UP DIGITIZATION OF LINEWORK DEPICTED ON THE FEMA FLOOD INSURANCE RATE MAPS.

CB #333  
Grate El. 3.82'  
E.I.E. = (-) 0.68' 36" RCP  
W.I.E. = (-) 0.18' 30" RCP  
S.I.E. = (-) 0.08' 18" RCP

CB #327 (*Box silted in*)  
Grate El. = 3.98'  
N.I.E. = (-) 0.12' 18" RCP

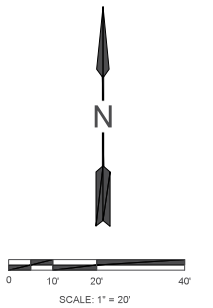
 Digitally signed by John M Harris  
DN: cn=John M Harris,  
o=CasItemAD141000000182AC75A740001C184,  
ou=AFRURA GROUP INC., c=US  
Location: State of Florida  
Contact Info: L57424  
Date: 2023.07.11 10:06:26 -0400

**JOHN M. HARRIS (FOR THE FIRM)**  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO. 7424  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR  
DIGITAL SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER





PROJECT LOCATION (N.T.S)





# 1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)

## EXHIBIT 6-6: 500' SURROUNDING PROPERTY OWNERS LIST

Buffer: 500 List Size: 90

| FolioId  | OwnerName                      | OwnerName2           | MailAddress                  | MailCity             | MailState | MailZip |
|----------|--------------------------------|----------------------|------------------------------|----------------------|-----------|---------|
| 10228074 | 7-ELEVEN INC                   | CORP INCOME TAX DEPT | 3200 HYACKBERRY RD           | IRVING               | TX        | 75063   |
| 10127256 | TPI-FMB LLC                    |                      | 103 15TH AVE NW STE 200      | WILLMAR              | MN        | 56201   |
| 10617008 | VENETIAN GARDENS CANAL         |                      | PALERMO CIR                  | FORT MYERS BEACH     | FL        | 33931   |
| 10617009 | VENETIAN GARDENS CANAL         |                      | PALERMO CIR                  | FORT MYERS BEACH     | FL        | 33931   |
| 10228046 | VAN BURGESS ROBERT             |                      | PO BOX 2717                  | FORT MYERS BEACH     | FL        | 33932   |
| 10228062 | LANI KAI LP                    |                      | 1400 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10228063 | LANI KAI LP                    |                      | 1400 ESTERO RD               | FORT MYERS BEACH     | FL        | 33931   |
| 10228064 | AULLS PATRICIA E L/E           |                      | 7241 BERGAMO WAY UNIT 101    | FORT MYERS           | FL        | 33966   |
| 10228065 | WILCOX LANCE                   |                      | 1339 SANTOS RD               | FORT MYERS BEACH     | FL        | 33931   |
| 10228066 | PARILLA DAVID R TR             |                      | 1335 SANTOS RD               | FORT MYERS BEACH     | FL        | 33931   |
| 10228067 | CONNER CHARLES R & GAIL D      |                      | 53 POMPAÑO ST                | FORT MYERS BEACH     | FL        | 33931   |
| 10228068 | PARILLA DAVID R TR             |                      | 1335 SANTOS RD               | FORT MYERS BEACH     | FL        | 33931   |
| 10477703 | LKLB OF FLORIDA INC            |                      | 1400 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10228069 | KLC SURF LLC                   | CHRISTOPHER PRIMEAU  | 4625 W EUCLID AVE            | TAMPA                | FL        | 33629   |
| 10228070 | KLC SURF LLC                   | CHRISTOPHER PRIMEAU  | 4625 W EUCLID AVE            | TAMPA                | FL        | 33629   |
| 10228071 | LANI KAI LP                    | ROBERT G CONIDARIS   | 1400 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10228072 | LANI KAI LP                    | ROBERT G CONIDARIS   | 1400 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10228073 | LANI KAI LP                    | ROBERT G CONIDARIS   | 1400 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10469664 | 463 PALMERO LLC                |                      | 1421 E LAKE SHORE DR         | SPRINGFIELD          | IL        | 62712   |
| 10228091 | 499 PALERMO LLC                |                      | 1421 E LAKE SHORE DR         | SPRINGFIELD          | IL        | 62712   |
| 10228092 | MILLER JONATHAN T              |                      | PO BOX 80490                 | FORT WAYNE           | IN        | 46898   |
| 10228093 | TEZAK HELEN C TR               |                      | 50 CHAPEL ST APT 4           | FORT MYERS BEACH     | FL        | 33931   |
| 10228094 | R & D ENTERPRISES OF           |                      | 3436 CHURCH ST               | STEVENS POINT        | WI        | 54481   |
| 10558864 | WEIGERT ANTJE & MARTIN         |                      | 415 CAPE CORAL PKWY W        | CAPE CORAL           | FL        | 33914   |
| 10228095 | JAMES R BRATLEY & JOAN E BRATL |                      | 15120 WEST ILIFF PL          | LAKEWOOD             | CO        | 80228   |
| 10228096 | GNIRCK RAPHAEL +               |                      | AM MUEHLBERG 39A             | BAD HOMBURG VD HOEHE | GERMANY   | 61348   |
| 10228097 | STRICK RICHARD A &             |                      | 5804 PARK RIDGE CT           | FORT COLLINS         | CO        | 80528   |
| 10228098 | HENNESSEY PATRICIA J &         |                      | 460 PALERMO CIR              | FORT MYERS BEACH     | FL        | 33931   |
| 10228099 | NORTH KEY INC                  |                      | 7150 RED LION FIVE POINTS RD | SPRINGBORO           | OH        | 45066   |
| 10228100 | DONNA M BYRD TRUST +           |                      | 5701 BLUNK KNOB RD           | ELIZABETH            | IN        | 47117   |
| 10228101 | RELAAX LLC                     |                      | 2201 E WILLOW ST STE D 363   | SIGNAL HILL          | CA        | 90755   |
| 10228102 | RELAAX LLC                     |                      | 2201 E WILLOW ST STE D 363   | SIGNAL HILL          | CA        | 90755   |
| 10599453 | LUSSIER TARA CORBISHLEY &      |                      | 745 BIMINI LN                | PUNTA GORDA          | FL        | 33950   |
| 10599454 | RELAAX LLC                     |                      | 2201 E WILLOW ST STE D 363   | SIGNAL HILL          | CA        | 90755   |
| 10228134 | JKCK LLC                       |                      | 3360 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10619304 | 201 PALERMO LLC                |                      | 1421 E LAKE SHORE DR         | SPRINGFIELD          | IL        | 62712   |
| 10619305 | 201 PALERMO LLC                |                      | 1421 E LAKE SHORE DR         | SPRINGFIELD          | IL        | 62712   |
| 10228136 | DAY BILLY WAYNE                |                      | 3708 SHANNON RUN TRL         | LOUISVILLE           | KY        | 40299   |
| 10228137 | LUMP THOMAS F & ANN C          |                      | 145 PALERMO CIR              | FORT MYERS BEACH     | FL        | 33931   |
| 10228138 | SLOMSKI STEVEN A &             |                      | PO BOX 2428, PMB 25382       | PENSACOLA            | FL        | 32513   |
| 10228156 | RILEY SUSAN K TR               |                      | 180 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10228157 | BAILEY JAMES P & LANA C        |                      | 162 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10574248 | SANDY BEACH L L C              |                      | 1892 SANDY BEACH RD          | CLARION              | IA        | 50525   |
| 10574249 | NEUMANN SHEILA                 |                      | 146 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10228159 | 140 PRIMO LLC                  | SHEILA NEUMANN       | 146 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10228160 | SEABIRD RESIDENTIAL LLC        |                      | 1709 SW 47TH TER             | CAPE CORAL           | FL        | 33914   |
| 10228161 | HIGHLEY JAY E & MARY B         |                      | 124 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10228162 | HIGHLEY MARY BETH TR           |                      | 6620 ESTERO BLVD #1006       | FORT MYERS BEACH     | FL        | 33931   |
| 10228163 | KWSH RE LLC                    |                      | 2601 MULBERRY AVE            | MUSCATINE            | IA        | 52761   |
| 10228164 | ARLINGTON GREEN HOMES LLC      |                      | 44 ALGONQUIN CT              | MARCO ISLAND         | FL        | 34145   |
| 10228165 | KALIDINDI RAMA USHA +          |                      | 44354 APACHE CIR             | ASHBURN              | VA        | 20147   |
| 10228167 | 1249 ESTERO ADVENTURES LLC     |                      | 290 BAHIA VIA                | FORT MYERS BEACH     | FL        | 33931   |
| 10228184 | SMART PARK OF FMB LLC          |                      | 11330 LONG WATER CHASE COURT | FORT MYERS           | FL        | 33908   |
| 10228190 | GANIM GEORGE W & JOSEPHINE     |                      | 4666 MAIN ST                 | BRIDGEPORT           | CT        | 6606    |
| 10228191 | GANIM GEORGE W & JOSEPHINE     |                      | 4666 MAIN ST                 | BRIDGEPORT           | CT        | 6606    |
| 10228192 | LANI KAI LP                    | ROBERT G CONIDARIS   | 1400 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10228193 | STEPNEY LLC                    |                      | 4666 MAIN ST                 | BRIDGEPORT           | CT        | 6606    |
| 10228194 | GANIM GEORGE W SR &            |                      | 4666 MAIN ST                 | BRIDGEPORT           | CT        | 6606    |
| 10228195 | ATWATTER LLC                   | WALTER RAY SIMMONS   | 12711 CHATHAM DR             | FORT MYERS           | FL        | 33908   |
| 10228196 | RIGHT CHOICE INVESTMENTS LLC   |                      | 4448 KELLY DR                | STERLING HEIGHTS     | MI        | 48314   |
| 10228197 | OUR BEACH SAND LLC             |                      | 12483 SUMMERWOOD DR          | FORT MYERS           | FL        | 33908   |
| 10228348 | GANIM PROPERTIES LLC           |                      | 4666 MAIN ST                 | BRIDGEPORT           | CT        | 6606    |
| 10557364 | GANIM PROPERTIES LLC           |                      | 4666 MAIN ST                 | BRIDGEPORT           | CT        | 6606    |
| 10599528 | TPI-FMB LLC                    |                      | 103 15TH AVE NW STE 200      | WILLMAR              | MN        | 56201   |
| 10557293 | TPI-FMB SUITES LLC             |                      | 1207 ESTERO BLVD             | FORT MYERS BEACH     | FL        | 33931   |
| 10228358 | JAMES A + JEAN B BISCHOFF TRUS | JEFF MAAAS           | 20468 ARDORE LN              | ESTERO               | FL        | 33928   |
| 10228359 | GRIFFIS LLC                    |                      | 9051 E CHICAGO RD            | JEROME               | MI        | 49249   |
| 10228360 | PATTON THOMAS D &              |                      | 153 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10228361 | ALMEIDA ROBERT M +             |                      | 163 PRIMO DR                 | FORT MYERS BEACH     | FL        | 33931   |
| 10228378 | RICHARD JOHN W TR              |                      | 237 OLD SAN CARLOS BLVD      | FORT MYERS BEACH     | FL        | 33931   |
| 10228379 | DEEP DISH DOUGH LLC            |                      | 328 BUCKLIN ST               | LA SALLE             | IL        | 61301   |



|          |                                |                              |                             |                  |    |       |
|----------|--------------------------------|------------------------------|-----------------------------|------------------|----|-------|
| 10228380 | MILLER CONRAD RE LLC           |                              | PO BOX 80490                | FORT WAYNE       | IN | 46898 |
| 10456515 | INVESTMENTS OF FMB LLC         | MARK DEIFT                   | 560 NW 118 AVE              | PLANTATION       | FL | 33325 |
| 10569721 | RICHARD JOHN W TR              |                              | 237 OLD SAN CARLOS BLVD     | FORT MYERS BEACH | FL | 33931 |
| 10228395 | BATIKI WEST CONDO ASSN INC     | SUITOR MIDDLETON COX + ASSOC | 15751 SAN CARLOS BLVD STE 8 | FORT MYERS       | FL | 33908 |
| 10462572 | CRESCENT SHORE CONDO ASSOC     |                              | PO BOX 2990                 | FORT MYERS BEACH | FL | 33932 |
| 10599529 | TPI-FMB LLC                    |                              | 103 15TH AVE NW STE 200     | WILLMAR          | MN | 56201 |
| 10599530 | TPI-FMB LLC                    |                              | 103 15TH AVE NW STE 200     | WILLMAR          | MN | 56201 |
| 10599531 | TPI-FMB LLC                    |                              | 103 15TH AVE NW STE 200     | WILLMAR          | MN | 56201 |
| 10599532 | TPI-FMB LLC                    |                              | 103 15TH AVE NW STE 200     | WILLMAR          | MN | 56201 |
| 10228463 | 1300 ESTERO BLVD LLC           |                              | 32 BAYVIEW BLVD             | FORT MYERS BEACH | FL | 33931 |
| 10228464 | BEYER TAMMY E TR               |                              | 9656 HALYARDS CT # 24       | FORT MYERS       | FL | 33919 |
| 10228465 | ANDRESEN EDWIN TR              |                              | 7960 PRESERVATION DR        | INDIANAPOLIS     | IN | 46278 |
| 10228466 | BOCCELLA SALVATORE             |                              | 4 POINT VIEW CT             | SICKLERVILLE     | NJ | 8081  |
| 10228467 | JOHNSON NANCY ANN L/E          |                              | 9 NANCY LN                  | FORT MYERS BEACH | FL | 33931 |
| 10228468 | HECK LLC                       |                              | 15561 CATALPA COVE DR       | FORT MYERS       | FL | 33908 |
| 10228469 | CONANT DONNA TR                |                              | 8122 S FOREST HILL CIR      | FRANKLIN         | WI | 53132 |
| 10228470 | DENNIS R + CYNTHIA L LOKEN TRU |                              | 106 ICHABOD LN              | MANKATO          | MN | 56001 |
| 10228471 | LANDOLFI STEVEN J              |                              | 22 VETO ST                  | PROVIDENCE       | RI | 2908  |
| 10228472 | NIEMEIER RYAN & SUMMER         |                              | 106 S WALNUT ST             | LA CRESCENT      | MN | 55947 |



# THE NEIGHBORHOOD COMPANY

## 1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone

### EXHIBIT 6-7: 500' SURROUNDING PROPERTY OWNERS MAP



TPI-FMB LLC  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

VENETIAN GARDENS CANAL  
PALERMO CIR  
FORT MYERS BEACH FL 33931

VENETIAN GARDENS CANAL  
PALERMO CIR  
FORT MYERS BEACH FL 33931

VAN BURGESS ROBERT  
PO BOX 2717  
FORT MYERS BEACH FL 33932

LANI KAI LP  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
1400 ESTERO RD  
FORT MYERS BEACH FL 33931

AULLS PATRICIA E L/E  
7241 BERGAMO WAY UNIT 101  
FORT MYERS FL 33966

WILCOX LANCE  
1339 SANTOS RD  
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR  
1335 SANTOS RD  
FORT MYERS BEACH FL 33931

CONNER CHARLES R & GAIL D  
53 POMPAÑO ST  
FORT MYERS BEACH FL 33931

PARILLA DAVID R TR  
1335 SANTOS RD  
FORT MYERS BEACH FL 33931

LKLB OF FLORIDA INC  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

KLC SURF LLC  
CHRISTOPHER PRIMEAU  
4625 W EUCLID AVE  
TAMPA FL 33629

KLC SURF LLC  
CHRISTOPHER PRIMEAU  
4625 W EUCLID AVE  
TAMPA FL 33629

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

463 PALMERO LLC  
1421 E LAKE SHORE DR  
SPRINGFIELD IL 62712

499 PALERMO LLC  
1421 E LAKE SHORE DR  
SPRINGFIELD IL 62712

MILLER JONATHAN T  
PO BOX 80490  
FORT WAYNE IN 46898

TEZAK HELEN C TR  
50 CHAPEL ST APT 4  
FORT MYERS BEACH FL 33931

R & D ENTERPRISES OF  
3436 CHURCH ST  
STEVENS POINT WI 54481

WEIGERT ANTJE & MARTIN  
415 CAPE CORAL PKWY W  
CAPE CORAL FL 33914

JAMES R BRATLEY & JOAN E BRATL  
15120 WEST ILIFF PL  
LAKEWOOD CO 80228

GNIRCK RAPHAEL +  
AM MUEHLBERG 39A  
BAD HOMBURG VD HOEHE 61348  
GERMANY

STRICK RICHARD A &  
5804 PARK RIDGE CT  
FORT COLLINS CO 80528

HENNESSEY PATRICIA J &  
460 PALERMO CIR  
FORT MYERS BEACH FL 33931

NORTH KEY INC  
7150 RED LION FIVE POINTS RD  
SPRINGBORO OH 45066

DONNA M BYRD TRUST +  
5701 BLUNK KNOB RD  
ELIZABETH IN 47117

RELAAX LLC  
2201 E WILLOW ST STE D 363  
SIGNAL HILL CA 90755

RELAAX LLC  
2201 E WILLOW ST STE D 363  
SIGNAL HILL CA 90755

LUSSIER TARA CORBISHLEY &  
745 BIMINI LN  
PUNTA GORDA FL 33950

RELAAX LLC  
2201 E WILLOW ST STE D 363  
SIGNAL HILL CA 90755

JKCK LLC  
3360 ESTERO BLVD  
FORT MYERS BEACH FL 33931

201 PALERMO LLC  
1421 E LAKE SHORE DR  
SPRINGFIELD IL 62712

201 PALERMO LLC  
1421 E LAKE SHORE DR  
SPRINGFIELD IL 62712

DAY BILLY WAYNE  
3708 SHANNON RUN TRL  
LOUISVILLE KY 40299

LUMP THOMAS F & ANN C  
145 PALERMO CIR  
FORT MYERS BEACH FL 33931

SLOMSKI STEVEN A &  
PO BOX 2428 PMB 25382  
PENSACOLA FL 32513

RILEY SUSAN K TR  
180 PRIMO DR  
FORT MYERS BEACH FL 33931

BAILEY JAMES P & LANA C  
162 PRIMO DR  
FORT MYERS BEACH FL 33931

SANDY BEACH L L C  
1892 SANDY BEACH RD  
CLARION IA 50525

NEUMANN SHEILA  
146 PRIMO DR  
FORT MYERS BEACH FL 33931

140 PRIMO LLC  
SHEILA NEUMANN  
146 PRIMO DR  
FORT MYERS BEACH FL 33931

SEABIRD RESIDENTIAL LLC  
1709 SW 47TH TER  
CAPE CORAL FL 33914

HIGHLEY JAY E & MARY B  
124 PRIMO DR  
FORT MYERS BEACH FL 33931

HIGHLEY MARY BETH TR  
6620 ESTERO BLVD #1006  
FORT MYERS BEACH FL 33931

KWSH RE LLC  
2601 MULBERRY AVE  
MUSCATINE IA 52761

ARLINGTON GREEN HOMES LLC  
44 ALGONQUIN CT  
MARCO ISLAND FL 34145

KALIDINDI RAMA USHA +  
44354 APACHE CIR  
ASHBURN VA 20147

1249 ESTERO ADVENTURES LLC  
290 BAHIA VIA  
FORT MYERS BEACH FL 33931

SMART PARK OF FMB LLC  
11330 LONG WATER CHASE COURT  
FORT MYERS FL 33908

GANIM GEORGE W & JOSEPHINE  
4666 MAIN ST  
BRIDGEPORT CT 06606

GANIM GEORGE W & JOSEPHINE  
4666 MAIN ST  
BRIDGEPORT CT 06606

LANI KAI LP  
ROBERT G CONIDARIS  
1400 ESTERO BLVD  
FORT MYERS BEACH FL 33931

STEPNEY LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

GANIM GEORGE W SR &  
4666 MAIN ST  
BRIDGEPORT CT 06606

ATWATTER LLC  
WALTER RAY SIMMONS  
12711 CHATHAM DR  
FORT MYERS FL 33908

RIGHT CHOICE INVESTMENTS LLC  
4448 KELLY DR  
STERLING HEIGHTS MI 48314

OUR BEACH SAND LLC  
12483 SUMMERWOOD DR  
FORT MYERS FL 33908

GANIM PROPERTIES LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

GANIM PROPERTIES LLC  
4666 MAIN ST  
BRIDGEPORT CT 06606

TPI-FMB LLC  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

TPI-FMB SUITES LLC  
1207 ESTERO BLVD  
FORT MYERS BEACH FL 33931

JAMES A + JEAN B BISCHOFF TRUS  
JEFF MAAAS  
20468 ARDORE LN  
ESTERO FL 33928

GRIFFIS LLC  
9051 E CHICAGO RD  
JEROME MI 49249

PATTON THOMAS D &  
153 PRIMO DR  
FORT MYERS BEACH FL 33931

ALMEIDA ROBERT M +  
163 PRIMO DR  
FORT MYERS BEACH FL 33931

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

DEEP DISH DOUGH LLC  
328 BUCKLIN ST  
LA SALLE IL 61301

MILLER CONRAD RE LLC  
PO BOX 80490  
FORT WAYNE IN 46898

INVESTMENTS OF FMB LLC  
MARK DEIFT  
560 NW 118 AVE  
PLANTATION FL 33325

RICHARD JOHN W TR  
237 OLD SAN CARLOS BLVD  
FORT MYERS BEACH FL 33931

BATIKI WEST CONDO ASSN INC  
SUITOR MIDDLETON COX + ASSOC  
15751 SAN CARLOS BLVD STE 8  
FORT MYERS FL 33908

CRESCENT SHORE CONDO ASSOC  
PO BOX 2990  
FORT MYERS BEACH FL 33932

TPI-FMB LLC  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

TPI-FMB LLC  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

TPI-FMB LLC  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

TPI-FMB LLC  
103 15TH AVE NW STE 200  
WILLMAR MN 56201

1300 ESTERO BLVD LLC  
32 BAYVIEW BLVD  
FORT MYERS BEACH FL 33931

BEYER TAMMY E TR  
9656 HALYARDS CT # 24  
FORT MYERS FL 33919

ANDRESEN EDWIN TR  
7960 PRESERVATION DR  
INDIANAPOLIS IN 46278

BOCCELLA SALVATORE  
4 POINT VIEW CT  
SICKLERVILLE NJ 08081

JOHNSON NANCY ANN L/E  
9 NANCY LN  
FORT MYERS BEACH FL 33931

HECK LLC  
15561 CATALPA COVE DR  
FORT MYERS FL 33908

CONANT DONNA TR  
8122 S FOREST HILL CIR  
FRANKLIN WI 53132

DENNIS R + CYNTHIA L LOKEN TRU  
106 ICHABOD LN  
MANKATO MN 56001

LANDOLFI STEVEN J  
22 VETO ST  
PROVIDENCE RI 02908

NIEMEIER RYAN & SUMMER  
106 S WALNUT ST  
LA CRESCENT MN 55947



Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

## *Town of Fort Myers Beach* COMMUNITY DEVELOPMENT DEPARTMENT

### Supplement PH-D

### Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre  
\$2000.00 PD Amendment minor (< acre total property area)  
\$4000.00 PD Reinstatement or \$6500.00 PD Amendment

|                                                                             |
|-----------------------------------------------------------------------------|
| <b>Project Name:</b> 1301 Estero Blvd Commercial Planned Development Rezone |
| <b>Authorized Applicant:</b> Kenrick S. Gallander, The Neighborhood Company |
| <b>STRAP Number(s):</b> 19-46-24-W4-0060B.0160                              |
|                                                                             |

|                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|
| <b>Current Property Status:</b> Vacant (Pre-lan - developed with 7-Eleven convenience store)                            |
| <b>Current Zoning:</b> Downtown                                                                                         |
| <b>Future Land Use Map (FLUM) Category:</b> Pedestrian Commercial                                                       |
| <b>Platted Overlay?</b> <input type="checkbox"/> yes, <input checked="" type="checkbox"/> no <b>FLUM Density Range:</b> |

#### Requested Action:

|                                     |                                                          |
|-------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/>            | DRI (with rezoning)                                      |
| <input checked="" type="checkbox"/> | Planned Development (also check below)                   |
| <input checked="" type="checkbox"/> | Rezoning from: <b>Downtown</b> to: <b>CPD</b>            |
| <input type="checkbox"/>            | Amendment to Master Concept Plan/attendant documentation |



## PART I Narrative Statements

### A. Comprehensive Plan Amendments (check one)

|                                     |                                                                                                                                                                                   |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/>            | There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.                                                                             |
| <input checked="" type="checkbox"/> | The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect) |
| See attached NARRATIVE document.    |                                                                                                                                                                                   |
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### B. Phasing of Construction

|                                     |                                                                                              |
|-------------------------------------|----------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | The development is to be constructed in a single phase.                                      |
| <input type="checkbox"/>            | The development is to be constructed in phases as follows: (describe proposed phasing below) |
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Case # \_\_\_\_\_ Date Received: \_\_\_\_\_

**C. Comprehensive Plan Compliance.**

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

|                                  |
|----------------------------------|
| See attached NARRATIVE document. |
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**D. Design Standards Compliance**

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

|                                  |
|----------------------------------|
| See attached NARRATIVE document. |
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Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

[illegible]

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

[illegible]

### G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

|                                                                            |
|----------------------------------------------------------------------------|
| There are no administrative amendments to an approved Master Concept Plan. |
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### PART 2 Submittal Requirements

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

#### Required Items

- Public Hearing Request Form
- Supplement Form PH-D
- Master Concept Plan
- Traffic Impact Statement - **IF DEEMED REQUIRED - TO BE PROVIDED ON SEPARATE COVER.**
- Architectural Elevations
- Schedule of Uses
- Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre \$2000.00 PD Amendment minor (< acre total property area)
- \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.



## 1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone Application

### NARRATIVE

#### **BACKGROUND & REQUEST**

The subject property is located at 1301 Estero Blvd., Fort Myers Beach, FL 33931, and consists of a single parcel (STRAP#: 19-46-24-W4-0060B.0160) totaling 10,677± sq. ft. (0.245± acres) (See Figure 1). The property has a Future Land Use (FLU) Map Designation of Pedestrian Commercial and is within the Downtown Zoning District.

The Neighborhood Company, The Applicant, Authorized Representative and Agent on behalf of the owner 7-Eleven Inc, is submitting this Planned Development Rezone Application to request the following:

- Rezone from Downtown to Commercial Planned Development (CPD)

The subject property prior to Hurricane Ian was developed with a 2,016± sq. ft. convenience store (7-Eleven) (See Figure 2). As a result of the hurricane, the property and existing structure received significant damage (See Figure 3). Assessments of the property required the structure and site infrastructure to be demolished and the site cleared (See Figure 4)



Figure 1. Location Map





Figure 2. Pre Hurricane Ian



Figure 3. Post Hurricane Ian



Figure 4. Existing Conditions

## **PROPOSED USE/DEVELOPMENT**

The 7-Eleven, which existed on the property for decades, was a very popular commercial business and provided convenience benefits to local residents and visitors. Based on the historic demand and continued need for convenience stores on Fort Myers Beach (FMB), the owner wants to redevelop the property with the same use. The plan for a new convenience store (7-Eleven) improves upon what existed prior to Hurricane Ian, and also reduces or eliminates non-conformities that existed on the property.

Convenience stores have been and continue to be a staple and necessary commercial business in all communities throughout the United States. Fort Myers Beach, Florida is no exception. A convenience store has been at this location for decades. As Fort Myers Beach continues to rebuild and regain its pre-Hurricane Ian resident and visitor populations, convenience related businesses will once again be needed and expected on this part of the island.

The proposed redevelopment of the property will consist of the following:

- A maximum 3,500+/- sq. ft. convenience store to be open 24 hours and seven days a week.
- Two (2) access points from Palermo Circle and Estero Boulevard significantly reduced in width from those that existed prior to Hurricane Ian.
- Dumpster and enclosure with direct access from Santos Road.



The Comprehensive Plan's Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4.

An FAR of 1.4 would allow approximately 14,947.8 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet that is well below the potential maximum allowed.

## **LOCATION, SITE DESIGN & COMPATIBILITY**

The property is situated within the "Core Area" of Fort Myers Beach at the northeast corner of Estero Blvd. and Palermo Circle. The north side of the property is bordered by Santos Road. Located approximately one quarter mile east of "Times Square" on Estero Blvd., the property is within a heavily travelled and walkable area of the island, which provides visitors with opportunities for shopping, dining, lodging, and access to the beach. This mixed-use "Core Area" is an ideal location for a convenience store. It is where the prior 7-Eleven served the needs of residents and visitors for decades and represents an area of continued activity with the opening of Margaritaville, and the planned redevelopment of the Beached Whale, Tuna Skin Apparel Store and the Cottage.

The subject property is oddly shaped and presents numerous design challenges that would require multiple variances if utilizing conventional zoning regulations. As such, the Commercial Planned Development provides for regulatory flexibility and allows for creative design to address site constraints. The proposed Master Concept Plan (MCP) reconfigures the old site to make it more functional, attractive, resilient, and safer. It also reduces or eliminates non-conformities and makes it generally consistent with the intent of the Downtown redevelopment district.

First, the building is placed where the property is the widest. This allows for a safer and more functional parking lot design where cars will no longer back onto Estero Blvd. Access will be limited to two access points - one along Estero Blvd and the one along Palermo Circle. This will allow for a logical circulation pattern and will provide safer ingress and egress movements. Additionally, this configuration allows for a slightly larger convenience store that will be newer, more resilient, and better meet the needs of the community.

Second, the revised configuration will provide a primary façade along Palermo that will cater to the motorist and improve vehicular access and a secondary facade closer to Estero, which will provide improved, quick and easy access to the pedestrian, cyclist and beachgoer. The placement of the building closer to Estero Blvd is consistent with the Downtown District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity.

Third the site configuration provides improved setbacks, and more space on the property for bike racks, a connection to the bus/trolley stop, sidewalks, improved landscaping and an enclosed/shielded dumpster pad. These improvements will create a more inviting, visually attractive development and will ensure locational compatibility.

The zoning and existing land uses surrounding the property are as follows:

- North: Santos RPD / Santos Road Right-of Way and Vacant
- South: Downtown / Estero Blvd Right-of-Way and Vacant
- East: Downtown/ Parking Lot
- West: Downtown / Palermo Circle Right-of-Way and Vacant





For decades, the properties surrounding this site were used for commercial purposes and will remain commercial as the island redevelops. Currently, the properties to the north, south and west are mostly vacant due to the impacts of the hurricane. The property to the north was previously Santo by the Beach, a weekly & monthly rental lodging, to the south across Estero Blvd. were various retail stores and public beach access. To the west was The Whale, a longtime Fort Myers Beach restaurant, and to the east is the Lani Kai's commercial parking lot.

As outlined within the Development Standards Table on the MCP, the proposed build to line and setbacks are as follows:

- Build-to line:
  - o Primary Street (Estero Blvd.): 5 feet max
- Minimum Setbacks – Primary and Accessory Structures:
  - o Secondary Street (Palermo Circle): 20 feet
  - o Local Street (Santos Road): 7.5 feet'
  - o Side/Rear: 5 feet

The development standards, inclusive of the build-to line and setbacks, further ensure compatibility with adjacent uses and are appropriate for property located at the center of commercial activity and surrounded by three roadways.

Development order approval will include code compliant landscaping throughout the property. Buffers for the site are not required as the property is adjacent to public rights-of-way on three sides and a parking lot to the east. However, it is the intent to enhance landscaping on the property. Plantings will be planned as part of the development order approval within the buffer areas along Palermo Circle, Santos Road, and between a portion of the subject property and the commercial parking lot to the east. Building edge plantings will also be provided along portions of the building facing Estero Blvd. and the remainder of the property adjacent to the commercial parking lot to the east. The dumpster enclosure, located on the north side of the property will be screened as required by LDC.

A minimum of 50% of the subject property is required to be open space in the Downtown zoning district as stated in LDC Sec. 34-677(b)(2). Prior to Hurricane Ian, the existing site provided an estimated 21% of open space. Due to the unique characteristics of the property and in order to build a modern convenience store and supporting infrastructure that provides for a safer and better functioning property, the site will not meet the intended 50% open space requirement but will maintain a minimum of 21% as previously provided. The 50% requirement would severely reduce the development footprint and render the project unfeasible. A 50% open space requirement is more consistent with suburban standards and is not realistic for an urban infill redevelopment project. The project intends to increase the amount of open space from what existed prior to Hurricane Ian to approximately 25%, which the majority will be located within the northern portion of the property helping to ensure further compatibility with those surrounding uses in the area.

The previously established convenience store use has a proven history of being compatible at this location with the surrounding roadways, lodging, restaurant and retail uses over the years. The proposed development standards, enhanced buffering, additional open space requirements outlined within the proposed CPD will continue to ensure any proposed use is compatible.



**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE  
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PH-D FORM:**

**A. COMPREHENSIVE PLAN AMENDMENTS**

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

- Mixed Use Districts Designation – Time Square Mixed-Use District



The applicant is aware that the town is currently in the early stages of amending its Comprehensive Plan Future Land Use Map (FLUM) as presented by the town's consultant, the town is considering a Future Land Use change for the subject property that would remove the property from the Pedestrian Commercial FLUM designation and place the property within a newly created "Time Square Mixed-Use District". The applicant intends to comply and be consistent with the existing and potential Future Land Use designation for this area. While it is uncertain if and when the

Time Square Mixed Use District will be approved, it is our understanding that it intends to promote a mix of uses, greater commercial intensity and enhanced bicycle and pedestrian activity, which are all consistent with the proposed CPD.



## **B. PHASING OF CONSTRUCTION**

The development is to be constructed in a single phase.



## **C. COMPREHENSIVE PLAN COMPLIANCE**

### **COMMUNITY DESIGN ELEMENT:**

**OBJECTIVE 1-A ESTERO BOULEVARD — Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.**

**POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.**

The redevelopment plan proposes enhancements to the frontage along Estero Blvd. and throughout the site. These enhancements will include improved access management, increased open space and green areas, defined sidewalks for pedestrian connectivity to Estero Blvd and nearby transit, and improved landscaping. Due to the unusual configuration of the site, which is triangular in shape and bordered by Estero Blvd., Palermo Circle and Santos Road, it was determined that the proposed building location and orientation resulted in a more functional site with improved managed traffic flow to allow all vehicles to leave the parking lot in a forward motion.

This plan proposes a reduction in the width of the driveway opening along Estero Blvd. to create a defined and controlled entrance into the development. Moreover, the new configuration will provide more open space and green areas along Estero Blvd and throughout the property. Additional enhancements to the site include landscaping, enhanced buffering, and potential mural artwork along Estero Blvd. and the rear portion of the building. These enhancements create a development with improved accessibility and safety for pedestrians, while improving the appearance for residents and visitors on the primary circulation route of Fort Myers Beach, thus supporting the “Estero Blvd” vision as described in Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan.

### **FUTURE LAND USE ELEMENT:**

**GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.**

**OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.**

The proposed project will rebuild a previously established commercial business which for decades provided easy and practical access to convenience goods for both residents and visitors. The proposed project will provide a more pedestrian friendly environment, through the reconfiguration of parking, the reduced width of the driveway opening from Estero Blvd., orientation of the building, appropriate setbacks/building location, and potential mural artwork on the east and south walls. Through the implementation of these elements, the development will enhance the public realm of Fort Myers Beach and add to its unique small-town character.

Finally, in an effort to minimize the damage that a future hurricane could inflict, the new building will be built to the current Florida Building Code, FEMA standards, and meet all applicable state and federal regulations.



**Policy 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.**

Located along Estero Blvd., approximately one quarter mile east of Times Square, the proposed project will re-establish a long-standing convenience-based business that has provided goods to both residents and visitors for decades. The previous building was destroyed by Hurricane Ian but was an integral component to the heavily travelled Estero Blvd. and walkable area of the town.

The proposed site configuration will provide a primary façade along Palermo catering to the motorist and improve vehicular access. A secondary facade closer to Estero will provide improved, quick and easy access for the pedestrian, cyclist and beachgoer. The placement of the building closer to Estero Blvd is consistent with the Downtown District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity. Other site elements provide for appropriately applied setbacks, enhanced buffers/landscaping, more space on the property for bike racks, a connection to the bus/trolley stop, relocation of an existing crosswalk, accessway/driveway width reductions, sidewalks, and an enclosed/shielded dumpster pad. These improvements will create a more inviting, safer, visually attractive development ensuring locational compatibility and improved pedestrian oriented areas consistent with Policy 4-A-2.

**POLICY 4-B-6: Pedestrian Commercial: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code.**

The project site is located within the Pedestrian Commercial FLUM, and as stated in Policy 4-B-6, commercial activities must contribute to the pedestrian-oriented public realm. The site plan proposes to provide enhancements to the public realm through the improved vehicular patterns on the site, clearly defined pedestrian sidewalks and the proposed mural located on the building to add to the pedestrian experience as people move along Estero Blvd. These proposed enhancements will contribute to the pedestrian-oriented public realm of Fort Myers Beach and is consistent with Policy 4-B-6.

**POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the “Pedestrian Commercial” category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the “Pedestrian Commercial” category as high as 2.5, and in other categories as high as 1.5.**

The Comprehensive Plan’s Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4.



An FAR of 1.4 would allow approximately 14,947.8 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet which equals an FAR of approximately 0.33 is well below the potential maximum allowed and thus is consistent with Policy 4-C-2.

**POLICY 4-C-3. ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.**

The Fort Myers Beach Land Development Code states that the intent of the Commercial Planned Development (CPD) zoning district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential and complies with the Fort Myers Beach Comprehensive Plan but does not meet all of the specific requirements of a conventional or redevelopment district. Due to the unique configuration of the subject property and the destruction caused by Hurricane Ian, this application requests a rezoning to CPD so the property can be redeveloped and to remove nonconformities which existed on the site prior to Hurricane Ian.

A proposed convenience retail store use is being requested within this CPD. This use classification is permitted by right within the Downtown zoning district as well as the Pedestrian Commercial category of the Fort Myers Beach Comprehensive Plan. The CPD rezone request is thereby in compliance with Policy 4-C-3.

**OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards. For flood- and wind-resistance, and by improving the current post-disaster build back policy.**

The new commercial building will be more resilient and will comply with the latest and more stringent Florida Building Code. Additionally, state and federal flood regulations will be followed, improving the resiliency of the island's structures.

#### **COASTAL MANAGEMENT ELEMENT:**

**GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.**

**POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.**

The proposed redevelopment of the site will be in compliance with all applicable federal, state and local regulations to develop a resilient commercial property to serve the residents and visitors of Fort Myers Beach.



## **TRANSPORTATION ELEMENT**

**GOAL 7:** To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.

### **POLICY 7-D-3 ALTERNATE TRAVEL MODES**

The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

To better serve the public, the proposed site design includes a clearly marked parking lot with a reduced entrance width from Estero Blvd., appropriate parking lot lighting, and an unobstructed sidewalk with nearby street crossings. To encourage use of alternate travel modes under Policy 7-D-3 the development will provide bike racks for bicycle parking and will maintain a pedestrian pathway to the existing transit stop located on the property to the east of the subject site.

## **UTILITIES ELEMENT**

**GOAL 8:** To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

**POLICY 8-A-1** Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

The proposed development will connect to central water and sewer utilities as mandated by the Town of Fort Myers Beach.





#### **D. DESIGN STANDARDS COMPLIANCE**

The proposed 7-Eleven convenience store will be consistent with the overall purpose and intent of the commercial design standards provided under LDC Section 34-991. The following outlines compliance with the specified design standards within LDC Sections 34-994 through 34-997:

As depicted in the architectural representations provided (See the required Architectural Elevations included in the submittal documents), the proposed exterior walls will be a combination of stucco and fiber cement panels/boards, which are identified as an appropriate finish material under LDC Section 34-994. The structure will be dry-floodproofed with all fastenings and design to be “visually unobtrusive” and compliant with being located within FIRM Zones: AE 11 and AE 12. The principal façade will be designed to be compliant with the requirements for transparent windows, glazing, and shape.

The proposed building will generally comply with the intent and applicable portions of LDC Section 34-995 related to “Principal Façade Walls” standards. 7-Eleven is proposing to design and install murals on the principal side wall façade facing Estero Blvd (primary street) and the building’s rear wall façade facing the commercial parking lot in order to not have blank walls and to enhance visual interest toward the public realm.

LDC Section 34-996 specifically allows for a variety of roof types. The proposed 7-Eleven is designed with a flat roof and parapet, which is permitted under subsection (b). Above the front entrance facing Palermo Circle, an architectural “entry tower” with a hip roof is proposed. The “entry tower” roof consists of a standing seam metal roof, which is permitted under subsection (c).

Due to the unique configuration and small lot size, the proposed design cannot support plazas and courtyards. The project does generally provide for portions of the building to be located close to and oriented toward the existing public sidewalk along Estero Boulevard. The project also provides for internal pedestrian passages or connections along the primary façade facing Palermo Circle to the existing sidewalk along Estero Boulevard, thus meeting the intent of LDC Section 34-997(d).





## **E. DECISION-MAKING COMPLIANCE**

### **(1) Whether there exists an error or ambiguity which must be corrected.**

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Downtown to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Through the proposed CPD rezone request, reductions in prior existing non-conformities are being corrected specific to accessway widths, amount of open space provided, and development standards.

### **(2) Whether there exist changed or changing conditions which make approval of the request appropriate.**

The Town of Fort Myers Beach has been devastated by Hurricane Ian. The proposed rezoning will allow the rebuilding of the pre-storm 7-Eleven convenience store. This building will assist in the Town's redevelopment by bringing back a well-established local business and providing a convenience store that will serve local residents and visitors.

### **(3) The impact of a proposed change on the intent of this chapter.**

The proposed rezoning change to CPD is consistent with the purpose and intent of the zoning chapter of the Land Development Code (LDC). The CPD will encourage and promote the redevelopment of a destroyed convenience store business that is needed in the community, reduce or eliminate prior non-conformities, and provide for a more resilient and improved development within the Pedestrian Commercial FLU designation. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the new 7-Eleven will not negatively impact the community's health, safety, and general welfare.

### **(4) The testimony of any applicant.**

The professional experts retained to support the petition will provide future testimony during the appropriate public hearings.

### **(5) The recommendation of staff and of the local planning agency.**

The petition will be reviewed by staff, expert testimony will be provided during the public hearing process before the Local Planning Agency and a recommendation will be made to the Town Council.

### **(6) The testimony of the public.**

The public will be provided with the opportunity to testify before the LPA and Town Council. Such testimony will be evaluated as applicable and appropriate to the request for the LPA's recommendation and Town Council's decision.



**(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.**

Please see Section C above, which explains how the petition is consistent with the town's comprehensive plan.

**(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.**

The rezoning request and the proposed redevelopment of a convenience retail store are ideal for the location. The site was previously developed with a convenience store supporting the residents' and visitors' needs. The subject property is located within an urban and commercialized area of the town with limited or no impact to any existing long-term residential uses.

**(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.**

All urban services were in place for the previous 7-Eleven and remain in place to adequately serve the subject site.

**(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.**

The subject property was previously developed and has been subsequently cleared of all existing natural vegetation due to the catastrophic impacts of Hurricane Ian. No environmentally critical areas and natural resources exist on the site.

**(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.**

The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to person or property as the proposed use existed prior to the catastrophic events of Hurricane Ian. There are no known documented code enforcement cases indicating the prior convenience retail use was deemed a nuisance, hazard, or caused detrimental effects to the community. The adjacent surrounding uses consist of public rights-of-way (Estero Boulevard, Palermo Circle, and Santos Road) and a commercial pay to park parking lot. Just beyond the roadways, are vacant or redeveloping commercially zoned lands, which are compatible with the proposed commercial use. All proposed setbacks, buffers, and open space areas are consistent with the standards provided for within the Land Development Code or are suitably proposed and complementary to the highly urbanized development pattern, and unique characteristics of the subject property.



**(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.**

Given that this CPD simply replaces the previously existing 7-Eleven, there will be no net changes on public facilities and the proposed request does not create any burden upon existing transportation or other services and facilities. The CPD does improve site design to facilitate and enhance bicycle and pedestrian access.

**(13) For planned development rezonings, see § 34-216 for additional considerations.**

This request to rezone the subject property from Downtown to Commercial Planned Development (CPD) will be presented at public hearing before the local planning agency and the town council consistent with LDC Section 34-216(a)(1). As demonstrated throughout this narrative, the proposed CPD meets the following criteria under LDC Section 34-216(2):

- a. The proposed convenience retail use, as provided for within the Schedule of Uses is appropriate for the subject location due to the fact that a 7-Eleven previously existed on the property for decades without issue.
- b. Sufficient safeguards are in place to protect the public interest through the proposed CPD and supporting MCP. The design, location and proposed use and development standards are generally consistent with the mixture of uses and pedestrian nature of the area and will meet the needs of the town's residents and visitors. As depicted on the MCP, access and circulation will be safer and more functional, the pedestrian experience will be improved and the site will be rebuilt with a new store, additional open space and improved landscaping.
- c. If recommended special conditions are presented and are deemed reasonable and feasible, the applicant will be willing to accept them to further ensure sufficient safeguards are established.
- d. The proposed rezoning request meets specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
  1. Policy 4-C-3: See Section "C" within the above narrative.
  2. Policies 4-B-6 and 4-C-3: See Section "C" within the above narrative.
  3. Policy 4-C-4: Proposed height of 30 feet is not taller than the standard height limit allowed under the Land Development Code.
  4. Policy 4-C-8: Density transfers. Not applicable.
  5. Policy 4-E-1: The existing development was consistent with and well below the allowed intensity (FAR 1.4) prior to the natural disaster (Hurricane Ian). Any proposed redevelopment will be consistent with the maximum intensity allowed under the comprehensive plan and LDC.
  6. Policy 7-J-2: The proposed rezone request is not a major rezoning as the request applies to a property that is less than one-quarter of an acre in area. Additionally, the proposed future redevelopment of an existing convenience retail store of similar size will render no net increase in traffic and will not adversely impact the surrounding network.



## **CONCLUSION:**

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the regulatory flexibility of the CPD process, reduction or elimination of prior non-conformities, and compliance with today's Florida Building Codes and FEMA standards, the developer will provide a project that is more resilient and functional to the public. This rezoning effort will help bring back a much needed convenience store on the island, helping to improve living conditions and supporting the public's overall health, safety and welfare.





# MASTER CONCEPT PLAN FOR 1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (7- ELEVEN STORE #7043)

LOCATED IN LEE COUNTY, FLORIDA  
PART OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST

DEVELOPED BY

PROPERTY OWNER

7-ELEVEN INC  
C/O CORP INCOME TAX DEPT  
3200 HYACKBERRY RD  
IRVING TX 75063

DEVELOPED BY

CREIGHTON CONSTRUCTION & MANAGEMENT  
2240 W FIRST ST, SUITE 101  
FORT MYERS, FLORIDA 33901

PROPERTY INFORMATION

SITE ADDRESS

1301 ESTERO BLVD  
FORT MYERS BEACH FL 33931

FOLIO NUMBER

10228074

FLOOD ZONE

ACCORDING TO THE FLOOD INSURANCE RATE  
MAP NO. 12071C0554G,  
EFFECTIVE DATE: NOVEMBER 17, 2022,  
THE PROPERTY IS LOCATED IN FLOOD ZONES  
"AE-11" AND "AE-12"

CURRENT ZONING

DOWNTOWN  
DISTRICT



VICINITY MAP

N.T.S.



LOCATION MAP

N.T.S.

INDEX OF SHEETS

- COVER SHEET
- MASTER CONCEPT PLAN

1301 ESTERO BLVD. COMMERCIAL PLANNED  
DEVELOPMENT

COVER SHEET

REVISIONS

DATE

#

ALVARO J. YUSTY, P.E.  
FL. LICENSE NO. 92973  
FL. COA # 28226

PROJECT #: 00600-00

SHEET:

1

DATUM NOTE:

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.  
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29  
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED  
SURVEYOR PRIOR TO USE.

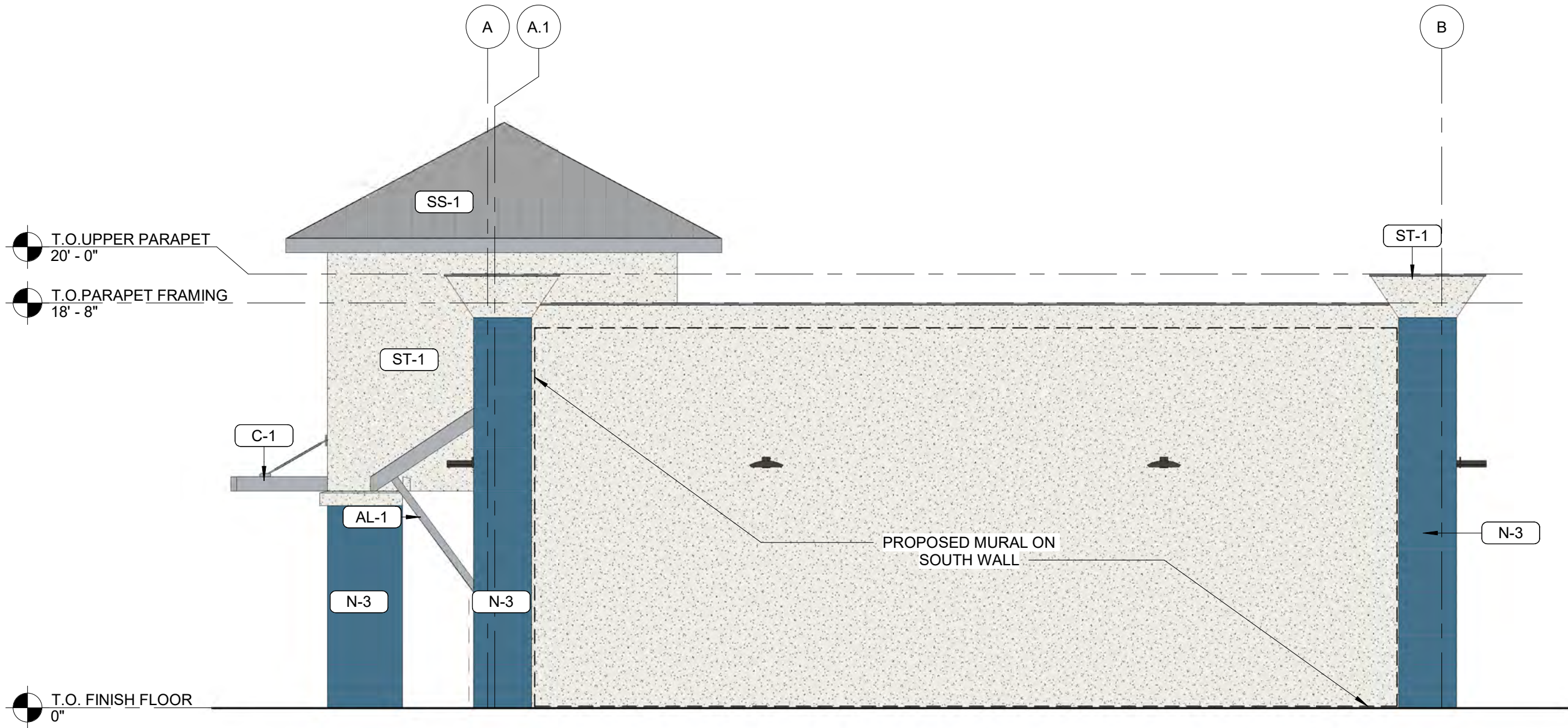
J.R. EVANS ENGINEERING, P.A.  
9961 INTERSTATE COMMERCE DR, STE. 230  
FT MYERS, FLORIDA 33913  
PHONE: (239) 405-9148  
FAX: (239) 288-2537  
WWW.JREVAENGINEERING.COM

J.R. EVANS  
ENGINEERING

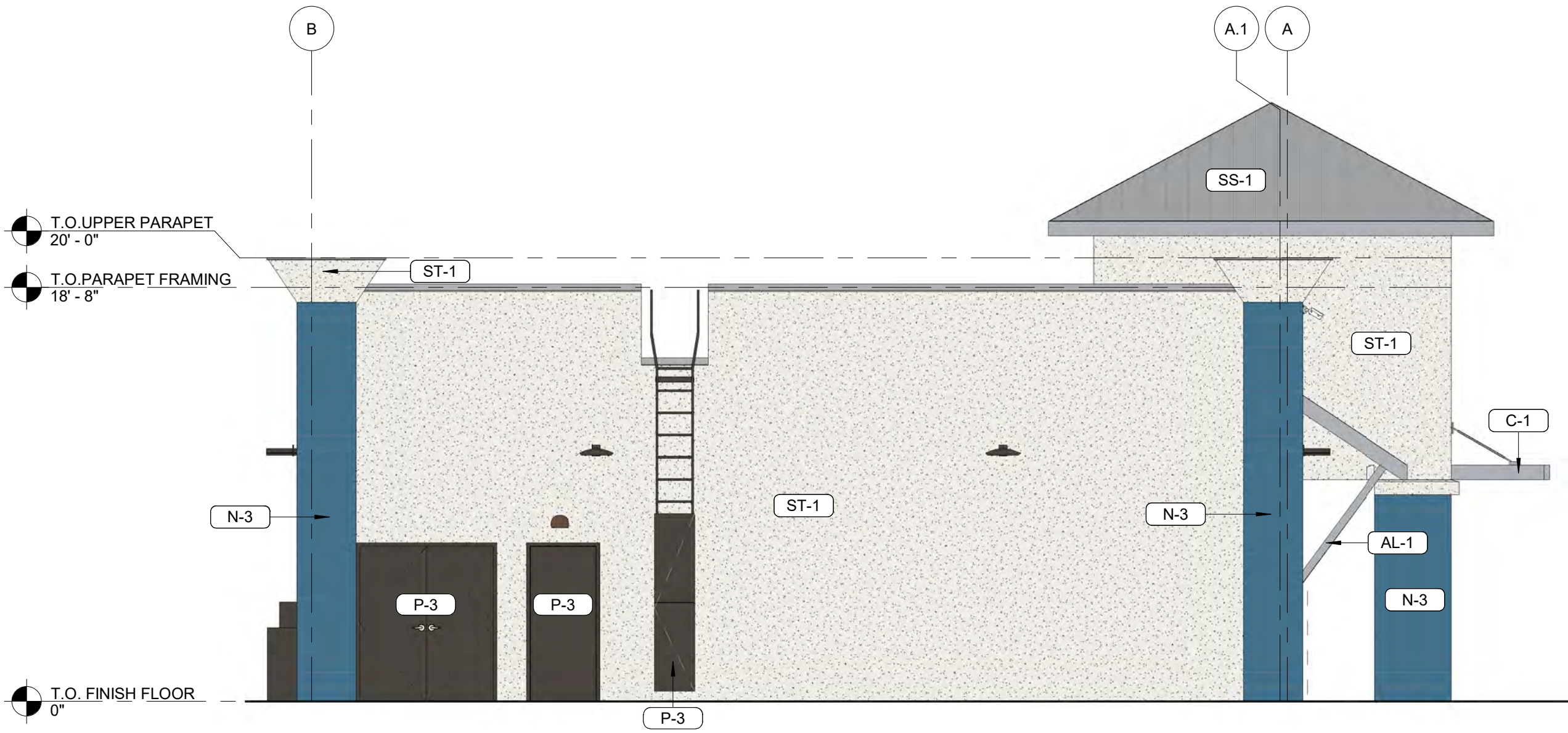




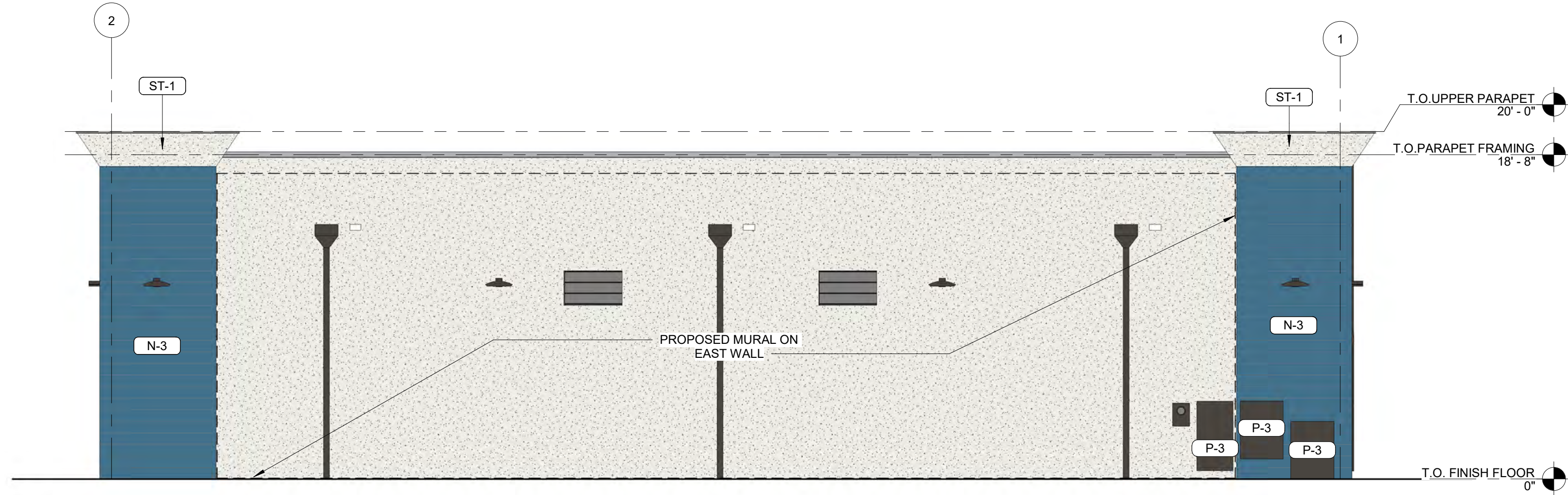




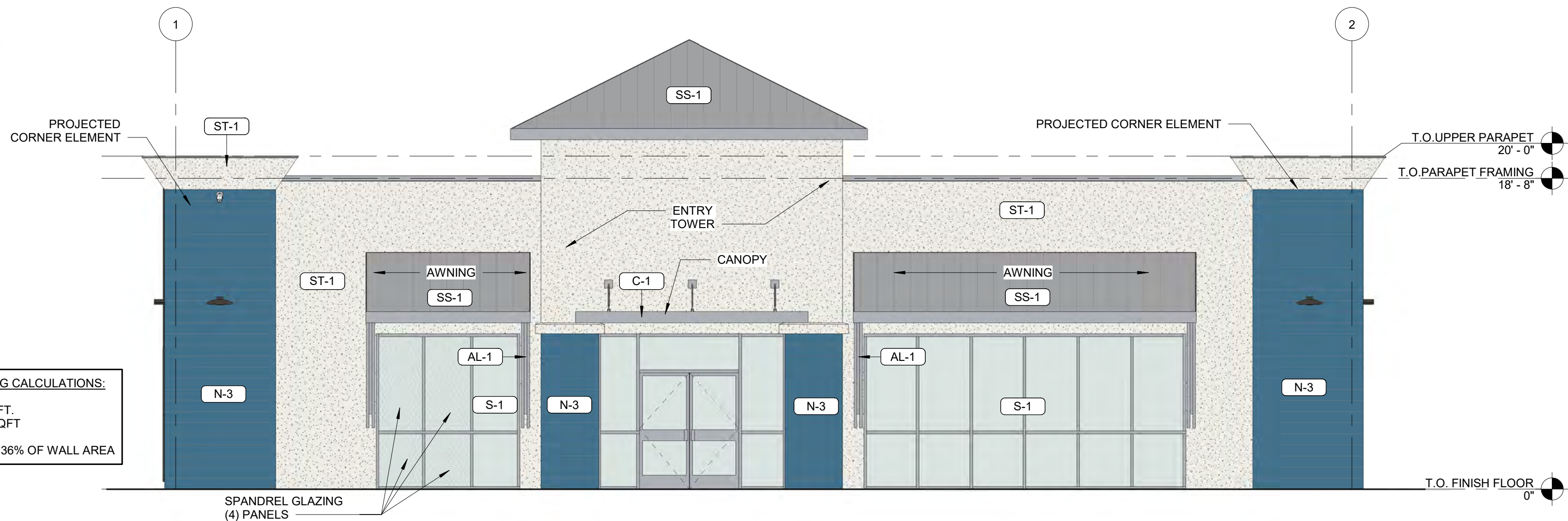
4 ELEVATION - RIGHT (SOUTH)  
3/16" = 1'-0"



2 ELEVATION - LEFT (NORTH)  
3/16" = 1'-0"



3 ELEVATION - REAR (EAST)  
3/16" = 1'-0"



1 ELEVATION - FRONT (WEST)  
3/16" = 1'-0"

FRONT FACADE GLAZING CALCULATIONS:  
-WALL AREA = 1,005 SQFT.  
-GLAZING AREA = 366 SQFT  
WINDOWS CONSIST OF 36% OF WALL AREA

| EXTERIOR MATERIALS SCHEDULE              |                                                                                 |                  |                   |
|------------------------------------------|---------------------------------------------------------------------------------|------------------|-------------------|
| (NOT ALL MATERIALS IN SCHEDULE ARE USED) |                                                                                 |                  |                   |
| NO.                                      | MATERIAL                                                                        | MANUFACTURER     | COLOR             |
| MR-1                                     | MEMBRANE ROOFING                                                                | DUROLAST         | WHITE             |
| N-1                                      | FIBER CEMENT PANEL                                                              | NICHIHA          | DOWN POUR SW 6516 |
| P-3                                      | EXTERIOR HM DOORS, FRAMES, TRASH ENCLOSURE GATE, GRAVEL GUARDS, AND LIGHT POLES | SHERWIN WILLIAMS | SEAL SKIN SW 7675 |
| S-1                                      | ALUMINUM STOREFRONT GLAZING                                                     | KAWNEER          | CLEAR             |
| C-1                                      | PREFINISHED ALUMINUM CANOPY                                                     | MAPES LUMISHADE  | CLEAR ANODIZED    |
| SS-1                                     | STANDING SEAM METAL ROOF                                                        | BERRIDGE         | LEAD COTE         |
| ST-1                                     | STUCCO                                                                          | DRYVIT OR EQ     | PAINTED (P-1)     |
| ST-2                                     | STUCCO                                                                          | DRYVIT OR EQ     | PAINTED (P-2)     |
| AL-1                                     | ALUMINUM CANOPY BRACKETS                                                        | TBD              | CLEAR ANODIZED    |

7-ELEVEN #1055525  
1301 ESTERO BLVD  
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT  
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991

REVIEW BOARD ELEVATIONS

CREIGHTON  
COMMERCIAL DEVELOPMENT

BOTI  
ARCHITECTURE  
504 W. COLLEGE ST.  
SPRINGFIELD, MO 65806  
TEL: 877.297.2684  
www.boti.studio

Drawings and Specifications as Instruments of service are and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correcting dimensions at job site. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

NOT FOR CONSTRUCTION

07/07/2023

JOB#: 23039  
DATE: 07/07/2023  
SHEET: R0.01





**NOT FOR  
CONSTRUCTION**





1  
R001

STREET VIEW - RIGHT (SOUTHWEST)  
N.T.S.

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PROTO:7043 CST 2022-02

7-ELEVEN #1055525  
1301 ESTERO BLVD  
FORT MYERS BEACH, FL 33931

CREIGHTON COMMERCIAL DEVELOPMENT  
900 SW PINE ISLAND ROAD, SUITE 202 CAPE CORAL, FL 33991

3D RENDERINGS

CREIGHTON  
COMMERCIAL DEVELOPMENT

BOTI  
ARCHITECTURE

504 W. COLLEGE ST.  
SPRINGFIELD, MO 65806  
TEL: 877.297.2684  
www.boti.studio

Drawings and Specifications as Instruments of service are and shall remain the property of the Architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the Architect.

Contractor is responsible for confirming and correcting dimensions at job site. The Architect will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the project.

The seal and signature apply only to the document to which they are affixed and we expressly disclaim any responsibility for all other plans, specifications, estimates, reports or other documents or instruments relating to or intended to be used for any part or parts of the project.

NOT FOR  
CONSTRUCTION

08/10/2023

JOB#: 23039  
DATE: 08/10/2023  
SHEET: R001





1 STREET VIEW - REAR (SOUTHEAST)  
R003 N.T.S.



08/10/2023

JOB#: 23039  
DATE: 08/10/2023  
SHEET:

R003

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PROTO:7043 CST 2022-02





**1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD)  
Planned Development Rezone**

**SCHEDULE OF USES**

**COMMERCIAL**

RETAIL STORE, SMALL TO INCLUDE:

CONVENIENCE STORES, NO FUEL PUMPS (OPEN 24 HRS/7 DAYS)



**Commercial Planned Development (CPD)  
Planned Development Rezone**

## **SECTION F: SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS**

**DEVIATION #1** seeks relief from LDC Section 34-706(d) which requires that when properties are fronting on Estero Boulevard, existing driveway and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The deviation would allow driveways to remain that connect to Estero Boulevard and Palermo Circle.

**Justification:** The prior site condition provided for existing access points (driveways) both onto Estero Blvd (Primary Street) and Palermo Circle (Secondary Street). Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Due to the unique triangular configuration of the subject property, which has been in place for decades and the need to redevelop the property to bring back the desired commercial convenience store use to the Town, it is necessary to continue to allow for access points from Estero Blvd., and Palermo Circle. Convenience stores rely heavily on customer vehicular traffic and truck deliveries, which require appropriately designed and safe traffic movement. Due to the physical limitations resulting from the triangular shape of the property the site plan continues access from Estero; however, the design has been improved to enhance functionality and safety.

**DEVIATION #2** seeks relief from LDC Section 34-2013(a)(3) which states that the maximum width at the property for parking lot access is 25 feet. The deviation would allow for a maximum parking lot access width at the property line of 60 feet along Palermo Circle and 35 feet along Estero Blvd.

**Justification:** The pre-lan site design had non-conforming access (driveway) widths along Estero Blvd. and Palermo Circle. Estero Blvd. was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. In order to bring back the desired commercial convenience store use to Fort Myers Beach, the odd shaped lot configuration requires the need to maintain an access point wider than 25 feet along both Palermo Circle and Estero Blvd. The proposed MCP reduces the access point widths from over 100 feet to a maximum of 60 feet for Palermo Circle and 80 feet wide down to a maximum of 35 feet. This new configuration will improve circulation patterns, ensure safe and efficient truck maneuverability, and improve overall public safety conditions.

**DEVIATION #3** seeks relief from the minimum driveway separation requirements of LDC Section 10-285 along Estero Boulevard and Palermo Circle. The deviation would allow driveway (vehicle access) separation along Estero Boulevard to be a minimum of approximately 141 feet from the adjacent access point to the east and a minimum of approximately 52 feet from the Estero Blvd/Palermo Intersection. The deviation would also allow driveway (vehicle access) separation along Palermo Circle to be a minimum of approximately 52 feet from the Santos Road intersection and approximately 105 feet from the Estero Blvd/Palermo Circle intersection.



**Justification:** The proposed accessways onto Estero Boulevard and Palermo Circle existed prior to Hurricane Ian and the destruction of the existing convenience store use. Relocation of the existing accessways to meet the distance separation from all surrounding street intersections or other accessways is impossible. Due to the unique triangular configuration of the subject property and the need to manage vehicular traffic and pedestrian connectivity to the site, the proposed site layout as detailed on the Master Concept Plan requires both accessways from Estero Blvd. and Palermo Circle to remain. The two accessways were non-conforming in terms of their location and overall width. The Estero Blvd. accessway was approximately 100 feet wide and Palermo Circle approximately 80 feet wide. Both accessways, pursuant to requested Deviation #2, will be significantly reduced in width. This will improve traffic circulation to and from the adjacent roadways. The proposed configuration, as detailed on the MCP, increases distance separation from all surrounding street intersection and accessways than what previously existed, thus working toward achieving general consistency of the intent of LDC Section 10-285 to provide as much connection separation while keeping the proposed redevelopment feasible.

**DEVIATION #4 seeks relief from LDC Section 34-706(a) which requires an off-street parking lot to be placed in the side or rear yards. The deviation would allow the off-street parking to be located and orientated toward the Palermo Circle frontage.**

**Justification:** The requested deviation from LDC Sec. 34-706(a) is to allow for off-street parking to be placed on the west side of the property (Palermo Circle frontage) as depicted on the MCP. Prior to Hurricane Ian the off-street parking for the site was located primarily along Estero Blvd., a major arterial roadway, with additional parking at the western side of the store along Palermo Circle. The parking configuration required vehicles to back into the rights-of-way from several of the parking stalls in order to exit the property. Pedestrians were not able to reach the front entrance of the building without walking through the parking lot, either behind or between vehicles.

The proposed redevelopment of the site has relocated the off-street parking to the western side of the site facing Palermo Circle, which is now the primary frontage and main entrance to the building. Although parking is not located in the side or rear yard, it has been relocated from the Estero Blvd. frontage. The reconfigured accessways into the site from Estero Blvd. and Palermo Circle have been reduced in width, allowing for more controlled vehicular movements in and out of the site. The new configuration removes the prior unsafe and undesirable off-street parking onto Estero Blvd. The closest parking stall proposed is more appropriately orientated parallel to Estero Blvd. and with a 10' separation from the Estero Blvd. This orientation also allows for the addition of an internal sidewalk connecting to the existing sidewalk along Estero Blvd., thus allowing for a safer, more pedestrian friendly site. The new accessways from Estero Blvd. and Palermo Circle will be clearly defined through pavement markings, and as previously stated a sidewalk connecting the store entrance directly to the existing Estero Blvd. sidewalk. The parking stalls will be located at the front of the store along Palermo Circle with adequate space to allow vehicles to exit the site without having to back into the Estero Blvd. right-of-way. The proposed site design, as detailed on the MCP, significantly reduces the nonconformities which existed prior to Hurricane Ian. It also creates a safer, more pedestrian friendly site with enhancements to the pedestrian realm along Estero Blvd. thus achieving general consistency with the intent of LDC Section 34-706(a) while working within the unique triangular configuration of the subject property in order to redevelop the property with a new convenient store use needed in the town.



**DEVIATION #5 seeks relief from LDC Section 34-2020(d)(2)i.1 which requires a minimum of four spaces per 1,000 square feet of total floor area or 14 parking spaces for the proposed max. 3,500 square feet of convenience store total floor area. The deviation would allow for a reduction in the minimum required parking spaces to 8 parking spaces.**

**Justification:** Parking requirements for a convenience store are four spaces per 1,000 square feet, which equates to a total of 14 vehicle parking spaces required for the proposed maximum 3,500 square foot convenience store. The site is located within an area of the town (Downtown zoning district) considered a “park-once” district and allows for a reduction of required vehicle parking by a multiplier of 67%. Through this multiplier, the required number of vehicle parking spaces would be reduced to a total of 5 spaces. However, LDC Sec. 34-953 states that requests for a rezoning to a Commercial Planned Development (CPD) zoning district require that building placement, size, design, and all other property development regulations, such as parking, shall be the same as for the CB zoning district. Following this requirement means the proposed convenience store is required to revert to providing a minimum of 14 vehicle parking spaces. This is counterproductive to the desired “park-once” intent the town is seeking for this area. Reverting to the CB requirements results in the applicant’s inability to apply the parking reduction multiplier and burdens the site with excessive off-street parking in this more urbanized area of the town.

The applicant desires to meet the intent of being within the Downtown “park-once” district by seeking a reduction in the number of off-street vehicle spaces from 14 to 8. Due to the unique triangular configuration of the subject property, the need to manage vehicular traffic and pedestrian connectivity to the site, and the need to support the proposed convenience store use results in the need to maintain a minimum of 8 parking spaces. The applicant also sees the benefit of and wants to promote the use of alternative modes of transportation to their development. The applicant is accomplishing this by designating an area for 2 bicycle racks, each able to hold 4 bicycles. As stated in LDC Sec. 34-2020(c), commercial buildings may eliminate one required vehicle parking space by providing and maintaining a bicycle rack able to hold four bicycles.

The requested deviation to allow for the reduction to a minimum of 8 vehicle parking spaces for a convenience store is consistent with the intent to reduce off-street parking impacts as allowed within the Downtown zoning district, provides areas for additional bicycle parking, addresses the unique site configuration limitations, and does not negatively impact the health, safety and welfare of the community.

**DEVIATION #6 seeks relief from LDC Section 34-705(a)(1) which requires building frontages on Estero Blvd. to be at least 50 percent of the lot frontage. The deviation would allow for the building frontage on Estero Blvd to be at least 43 percent of the lot frontage.**

Due to the subject property’s location at the corner of Estero Blvd. and Palermo Circle, LDC Sec. 34-705(a)(1) requires the building to be located within the corner of the lot nearest the street intersections. The unique triangular shape of the lot presents a design challenge when attempting to meet the 50% Estero Blvd. frontage requirement. The requested deviation will allow for the frontage requirement to be reduced to 43% on Estero Blvd.



Prior to Hurricane Ian, the convenience store's primary front façade was at an angle facing Estero Blvd. with off-street parking encompassing the entire frontage area of the property. The proposed building orientation as shown on the MCP has the primary front façade now facing Palermo Circle and moved adjacent to Estero Blvd. property line, resulting in meeting the desired pedestrian friendly "build-to" site orientation than existed prior to Hurricane Ian.

The proposed site configuration locates the building where the property is the widest, removes off-street parking from the Estero Blvd. frontage, reduces the width of the vehicular access points from Estero Blvd. and Palermo Circle, and allows for an internal sidewalk from the entrance of the 7-Eleven to the sidewalk along Estero Blvd. This site configuration also brings the building closer to Estero Blvd., establishes a much safer, more pedestrian friendly environment and encourages pedestrian connectivity in a heavily traveled, walkable area of the island.

The placement of the building helps activate Estero Blvd., creates visual interest, and encourages bicycle and pedestrian activity which supports the goal of the Downtown and CB zoning districts under the proposed CPD rezoning. The proposed site design allows for the redevelopment of a convenience store on the unique triangular site in a manner that provides a much-needed service to the island while enhancing the quality and character of the pedestrian-oriented commercial activities along Estero Blvd. thus meeting the intent of the LDC's building frontage requirement for Estero Blvd. Based on the justifications provided, the granting of this deviation will not negatively impact the health, safety, and welfare of the community.

**DEVIATION #7 seeks relief from LDC Section 34-2015(5) which requires sufficient maneuvering room to allow an exiting vehicle to leave the parking lot in a forward motion. The deviation would allow vehicles to leave the most northern parking spaces in a reverse motion into the Palermo Circle right-of-way.**

Prior to Hurricane Ian, the convenience store's parking configuration required vehicles to back into the Palermo Circle, a local street, and Estero Boulevard, an arterial roadway, rights-of-ways in order to exit the site. The unique triangular shape of the lot presents a design challenge for access and the required parking of vehicles. The lot and redevelopment of the prior use does not provide sufficient room to allow for all spaces to leave in a forward motion into Palermo Circle right-of-way. The proposed reconfiguration of the site has created a defined two-way access from Estero Boulevard as well as Palermo Circle to improve vehicle maneuvering to and from the property. The site configuration has also allowed for improved pedestrian safety and connectivity from the right-of-way to the use. The proposed parking spaces, which are located on a property within the Pedestrian Commercial future land use category, do not unduly interfere with a critical congested road segment (Estero Boulevard) and do not affect normal usage of any existing or proposed sidewalks along Palermo Circle. The requested deviation to allow vehicles to back out of the most northern parking spaces into Palermo Circle, a local street, will not negatively impact the health, safety, and welfare of the community.





## 1301 ESTERO BLVD COMMERCIAL PLANNED DEVELOPMENT (CPD) Planned Development Rezone Application

### NARRATIVE

#### **BACKGROUND & REQUEST**

The subject property is located at 1301 Estero Blvd., Fort Myers Beach, FL 33931, and consists of a single parcel (STRAP#: 19-46-24-W4-0060B.0160) totaling 10,677± sq. ft. (0.245± acres) (See Figure 1). The property has a Future Land Use (FLU) Map Designation of Pedestrian Commercial and is within the Downtown Zoning District.

The Neighborhood Company, The Applicant, Authorized Representative and Agent on behalf of the owner 7-Eleven Inc, is submitting this Planned Development Rezone Application to request the following:

- Rezone from Downtown to Commercial Planned Development (CPD)

The subject property prior to Hurricane Ian was developed with a 2,016± sq. ft. convenience store (7-Eleven) (See Figure 2). As a result of the hurricane, the property and existing structure received significant damage (See Figure 3). Assessments of the property required the structure and site infrastructure to be demolished and the site cleared (See Figure 4)



Figure 1. Location Map



Figure 2. Pre Hurricane Ian



Figure 3. Post Hurricane Ian





Figure 4. Existing Conditions

## **PROPOSED USE/DEVELOPMENT**

The 7-Eleven, which existed on the property for decades, was a very popular commercial business and provided convenience benefits to local residents and visitors. Based on the historic demand and continued need for convenience stores on Fort Myers Beach (FMB), the owner wants to redevelop the property with the same use. The plan for a new convenience store (7-Eleven) improves upon what existed prior to Hurricane Ian, and also reduces or eliminates non-conformities that existed on the property.

Convenience stores have been and continue to be a staple and necessary commercial business in all communities throughout the United States. Fort Myers Beach, Florida is no exception. A convenience store has been at this location for decades. As Fort Myers Beach continues to rebuild and regain its pre-Hurricane Ian resident and visitor populations, convenience related businesses will once again be needed and expected on this part of the island.

The proposed redevelopment of the property will consist of the following:

- A maximum 3,500+/- sq. ft. convenience store to be open 24 hours and seven days a week.
- Two (2) access points from Palermo Circle and Estero Boulevard significantly reduced in width from those that existed prior to Hurricane Ian.
- Dumpster and enclosure with direct access from Santos Road.



The Comprehensive Plan's Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows a FAR up to 1.4. Due to the requested rezoning to CPD and consistency with LDC Sec. 34-953 for the CB zoning district, the allowed FAR for the subject property shall not exceed 1.0.

A FAR of 1.0 would allow approximately 10,677± square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet that is well below the potential maximum allowed.

## **LOCATION, SITE DESIGN & COMPATIBILITY**

The property is situated within the "Core Area" of Fort Myers Beach at the northeast corner of Estero Blvd. and Palermo Circle. The north side of the property is bordered by Santos Road. Located approximately one quarter mile east of "Times Square" on Estero Blvd., the property is within a heavily travelled and walkable area of the island, which provides visitors with opportunities for shopping, dining, lodging, and access to the beach. This mixed-use "Core Area" is an ideal location for a convenience store. It is where the prior 7-Eleven served the needs of residents and visitors for decades and represents an area of continued activity with the opening of Margaritaville, and the planned redevelopment of the Beached Whale, Tuna Skin Apparel Store and the Cottage.

The subject property is oddly shaped and presents numerous design challenges that would require multiple variances if utilizing conventional zoning regulations. As such, the Commercial Planned Development provides for regulatory flexibility and allows for creative design to address site constraints. The proposed Master Concept Plan (MCP) reconfigures the old site to make it more functional, attractive, resilient, and safer. It also reduces or eliminates non-conformities and makes it generally consistent with the intent of the Downtown redevelopment district.

First, the building is placed where the property is the widest. This allows for a safer and more functional parking lot design where cars will no longer back onto Estero Blvd. Access will be limited to two access points - one along Estero Blvd and the other along Palermo Circle. This will allow for a logical circulation pattern and will provide safer ingress and egress movements. Additionally, this configuration allows for a slightly larger convenience store that will be newer, more resilient, and better meet the needs of the community.

Second, the revised configuration will provide a primary façade along Palermo that will cater to the motorist and improve vehicular access and a secondary facade closer to Estero, which will provide improved, quick and easy access to the pedestrian, cyclist and beachgoer. The placement of the building closer to Estero Blvd is consistent with the Downtown District and the Commercial Boulevard (CB) District build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity.

Third the site configuration provides improved setbacks, and more space on the property for bike racks, a connection to the bus/trolley stop, sidewalks, improved landscaping and an enclosed/shielded dumpster pad. These improvements will create a more inviting, visually attractive development and will ensure locational compatibility.



The zoning and existing land uses surrounding the property are as follows:

- North: Santos RPD / Santos Road Right-of Way and Vacant
- South: Downtown / Estero Blvd Right-of-Way and Vacant
- East: Downtown/ Parking Lot
- West: Downtown / Palermo Circle Right-of-Way and Vacant

For decades, the properties surrounding this site were used for commercial purposes and will remain commercial as the island redevelops. Currently, the properties to the north, south and west are mostly vacant due to the impacts of the hurricane. The property to the north was previously Santo by the Beach, a weekly & monthly rental lodging, to the south across Estero Blvd. were various retail stores and public beach access. To the west was The Whale, a longtime Fort Myers Beach restaurant, and to the east is the Lani Kai's commercial parking lot.

As outlined within the Development Standards Table on the MCP, the proposed build to line and setbacks are as follows:

- Build-to line:
  - Primary Street (Estero Blvd.): 5 feet max
- Minimum Setbacks – Primary and Accessory Structures:
  - Secondary Street (Palermo Circle): 20 feet
  - Local Street (Santos Road): 7.5 feet'
  - Side/Rear: 5 feet

The development standards, inclusive of the build-to line and setbacks, further ensure compatibility with adjacent uses and are appropriate for property located at the center of commercial activity and surrounded by three roadways.

Development order approval will include code compliant landscaping throughout the property. Buffers for the site are not required as the property is adjacent to public rights-of-way on three sides and a parking lot to the east. However, it is the intent to enhance landscaping on the property. Plantings will be planned as part of the development order approval within the buffer areas along Palermo Circle, Santos Road, and between a portion of the subject property and the commercial parking lot to the east. Building edge plantings will also be provided along portions of the building facing Estero Blvd. and the remainder of the property adjacent to the commercial parking lot to the east. The dumpster enclosure, located on the north side of the property will be screened as required by LDC.

Prior to Hurricane Ian, the existing site provided an estimated 21% of open space. Due to the request to rezone to CPD and the requirement to follow CB zoning district property development regulations, there is no minimum open space requirement regulation. However, the development will comply with LDC Sec. 10-415 which states that all development must maintain, at a minimum, open space within the landscaping of parking and vehicle use areas and in areas where perimeter buffers are required in accordance with LDC Sec. 10-416(c). Due to the unique characteristics of the property and in order to build a modern convenience store and supporting infrastructure that provides for a safer and better functioning property, the proposed project intends to increase the amount of open space from what existed prior to Hurricane Ian to approximately 22%. This open space will be provided through perimeter buffering and parking areas as indicated on the MCP with the majority of the open space located within the northern portion of the property to ensure further compatibility with the surrounding uses in the area.



The previously established convenience store use has a proven history of being compatible at this location with the surrounding roadways, lodging, restaurant and retail uses over the years. The proposed development standards, enhanced buffering, additional open space requirements outlined within the proposed CPD will continue to ensure any proposed use is compatible.





**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE  
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PH-D FORM:**

**A. COMPREHENSIVE PLAN AMENDMENTS**

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

- Mixed Use Districts Designation – Time Square Mixed-Use District



The applicant is aware that the town is currently in the early stages of amending its Comprehensive Plan Future Land Use Map (FLUM) as presented by the town's consultant, the town is considering a Future Land Use change for the subject property that would remove the property from the Pedestrian Commercial FLUM designation and place the property within a newly created "Time Square Mixed-Use District". The applicant intends to comply and be consistent with the existing and potential Future Land Use designation for this area.

While it is uncertain if and when the

Time Square Mixed Use District will be approved, it is our understanding that it intends to promote a mix of uses, greater commercial intensity and enhanced bicycle and pedestrian activity, which are all consistent with the proposed CPD.



## **B. PHASING OF CONSTRUCTION**

The development is to be constructed in a single phase.



## **C. COMPREHENSIVE PLAN COMPLIANCE**

### **COMMUNITY DESIGN ELEMENT:**

**OBJECTIVE 1-A ESTERO BOULEVARD — Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.**

**POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.**

The redevelopment plan proposes enhancements to the frontage along Estero Blvd. and throughout the site. These enhancements will include improved access management, increased open space and green areas, defined sidewalks for pedestrian connectivity to Estero Blvd and nearby transit, and improved landscaping. Due to the unusual configuration of the site, which is triangular in shape and bordered by Estero Blvd., Palermo Circle and Santos Road, it was determined that the proposed building location and orientation resulted in a more functional site with improved managed traffic flow to allow all vehicles to leave the parking lot in a forward motion.

This plan proposes a reduction in the width of the driveway opening along Estero Blvd. to create a defined and controlled entrance into the development. Moreover, the new configuration will provide more open space and green areas along Estero Blvd and throughout the property. Additional enhancements to the site include landscaping, enhanced buffering, and potential mural artwork or window features along Estero Blvd. and the rear portion of the building. These enhancements create a development with improved accessibility and safety for pedestrians, while improving the appearance for residents and visitors on the primary circulation route of Fort Myers Beach, thus supporting the “Estero Blvd” vision as described in Objective 1-A and Policy 1-A-1 of the Fort Myers Beach Comprehensive Plan.

### **FUTURE LAND USE ELEMENT:**

**GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.**

**OBJECTIVE 4-A SMALL-TOWN CHARACTER — Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.**

The proposed project will rebuild a previously established commercial business which for decades provided easy and practical access to convenience goods for both residents and visitors. The proposed project will provide a more pedestrian friendly environment, through the reconfiguration of parking, the reduced width of the driveway opening from Estero Blvd., orientation of the building, appropriate setbacks/building location, and potential mural artwork or window feature on the east and south walls. Through the implementation of these elements, the development will enhance the public realm of Fort Myers Beach and add to its unique small-town character.

Finally, in an effort to minimize the damage that a future hurricane could inflict, the new building will be built to the current Florida Building Code, FEMA standards, and meet all applicable state and federal regulations.



**Policy 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian-oriented public realm.**

Located along Estero Blvd., approximately one quarter mile east of Times Square, the proposed project will re-establish a long-standing convenience-based business that has provided goods to both residents and visitors for decades. The previous building was destroyed by Hurricane Ian but was an integral component to the heavily travelled Estero Blvd. and walkable area of the town.

The proposed site configuration will provide a primary façade along Palermo catering to the motorist and improve vehicular access. A secondary facade closer to Estero will provide improved, quick and easy access for the pedestrian, cyclist and beachgoer. The placement of the building closer to Estero Blvd is consistent with the Downtown and CB zoning district's build to lines and helps activate the street, create visual interest and encourages bicycle and pedestrian activity. Other site elements provide for appropriately applied setbacks, enhanced buffers/landscaping, more space on the property for bike racks, a connection to the bus/trolley stop, relocation of an existing crosswalk, accessway/driveway width reductions, sidewalks, and an enclosed/shielded dumpster pad. These improvements will create a more inviting, safer, visually attractive development ensuring locational compatibility and improved pedestrian oriented areas consistent with Policy 4-A-2.

**POLICY 4-B-6: Pedestrian Commercial: a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code.**

The project site is located within the Pedestrian Commercial FLUM, and as stated in Policy 4-B-6, commercial activities must contribute to the pedestrian-oriented public realm. The site plan proposes to provide enhancements to the public realm through the improved vehicular patterns on the site, clearly defined pedestrian sidewalks and the proposed mural and/or potential architectural or window features located on the building adding to the pedestrian experience moving along Estero Blvd. These proposed enhancements will contribute to the pedestrian-oriented public realm of Fort Myers Beach and is consistent with Policy 4-B-6.

**POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the "Pedestrian Commercial" category as high as 2.5, and in other categories as high as 1.5.**

The Comprehensive Plan's Pedestrian Commercial FLU designation indicates that the maximum Floor Area Ratio (FAR) specified under the Land Development Code (LDC) may be as high as 2.5. With the subject property currently located within the Downtown zoning district, LDC Sec. 34-675(c)(3) allows an FAR up to 1.4. As stated in LDC Sec. 34-953, the request for a rezoning from the Downtown zoning district to Commercial Planned Development (CPD) zoning district requires that building placement, size, design, and all other property



development regulations shall be the same as for the CB zoning district. Thus, the allowed FAR for the subject property shall not exceed 1.0 as allowed within the CB zoning district, LDC Sec. 34-705(c).

A FAR of 1.0 would allow approximately 10,677 square feet of building. The CPD is proposing a total building area of approximately 3,500 square feet which equals a FAR of approximately 0.33 which is well below the potential maximum allowed and thus is consistent with Policy 4-C-2.

**POLICY 4-C-3. ii. Where new or expanded commercial uses are encouraged, as in the “Pedestrian Commercial” category, the Land Development Code shall specify its permitted form and extent and provide a streamlined approval process. Landowners may also use the planned development rezoning process to seek approval of other forms of commercial development in that category.**

The Fort Myers Beach Land Development Code states that the intent of the Commercial Planned Development (CPD) zoning district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential and complies with the Fort Myers Beach Comprehensive Plan but does not meet all of the specific requirements of a conventional or redevelopment district. Due to the unique configuration of the subject property and the destruction caused by Hurricane Ian, this application requests a rezoning to CPD so the property can be redeveloped and to remove nonconformities which existed on the site prior to Hurricane Ian.

A proposed convenience retail store use is being requested within this CPD. This use classification is permitted by right within the Downtown zoning district as well as the Pedestrian Commercial category of the Fort Myers Beach Comprehensive Plan. The CPD rezone request is thereby in compliance with Policy 4-C-3.

**OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT — Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster build back policy.**

The new commercial building will be more resilient and will comply with the latest and more stringent Florida Building Code. Additionally, state, federal, and local flood regulations will be followed, improving the resiliency of the island’s structures.

#### **COASTAL MANAGEMENT ELEMENT:**

**GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.**

**POLICY 5-A-1 The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.**

The proposed redevelopment of the site will follow applicable federal, state and local regulations resulting in a resilient commercial property to serve the residents and visitors of Fort Myers Beach.



## **TRANSPORTATION ELEMENT**

**GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off-island systems, and parking options matched to road capacity.**

### **POLICY 7-D-3 ALTERNATE TRAVEL MODES**

**The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.**

To better serve the public, the proposed site design includes a clearly marked parking lot with a reduced entrance width from Estero Blvd., appropriate parking lot lighting, and an unobstructed sidewalk with nearby street crossings. To encourage use of alternate travel modes under Policy 7-D-3 the development will provide bike racks for bicycle parking and will maintain a pedestrian pathway to the existing transit stop located on the property to the east of the subject site.

## **UTILITIES ELEMENT**

**GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.**

**POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.**

The proposed development will connect to central water and sewer utilities as mandated by the Town of Fort Myers Beach.





#### **D. DESIGN STANDARDS COMPLIANCE**

The proposed 7-Eleven convenience store will be consistent with the overall purpose and intent of the commercial design standards provided under LDC Section 34-991. The following outlines compliance with the applicable specified design standards within LDC Sections 34-994 through 34-997:

As depicted in the architectural representations provided (See the required Architectural Elevations included in the submittal documents), the proposed exterior walls will be a combination of stucco and fiber cement panels/boards, which are identified as an appropriate finish material under LDC Section 34-994. The commercial structure, with space located below the base flood elevation, will be properly dry-floodproofed with all fastenings designed to be “visually unobtrusive” and integrated into the design of the principal facades. The principal façade will be designed to be compliant with the requirements for transparent windows, glazing, and shape.

The proposed building will generally comply with the intent and applicable portions of LDC Section 34-995 related to the “Principal Façade Walls” standards. The primary principal building façade will face Palermo Circle due to the unique triangular property configuration. This principal façade as illustrated on the supplied renderings will include a working entrance facing Palermo Circle and incorporate a “prominent cornice and expression line.” Awnings and canopies are provided along the applicable principal façade consistent with the LDC. 7-Eleven is proposing to design and install murals on the principal side wall façade facing Estero Blvd (primary street) and the building’s rear wall façade facing the commercial parking lot in order to not have blank walls and to enhance visual interest toward the public realm. Window features along the principal side wall facade may also be evaluated to provide further interest and an element to further engage the pedestrians walking along Estero Blvd. The proposed exterior walls will be a combination of stucco and fiber cement panels, a stucco tower with a prefabricated aluminum canopy at the entry and additional architectural features such as aluminum store front glazing, standing seam metal awnings and tower roof detail.

LDC Section 34-996 specifically allows for a variety of roof types. The proposed 7-Eleven is designed with a flat roof and parapet, which is permitted under subsection (b). Above the front entrance facing Palermo Circle, an architectural “entry tower” with a hip roof is proposed. The “entry tower” roof consists of a standing seam metal roof, which is permitted under subsection (c).

Due to the unique configuration and small lot size, the proposed design cannot support plazas and courtyards. The project does generally provide for portions of the building to be located close to and oriented toward the existing public sidewalk along Estero Boulevard. The project also provides for internal pedestrian passages or connections along the primary façade facing Palermo Circle to the existing sidewalk along Estero Boulevard, thus meeting the intent of LDC Section 34-997(d). The proposed entrance to the existing adjacent sidewalk/pathway along Estero Blvd is a very short 20 second walk of less than 45 feet.



## **E. DECISION-MAKING COMPLIANCE**

### **(1) Whether there exists an error or ambiguity which must be corrected.**

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Downtown to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Through the proposed CPD rezone request, reductions in prior existing non-conformities are being corrected specific to accessway widths, amount of open space provided, and development standards.

### **(2) Whether there exist changed or changing conditions which make approval of the request appropriate.**

The Town of Fort Myers Beach has been devastated by Hurricane Ian. The proposed rezoning will allow the rebuilding of the pre-storm 7-Eleven convenience store. This building will assist in the Town's redevelopment by bringing back a well-established local business and providing a convenience store that will serve local residents and visitors.

### **(3) The impact of a proposed change on the intent of this chapter.**

The proposed rezoning change to CPD is consistent with the purpose and intent of the zoning chapter of the Land Development Code (LDC). The CPD will encourage and promote the redevelopment of a destroyed convenience store business that is needed in the community, reduce or eliminate prior non-conformities, and provide for a more resilient and improved development within the Pedestrian Commercial FLU designation. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the new 7-Eleven will not negatively impact the community's health, safety, and general welfare.

### **(4) The testimony of any applicant.**

The professional experts retained to support the petition will provide future testimony during the appropriate public hearings.

### **(5) The recommendation of staff and of the local planning agency.**

The petition will be reviewed by staff, expert testimony will be provided during the public hearing process before the Local Planning Agency and a recommendation will be made to the Town Council.

### **(6) The testimony of the public.**

The public will be provided with the opportunity to testify before the LPA and Town Council. Such testimony will be evaluated as applicable and appropriate to the request for the LPA's recommendation and Town Council's decision.



**(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.**

Please see Section C above, which explains how the petition is consistent with the town's comprehensive plan.

**(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.**

The rezoning request and the proposed redevelopment of a convenience retail store are ideal for the location. The site was previously developed with a convenience store supporting the residents' and visitors' needs. The subject property is located within an urban and commercialized area of the town with limited or no impact to any existing long-term residential uses.

**(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.**

All urban services were in place for the previous 7-Eleven and remain in place to adequately serve the subject site.

**(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.**

The subject property was previously developed and has been subsequently cleared of all existing natural vegetation due to the catastrophic impacts of Hurricane Ian. No environmentally critical areas and natural resources exist on the site.

**(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.**

The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to person or property as the proposed use existed prior to the catastrophic events of Hurricane Ian. There are no known documented code enforcement cases indicating the prior convenience retail use was deemed a nuisance, hazard, or caused detrimental effects to the community. The adjacent surrounding uses consist of public rights-of-way (Estero Boulevard, Palermo Circle, and Santos Road) and a commercial pay to park parking lot. Just beyond the roadways, are vacant or redeveloping commercially zoned lands, which are compatible with the proposed commercial use. All proposed setbacks, buffers, and open space areas are consistent with the standards provided for within the Land Development Code or are suitably proposed and complementary to the highly urbanized development pattern, and unique characteristics of the subject property.



**(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.**

Given that this CPD simply replaces the previously existing 7-Eleven, there will be no net changes on public facilities and the proposed request does not create any burden upon existing transportation or other services and facilities. The CPD does improve site design to facilitate and enhance bicycle and pedestrian access.

**(13) For planned development rezonings, see § 34-216 for additional considerations.**

This request to rezone the subject property from Downtown to Commercial Planned Development (CPD) will be presented at public hearing before the local planning agency and the town council consistent with LDC Section 34-216(a)(1). As demonstrated throughout this narrative, the proposed CPD meets the following criteria under LDC Section 34-216(2):

- a. The proposed convenience retail use, as provided for within the Schedule of Uses is appropriate for the subject location due to the fact that a 7-Eleven previously existed on the property for decades without issue.
- b. Sufficient safeguards are in place to protect the public interest through the proposed CPD and supporting MCP. The design, location and proposed use and development standards are generally consistent with the mixture of uses and pedestrian nature of the area and will meet the needs of the town's residents and visitors. As depicted on the MCP, access and circulation will be safer and more functional, the pedestrian experience will be improved and the site will be rebuilt with a new store, additional open space and improved landscaping.
- c. If recommended special conditions are presented and are deemed reasonable and feasible, the applicant will be willing to accept them to further ensure sufficient safeguards are established.
- d. The proposed rezoning request meets specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
  1. Policy 4-C-3: See Section "C" within the above narrative.
  2. Policies 4-B-6 and 4-C-3: See Section "C" within the above narrative.
  3. Policy 4-C-4: Proposed height of 30 feet is not taller than the standard height limit allowed under the Land Development Code.
  4. Policy 4-C-8: Density transfers. Not applicable.
  5. Policy 4-E-1: The existing development was consistent with and well below the allowed intensity (FAR 1.4) prior to the natural disaster (Hurricane Ian). Any proposed redevelopment will be consistent with the maximum intensity allowed under the comprehensive plan and LDC which will be a FAR of 1.0.
  6. Policy 7-J-2: The proposed rezone request is not a major rezoning as the request applies to a property that is less than one-quarter of an acre in area. Additionally, the proposed future redevelopment of an existing convenience retail store of similar size will render no net increase in traffic and will not adversely impact the surrounding network.



## **CONCLUSION:**

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the regulatory flexibility of the CPD process, reduction or elimination of prior non-conformities, and compliance with today's Florida Building Codes, Floodplain Management standards and the Town's Floodplain Regulations the developer will provide a project that is more resilient and functional to the public. This rezoning effort will help bring back a much-needed convenience store on the island, helping to improve living conditions and supporting the public's overall health, safety and welfare.





PART OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST

7-ELEVEN INC  
C/O CORP INCOME TAX DEPT  
3200 HYACKBERRY RD  
IRVING TX 75063

CREIGHTON CONSTRUCTION & MANAGEMENT  
2240 W FIRST ST, SUITE 101  
FORT MYERS, FLORIDA 33901

## PROPERTY INFORMATION

## SITE ADDRESS

1301 ESTERO BLVD  
FORT MYERS BEACH FL 33931

## FOLIO NUMBER

10228074

FLOOD ZONE

ACCORDING TO THE FLOOD INSURANCE RATE  
MAP NO. 12071C054G,  
EFFECTIVE DATE: NOVEMBER 17, 2022,  
THE PROPERTY IS LOCATED IN FLOOD ZONES  
"AE-11" AND "AE-12"

CURRENT ZONING

DOWNTOWN  
DISTRICT

VICINITY MAP

N.T.S.



## LOCATION MAP

N.T.S.

## INDEX OF SHEETS

1. COVER SHEET
2. MASTER CONCEPT PLAN

1301 ESTERO BLVD. COMMERCIAL PLANNED  
DEVELOPMENT

COVER SHEET

[illegible]

DATUM NOTE:

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.  
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29  
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED  
SURVEYOR PRIOR TO USE.

ALVARO J. YUSTY, P.E.  
LICENSE NO. 92973  
COA # 20236

|            |          |
|------------|----------|
| PROJECT #: | 00600-00 |
|------------|----------|

SHEET: 1



| OPEN SPACE         |          |          |
|--------------------|----------|----------|
|                    | REQUIRED | PROVIDED |
| MINIMUM PERCENTAGE | 0        | 20.82%   |
| MINIMUM AREA       | 0 AC     | 0.051 AC |

**DATUM NOTE:**

ALL ELEVATIONS REFERENCE NAVD88 VERTICAL DATUM.  
APPROXIMATE CONVERSION FOR PROJECT AREA: NAVD88 + 1.18' = NGVD29  
ANY DATUM CONVERSIONS SHOULD BE CONFIRMED BY A LICENSED  
SURVEYOR PRIOR TO USE.

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN REGARDING LEASING OF FURNITURE FOR USE IN TOWN HALL; APPROVING THE LEASE WITH BOXX MODULAR FOR 48 MONTHS AT A MONTHLY RENTAL RATE OF \$2,586.00 AND A ONE TIME INSTALLATION AND DELIVERY FEE OF \$11,050.00; AND PROVIDING AN EFFECTIVE DATE.

**Why the action is necessary:**

It is necessary for the Town Council to ratify an "emergency purchase" authorization in order to comply with the Town's Procurement Ordinance. The "emergency purchase" was necessary in order to execute the lease as soon as possible after finalization of details to ensure a delivery date that coincides with the trailers being ready for occupancy.

**What the action accomplishes:**

The action provides official authorization by the Town Council of the "emergency purchase" that was necessary to expedite the lease for office furniture.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

This 48-month lease for office furniture corresponds to the 48-month lease for the temporary town hall modular units. It was necessary to execute the lease as soon as the details were finalized in order to ensure the furniture would be delivered at the same time as the modular units would be ready for occupancy. An "emergency purchase" authorization was executed to expedite execution of the lease, and is now being brought before Town Council for ratification.

**Attachments:**

1. 24-34, Boxx Modular Ratification
2. BOXX Modular Furniture Lease Executed Contract

**Financial Impact:**

The lease involves a one-time delivery and installation fee of \$11,050. The monthly rate is then \$2,586 per month for 48 months. The fiscal years' impacts are as follows:

|      |          |
|------|----------|
| FY24 | \$29,152 |
| FY25 | \$31,032 |
| FY26 | \$31,032 |
| FY27 | \$31,032 |
| FY28 | \$12,930 |

Total \$135,178

6. **Alternative Action**

7. **Management Recommendations:**

Management recommends ratification of the lease.

8. **Recommended Approval:**

Joe Onzick, Finance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/26/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024



## **RESOLUTION NUMBER 24-34**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN REGARDING LEASING OF FURNITURE FOR USE IN TOWN HALL; APPROVING THE LEASE WITH BOXX MODULAR FOR 48 MONTHS AT A MONTHLY RENTAL RATE OF \$2,586.00 AND A ONE TIME INSTALLATION AND DELIVERY FEE OF \$11,050.00; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town of Fort Myers Beach has been working diligently to secure modular units for use as a Town Hall; and

**WHEREAS**, the modular units are in place and it is necessary to provide furniture for the use by Town staff and the public in the modular units; and

**WHEREAS**, due to staging efforts the execution of a lease with Boxx Modular was completed as an emergency purchase; and

**WHEREAS**, adoption of this Resolution is in the best interest of the health, safety and welfare of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH, AS FOLLOWS:**

Section 1. The above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. This Resolution memorializes and ratifies the actions of the Town to enter into a Lease Agreement with Boxx Modular for furniture for use in Town Hall as an emergency purchase.

Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, and upon being put to a roll call vote, the result was as follows:

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Vacant, Council Member        | N/A   |
| Karen Woodson, Council Member | _____ |

ADOPTED this 5<sup>th</sup> day of February, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 5<sup>th</sup> day February, 2024.





**ACCEPTANCE:** Upon acceptance of this Lease Agreement by the Lessee, it shall become a binding contract subject to the attached general terms and conditions. Where Lessor is responsible for transportation and/or installation, the attached special terms and conditions for transportation and/or installation shall also apply.

Unless otherwise stated, prices exclude all sale taxes, property taxes, licenses, permits, and fees. Delivery and installation prices are based on the site being accessible, level and having adequate drainage. Lessee is responsible for obtaining any building permits and securing local installation and foundation approvals.

Return Transportation and Dismantle amounts are estimates only. Actual charges to be specified at the time of pick-up/dismantle. As applicable, Lessee is responsible for site restoration, including, but not limited to, removal of footings, foundations, decks, ramps, and utilities at the end of the Lease Term.

**Payment Terms:**

| Deposit Due with Signed Lease                                                           | Payment Amount |
|-----------------------------------------------------------------------------------------|----------------|
| First Month's Rent                                                                      | \$2,586.00     |
| Damage Deposit Equal to One Month's Rent                                                | \$2,586.00     |
| 50% of the Delivery and Installation Charges (Plus Tax if applicable)                   | \$5,525.00     |
| Total Deposit Due                                                                       | \$10,697.00    |
| Balance of Payment for Delivery and Installation is due upon Commencement Date of Lease | \$5,525.00     |

**NOTICES FOR LESSOR:**

BOXX Modular, Inc.  
Address: 1716 Candler Road, Gainesville, GA 30507  
Attention: Stephanie Christan, Branch Manager

**NOTICES FOR LESSEE:**

Town of Fort Myers Beach  
Address: 2525 Estero Boulevard, Fort Myers Beach, Florida 33931  
Attention: Frankie Kropacek

## ACKNOWLEDGEMENT

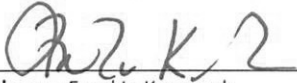
Notwithstanding anything to the contrary in this Lease, and in addition to the rights under the force majeure clause in the Terms and Conditions, Lessor and any of its affiliates, shall not be in default of any of its obligations hereunder, and shall not have any liability or be responsible for any claims or damages whatsoever incurred by the Lessee, as a result of the non-performance or any delays in the performance of its service resulting from the unavailability of assets, resources, personnel, labor and support services caused by, directly or indirectly, the COVID-19 pandemic.

Notwithstanding anything to the contrary in this Lease, in the event that any amount is due to Lessor or any of its affiliates by the Lessee or any of the Lessee's affiliates, Lessor shall have the right of set-off against the Lessee for that amount, whether such amount arises pursuant to this Lease, any other contracts between the Lessee and/or the Lessee's affiliates and Lessor, Lessor's affiliates or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement by their duly authorized agents.

**Town of Fort Myers Beach ("Lessee")**

Authorized Signature:



**Name:** Frankie Kropacek

**Title:** Senior Procurement Manager

**Date:**

1-24-24

**BOXX Modular, Inc.**

Authorized Signature:



**Name:** Alex Nguyen

**Title:** Regional Sales Manager, Boxx Modular, Inc.

**Date:** 01/26/2024

Please sign and return this copy to your sales representative.

## LEASE AGREEMENT – TERMS AND CONDITIONS

This Lease Agreement is by and between BOXX Modular, Inc., a corporation organized in the State of Delaware and having its principal place of business located at 3475 High River Road, Fort Worth, Texas 76155 (herein "Lessor") and Lessee. Lessor hereby demises, leases and lets to Lessee and Lessee hereby leases, leases and hires from Lessor, modular building(s) and/or equipment described in the Cover Page(s) ("Equipment") in accordance with the following terms and conditions of this Lease Agreement.

1. **Term.** This Lease shall become effective upon the execution by Lessee and Lessor. Pursuant to Section 3 hereunder, the term of this Lease ("Lease Term") shall commence on the sooner of the date the Equipment is accepted by Lessee or ninety (90) days after Lessee receives notice of the Equipment's availability for delivery. This Lease shall end on the last day of the Initial Lease Term as specified in the Cover Page(s). In the event of any extension or renewal of this Lease, all terms and conditions of this Lease remain unchanged unless mutually agreed to in writing by both Parties.
2. **Lease.** Lessee agrees to pay to Lessor or its assignee the Lease Payments, One Time Charges equal to the amounts specified in the Cover Page(s), and a personal property fee of eight percent (8%) of the monthly Lease Payments. Lease Payments, One Time Charges, and the personal property fee will be due in accordance with the terms specified in the Cover Page(s) and shall continue until all payments are made in accordance with the Lease. If the Lease Term begins on the second day through the last day of any month, the Lease Payments shall be prorated for that portion of the month and shall be paid at the time specified in the Cover Page(s). Any payment(s) received later than ten (10) days from the due date will be subject to a late charge equal to three percent (3%) of the amount due per month until paid by Lessee. The Lease Payments will be payable without notice or demand at the office of Lessor or such other place as Lessor or its assignee may from time to time designate in writing. The Lease Payments and One Time Charges specified in the Cover Page(s) do not include any amounts for changes in taxes, tariffs, or other similar charges that are enacted after the date of this Lease. Lessor shall be entitled to an equitable adjustment in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in taxes, tariffs, or similar charges due to such changes including, without limitation, escalation, delay damages, costs to procure, costs to change suppliers, costs of manufactured equipment or goods, or other costs of any kind resulting from the changes. In the event of such changes, Lessee shall execute a change order in an amount commensurate with any actual, direct, and documented increase in material costs incurred as a direct result of such changes. Lessor's fee shall not be increased as a result of such cost increases. All payments will be absolute and unconditional in all events and will not be subject to any offset, defense, counterclaim, or recoupment by the Lessee for any reason whatsoever.
3. **Delivery, Acceptance and Removal.**
  - a. Lessee, at its own expense, unless otherwise agreed herein, will cause the Equipment to be delivered to Lessee at the location specified in the Cover Page(s). The Lease Term will commence at the sooner of: i) the Lessee receives and accepts the Equipment as soon as it has been delivered, installed and operational or upon occupancy if applicable, whichever is the earlier. Lessee will evidence the commencement by executing and delivering to Lessor a Delivery, Acceptance, Indemnification, and Services Certificate in the form provided by Lessor and attached herein as Exhibit A; or, ii) ninety (90) days after Lessor has notified the Lessee in writing that the Equipment is ready to be delivered to the Project Site as provided in Exhibit A and delivery is delayed through no material fault of Lessor.
  - b. Unless purchased by Lessee, Lessor will remove the Equipment from the Project Site at the end of the Lease Term or any Lease Term Extension or in the Event of Default by Lessee, and Lessee agrees to pay Lessor for these services the amount specified in the Cover Page(s) as "Dismantle and Return Freight". Lessee will be responsible for the restoration, if any, of the site.
4. **Damage Deposit.** Lessee shall pay the amount specified in the Cover Page(s) as ("Damage Deposit") to be held by Lessor without liability to Lessee for interest, as security for Lessee's performance of the terms and conditions of this Lease, and in furtherance thereof, Lessee hereby grants to Lessor a security interest in the cash from time to time comprising the Damage Deposit and all proceeds thereof. In the event of Lessee's default, Lessor may apply the Damage Deposit as payment of Lessee's Lease Payment(s), or of Lessor's cost, expenses and attorney fees in enforcing the terms of this Lease and to indemnify Lessor against any damages sustained by Lessor, provided, however, nothing herein contained shall be construed to mean that the recovery of damages by Lessor shall be limited to the amount of the Damage Deposit. In the event all or any portion of the Damage Deposit is applied as aforesaid, upon demand Lessee shall deposit additional amounts with Lessor so that the Damage Deposit shall always be maintained at its original amount. Provided Lessee is not in default hereunder, upon the termination of this Lease, any unexpended balance of the Damage Deposit shall be returned to Lessee.
5. **Warranties.** Lessor hereby assigns to Lessee during the Lease Term, so long as no Event of Default has occurred hereunder and is continuing, all benefits of the Manufacturer's Warranties, if any, expressed or implied with respect to the Equipment. Except as otherwise provided herein, Lessor grants Lessee its Standard Limited Warranty restricted to the Equipment and Services supplied by Lessor under this Lease. A copy of the Standard Limited Warranty is attached herein as Exhibit C.
6. **Title to Equipment; Security Interest.** During the term of this Lease, title to the Equipment and any and all additions, repairs, replacements or modifications thereof, will rest with Lessor, subject to the rights of Lessee under this Lease. In the Event of Default as set forth in Section 16, Lessee will peaceably surrender possession of the Equipment to Lessor. Lessor shall have and retain a security interest under the Uniform Commercial Code in the Equipment, the proceeds thereof and any and all repairs, replacements, substitutions and modifications thereto, in order to secure Lessee's payments and the performance of all other obligations of Lessee under this Lease. If requested by Lessor, Lessee agrees to execute such additional documents including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor that Lessor deems necessary or appropriate to protect its interest in the Equipment and in this Lease.

If the Lessee, mortgagee or a purchaser of the Lessee's property or any creditor of the Lessee refuses to admit Lessor's title to the Equipment, refuses to permit Lessor to retake possession of the Equipment or if the Equipment is lost, stolen, damaged or destroyed: (a) the Lessee shall forthwith upon demand pay to Lessor the then-current full replacement value of the Equipment, which shall be a debt owed by the Lessee to Lessor until paid in full; and (b) this Lease may be terminated immediately by Lessor.
7. **Maintenance and Repairs.** Lessee shall be responsible for the routine cleaning and maintenance of the Equipment and will pay all costs, claims, damages, fees and charges arising out of its possession, occupancy, use or maintenance, whether by its owners, employees, vendors or invitees. Lessee, at its expense will keep the Equipment in good working order and repair and furnish all parts, mechanisms and devices required therefore. LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF, OR TO LESSEE, LESSEE'S EQUIPMENT, PERSONAL PROPERTY OR ANY OTHER PERSON OR ENTITY ARISING OUT OF, OR IN CONNECTION WITH, THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF. A copy of Lessee's Maintenance Responsibilities is attached herein as Exhibit B.
8. **Alterations.** Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.
9. **Location and Inspection.** The Equipment will not be relocated from its initial location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter the Project Site during normal business hours to inspect the Equipment or observe its use and operation. Barring an emergency, Lessor shall give the Lessee forty-eight (48) hours advance notice and shall not enter the Equipment unless in the presence of an employee or agent of the Lessee.
10. **Liens, Taxes, and Utilities.** Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. In addition to the Lease Payments and One Time Charges, and other sums owed Lessor under this Lease, Lessee shall be solely responsible for the payment of all federal, state, municipal, county, and/or city sales, use, personal property, and all other taxes, including, but not limited to, those taxes levied against (i) the price or value of the Equipment, (ii) its use or operation, (iii) the ownership of the Equipment, (iv) the Lease Payments being paid or, (v) other amounts which result from or arise out of

the parties having entered into the Lease. (Lessor is responsible for its own "Income Taxes" and "Wage Taxes"). Lessee shall be solely responsible to pay all charges and expenses associated with the installation, connection and use of utilities and the eventual disconnection of same. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor thereof.

11. **Risk of Loss; Damage; Destruction.** Lessee assumes all risk of loss of or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will, immediately place the same in good repair with the proceeds of any insurance recovery applied to cost of such repair. If Lessor determines that the Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee, at the option of Lessor, will either (a) replace the same with like equipment in good repair, or (b) on the next Lease Payment date, pay Lessor: (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease Payment due on such date, and (ii) an amount equal to the applicable replacement cost. In the event that Lessee is obligated to make payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the replacement cost amount to be paid by Lessee with respect to the Equipment which has suffered the event of loss and the Lease shall remain in full force and effect for all remaining Equipment.
12. **Force Majeure.** Lessor shall not be responsible for delays caused by events which are beyond Lessor's control including, but not limited to, Acts of God, strikes, material shortages, manufacturer delays, weather, epidemics, pandemics, COVID-19, and acts of terrorism certified by government. In the event of delays that are not caused by or the fault of Lessor, an extension of time for completion shall be awarded to Lessor which, in the sole opinion of Lessor, equitably compensates Lessor for such delays.
13. **Personal Property.** The Equipment is and will remain personal property and will not be deemed to be affixed or attached to real estate of any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.
14. **Lessee Insurance.** During the Lease Term, at Lessee's sole expense, Lessee shall obtain, provide, and maintain insurance coverage for all loss or damage to (i) the real property the Equipment is on, (ii) all personal property, (iii) all Lessee's property, (iv) all Lessor's property and Equipment, and (v) for all injury to persons, including death, in amounts agreeable to Lessor. Such Insurance shall name BOXX Modular, Inc. (located at 717 Constitution Drive, Suite 100, Exton, PA 19341 or 3475 High River Road, Fort Worth, Texas 76155) as the Certificate Holder, and as "Additional Insured" and "Loss Payee", in respect to all Lessor's modular units on the premises. A copy of such policy or certificate evidencing the existence and amounts thereof, including any endorsements, shall be delivered to Lessor within ten (10) days of executing the Lease, but in no event later than two (2) business days prior to delivery of the Equipment. Lessor reserves the right to postpone delivery of the Equipment until such policy or certificate is received by Lessor. Should such Insurance expire, be terminated, or be canceled during the Lease Term, then Lessee shall instantly provide Lessor with written notice of such expiration, termination, or cancellation, and shall immediately renew or replace such Insurance. Failure of Lessee to supply Lessor with such insurance certificates shall be considered a default. Except as provided otherwise in this Lease, Lessee's Insurance coverage shall commence upon the date of delivery of the Equipment, and continue throughout the term of this Lease, until Lessor removes the Equipment from Lessee's site. Nothing stated herein shall be construed to limit Lessee's obligations, covenants, or liability under the Lease.
15. **Insurance Coverage and Amounts.**
  - 15.1 Lessee shall provide the following types and amounts of insurance, which shall be primary to any insurance coverage carried by Lessor. All policies shall be written on a "per occurrence basis". Special form "All Risk" property insurance for each modular building (Equipment) or, if different, such other form of insurance stipulated in the Cover Page(s). The insurance shall be in an amount not less than Fifty Thousand Dollars (\$50,000.00), per each modular building unit or, if different, such other sum as set forth in the Cover Page(s). The insurance shall name Lessor, and any secured lender of Lessor, as Loss Payees. Coverage shall include theft and 100% replacement cost in like kind and quality, and shall extend to demolition and debris removal as may be required. All proceeds recovered under such insurance, due to the destruction or damage to the modular buildings

(Equipment), shall be paid to and be the sole property of Lessor and/or Lessor's secured lender; and

- 15.2 **Commercial General Liability Policy** against claims for bodily injury, death or property damage occurring in, on, or about the modular buildings (Equipment), in the amounts of not less than One Million Dollars (\$1,000,000.00) for bodily injury to, or death of, one person, and One Million Dollars (\$1,000,000.00) for property damage in a single occurrence, with a general aggregate of Two Million Dollars (\$2,000,000.00) or, if different, such other amounts as set forth on Schedule A. Lessee shall provide to Lessor Certificate(s) of Insurance evidencing the required types and limits of coverage as required. Such certificate(s) shall name Lessee as an Insured, Lessor as a Certificate Holder, Loss Payee, and Additional Insured on a primary and non-contributory basis (CG 20 01) respective of the type of loss, and shall expressly waive any and all right of contribution and subrogation against Lessor and Lessor's insurer.

Notice: Lessee is the sole insurer of the Equipment. Certificate(s) of Insurance to be provided by Lessee shall contain a provision that Lessor and Lessor's secured lender, if requested, shall receive the maximum written notice available by the insurance carrier, under the circumstances, prior to any termination, cancellation, or alteration of the policy, but in no event shall such notice be less than thirty (30) days prior to any termination, cancellation or alteration of the terms of such certificate of insurance. Lessee shall provide Lessor, and Lessor's secured lender if requested, with a copy of each Certificate required by this Lease.

16. **Assignment.** Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or (ii) sublet the Equipment. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Lessee covenants and agrees not to assert against the assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment, or the like which Lessee may have against Lessor. Upon assignment of Lessor's interests herein Lessor will cause written notice of assignment to be sent to Lessee which will be sufficient if it discloses the name of the assignee and address to which further payments hereunder should be made.
17. **Event of Default.** The term "Event of Default," as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing ever delivered by Lessee pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; (v) an attachment, levy or execution is threatened or levied upon or against the Equipment; (vi) upon the death or insolvency of any guarantor hereof or any other default under a guaranty agreement of this Lease between the guarantor and Lessor.
18. **Remedies.** Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all unpaid payments and other charges immediately due and payable and to recover the balance of the payments and other charges reserved hereunder, with Lessor retaining title to the Equipment; (ii) by written notice to the Lessee, request Lessee to (and Lessee agrees that it will), at Lessee's expense, promptly return the Equipment to Lessor, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of the Lessee, holding Lessee liable for the balance of Lease Payments and other charges reserved hereunder for the balance of the Lease Term, or residual value of the Equipment exceeds the net amount received by Lessor from such sale or lease; and (iv) exercise any other right, remedy or privilege which may

- be available to it under applicable laws of the state of the Equipment location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.
19. **Confessed Judgment.** Additionally, upon the occurrence of an Event of Default, Lessee hereby authorizes any attorney designated by Lessor or any clerk of any court of record to appear for Lessor in any court of record and confess judgment without prior hearing against Lessee in favor of Lessor for, and in the amount of, the unpaid balance of all amounts due, all interest accrued and unpaid thereon, all other amounts payable by Lessee to Lessor under the terms of this Lease or any other agreement, documents, instrument evidencing, securing or guarantying the obligations evidenced by this Lease, costs of suit, and attorney's fees.
  20. **Indemnity.** Lessee, for itself, its successors, assigns and legal representatives, does hereby, now and for the future, agree to indemnify, defend, save and hold harmless Lessor, Lessor's successors, assigns and legal representatives from and against any and all liability, damages and costs of any kind, nature or extent, including attorney's fees from all manner of action, actions, cause or causes of action, claims, proceedings, suits, debts, sums of money, claims, accounts, bonds, bills, specialties, controversies, judgments, assessments, penalties, for or on account of personal injuries, death or property damage, and all demands whatsoever, at law or in equity, arising directly or indirectly out of, or in connection with, Lessee's or any of Lessee's employees, agents, or servants, and including all third parties' use, occupancy or presence in, on or about the Equipment leased hereunder.  
  
In the event Lessee shall receive notice of any claim, suit or action for personal injury, death or property damage, Lessee shall provide prompt written notification thereof to Lessor. In the event of commencement of any suit, action or proceeding, Lessee shall immediately assume the defense of Lessor at its sole cost and expense and shall wholly indemnify Lessor as provided herein.
  21. **Notices.** All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, or email, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. The parties intend and agree that a carbon copy, photocopy, electronic scan or facsimile of this document or of any Schedules, related agreements hereunder with their signature thereon shall be treated as an original and shall be binding as an original-signature document for all purposes.
  22. **Permits and Fees.** Unless stated otherwise herein, Lessee shall be responsible, at Lessee's sole expense, to obtain all permits that are associated with and/or required as a result of the parties entering the Lease. Such permits include, but are not limited to, (i) Zoning, (ii) Building, (iii) Utility, (iv) Business, (v) Use, (vi) Occupancy, and (vii) Construction permits.
  23. **Code Requirements.** Lessor shall only be responsible for those federal and state code and/or regulations requirements specifically delineated in the Lease. All costs, including overhead and profit, incurred by Lessor in having to conform to any code and/or regulation or ordinance requirements, other than those specifically stated in this Lease, shall be the sole responsibility of the Lessee. All additional cost(s) shall be added to the Lease price as a Change Order.
  24. **Section Headings.** All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
  25. **Governing Law.** This Lease shall be construed in accordance with, and governed by the laws of, the Commonwealth of Pennsylvania. All disputes arising in connection with this Lease, including any question regarding its existence or validity, shall be resolved by a State or Federal Court of Lessor's choosing.
  26. **Delivery of Related Documents.** Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease provided there is no cost to the Lessee, the documents comport with Law as approved by Lessee's legal counsel, and the documents do not change the substance of the original transaction.
  27. **Entire Contract; Waiver.** This Lease and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitute the entire agreement between the parties with respect to the lease of the Equipment, and this Lease shall not be modified, amended, altered or changed except with the written consent of Lessee and Lessor. Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease. The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof. If there is a conflict between the terms, conditions or provisions of this Contract and the terms, conditions or provisions of any other document or instrument then the terms, conditions or provisions of this Lease shall prevail.
  28. **Use of Equipment.** The Lessee may possess, occupy and use the Equipment for any lawful purpose consistent with the intended use of the Equipment provided under this Contract and shall comply with all applicable laws and ordinances and pay all claims, damages, fees and charges arising out of its possession, occupancy, use or maintenance. Lessee further agrees to be the sole operator and end user of the Equipment described under this Lease. Lessee acknowledges and agrees that the Equipment is of a size, design and capacity selected by Lessee.
  29. **Filings.** The Lessee authorizes Lessor to make Lessor's security interest a matter of public record by filings of any documents Lessor deems necessary for that purpose and Lessor shall be responsible for any costs associated therewith. The Lessee agrees to sign or execute such documents to evidence its consent to such filings as long as there is no cost to Lessee other than those costs included in this Contract and the documents are approved by Lessee's attorney.
  30. **Financial Statements.** If requested by Lessor, Lessee agrees to provide Lessor with a copy of its financial statements, including, but not limited to, the current period within ten (10) days of Lessor making said request.
  31. **Contract Renewal.** The Parties, at the end of the Lease Term, may mutually agree in writing to a "Lease Term Extension". If Lessee wishes to extend the Lease Term, Lessee must notify Lessor, in writing, sixty (60) days prior to the date the then current Lease Term ends. If Lessor agrees to grant such extension, Lessor shall give Lessee, in writing, any new Lease rate and/or other conditions that will become effective under the extended Lease Term when executed by both Parties. The Initial Lease Term, and any Lease Term extension periods, shall be considered the ("Lease Term"). Lessor reserves the right to refuse an extension of the Lease Term. Provided Lessee is not then in default and the Lessee remains in possession of the Equipment after the Lease Term, then this Contract shall automatically renew for an additional twelve (12) month period, and annually thereafter, on the same terms and conditions as set forth herein with the exception of the Lease Payments which shall increase by a minimum of ten percent (10%) or as otherwise quoted to the Lessee in writing by Lessor at or prior to the end of the Lease Term, or each additional renewed term, as applicable.
  32. **Right of Setoff.** Notwithstanding anything to the contrary in this Lease, in the event that any amount is due to Lessor or any of its affiliates by the Lessee or any of the Lessee's affiliates, Lessor shall have the right of set-off against the Lessee for that amount, whether such amount arises pursuant to this Lease, any other contracts between the Lessee and/or the Lessee's affiliates and Lessor, Lessor's affiliates or otherwise.

EXHIBIT A

DELIVERY, ACCEPTANCE, INDEMNIFICATION AND SERVICES CERTIFICATE

Reference is made to the Lease Agreement #MPFL-180755, dated January 15, 2024 between the undersigned and BOXX Modular, Inc. ("Lessor") calling for 48 monthly payments in the amount of \$2,586.00 each plus any and all taxes. We are pleased to confirm to you as follows:

1. As of the date of this Certificate all of the Equipment described in the Lease referenced above has been delivered to and received by the undersigned: that all Services or other work necessary prior to the use thereto has been completed; that said Equipment has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Equipment has been accepted by the undersigned and complies with all terms of the above referenced Lease, or
2. Pursuant to Section 3.a of this Lease, Lessor notified the Lessee in writing on \_\_\_\_\_, 20\_\_\_\_ that the Equipment is ready to be delivered to the Project Site as provided in the Cover Page(s) to the Lease and delivery has been delayed by more than ninety (90) days through no material fault of Lessor. Should the delay extend beyond ninety (90) days from the date Lessor notified the Lessee then this Lease shall commence with or without Lessee's execution of this Certificate and all terms of the Lease shall remain in full force and effect.

This certificate shall not be considered to alter or amend the terms of the aforesaid Lease.

Dated this 25<sup>th</sup> day of January, 2024.

Lessee: Town of Fort Myers Beach

Signed: 

Printed Name: FRANKIE KROPACZEK

Title: OPERATIONS DIRECTOR

Witnessed: 

Witness Printed Name: Jeff Hauge



## **EXHIBIT B**

### **LESSEE MAINTENANCE RESPONSIBILITY**

As a condition precedent to Lessor granting a Limited Warranty of a modular building (the "Equipment") leased by Lessor, certain routine maintenance of the Equipment is required to be performed by the Lessee. Such "Routine Maintenance" is at the sole expense of the Lessee and includes, but is not limited to, regular janitorial services as needed and the following duties:

1. Change filters on HVAC units every two (2) months, or more frequently if the Equipment is located in a particularly dirty environment. Maintain a log of when the filter changes occur. Clean HVAC coils and inspect units annually. Generators are not to be used, as this can void the warranty on the HVAC units.
  2. Ensure all return air registers are open and air passage is not blocked.
  3. Clean air ducts every two years or more frequently if located in a dusty environment. Maintain a log of when ducts are cleaned.
  4. Report leaks of all types, plumbing or rainwater, immediately to your local branch of BOXX Modular, Inc. or via e-mail to [service@boxxmodular.com](mailto:service@boxxmodular.com). If a leak occurs,
    - a. Remove water spillage immediately. Turn off all power if any affected areas contain electrical wiring or lights.
    - b. Immediately dry any wet carpet or tile and other wet surfaces by appropriate methods.
    - c. Depending on the severity of the leak, dehumidifiers may be required to ensure dryness and prevent the growth of mold.
  5. Under OSHA guidelines inspect roof(s) periodically and implement the following procedures:
    - a. Clean roof of all debris, especially sharp items such as nails, screws, stones, and tree branches.
    - b. Clean debris from, and unclog as necessary, all scuppers, gutters and downspouts.
    - c. Inspect roofing for visible tears or cracks or loose roofing material.
    - d. Inspect roof penetration flashings and roof termination caulking for cracks.
    - e. Remove snow if any to prevent leaks.
    - f. If any tears, leaks or cracks are found, contact Lessor immediately for instructions and to arrange for repairs.
  6. Maintain adequate storm water drainage away from the Equipment and ensure that no water is allowed to pond beneath buildings.
  7. Maintain floor coverings in good, safe, serviceable condition:
    - a. Dry or damp mop vinyl covered floors. Do not wet mop vinyl covered surfaces.
    - b. Strip, seal and wax vinyl tile floor covering at least once a year.
    - c. Trim carpet snags/ravels to prevent further carpet damage or creating a tripping hazard
    - d. Do not use tape on carpet to seal rips or frayed/loose seams.
  8. Perform additional routine maintenance as required by use or environment:
    - a. Do not staple, tack, tape items to walls or punch holes into walls.
    - b. Replace batteries in smoke detectors/emergency exit lights at least once a year or more frequently if required to maintain them in safe condition. Test all smoke detectors per local code or manufacturer's requirements.
    - c. Replace fluorescent lamps, incandescent bulbs or other lighting as needed.
    - d. Check rain diverters caulking over doors and windows. Re-caulk as needed. If rain diverters do not keep blowing rain from penetrating doors, canopies over doors may be required.
    - e. Caulk siding materials and window frames as needed to prevent water penetration.
    - f. Maintain air conditioning temperature between 70-76 degrees in hot weather during evenings, weekends and holidays to maintain reasonable temperature and humidity in the Equipment and lubricate the equipment. Use programmable T-stats with lock boxes when possible.
    - g. Ensure skirting vents are not blocked at all times.
    - h. Do not remove inspection/data labels from walls, doors, windows and electrical panels.
    - i. Ensure and maintain all necessary pest and animal controls.
- FIRE HAZARD WARNING**
- i. Maintain a 3' clearance around electrical panels
  - ii. Do not overload the electrical outlets
  - iii. Do not place objects on top or in front of electric heaters
  - iv. Do not block any vent
  - v. Clothing and flammable materials should not be stored in closets with electrical panels
  - vi. Furnace and water tank closets should not be used for storage

FOR SERVICE, OR IF YOU HAVE A QUESTION, PLEASE CONTACT YOUR LOCAL BOXX BRANCH OFFICE.

## **EXHIBIT C**

### **STANDARD LIMITED WARRANTY**

BOXX Modular, Inc. ("BOXX") grants this restricted Standard Limited Warranty to the Customer. The warranty granted herein is limited to the Equipment and Services provided by BOXX, under the above referenced Contract.

**MANUFACTURER'S STANDARD LIMITED WARRANTY:** In the case of a Purchase Contract, BOXX will assign all interest held by BOXX, in such Manufacturer's Limited Warranty. In the case of a Lease Agreement, BOXX retains the ownership of the Manufacturer's Warranty, but will provide the benefits of such warranty to the Customer, for whatever warranty period provided under such warranty.

**BOXX STANDARD LIMITED WARRANTY:** Except as otherwise provided herein, BOXX warrants, under normal use and service, the Equipment and Services BOXX provides, under the above mentioned Contract. BOXX warrants that all Equipment and Services provided by BOXX will be free from defects in material and workmanship for a period of one (1) year from the date of Acceptance or Occupancy of the Equipment, whichever occurs first (Refer to BOXX Scope of Work and Purchase Contract or Lease Agreement). ALL WARRANTY WORK PERFORMED BY A THIRD PARTY, WITHOUT THE PRIOR WRITTEN APPROVAL OF BOXX, MAY VOID THIS WARRANTY.

**CLAIMS:** A valid warranty claim must be submitted to BOXX, within the time allow for such claim under the Contract, and during the warranty period. Redress for a valid warranty claim will be provided within a reasonable time. This warranty is limited to non-union at non-prevailing wages. Warranty service will be performed during daily routine business hours. BOXX will not pay warranty repairs, parts, or replacements, which are made or supplied prior to having received an express written authorization from BOXX.

**EXCLUSIVE REMEDIES:** The sole and exclusive remedies, under this warranty, are those specifically provided in this Standard Limited Warranty. BOXX's obligation shall be limited solely to replacing and/or repairing defective parts or materials. BOXX neither assumes nor authorizes any person or entity to assume for BOXX any other liability or obligation in connection with this warranty.

**EXCLUSIONS FROM COVERAGE:** Expressly excluded from this warranty are the following:

- a) Any damage, loss, defect, repair, adjustment or replacement caused by, resulting from or in any way related to any misuse or neglect of the Equipment or Services, including improper service to, and connection of, electric service and other utilities.
- b) Any damage, loss, defect, repair, adjustment or replacement caused by, resulting from or in any way related to any surge, spike or other significant change to the recommended electrical service requirements, excessive water supply pressure, accident, collision, fire, earthquake, flood, or Act of God involving or affecting the Equipment or Services.
- c) Any damage, loss, defect, repair, adjustment or replacement caused by, resulting from or in any way related to any loading of the Equipment beyond any limits specified in applicable codes.
- d) Any damage, loss, defect, repair, adjustment or replacement caused by, resulting from or any way related to any repairs, additions, modifications or alterations to the Equipment or the Services, or any components made without the prior express written authorization of BOXX.
- e) Any portion of the Equipment or any materials, components or other aspects of the Equipment that the manufacturer specified as being unwarrantable.
- f) Any items or services that are a part of the routine maintenance of the Equipment including, but not limited to, minor adjustments to doors, cabinets, moldings and similar components once the Equipment has been accepted, re-caulking of windows after acceptance of the Equipment, starting of electrical, oil, gas and plumbing appliances or components, and servicing appliances in accordance with instructions provided by the suppliers.
- g) Any damage, loss, defect, repair, adjustment or replacement caused by, resulting from or in any way related to any failure to perform routine maintenance to the Equipment or Services, including the items specified in the preceding subparagraph (f).
- h) (Manufacturer's Warranty only) The axles, frames, brakes, tires, windows, air conditioners, hot water heaters, furnaces, plumbing fixtures, furniture and furnishings of the Equipment. Any and all warranties with respect to such items as may be available from suppliers thereof are hereby assigned by BOXX. If any component specified in this subparagraph proves to be defective and cannot be ordered and replaced by the supplier. BOXX shall assist in obtaining a replacement of the defective component from the supplier, however, BOXX is not responsible for the costs of the replacement (if any), all shipping costs (if any), and the return of the defective component to the supplier thereof. BOXX shall have no liability for labor or service costs associated with any claim pertaining to any component listed in this subparagraph.
- i) Any damage, loss, defect, repair, adjustment or replacement, while the Equipment is outside the continental United States of America or Canada.

**DISCLAIMER OF OTHER WARRANTIES:** EXCEPT AS EXPRESSLY PROVIDED IN THIS STANDARD LIMITED WARRANTY, BOXX EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES OF EACH AND EVERY NATURE AND DESCRIPTION, AND EXPRESSLY STATES THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES WILL BOXX BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**NOTICE OF WARRANTY CLAIMS:** All claims made, under this Standard Limited Warranty, must be submitted in writing within the time allowed under the above mentioned Contract and Warranty Period. Forward all claims to: BOXX Modular, Inc., Attn: Warranty Department 3475 High River Rd., Ft. Worth, TX 76155. (1-877-438-8627)

**ASSIGNABILITY:** This Standard Limited Warranty is not assignable, without the prior written approval of BOXX Modular, Inc.



**RIDER TO MASTER SERVICES CONTRACT**  
**BOXX MODULAR CONTRACT # MPFL180755**  
**Dated January 15, 2024**

The provisions of this Rider supplement or amend the terms and conditions of the above-referenced and attached Agreement. To the extent that there are any conflicts or ambiguities between the provisions of this Rider and the terms and conditions of the Agreement, the provision of this Rider shall prevail.

**ADDITIONAL TERMS AND CONDITIONS**

- Section 20 Indemnity, is removed and replaced with the following:
  - 20. Indemnity: Subject to the provisions of Florida Statutes, section 768.28, Lessee, for itself, its successors, assigns and legal representatives, does hereby, now and for the future, agree to indemnify, defend, save and hold harmless Lessor, Lessor's successors, assigns and legal representatives from and against any and all liability, damages and costs of any kind, nature or extent, including attorney's fees from all manner of action, actions, cause or causes of action, claims, proceedings, suits, debts, sums of money, claims, accounts, bonds, bills, specialties, controversies, judgments, assessments, penalties, for or on account of personal injuries, death or property damage, and all demands whatsoever, at law or in equity, arising directly or indirectly out of, or in connection with, Lessee's or any of Lessee's employees, agents, or servants, and including all third parties' use, occupancy or presence in, on or about the Equipment leased hereunder.

In the event Lessee shall receive notice of any claim, suit or action for personal injury, death or property damage, Lessee shall provide prompt written notification thereof to Lessor. In the event of commencement of any suit, action or proceeding, Lessee shall immediately assume the defense of Lessor at its sole cost and expense and shall wholly indemnify Lessor as provided herein.

**BOXX Modular Inc.**

By: Alexander Nguyen

Alex Nguyen, Regional Sales Manager, BOXX Modular, Inc.

Print Name and Title

Date: 01/26/2024

**TOWN OF FORT MEYERS BEACH**

By: Frankie Kropacek

FRANKIE KROPACEK

Print Name and Title

Date: 1-24-24

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH RATIFYING THE APPROVAL AND PAYMENT OF AN ANNUAL GRANICUS SOFTWARE SUBSCRIPTION FOR USE WITH THE TOWN'S SHORT-TERM RENTAL PROGRAM PURSUANT TO THE TERMS AND CONDITIONS OF THE EXISTING UNEXPIRED HOST AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The action is necessary to comply with the Town's procurement ordinance governing emergency purchases. The emergency purchase was necessary to ensure uninterrupted use of the software to manage the short term rental program.

**What the action accomplishes:**

The action provides formal authorization of the necessary renewal of the Granicus software subscription for the Short Term Rental Program.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

Patty Prevost, Code  
Supervisor/STR Coordinator

5. **Background:**

Granicus is the name of the software used to manage the Short Term Rental Program. There is an annual subscription fee for use of the software. Each year the Town is sent a proposal in late summer or early fall and then an invoice in September or October for the next year's subscription fee. The proposal and invoice for this year's subscription, as well as late notices were sent to employees who are no longer with the Town. Therefore, the Town was unaware of the proposal, invoice or late notices. In order to continue using the software, it was necessary to pay the overdue invoice immediately, which required an emergency purchase authorization.

Since the renewal is greater than \$25,000, it also requires approval by the Town Council.

Finance is bringing this to Town Council for approval on behalf of the Short Term Rental Department in Community Development.

**Attachments:**

1. Granicus Invoice 10-13-23
2. Proposal for Granicus 9-8-23
3. Granicus Services Agreement - EXECUTED 10-5-18

**Financial Impact:**

The annual subscription cost is \$41,288.63, and is covered by the short term rental fees. Short Term Rental Fee revenue collected YTD is \$82,200.

6. **Alternative Action**

This is the only software we know of that is available to manage the Short Term Rental Program.

7. **Management Recommendations:**

Management recommends ratifying the emergency renewal of the Granicus software subscription.

8. **Recommended Approval:**

Joe Onzick, Finance Director  
Joe Onzick, Finance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/26/2024  
Approved - 1/30/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024



# Invoice

|              |            |           |            |
|--------------|------------|-----------|------------|
| Date         | 10/13/2023 | Invoice # | 173091     |
| Terms        | Net 30     | Due Date  | 11/12/2023 |
| P.O. Number: |            |           |            |

Please remit via ACH to:  
Routing #: 022000020  
Acct #: 269099115

Please Send Checks to:  
Granicus  
Dept CH – Box 19634  
Palatine, IL 60055 - 9634

| Bill To                                                                                 | Sold To                                                                                 |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Fort Myers Beach, FL<br>2523 Estero Blvd.<br>Fort Myers Beach FL 33931<br>United States | Fort Myers Beach, FL<br>2523 Estero Blvd.<br>Fort Myers Beach FL 33931<br>United States |

| Description            | Term Start Date | Term End Date | Tax Rate | Tax Amount | Amount      |
|------------------------|-----------------|---------------|----------|------------|-------------|
| 24/7 Hotline           | 10/01/2023      | 09/30/2024    | 0.000%   | \$0.00     | \$6,034.04  |
| Address Identification | 10/01/2023      | 09/30/2024    | 0.000%   | \$0.00     | \$27,712.22 |
| Compliance Monitoring  | 10/01/2023      | 09/30/2024    | 0.000%   | \$0.00     | \$7,542.37  |

Subtotal \$41,288.63

Tax Total \$0.00

Total \$41,288.63

Amount Due \$41,288.63

For any questions about your invoice, please contact  
us at [AR@granicus.com](mailto:AR@granicus.com) or 1-800-314-0147

Thank you for your business



**ORDER DETAILS**

**Prepared By:** Korgbae Freeman  
**Phone:**  
**Email:** korgbae.freeman@granicus.com  
**Order #:** Q-288009  
**Prepared On:** 08 Sep 2023  
**Expires On:** 30 Sep 2023

**ORDER TERMS**

**Currency:** USD  
**Payment Terms:** Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)  
**Period of Performance:** 10/01/2023 - 09/30/2024

## PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

- Once purchased data storage has been exceeded, data storage is billed in increments of 1TB over the purchased data storage amounts herein and will be assessed an additional annual fee of \$1,200.00 and billed in arrears. Storage is reviewed annually and is adjusted at the next annual renewal. Throughout the term of the contract Fort Myers Beach, FL is able to contact Granicus for a report on how much storage has been used.

| Renewing Subscription Fees |                   |               |             |
|----------------------------|-------------------|---------------|-------------|
| Solution                   | Billing Frequency | Quantity/Unit | Annual Fee  |
| 24/7 Hotline               | Annual            | 1 Each        | \$6,034.04  |
| Address Identification     | Annual            | 1 Each        | \$27,712.22 |
| Compliance Monitoring      | Annual            | 1 Each        | \$7,542.37  |
| SUBTOTAL:                  |                   |               | \$41,288.63 |

## TERMS & CONDITIONS

- This quote, and all products and services delivered hereunder are governed by the terms located at <https://granicus.com/legal/licensing>, including any product-specific terms included therein (the "License Agreement"). If your organization and Granicus has entered into a separate agreement or is utilizing a contract vehicle for this transaction, the terms of the License Agreement are incorporated into such separate agreement or contract vehicle by reference, with any directly conflicting terms and conditions being resolved in favor of the separate agreement or contract vehicle to the extent applicable.
- If submitting a Purchase Order, please include the following language: The pricing, terms and conditions of quote Q-288009 dated 08 Sep 2023 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Fort Myers Beach, FL to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.
- The terms and conditions set forth in the Agreement effective 30 Sep 2019 are incorporated herein by reference.
- ClearCaster Terms & Conditions attached to this quote are incorporated herein by reference.
- Client will be invoiced for use of any product or service measured or capped by volume or amount of usage that exceeds the permitted amount set forth in this Quote at the same cost or rate set forth herein.



## Host Compliance Services Agreement

THIS SERVICES AGREEMENT (the "**Agreement**") is entered into as of the August 15, 2018 (the "**Effective Date**"), between Host Compliance LLC, ("**Host Compliance**") and The Town of Fort Myers Beach, with an address at 2525 Estero Boulevard Fort Myers Beach, FL 33931 (the "**Customer**"). This Agreement sets forth the terms and conditions under which Host Compliance agrees to license to Customer certain hosted software and provide all other services necessary for Customer's productive use of such software (the "**Services**") as further described in the attached Schedule 1.

### 1.0 Services.

- 1.1 Subscriptions.** Unless otherwise provided in the attached Schedule 1, (a) Services are purchased as subscriptions, (b) additional service subscriptions may be added during a subscription term, with the pricing for such additional services, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscription.
- 1.2 Provision of Services.** Customer and Customer's end-users ("End Users") may access and use the Services and any other Services that may be ordered by the Customer from time to time pursuant to a valid subscription in accordance with the terms of this Agreement.
- 1.3 Facilities and Data Processing.** Host Compliance will use, at a minimum, industry standard technical and organizational security measures to store data provided by Customer, or obtained by Customer through the use of the Services ("Customer Data"). These measures are designed to protect the integrity of Customer Data and guard against unauthorized or unlawful access.
- 1.4 Modifications to the Services.** Host Compliance may update the Services from time to time. If Host Compliance updates the Services in a manner that materially improves functionality, Host Compliance will inform the Customer.

### 2.0 Customer Obligations.

- 2.1 Customer Administration of the Services.** Host Compliance' responsibilities do not extend to internal management or administration of the Services. Customer is responsible for: (i) maintaining the confidentiality of passwords and accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators' use of the Services complies with this Agreement.
- 2.2 Compliance.** Customer is responsible for use of the Services and will comply with laws and regulations applicable to customer's use of the Services, if any.
- 2.3 Unauthorized Use & Access.** Customer will prevent unauthorized use of the Services and terminate any unauthorized use of or access to the Services. Customer will promptly notify Host Compliance of any unauthorized use of or access to the Services.



**2.4 Restricted Uses.** Customer will not and will ensure that its End Users do not: (i) sell, resell, or lease the Services; or (ii) reverse engineer or attempt to reverse engineer the Services, nor assist anyone else to do so.

**2.5 Third Party Requests.**

- 2.5.1** "Third Party Request" means a request from a third party for records relating to Customer's or an End User's use of the Services including information regarding an End User. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.
- 2.5.2** Customer is responsible for responding to Third Party Requests via its own access to information policies. Customer will seek to obtain information required to respond to Third Party Requests and will contact Host Compliance only if it cannot obtain such information despite diligent efforts.
- 2.5.3** If Host Compliance receives a Third Party Request, Host Compliance will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of Host Compliance's receipt of a Third Party Request; (B) comply with Customer's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Customer with information or tools required for Customer to respond to the Third Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to any Third Party Request, then Host Compliance may, but will not be obligated to do so.
- 2.5.4** If Customer receives a Third Party Request for access to the Services, or descriptions, drawings, images or videos of the Services' user interface, Customer will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Host Compliance of Customer's receipt of such Third Party Request; (B) comply with Host Compliance's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Host Compliance with information required for Host Compliance to respond to the Third Party Request. If Host Compliance fails to promptly respond to any Third Party Request, then Customer may, but will not be obligated to do so.

**3.0 Intellectual Property Rights; Confidentiality**

- 3.1 Reservation of Rights.** Except as expressly set forth herein, this Agreement does not grant (i) Host Compliance any intellectual Property Rights in the Customer Data or (ii) Customer any Intellectual Property Rights in the Services, any other products or offerings of Host Compliance, Host Compliance trademarks and brand features, or any improvements, modifications or derivative works of any of the foregoing. "Intellectual Property Rights" means current and future worldwide rights under patents, copyright, trade secret, trademark, moral rights and other similar rights.
- 3.2 Suggestions.** Host Compliance may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, and license and sub-license, any feedback, comments,



or suggestions Customer or End Users send Host Compliance or post in Host Compliance' online forums without any obligation to Customer.

**3.3 Confidential Information.** Customer understands and agrees that it will not reveal, publish or otherwise disclose to any person, firm or corporation, without written authorization of Host Compliance, or except as required by law, any Confidential Information of Host Compliance, including without limitation any trade secrets, confidential knowledge, data or other proprietary information relating to the Services. "Confidential Information" means all information, written or oral, relating to the business, operations, services, facilities, processes, methodology, technologies, intellectual property, research and development, customers, strategy or other confidential or proprietary materials of Host Compliance.

#### 4.0 Fees & Payment.

##### 4.1 Fees.

- 4.1.1 Customer will pay Host Compliance for all applicable fees upfront annually.
  - 4.1.2 Customer will pay any amounts related to the Services as per payment terms detailed on the applicable invoice. Unless otherwise indicated, all dollar amounts referred to in the Agreement are in U.S. funds.
  - 4.1.3 Customer acknowledges that while it may choose to delay the implementation of the Services, this is not a valid reason for withholding payment on any invoices. Furthermore, the Customer will not withhold payment on any invoices for any other reason.
  - 4.1.4 Except as expressly provided on Schedule 1, renewal of promotional or one-time priced subscriptions will be at Host Compliance's applicable list price in effect at the time of the applicable renewal. Unless Host Compliance provide Customer notice of different pricing at least 75 days prior to the applicable renewal term, the per unit pricing during any renewal term will increase by the larger of the 12-Month Consumer Price Index (not seasonally adjusted), as published by the United States Department of Labor, or five (5) percent. Notwithstanding anything to the contrary, any renewal in which the number of monitored short-term rental listings has increased or decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
- 4.2 Taxes.** Customer is responsible for all taxes. Host Compliance will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide Host Compliance with an official tax receipt or other appropriate documentation.
- 4.3 Purchase Orders.** If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement or the Services provided hereunder and are null and void.

#### 5.0 Term & Termination.





- 5.1 Term.** The initial term of this Agreement shall be one year commencing on the Effective Date, which shall automatically renew for a further period of one year upon each expiry of the then current term, unless either party provides written notice to the other party of its intention not to renew at least 45 days prior to the end of the then current term. That said, the time period until the earlier of (a) the 6-month anniversary of the Effective Date, or (b) the start date of Customer's systematic or mass outreach activities utilizing the data obtained through the Services (traditional mail, electronic mail, and/or telephone campaigns), or (c) termination by Host Compliance in our sole discretion, shall be considered a trial period ("Trial Period").
- 5.2 Termination for Convenience.** If, for any reason during the Trial Period, Customer is dissatisfied with the Services, Customer may terminate the Subscription and all funds paid under this Agreement will be refunded and future commitments waived.
- 5.3 Effects of Termination for Convenience.** If this Agreement is terminated by Customer in accordance with Section 5.2 (Termination for Convenience): (i) the rights granted by Host Compliance to Customer will cease immediately and Customer will no longer have the right to utilize the data obtained through the use of the Services for systematic or mass outreach activities (including traditional mail, electronic mail, and/or telephone campaigns); and (ii) after a reasonable period of time, Host Compliance may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.2 (Termination for Convenience), 5.3 (Effects of Termination for Convenience), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).
- 5.4 Termination for Breach:** Following the Trial Period, a party may terminate this Agreement for cause upon 45 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period.
- 5.5 Refund or Payment upon Termination for Breach.** If this Agreement is terminated by Customer in accordance with Section 5.4 (Termination for Breach), Host Compliance will refund Customer any prepaid fees covering the remainder of the term of all Subscriptions after the effective date of termination. If this Agreement is terminated by Host Compliance in accordance with Section 5.4 (Termination for Breach), Customer will pay any unpaid fees covering the remainder of the term of the Agreement. In no event will Customer's termination after the first 6 months relieve Customer of its obligation to pay any fees payable to Host Compliance for the period prior to the effective date of termination.
- 5.6 Effects of Termination for Breach.** If this Agreement is terminated in accordance with Section 5.4 (Termination for Breach): (i) the rights granted by Host Compliance to Customer will cease immediately (except as set forth in this section); (ii) Host Compliance may provide Customer access to its account at then-current fees so the Customer may export its Customer Data; and (iii) after a reasonable period of time, Host Compliance may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.5



(Refund or Payment upon Termination for Breach), 5.6 (Effects of Termination for Breach), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

## **6.0 Indemnification.**

- 6.1 By Host Compliance.** Host Compliance will indemnify, defend and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Customer to the extent based on an allegations that Host Compliance' technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, patent or trademark right of the third party. In no event will Host Compliance have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Host Compliance and (ii) any content, information, or data provided by Customers, End Users, or other third parties.
- 6.2 By Customer.** Customer will indemnify, defend, and hold harmless Host Compliance from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Host Compliance regarding: (i) Customer Data; (ii) Customer's use of the Services in violation of this Agreement; or (iii) End Users' use of the Services in violation of this Agreement. Contractor acknowledges that City is not waiving any claims of sovereign Immunity under 768.28
- 6.3 Possible Infringement.** If Host Compliance believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then Host Compliance may (i) obtain the right for Customer, at Host Compliance' expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement for the Services; or (iii) modify the Services so that they no longer infringe. If Host Compliance does not believe the options described in this section are reasonable then Host Compliance may suspend or terminate this Agreement and/or Customer's use of the affected Services with no further liability or obligation to the Customer other than the obligation to provide the Customer with a pro-rata refund of pre-paid fees for the affected portion of the Services.
- 6.4 General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. The indemnities above are Host Compliance' and Customer's only remedy under this Agreement for violation by the other party of a third party's Intellectual Property Rights.

## **7.0 Exclusion of Warranties; Limitation of Liability.**

- 7.1 Exclusion of Warranties.** Except as explicitly set forth in this Agreement, Host Compliance makes no other representation, warranty or condition, express or implied, and expressly excludes all



implied or statutory warranties or conditions of merchantability, merchantable quality, durability or fitness for a particular purpose, and those arising by statute or otherwise in law or from a course of dealing or usage of trade with respect to the Services. Host Compliance does not make any representations or warranties of any kind to client with respect to any third party software forming part of the Services

**7.2 Limitation on Indirect Liability.** To the fullest extent permitted by law, except for Host Compliance and Customer's indemnification obligations hereunder, neither Customer nor Host Compliance and its affiliates, suppliers, and distributors will be liable under this Agreement for (i) indirect, special, incidental, consequential, exemplary, or punitive damages, or (ii) loss of use, data, business, revenue, or profits (in each case whether direct or indirect), even if the party knew or should have known that such damages were possible and even if a remedy fails of its essential purpose.

**7.3 Limitation on Amount of Liability.** To the fullest extent permitted by law, Host Compliance' aggregate liability under this Agreement will not exceed the amount paid by Customer to Host Compliance hereunder during the twelve months prior to the event giving rise to liability.

## 8.0 Miscellaneous.

**8.1 Terms Modification.** Host Compliance may wish to revise this Agreement from time to time. If a revision, in Host Compliance' sole discretion, is material, Host Compliance will notify Customer and possibly request that an Amendment to this Agreement be agreed upon and signed. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change.

**8.2 Entire Agreement.** The Agreement including the invoice and order form provided by Host Compliance, constitutes the entire agreement between Customer and Host Compliance with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: this Agreement, then the invoice, then the order form.

**8.3 Governing Law.** This Agreement will in all respects be governed exclusively by and construed in accordance with the laws of the State of Florida. *VENUE IS LEE COUNTY FLORIDA*

**8.4 Severability.** Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect. *DATE 05/18*

**8.5 Waiver or Delay.** Any express waiver or failure to exercise promptly any right under the Agreement will not create a continuing waiver or any expectation of non-enforcement.

**8.6 Assignment.** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of Host Compliance. Host Compliance may not assign this Agreement without providing notice to Customer, except Host Compliance may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection



with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.

**8.7 Force Majeure.** Except for payment obligations, neither Host Compliance nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).

**8.8 Procurement Piggybacking.** Host Compliance agrees to reasonably participate in any "piggybacking" programs pertinent to local government.

**8.9 Public Record.** IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address) .

(239) 765-0202  
ext 1400

Michelle Mayher, Town Clerk  
2525 E. Stero Blvd  
FMB, FL 33931  
Michelle@fmbgov.com

IN WITNESS WHEREOF Host Compliance and the Customer have executed this Agreement as of the Effective Date.

The Town of Fort Myers Beach by its authorized signatory:

Name: ROGER T. HEINSTADT  
Title: TOWN MANAGER  
Date: 10/5/18

Billing Contact: RHONDA PAYNE  
Billing Email: RHONDA@FMBGOV.COM  
Billing Direct Phone: 239 765 0202 #1203

Host Compliance LLC by its authorized signatory:

Name: Ulrik Binzer  
Title: Chief Executive Officer  
Date:

Account Executive: Paul Hetherington  
Account Executive Email: paulh@hostcompliance.com  
Account Executive Phone: (415) 715-9280

Recommend Approval  
Paul Hetherington  
Recommending Services  
10/4/2018

10/5/18 J. Turner  
Town Attorney

## Schedule 1

### Scope of Services

#### Address Identification

Monthly email-delivered report and live web-delivered dashboard with complete address information and screenshots of all identifiable STRs in The Town of Fort Myers Beach's jurisdiction:

- Up-to-date list of jurisdiction's active STR listings
- High resolution screenshots of all active listings (captured weekly)
- Full address and contact information for all identifiable STRs in jurisdiction
- All available listing and contact information for non-identifiable STRs in jurisdiction

#### Compliance Monitoring

Ongoing monitoring of the short-term rentals operating in The Town of Fort Myers Beach's jurisdiction for zoning and permit compliance coupled with systematic outreach to non-compliant short-term rental property owners (using The Town of Fort Myers Beach's form letters)

- Ongoing monitoring of STRs for zoning and permit compliance
- Pro-active and systematic outreach to unpermitted and/or illegal short-term rental operators (using jurisdiction's form letters)
- Monthly staff report on jurisdiction's zoning and permit compliance:
- Up-to-date list of STRs operating illegally or without the proper permits
- Full case history for non-compliant listings

#### 24/7 Short-term Rental Hotline

24/7 staffed telephone and email hotline for neighbors to report non-emergency problems related to STR properties:

- Incidents can be reported by phone or email
- Full documentation of all reported incidents
- Digital recordings and written transcripts of all calls
- Ability for neighbors to include photos, video footage and sound recordings to document complaints
- Real-time outreach to owners of problem properties (whenever owner's contact info is known)
- Weekly staff reports containing:
  - The # and types of reported incidents
  - List of properties for which incidents have been reported
- Custom reports and analysis of hotline related activities



HOST COMPLIANCE, LLC  
Short-term Rental Compliance Monitoring and Associated Services  
HCSA - 5-5-2016 - W

**Total Annual Subscription Service Price**

**Price: \$35,000 /yr**

*Note: Above pricing assumes The Town of Fort Myers Beach's will provide current registrations and condo opt out list to Host Compliance.*



1. **Requested Motion:**

**Meeting Date:** February 5, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A FIRST AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND ANGIE BREWER & ASSOCIATES, INC. TO EXTEND THE TERM OF THE CONSULTANT AGREEMENT FOR FUNDING MANAGEMENT SERVICES FOR SRF OR OTHER GRANTS AND OR LOANS AVAILABLE TO THE TOWN, TO JUNE 9, 2024 BY THE EXERCISE OF ONE OF TWO RENEWAL OPTIONS; APPROVING SUPPLEMENTAL TASK AUTHORIZATION NO. 4 FOR THE UNINTERRUPTED CONTINUATION OF THESE SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT AND SUPPLEMENTAL TASK AUTHORIZATION AND THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**Why the action is necessary:**

The Town needs the expertise and assistance of Angie Brewer to administer the State Revolving Fund (SRF) loans and other grants related to the stormwater and water infrastructure projects, especially the Tier 1 project. Their familiarity with the Town projects, and expertise in funding management enables the Town to submit reimbursement requests in a timely manner and to comply with all regulatory requirements.

**What the action accomplishes:**

Authorizing the one-year extension formally authorizes Angie Brewer and Associates, LC. to continue providing funding management services and to invoice us for those services they have already provided and as well the services they will be providing until June 9, 2024..

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

Angie Brewer & Associates, LC. have been providing professional funding management services for the Town for many years. Specifically, they have been managing the State Revolving Fund (SRF) loans for our stormwater and water infrastructure projects, as well as other grants funding those projects. The town approved the latest contract with Angie Brewer in February of 2021 based on piggybacking off the contract that Collier Contract awarded to Angie Brewer and Associates. That contract was a 3-year contract awarded June 9, 2020 that expired on June 8, 2023. But it had a provision for two one-year extensions. Collier County approved the first one-year extension. Due to an administrative oversight, the Town has not yet authorized its first one-year extension, thereby inadvertently allowing the contract to expire on June 8, 2023. However, Angie Brewer and Associates have continued to provide needed funding management services without a contract and without invoicing the Town. Now that we are aware of this oversight, we would like to remedy it by authorizing the first one-year contract extension which would take us until June 9, 2024. In conjunction with this one-year extension, we are also requesting approval of a new Supplemental Task Agreement (STA #4) for Angie Brewer and Associates which will enable them to invoice us for their services already performed this past year for which we have not yet been invoiced, as well as for their services to be provided through the remainder of their contract year expiring June 9, 2024.

We intend to authorize the second one-year contract extension through June 8, 2025 at the appropriate time.

**Attachments:**

1. 24-19, Angie Brewer Associates Contract Extension
2. First Amendment to Consultant Agreement Angie Brewer and Assoc. Inc.
3. Contract with Collier County 20-7690 Angie Brewer Associates L.C.\_Contract - Fully executed
4. Amendment to Contract with Collier County 20-7690\_Amendment#1\_Fully Exec
5. Consultant Agreement with Town Feb 2021
6. Contract Extension with Collier County thru 6-8-24
7. STA #4 Angie Brewer for Services Through 6-9-2024

**Financial Impact:**

The cost of service provided by Angie Brewer is outlined in the attached contract. It is a function of the volume of work and funding. The amount of the Supplemental Task Authorization is \$183,225.00.

**6. Alternative Action**

The alternative would be for the Town to issue its own Request for Proposals, which would only replicate what Collier County has already done, and delay provision of the necessary services to ensure compliance with and timely reimbursement by the SRF program.

**7. Management Recommendations:**

Staff recommends approval of the one-year extension of the professional services agreement with Angie Brewer and Associates, LC and STA #4, since it piggybacks on an agreement competitively procured and awarded by Collier County, and because staff is pleased with the outstanding service provided by Angie Brewer and Associates, and staff appreciates the uninterrupted service provided despite the expiration of the formal professional services agreement.

**8. Recommended Approval:**

Joe Onzick, Finance Director  
Joe Onzick, Finance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/31/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024

## **RESOLUTION NO. 24-19**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A FIRST AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND ANGIE BREWER & ASSOCIATES, INC. TO EXTEND THE TERM OF THE CONSULTANT AGREEMENT FOR FUNDING MANAGEMENT SERVICES FOR SRF OR OTHER GRANTS AND OR LOANS AVAILABLE TO THE TOWN, TO JUNE 9, 2024 BY THE EXERCISE OF ONE OF TWO RENEWAL OPTIONS; APPROVING SUPPLEMENTAL TASK AUTHORIZATION NO. 4 FOR THE UNINTERRUPTED CONTINUATION OF THESE SERVICES; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT AND SUPPLEMENTAL TASK AUTHORIZATION AND THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town Code of Ordinances allows for "piggybacking" agreements and contracts that have been competitively procured by other local governments; and

**WHEREAS**, pursuant to this procedure, the Town "piggybacked" on an existing agreement between Collier County and Angie Brewer & Associates, LC. ("Consultant"), whereby Consultant will provide the Town with professional consulting services to assist with SFR or other grant and/or loan funding resources available to the Town; and

**WHEREAS**, the Town Council approved the Agreement on February 16, 2021 for services until June 9, 2023; and

**WHEREAS**, the Town desires to retroactively exercise the first of two 1-year renewal options to extend the term of the Agreement to June 9, 2024; and

**WHEREAS**, extension of the term retroactively and approval of Supplemental Task Authorization No. 4 for uninterrupted continuation of contracted services in the amount of \$183,225, is in the best interest of the residents of Fort Myers Beach.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, THAT:**

Section 1. That the above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. That the First Amendment to the Agreement between the Town and Consultant for the provision of consulting services as attached and incorporated herein as Exhibit “A” and Supplemental Task Authorization No. 4, attached as Exhibit “B” are approved.

Section 3. That the Mayor is authorized to execute the Amendment and Supplemental Task Authorization No. 4 and the Town Manager is authorized to expend budgeted funds on behalf of the Town.

Section 4. If any section, sentence, clause or phrase herein is held to be invalid by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 5. This Resolution shall become effective immediately upon its adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_, and upon being put to a vote, the result was as follows:

|                               |       |
|-------------------------------|-------|
| Dan Allers, Mayor             | _____ |
| Jim Atterholt, Vice Mayor     | _____ |
| John R. King, Council Member  | _____ |
| Vacant, Council Member        | N/A   |
| Karen Woodson, Council Member | _____ |

ADOPTED this 5<sup>th</sup> day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE TOWN OF FORT  
MYERS BEACH ONLY:**

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of \_\_\_\_\_, 2024.

**FIRST AMENDMENT TO CONSULTANT AGREEMENT  
ANGIE BREWER & ASSOCIATES, INC.**

**THIS FIRST AMENDMENT** is made and entered into this 5th\_ day of February, 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Angie Brewer & Associates, LLC, hereinafter referred to as “Contractor”, to that certain Consultant Agreement, dated February 16, 2021 (“Agreement”) for consulting services concerning that certain Agreement for Special Magistrate Services, approved by the Town Council of the Town of Fort Myers Beach on February 5, 2024.

**WITNESSETH:**

**WHEREAS**, the services provided by Contractor to date have been beneficial to the Town and as a result the parties desire to extend the term of the initial contract by the exercise of the first of two optional 1-year renewal contract periods retroactive to June 9, 2023; and

**WHEREAS**, the parties further desire to include and/or modify existing terms and conditions in the initial Agreement as provided herein; and

**WHEREAS**, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning a Contractor’s compliance with Florida’s Public Records Act; and

**WHEREAS**, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

**WHEREAS**, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

**WHEREAS**, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

**WHEREAS**, Section 286.101, Florida Statutes contains a list of “foreign countries of concern” including, the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such “foreign country of concern” and any entity that does business with a state agency or political subdivision must disclose certain of their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

**WHEREAS**, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

**WHEREAS**, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

**1. Amendment.** This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

**2. Public Records Compliance.** Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town’s custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS**



**RELATING TO THIS AGREEMENT, CONTACT THE  
CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL  
2525 ESTERO BLVD.  
FORT MYERS BEACH, FL. 33931  
(239)765-0202  
AMY@FMBGOV.COM**

**3. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

**4. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

**5. Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

**6. E-Verify Compliance.** By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this

paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

**7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

Moreover, Contractor shall comply with the disclosure requirements set forth in section 286.101 (3) (a), F.S., which requires "Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift received from a "foreign country of concern" if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable "foreign country of concern" and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of

Financial Services”. Pursuant to section 268.101(7), F.S.: “In addition to any fine assessed under [section 286.101(7)(a), F.S.], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”

**8. Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties’ actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

**9. Attorneys’ Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys’ fee and costs.

**10. Public Entities Crime or Convicted Vendor List.** Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

**11. Data Management; Notice of Breach.** Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

**12. Environmental and Social Government and Corporate Activism.** The Town has not given preference or requested documentation from the Contractor based on Contractor’s social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor’s social, political or ideological interests.

**13. Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency, to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

**14. Additional Terms.** Notwithstanding any of other provision to the contrary, the parties agree as follows:

- A. **Duration of Agreement.** This amendment shall document the exercise of the first of two optional year renewals of the Agreement, retroactive to June 9, 2023, thereby extending the term of the Agreement to June 9, 2024. The parties may agree to exercise the second of two optional year renewals upon expiration of this first

optional year renewal on June 9, 2024. The exercise of a second optional year renewal shall be documented by a Second Amendment to the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

**Contractor:**

\_\_\_\_\_

**Print Name:** Angie Brewer

**Company:** Angie Brewer & Associates, LLC

**ATTEST:**

**Town of Fort Myers Beach**

\_\_\_\_\_  
**Amy Baker, Town Clerk**

\_\_\_\_\_  
**Dan Allers, Mayor**

**APPROVED AS TO FORM & SUFFICIENCY**

\_\_\_\_\_  
**Vose Law Firm, Town Attorney**

## FIXED FEE PROFESSIONAL SERVICE AGREEMENT

# 20-7690

for

Loan and/or Grant Acquisition and Compliance Services

THIS AGREEMENT, made and entered into on this 9<sup>th</sup> day of June 2020, by and between Angie Brewer & Associates, L.C., authorized to do business in the State of Florida, whose business address is 9080 58th Drive East Suite 200, Bradenton, FL 34202, (the "Contractor") and Collier County, a political subdivision of the State of Florida, (the "County"):

### WITNESSETH:

1. The Agreement shall be for a three ( 3 ) year period, commencing ☒ upon the date of Board approval ☐ on \_\_\_\_\_ and terminating three ( 3 ) year(s) from that date or until all outstanding Purchase Order(s) issued prior to the expiration of the Agreement period have been completed or terminated.

The County may, at its discretion and with the consent of the Contractor, renew the Agreement under all of the terms and conditions contained in this Agreement for two ( 2 ) additional one ( 1 ) year(s) periods. The County shall give the Contractor written notice of the County's intention to renew the Agreement term prior to the end of the Agreement term then in effect.

The County Manager, or his designee, may, at his discretion, extend the Agreement under all of the terms and conditions contained in this Agreement for up to one hundred and eighty (180) days. The County Manager, or his designee, shall give the Contractor written notice of the County's intention to extend the Agreement term prior to the end of the Agreement term then in effect.

2. **COMMENCEMENT OF SERVICES.** The Contractor shall commence the work upon issuance of a ☒ Purchase Order ☐ ~~Notice to Proceed.~~
3. **STATEMENT OF WORK.** The Contractor shall provide services in accordance with the terms and conditions of ☒ Request for Proposal (RFP) ☐ ~~Invitation to Bid (ITB)~~ ☐ Other \_\_\_\_\_ ( \_\_\_\_\_ ) # 20-7690, including all Attachment(s), Exhibit(s) and Addenda and the Contractor's proposal referred to herein and made an integral part of this Agreement.

☒ The Contractor shall also provide services in accordance with **Exhibit A – Scope of Services** attached hereto.

3.1 This Agreement contains the entire understanding between the parties and any modifications to this Agreement shall be mutually agreed upon in writing by the Parties, in compliance with the County's Procurement Ordinance, as amended, and Procurement Procedures in effect at the time such services are authorized.

3.2 The execution of this Agreement shall not be a commitment to the Contractor to order any minimum or maximum amount. The County shall order items/services as required but makes no guarantee as to the quantity, number, type or distribution of items/services that will be ordered or required by this Agreement.

4. **THE AGREEMENT SUM.** The County shall pay the Contractor for the performance of this Agreement based on **Exhibit B- Fee Schedule**, attached hereto and the price methodology as defined in Section 4.1. Payment will be made upon receipt of a proper invoice and upon approval by the County's Contract Administrative Agent/Project Manager, and in compliance with Chapter 218, Fla. Stats., otherwise known as the "Local Government Prompt Payment Act".

**4.1 Price Methodology (as selected below):**

☐ **Lump Sum (Fixed Price):** ~~A firm fixed total price offering for a project; the risks are transferred from the County to the contractor; and, as a business practice there are no hourly or material invoices presented, rather, the contractor must perform to the satisfaction of the County's project manager before payment for the fixed price contract is authorized.~~

☒ **Time and Materials:** The County agrees to pay the contractor for the amount of labor time spent by the contractor's employees and subcontractors to perform the work (number of hours times hourly rate), and for materials and equipment used in the project (cost of materials plus the contractor's markup). This methodology is generally used in projects in which it is not possible to accurately estimate the size of the project, or when it is expected that the project requirements would most likely change. As a general business practice, these contracts include back-up documentation of costs; invoices would include number of hours worked and billing rate by position (and not company (or subcontractor) timekeeping or payroll records), material or equipment invoices, and other reimbursable documentation for the project.

☒ **Unit Price:** The County agrees to pay a firm total fixed price (inclusive of all costs, including labor, materials, equipment, overhead, etc.) for a repetitive product or service delivered (i.e. installation price per ton, delivery price per package or carton, etc.). The invoice must identify the unit price and the number of units received (no contractor inventory or cost verification).



4.2 Any County agency may obtain services under this Agreement, provided sufficient funds are included in their budget(s).

4.3 Payments will be made for services furnished, delivered, and accepted, upon receipt and approval of invoices submitted on the date of services or within six (6) months after completion of the Agreement. Any untimely submission of invoices beyond the specified deadline period is subject to non-payment under the legal doctrine of "laches" as untimely submitted. Time shall be deemed of the essence with respect to the timely submission of invoices under this Agreement.

4.4 ☐ ~~Travel and Reimbursable Expenses:~~ ~~Travel and Reimbursable Expenses must be approved in advance in writing by the County. Travel expenses shall be reimbursed as per Section 112.061 Fla. Stats.~~

~~Reimbursements shall be at the following rates:~~

|                           |                                                                                               |
|---------------------------|-----------------------------------------------------------------------------------------------|
| Mileage                   | \$0.44.5 per mile                                                                             |
| Breakfast                 | \$6.00                                                                                        |
| Lunch                     | \$11.00                                                                                       |
| Dinner                    | \$19.00                                                                                       |
| Airfare                   | Actual ticket cost limited to tourist or coach class fare                                     |
| Rental car                | Actual rental cost limited to compact or standard-size vehicles                               |
| Lodging                   | Actual cost of lodging at single occupancy rate with a cap of no more than \$150.00 per night |
| Parking                   | Actual cost of parking                                                                        |
| Taxi or Airport Limousine | Actual cost of either taxi or airport limousine                                               |

~~Reimbursable items other than travel expenses shall be limited to the following: telephone long-distance charges, fax charges, photocopying charges and postage. Reimbursable items will be paid only after Contractor has provided all receipts. Contractor shall be responsible for all other costs and expenses associated with activities and solicitations undertaken pursuant to this Agreement.~~

5. **SALES TAX.** Contractor shall pay all sales, consumer, use and other similar taxes associated with the Work or portions thereof, which are applicable during the performance of the Work. Collier County, Florida as a political subdivision of the State of Florida, is exempt from the payment of Florida sales tax to its vendors under Chapter 212, Florida Statutes, Certificate of Exemption # 85-8015966531C.

6. **NOTICES.** All notices from the County to the Contractor shall be deemed duly served if mailed or emailed to the Contractor at the following:

|                                    |                                 |
|------------------------------------|---------------------------------|
| <b>Company Name:</b>               | Angie Brewer & Associates, L.C. |
| <b>Address:</b>                    | 9080 58th Drive East, Suite 300 |
|                                    | Bradenton, FL 34202             |
| <b>Authorized Agent:</b>           | Mark A. Brewer, President       |
| <b>Attention Name &amp; Title:</b> |                                 |
| <b>Telephone:</b>                  | (941) 756-5800                  |
| <b>E-Mail(s):</b>                  | president@angiebrewer.com       |

All Notices from the Contractor to the County shall be deemed duly served if mailed or emailed to the County to:

**Board of County Commissioners for Collier County, Florida**

|                           |                                          |
|---------------------------|------------------------------------------|
| <b>Division Director:</b> | Joseph Bellone                           |
| <b>Division Name:</b>     | Financial & Operational Support Division |
| <b>Address:</b>           | 3339 Tamiami Trail East                  |
|                           | Naples, FL 34112                         |

|                                 |                                   |
|---------------------------------|-----------------------------------|
| <b>Administrative Agent/PM:</b> | Tara Castillo                     |
| <b>Telephone:</b>               | (239) 252-2539                    |
| <b>E-Mail(s):</b>               | Tara.Castillo@colliercountyfl.gov |

The Contractor and the County may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

7. **NO PARTNERSHIP.** Nothing herein contained shall create or be construed as creating a partnership between the County and the Contractor or to constitute the Contractor as an agent of the County.
8. **PERMITS: LICENSES: TAXES.** In compliance with Section 218.80, F.S., all permits necessary for the prosecution of the Work shall be obtained by the Contractor. The County will not be obligated to pay for any permits obtained by Subcontractors.

Payment for all such permits issued by the County shall be processed internally by the County. All non-County permits necessary for the prosecution of the Work shall be procured and paid for by the Contractor. The Contractor shall also be solely responsible for payment of any and all taxes levied on the Contractor. In addition, the Contractor shall comply with all rules, regulations and laws of Collier County, the State of Florida, or the U. S. Government now in force or hereafter adopted. The Contractor agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by the Contractor.

9. **NO IMPROPER USE.** The Contractor will not use, nor suffer or permit any person to use in any manner whatsoever, County facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor or if the County or its authorized representative shall deem any conduct on the part of the Contractor to be objectionable or improper, the County shall have the right to suspend the Agreement of the Contractor. Should the Contractor fail to correct any such violation, conduct, or practice to the satisfaction of the County within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension to continue until the violation is cured. The Contractor further agrees not to commence operation during the suspension period until the violation has been corrected to the satisfaction of the County.
10. **TERMINATION.** Should the Contractor be found to have failed to perform his services in a manner satisfactory to the County as per this Agreement, the County may terminate said Agreement for cause; further the County may terminate this Agreement for convenience with a thirty (30) day written notice. The County shall be the sole judge of non-performance.

In the event that the County terminates this Agreement, Contractor's recovery against the County shall be limited to that portion of the Agreement Amount earned through the date of termination. The Contractor shall not be entitled to any other or further recovery against the County, including, but not limited to, any damages or any anticipated profit on portions of the services not performed.

11. **NO DISCRIMINATION.** The Contractor agrees that there shall be no discrimination as to race, sex, color, creed or national origin.
12. **INSURANCE.** The Contractor shall provide insurance as follows:

A. ☒ **Commercial General Liability:** Coverage shall have minimum limits of \$1,000,000 Per Occurrence, \$2,000,000 aggregate for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; Independent Contractors; Products and Completed Operations and Contractual Liability.

B. ☐ **Business Auto Liability:** Coverage shall have minimum limits of \$ Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include: Owned Vehicles, Hired and Non-Owned Vehicles and Employee Non-Ownership.

C. ☒ **Workers' Compensation:** Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws.

The coverage must include Employers' Liability with a minimum limit of \$ 500,000 for each accident.

D. ☒ **Professional Liability:** Shall be maintained by the Contractor to ensure its legal liability for claims arising out of the performance of professional services under this Agreement. Contractor waives its right of recovery against County as to any claims under this insurance. Such insurance shall have limits of not less than \$ 1,000,000 each claim and aggregate.

E. ☐ **Cyber Liability:** Coverage shall have minimum limits of \$ per occurrence.

F. ☐ **Technology Errors and Omissions:** Coverage shall have minimum limits of \$ per occurrence.

G. ☐ **Watercraft:** Coverage shall have minimum limits of \$ per occurrence.

H. ☐ **United States Longshoreman's and Harborworker's Act** Coverage shall be maintained where applicable to the completion of the work \$ per occurrence.

I. ☐ **Maritime Coverage (Jones Act):** Coverage shall have minimum limits of \$ per occurrence.

L. ☐ **(other):** Coverage shall have minimum limits of \$ per occurrence.

**Special Requirements:** Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR, Collier County Government shall be listed as the Certificate Holder and included as an "Additional Insured" on the Insurance Certificate for Commercial General Liability where required. This insurance shall be primary and non-contributory with respect to any other insurance maintained by, or available for the benefit of, the Additional Insured and the Contractor's policy shall be endorsed accordingly.

Current, valid insurance policies meeting the requirement herein identified shall be maintained by Contractor during the duration of this Agreement. The Contractor shall provide County with certificates of insurance meeting the required insurance provisions. Renewal certificates shall be sent to the County thirty (30) days prior to any expiration date. Coverage afforded under the policies will not be canceled or allowed to expire until the greater of: thirty (30) days prior written notice, or in accordance with policy provisions. Contractor shall also notify County, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage or limits received by Contractor from its insurer, and nothing contained herein shall relieve Contractor of this requirement to provide notice.

Contractor shall ensure that all subcontractors comply with the same insurance requirements that the Contractor is required to meet.

13. **INDEMNIFICATION.** To the maximum extent permitted by Florida law, the Contractor shall defend, indemnify and hold harmless Collier County, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, whether resulting from any claimed breach of this Agreement by Contractor, any statutory or regulatory violations, or from personal injury, property damage, direct or consequential damages, or economic loss, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor or anyone employed or utilized by the Contractor in the performance of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph.

This section does not pertain to any incident arising from the sole negligence of Collier County.

13.1 The duty to defend under this Article 13 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of the Contractor, County and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this Article 13 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against the County or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

14. **AGREEMENT ADMINISTRATION.** This Agreement shall be administered on behalf of the County by the Financial & Operational Support Division.
15. **CONFLICT OF INTEREST.** Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. Contractor further represents that no persons having any such interest shall be employed to perform those services.
16. **COMPONENT PARTS OF THIS AGREEMENT.** This Agreement consists of the following component parts, all of which are as fully a part of the Agreement as if herein set out verbatim: Contractor's Proposal, Insurance Certificate(s), ☒ Exhibit A Scope of Services, Exhibit B Fee Schedule, ☒ RFP/ ☐ ITB/ ☐ Other \_\_\_\_\_ #20-7690 \_\_\_\_\_, including Exhibits, Attachments and Addenda/Addendum, ☐ subsequent quotes, and ☒ Other Exhibit/Attachment: Federal Contract Provisions and Assurances.

17. **APPLICABILITY.** Sections corresponding to any checked box (■) will expressly apply to the terms of this Agreement.
18. **SUBJECT TO APPROPRIATION.** It is further understood and agreed by and between the parties herein that this Agreement is subject to appropriation by the Board of County Commissioners.
19. **PROHIBITION OF GIFTS TO COUNTY EMPLOYEES.** No organization or individual shall offer or give, either directly or indirectly, any favor, gift, loan, fee, service or other item of value to any County employee, as set forth in Chapter 112, Part III, Florida Statutes, Collier County Ethics Ordinance No. 2004-05, as amended, and County Administrative Procedure 5311. Violation of this provision may result in one or more of the following consequences: a. Prohibition by the individual, firm, and/or any employee of the firm from contact with County staff for a specified period of time; b. Prohibition by the individual and/or firm from doing business with the County for a specified period of time, including but not limited to: submitting bids, RFP, and/or quotes; and, c. immediate termination of any Agreement held by the individual and/or firm for cause.
20. **COMPLIANCE WITH LAWS.** By executing and entering into this Agreement, the Contractor is formally acknowledging without exception or stipulation that it agrees to comply, at its own expense, with all federal, state and local laws, codes, statutes, ordinances, rules, regulations and requirements applicable to this Agreement, including but not limited to those dealing with the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et seq. and regulations relating thereto, as either may be amended; taxation, workers' compensation, equal employment and safety including, but not limited to, the Trench Safety Act, Chapter 553, Florida Statutes, and the Florida Public Records Law Chapter 119, including specifically those contractual requirements at F.S. § 119.0701(2)(a)-(b) as stated as follows:

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Communication and Customer Relations Division  
3299 Tamiami Trail East, Suite 102  
Naples, FL 34112-5746  
Telephone: (239) 252-8383**

The Contractor must specifically comply with the Florida Public Records Law to:

1. Keep and maintain public records required by the public agency to perform the service.



2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

If Contractor observes that the Contract Documents are at variance therewith, it shall promptly notify the County in writing. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this Agreement and the County shall have the discretion to unilaterally terminate this Agreement immediately.

21. **OFFER EXTENDED TO OTHER GOVERNMENTAL ENTITIES.** Collier County encourages and agrees to the successful Contractor extending the pricing, terms and conditions of this solicitation or resultant Agreement to other governmental entities at the discretion of the successful Contractor.
22. **AGREEMENT TERMS.** If any portion of this Agreement is held to be void, invalid, or otherwise unenforceable, in whole or in part, the remaining portion of this Agreement shall remain in effect.
23. **ADDITIONAL ITEMS/SERVICES.** Additional items and/or services may be added to this Agreement in compliance with the Procurement Ordinance, as amended, and Procurement Procedures.
24. **DISPUTE RESOLUTION.** Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached during negotiations to County for approval. Failing resolution, and prior to the

commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through Mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida. The mediation shall be attended by representatives of Contractor with full decision-making authority and by County's staff person who would make the presentation of any settlement reached at mediation to County's board for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under section 44.102, Fla. Stat.

25. **VENUE.** Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate federal or state courts in Collier County, Florida, which courts have sole and exclusive jurisdiction on all such matters.

26. ☐ **KEY PERSONNEL.** ~~The Contractor's personnel and management to be utilized for this project shall be knowledgeable in their areas of expertise. The County reserves the right to perform investigations as may be deemed necessary to ensure that competent persons will be utilized in the performance of the Agreement. The Contractor shall assign as many people as necessary to complete the services on a timely basis, and each person assigned shall be available for an amount of time adequate to meet the required service dates. The Contractor shall not change Key Personnel unless the following conditions are met: (1) Proposed replacements have substantially the same or better qualifications and/or experience. (2) that the County is notified in writing as far in advance as possible. The Contractor shall make commercially reasonable efforts to notify Collier County within seven (7) days of the change. The County retains final approval of proposed replacement personnel.~~

☒ **AGREEMENT STAFFING.** The Contractor's personnel and management to be utilized for this Agreement shall be knowledgeable in their areas of expertise. The County reserves the right to perform investigations as may be deemed necessary to ensure that competent persons will be utilized in the performance of the Agreement. The Contractor shall assign as many people as necessary to complete required services on a timely basis, and each person assigned shall be available for an amount of time adequate to meet required services.

27. ☐ **ORDER OF PRECEDENCE.** ~~In the event of any conflict between or among the terms of any of the Contract Documents, the terms of solicitation the Contractor's Proposal, and/or the County's Board approved Executive Summary, the Contract Documents shall take precedence.~~

☒ **ORDER OF PRECEDENCE (Grant Funded).** In the event of any conflict between or among the terms of any of the Contract Documents and/or the County's Board approved Executive Summary, the terms of the Agreement shall take precedence over the terms of all other Contract Documents, except the terms of any Supplemental Conditions shall take precedence over the Agreement. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Supplemental Conditions, if any, or the Agreement, the conflict shall be resolved by

imposing the more strict or costly obligation under the Contract Documents upon the Contractor at County's discretion.

28. **ASSIGNMENT**. Contractor shall not assign this Agreement or any part thereof, without the prior consent in writing of the County. Any attempt to assign or otherwise transfer this Agreement, or any part herein, without the County's consent, shall be void. If Contractor does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward the County.
29. **SECURITY**. The Contractor is required to comply with County Ordinance 2004-52, as amended. Background checks are valid for five (5) years and the Contractor shall be responsible for all associated costs. If required, Contractor shall be responsible for the costs of providing background checks by the Collier County Facilities Management Division for all employees that shall provide services to the County under this Agreement. This may include, but not be limited to, checking federal, state and local law enforcement records, including a state and FBI fingerprint check, credit reports, education, residence and employment verifications and other related records. Contractor shall be required to maintain records on each employee and make them available to the County for at least four (4) years. All of Contractor's employees and subcontractors must wear Collier County Government Identification badges at all times while performing services on County facilities and properties. Contractor ID badges are valid for one (1) year from the date of issuance and can be renewed each year at no cost to the Contractor during the time period in which their background check is valid, as discussed below. All technicians shall have on their shirts the name of the contractor's business.

The Contractor shall immediately notify the Collier County Facilities Management Division via e-mail (DL-FMOPS@colliergov.net) whenever an employee assigned to Collier County separates from their employment. This notification is critical to ensure the continued security of Collier County facilities and systems. Failure to notify within four (4) hours of separation may result in a deduction of \$500 per incident.

*(Intentionally left blank -signature page to follow)*

IN WITNESS WHEREOF, the parties hereto, by an authorized person or agent, have executed this Agreement on the date and year first written above.

ATTEST:

Crystal K. Kinzel, Clerk of Courts & Comptroller

By: Crystal K. Kinzel

Dated: 6/11/2020

(SEAL) Attest as to Chairman's signature only.

Contractor's Witnesses:

Yolanda Grijalva  
Contractor's First Witness

Yolanda Grijalva  
↑Type/print witness name↑

Mark A. Brewer  
Contractor's Second Witness

MARK A. BREWER  
↑Type/print witness name↑

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By: Burt L. Saunders  
Burt L. Saunders, Chairman

Angie Brewer & Associates, L.C.  
Contractor

By: Angie R. Brewer  
Signature  
Angie R. Brewer, CEO  
↑Type/print signature and title↑

Approved as to Form and Legality:

Scott R. Teach  
Deputy County Attorney  
Scott R. Teach  
Print Name

SR1  
CAO

## Exhibit A

### Scope of Services

☒ following this page (pages 1 through 2)

☐ this exhibit is not applicable

**RFP# 20-7690 "Loan and/or Grant Acquisition and Compliance Services"**

**EXHIBIT A  
SCOPE OF SERVICES**

The Contractor shall provide the requirements of the Specifications or Scope of Work stated herein.

Services which may consist of, but shall not be limited to; research, grant writing, application assistance, compliance training, oversight of funding related projects, documentation of fund disbursement, monitoring and documentation of compliance, close-out coordination and assistance, and draft preparation of audit requirements. The Contractor shall conduct research, and draft and present to the County for final review and approval, any, and all documents as described in each of the following six services.

The County foresees utilizing the Contractor for the following six services.

**1. Planning, Application Development and Submittal**

- a. Review of project concept and design
- b. Review budget for grant eligibility and approval
- c. Provide cost benefit analyses
- d. Assist in negotiation and review of funding agreements
- e. Draft and coordinate legal ads and recording of Board of County Commissioner's Resolutions
- f. Assist and participate in presentations to the Board of County Commissioners
- g. Work directly with County Attorney and Grant Compliance Office on required reviews
- h. Work with prospective Grantors in support of application
- i. Prepare and submit application
- j. Provide assistance in updating the County's Grant Administration Handbook
- k. Provide training to selected County staff in grant writing, research to insure appropriate and responsive interface with County, State and Federal Agencies
- l. Develop and provide training of 2 CFR Part 200 compliance with inclusion of County procedures and practices
- m. Research and collaborate with County divisional staff on new funding opportunities

**2. Pre-Construction Requirement**

- a. Prepare applicable plans and submit documentation to funding source provider for contract award
- b. Assist in providing information to potential respondents on Loan and/or grant requirements
- c. Provide technical assistance and compliance training during bidding phase in accordance with requirements
- d. Provide support at public hearing meetings, including presentations to the Board
- e. Provide required bid and other documents for loans/grants
- f. Independently process forms requiring County management's review and approval, i.e., "Authorized Representative Site Certification"

**3. Contractor Processing, Payment and Reporting**

- a. Assist in review of payment applications/invoices (including stored materials when applicable)
- b. Provide cost identification and data entry for Loan and/or grant eligibility prior to release of funds

**4. Grantor Agency Reporting and Submittal Requirements**

- a. Accumulate data for calculation of request for funds
- b. Prepare and submit as directed by the County, documentation required to support request for funds
- c. Prepare final request forms and packages
- d. Review detail data of grant/loan funds available for amendments
- e. Monitor funds requested and cash flow management for Loan and/or grant compliance
- f. Prepare Capital Financing Plan
- g. Prepare documents for inclusion of specific project



- h. Prepare grant related environmental impact assessments for the project
- i. Prepare periodic status reports, frequency to be determined on a project by project basis
- j. Coordinate with other potential funding source providers
- k. Coordinate responses to Regulators and Auditors questions through Office of Management and Budget (OMB) and/or Public Utilities Department (PUD) staff

**5. Monitoring for Compliance**

- a. Review Florida Certified Minority-Owned Business Enterprises (MBE) and Woman-Owned Business Enterprises (WBE) reports to determine actual level of participation
- b. Provide assistance with MBE/WBE status revisions
- c. Perform Davis-Bacon Act monitoring to ensure weekly certified payroll compliance and EEO requirements when applicable
- d. Perform Buy America/American Act monitoring when applicable
- e. Monitor grants/loans contractual requirements as determined

**6. Program Coordination**

- a. Schedule and participate in program coordination meetings
- b. Participate in Pre-Construction meetings to review grant compliance requirements passed on to Third Parties such as the Davis Bacon Act
- c. Review draft change orders for eligibility
- d. Coordinate submittals to funding source of change orders and documentation
- e. Assist in contract, project and report closeout including final amendment
- f. Assist with preparation of documentation for audit of project/program
- g. Project close-out assistance with the Department of Environmental Protection (DEP) and external auditors
- h. Work directly with consultants to get needed engineering documentation

## Exhibit B

### Fee Schedule

*following this page (pages 1 through 1)*



**RFP# 20-7690 "Loan and/or Grant Acquisition and Compliance Services"****EXHIBIT B  
FEE SCHEDULE**

The costs shown are inclusive of all required travel, meals, supplies, software and reproduction costs incurred by the Contractor. The fees do not include expenditures such as publication of advertisements, reservation of public meeting space, or notifications to the public that are necessary to meet program requirements.

| <b>For all services related to the acquisition or compliance of loans and/or grants:</b> | <b>Estimated % of Cost per \$1,000</b> |
|------------------------------------------------------------------------------------------|----------------------------------------|
| a. Under \$2 million                                                                     | a. \$68.00/1,000 or 6.08%              |
| b. Between \$2 million and \$5 million                                                   | b. \$43.00/1,000 or 4.30%              |
| c. Over \$5 million but less than \$15 million                                           | c. \$31.00/1,000 or 3.10%              |
| d. Between \$15 million and \$25 million                                                 | d. \$24.00/1,000 or 2.40%              |
| e. Over \$25 million                                                                     | e. \$18.00/1,000 or 1.80%              |

The following is a list of the current rates:

| <b>LABOR CATEGORY</b>      | <b>HOURLY RATE</b> |
|----------------------------|--------------------|
| Principal                  | \$185.00           |
| Chief Funding Resource     | \$165.00           |
| Senior Funding Manager     | \$155.00           |
| Funding Manager II         | \$150.00           |
| Funding Manager I          | \$145.00           |
| Senior Project Manager II  | \$135.00           |
| Senior Project Manager     | \$130.00           |
| Project Manager            | \$125.00           |
| Senior Funding Coordinator | \$110.00           |
| Funding Coordinator        | \$105.00           |
| Senior Funding Specialist  | \$100.00           |
| Funding Specialist         | \$88.00            |
| Compliance Specialist      | \$65.00            |
| Computer Technician        | \$65.00            |
| Administrative/Clerk II    | \$63.00            |
| Administrative/Clerk I     | \$54.00            |

## Other Exhibit/Attachment

Description:

Federal Contract Provisions and Assurances (Exhibit I-1 to Exhibit I-9)

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☒ following this page (pages 1 through 9)

☐ this exhibit is not applicable

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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**FEDERAL EMERGENCY MANAGEMENT AGENCY  
PUBLIC ASSISTANCE**

This project activity is funded in whole or in part by the Federal Government, or an Agency thereof. Federal Law requires that the Applicant's contracts relating to the project include certain provisions.

Per uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a contract (including a purchase order).

**Compliance with Federal Law, Regulations and Executive Orders:** The Sub-Recipient (County) agrees to include in the subcontract that (i) the subcontractor is bound by the terms of the Federally-Funded Subaward and Grant Agreement, (ii) the subcontractor is bound by all applicable state and Federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

Specifically, the Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with any and all other relevant Federal, State, and local laws, regulations, codes and ordinances:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 44 C.F.R. Part 206
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- FEMA Public Assistance Program and Policy Guide, 2017 (in effect for incidents declared on or after April 1, 2017)

**Reporting:** The contractor will provide any information required to comply with the grantor agency requirements and regulations pertaining to reporting. It is important that the contractor is aware of the reporting requirements of the County, as the Federal or State granting agency may require the contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the granting agency.

**Access to Records:** (1) The contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative's access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives' access to construction or other work sites pertaining to the work being completed under the contract.

**DHS Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

**No Obligation by Federal Government:** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**Program Fraud and False or Fraudulent Statements or Related Acts:** The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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**Energy Efficiency Standards:** The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**Termination:** Should the Contractor be found to have failed to perform his services in a manner satisfactory to the County as per this Agreement, the County may terminate said Agreement for cause; further the County may terminate this Agreement for convenience with a thirty (30) day written notice. The County shall be sole judge of non-performance. In the event that the County terminates this Agreement, Contractor's recovery against the County shall be limited to that portion of the Agreement Amount earned through the date of termination. The Contractor shall not be entitled to any other or further recovery against the County, including, but not limited to, any damages or any anticipated profit on portions of the services not performed.

**Rights to Inventions Made Under a Contract or Agreement:** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the County wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the County must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**Changes:** See Standard Purchase Order Terms and Conditions.

**Procurement of Recovered Materials (§200.322) (Over \$10,000):** (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

**Suspension and Debarment:** (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms §200.321** (a) The Solicitor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible. (b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;



EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**Equal Employment Opportunity Clause (§60-1.4):** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4.

During the performance of this contract, the contractor agrees as follows:

- I. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- II. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- III. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- IV. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- V. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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- VI. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- VII. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- VIII. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) (over \$100,000):** Where applicable, all contracts awarded by the solicitor in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

**Administrative, Contractual, or Legal Remedies (over \$150,000):** Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

**Clean Air Act and Federal Water Pollution Control Act: (over \$150,000)** (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* (2) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* (3) The contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. (4) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended) (over \$100,000):** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

**State Provisions**

**Convicted Vendor and Discriminatory Vendors List** Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

**Lobbying:** No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or any state agency.

**Inspector General Cooperation:** The Parties agree to comply with Section 20.055(5), Florida Statutes, for the inspector general to have access to any records, data and other information deemed necessary to carry out his or her duties and incorporate into all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

**Record Retention** - The contractor shall maintain and retain sufficient records demonstrating its compliance with the terms of the Agreement for a period of at least five (5) years after final payment is made and shall allow the County, FDEM, or its designee's access to such records upon request.

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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**Acknowledgement of Terms, Conditions, and Grant Clauses**

**Certification**

If the vendor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Department for review and approval. The vendor agrees to include in the subcontract that (1) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Department and Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The recipient shall document in the quarterly report the subcontractor's progress in performing its work under this agreement. For each subcontract, the Recipient shall provide a written statement to the Department as to whether the subcontractor is a minority vendor as defined in Section 288.703, Fla. Stat.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name Angie Brewer & Associates, LC

Date 02/24/2020

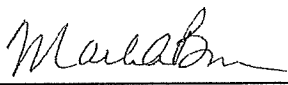
Authorized Signature 

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

(1) The prospective subcontractor of the Sub-recipient, Collier County, certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the Sub-recipient's subcontractor is unable to certify to the above statement, the prospective contract shall attach an explanation to this form.

CONTRACTOR

Angie Brewer & Associates, LC

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By: Mark A. Brewer  
Signature

Mark A. Brewer, President

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Name and Title

9080 58th Drive East, Suite 200

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Street Address

Bradenton, FL 34202

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City, State, Zip

831662044

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DUNS Number

02/24/2020

---

Date

Sub-Recipient Name: Collier County Board of County Commissioners

DEM Contract Number: Z0001

FEMA Project Number: 4337DRFLP0000001

EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

| COLLIER COUNTY                                                                                                                                                                                                                                                                                                                                                                                                       |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| ANTICIPATED DISADVANTAGED, MINORITY, WOMEN OR VETERAN PARTICIPATION STATEMENT                                                                                                                                                                                                                                                                                                                                        |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| Status will be verified. Unverifiable statuses will require the PRIME to either provide a revised statement or provide source documentation that validates a status.                                                                                                                                                                                                                                                 |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| A. PRIME VENDOR/CONTRACTOR INFORMATION                                                                                                                                                                                                                                                                                                                                                                               |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| PRIME NAME                                                                                                                                                                                                                                                                                                                                                                                                           |                                | PRIME FEID NUMBER                                                                                                                                                                                                                                                                                                                                                               |                            | CONTRACT DOLLAR AMOUNT                                                                                                                                                                                                                                                             |                             |
| Angie Brewer & Associates, LC                                                                                                                                                                                                                                                                                                                                                                                        |                                | 65-1073934                                                                                                                                                                                                                                                                                                                                                                      |                            |                                                                                                                                                                                                                                                                                    |                             |
| IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS 8A CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?                                                                                                                                                                                     |                                | VETERAN Y <input type="checkbox"/> N <input checked="" type="checkbox"/><br>DBE? Y <input checked="" type="checkbox"/> N <input type="checkbox"/><br>MBE? Y <input type="checkbox"/> N <input checked="" type="checkbox"/><br>WBE? Y <input checked="" type="checkbox"/> N <input type="checkbox"/><br>SDB 8A? Y <input type="checkbox"/> N <input checked="" type="checkbox"/> |                            | IS THE ACTIVITY OF THIS CONTRACT...<br>CONSTRUCTION? Y <input type="checkbox"/> N <input checked="" type="checkbox"/><br>CONSULTATION? Y <input checked="" type="checkbox"/> N <input type="checkbox"/><br>OTHER? Y <input type="checkbox"/> N <input checked="" type="checkbox"/> |                             |
| IS THIS SUBMISSION A REVISION?                                                                                                                                                                                                                                                                                                                                                                                       |                                | Y <input type="checkbox"/> N <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                |                            | IF YES, REVISION NUMBER                                                                                                                                                                                                                                                            |                             |
| B. IF PRIME HAS SUBCONTRACTOR OR SUPPLIER WHO IS A DISADVANTAGED MINORITY, WOMEN-OWNED, SMALL BUSINESS CONCERN OR SERVICE DISABLED VETERAN, PRIME IS TO COMPLETE THIS NEXT SECTION                                                                                                                                                                                                                                   |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| DBE M/WBE VETERAN                                                                                                                                                                                                                                                                                                                                                                                                    | SUBCONTRACTOR OR SUPPLIER NAME | TYPE OF WORK OR SPECIALTY                                                                                                                                                                                                                                                                                                                                                       | ETHNICITY CODE (See Below) | SUB/SUPPLIER DOLLAR AMOUNT                                                                                                                                                                                                                                                         | PERCENT OF CONTRACT DOLLARS |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| TOTALS:                                                                                                                                                                                                                                                                                                                                                                                                              |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| C. SECTION TO BE COMPLETED BY PRIME VENDOR/CONTRACTOR                                                                                                                                                                                                                                                                                                                                                                |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| NAME OF SUBMITTER                                                                                                                                                                                                                                                                                                                                                                                                    |                                | DATE                                                                                                                                                                                                                                                                                                                                                                            |                            | TITLE OF SUBMITTER                                                                                                                                                                                                                                                                 |                             |
| Mark A. Brewer                                                                                                                                                                                                                                                                                                                                                                                                       |                                | 02/24/2020                                                                                                                                                                                                                                                                                                                                                                      |                            | President                                                                                                                                                                                                                                                                          |                             |
| EMAIL ADDRESS OF PRIME (SUBMITTER)                                                                                                                                                                                                                                                                                                                                                                                   |                                | TELEPHONE NUMBER                                                                                                                                                                                                                                                                                                                                                                |                            | FAX NUMBER                                                                                                                                                                                                                                                                         |                             |
| president@angiebrewer.com                                                                                                                                                                                                                                                                                                                                                                                            |                                | 941-756-5800                                                                                                                                                                                                                                                                                                                                                                    |                            |                                                                                                                                                                                                                                                                                    |                             |
| NOTE: This information is used to track and report anticipated DBE or MBE participation in federally-funded contracts. The anticipated DBE or MBE amount is voluntary and will not become part of the contractual terms. This form must be submitted at time of response to a solicitation. If and when awarded a County contract, the prime will be asked to update the information for the grant compliance files. |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| ETHNICITY                                                                                                                                                                                                                                                                                                                                                                                                            |                                | CODE                                                                                                                                                                                                                                                                                                                                                                            |                            |                                                                                                                                                                                                                                                                                    |                             |
| Black American                                                                                                                                                                                                                                                                                                                                                                                                       |                                | BA                                                                                                                                                                                                                                                                                                                                                                              |                            |                                                                                                                                                                                                                                                                                    |                             |
| Hispanic American                                                                                                                                                                                                                                                                                                                                                                                                    |                                | HA                                                                                                                                                                                                                                                                                                                                                                              |                            |                                                                                                                                                                                                                                                                                    |                             |
| Native American                                                                                                                                                                                                                                                                                                                                                                                                      |                                | NA                                                                                                                                                                                                                                                                                                                                                                              |                            |                                                                                                                                                                                                                                                                                    |                             |
| Subcont. Asian American                                                                                                                                                                                                                                                                                                                                                                                              |                                | SAA                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                                                                                                                                                                                                                                                    |                             |
| Asian-Pacific American                                                                                                                                                                                                                                                                                                                                                                                               |                                | APA                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                                                                                                                                                                                                                                                    |                             |
| Non-Minority Women                                                                                                                                                                                                                                                                                                                                                                                                   |                                | NMW                                                                                                                                                                                                                                                                                                                                                                             |                            |                                                                                                                                                                                                                                                                                    |                             |
| Other: not of any other group listed                                                                                                                                                                                                                                                                                                                                                                                 |                                | O                                                                                                                                                                                                                                                                                                                                                                               |                            |                                                                                                                                                                                                                                                                                    |                             |
| D. SECTION TO BE COMPLETED BY COLLIER COUNTY                                                                                                                                                                                                                                                                                                                                                                         |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| DEPARTMENT NAME                                                                                                                                                                                                                                                                                                                                                                                                      |                                | COLLIER CONTRACT # (IFB/RFP or PO/REQ)                                                                                                                                                                                                                                                                                                                                          |                            | GRANT PROGRAM/CONTRACT                                                                                                                                                                                                                                                             |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |
| ACCEPTED BY:                                                                                                                                                                                                                                                                                                                                                                                                         |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            | DATE                                                                                                                                                                                                                                                                               |                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |                                                                                                                                                                                                                                                                                                                                                                                 |                            |                                                                                                                                                                                                                                                                                    |                             |

EXHIBIT I - 8



EXHIBIT I  
FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**LOBBYING CERTIFICATION**  
**(To be submitted with each bid or offer exceeding \$100,000)**

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

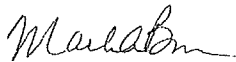
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Angie Brewer & Associates, LC

Contractor (Firm Name)



Signature of Contractor's Authorized Official

Mark A. Brewer, President

Name and Title of Contractor's Authorized Official

02/24/2020

Date



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/19/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| <b>PRODUCER</b><br>Stratum Insurance Agency LLC<br>10620 Southern Highlands Pkwy<br>Suite 110-276<br>Las Vegas, NV 89141 | <b>CONTACT</b><br>NAME: Small Business Team<br>PHONE (A/C, No, Ext): (949) 270-0609 FAX (A/C, No): (949) 270-0608<br>E-MAIL ADDRESS: helpdesk@stratuminsurance.com                                                                                                                                                                                                                                                                |                               |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--|--------|------------|-----------------------|-------|------------|--|--|------------|--|--|------------|--|--|------------|--|--|------------|--|--|
| <b>INSURED</b><br>Angie Brewer & Associates, LLC<br>9080 58th Drive East, Suite 200<br>Bradenton FL 34202                | <table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr> <tr> <td>INSURER A:</td><td>RLI Insurance Company</td><td>13058</td></tr> <tr> <td>INSURER B:</td><td></td><td></td></tr> <tr> <td>INSURER C:</td><td></td><td></td></tr> <tr> <td>INSURER D:</td><td></td><td></td></tr> <tr> <td>INSURER E:</td><td></td><td></td></tr> <tr> <td>INSURER F:</td><td></td><td></td></tr> </table> | INSURER(S) AFFORDING COVERAGE |  | NAIC # | INSURER A: | RLI Insurance Company | 13058 | INSURER B: |  |  | INSURER C: |  |  | INSURER D: |  |  | INSURER E: |  |  | INSURER F: |  |  |
| INSURER(S) AFFORDING COVERAGE                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                   | NAIC #                        |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
| INSURER A:                                                                                                               | RLI Insurance Company                                                                                                                                                                                                                                                                                                                                                                                                             | 13058                         |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
| INSURER B:                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
| INSURER C:                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
| INSURER D:                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
| INSURER E:                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |
| INSURER F:                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                   |                               |  |        |            |                       |       |            |  |  |            |  |  |            |  |  |            |  |  |            |  |  |

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR                                  | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                    | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------|-------------------------------------------|--------------|------------------------------|-----------|--------------------------------|--------------|-------------------|--------------|------------------------|--------------|--|----|
| A                                         | GENERAL LIABILITY                                                                                                                                                                                                                                                                                    | X         |          | PMB0001254    | 12/20/2019              | 12/20/2020              | <table border="1"> <tr><td>EACH OCCURRENCE</td><td>\$ 2,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td>\$ 10,000</td></tr> <tr><td>PERSONAL &amp; ADV INJURY</td><td>\$ 2,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td>\$ 4,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 4,000,000</td></tr> <tr><td></td><td>\$</td></tr> </table> | EACH OCCURRENCE                     | \$ 2,000,000 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 1,000,000 | MED EXP (Any one person)     | \$ 10,000 | PERSONAL & ADV INJURY          | \$ 2,000,000 | GENERAL AGGREGATE | \$ 4,000,000 | PRODUCTS - COMP/OP AGG | \$ 4,000,000 |  | \$ |
| EACH OCCURRENCE                           | \$ 2,000,000                                                                                                                                                                                                                                                                                         |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ 1,000,000                                                                                                                                                                                                                                                                                         |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| MED EXP (Any one person)                  | \$ 10,000                                                                                                                                                                                                                                                                                            |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| PERSONAL & ADV INJURY                     | \$ 2,000,000                                                                                                                                                                                                                                                                                         |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| GENERAL AGGREGATE                         | \$ 4,000,000                                                                                                                                                                                                                                                                                         |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| PRODUCTS - COMP/OP AGG                    | \$ 4,000,000                                                                                                                                                                                                                                                                                         |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| A                                         | AUTOMOBILE LIABILITY                                                                                                                                                                                                                                                                                 |           |          | PMB0001254    | 12/20/2019              | 12/20/2020              | <table border="1"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 2,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr> <tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr> <tr><td></td><td>\$</td></tr> </table>                                                                                                                                     | COMBINED SINGLE LIMIT (Ea accident) | \$ 2,000,000 | BODILY INJURY (Per person)                | \$           | BODILY INJURY (Per accident) | \$        | PROPERTY DAMAGE (Per accident) | \$           |                   | \$           |                        |              |  |    |
| COMBINED SINGLE LIMIT (Ea accident)       | \$ 2,000,000                                                                                                                                                                                                                                                                                         |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| BODILY INJURY (Per person)                | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| BODILY INJURY (Per accident)              | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| PROPERTY DAMAGE (Per accident)            | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | <input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> ALL OWNED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS<br><input type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> NON-OWNED AUTOS                                                                  |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | UMBRELLA LIAB <input type="checkbox"/> OCCUR<br>EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$                                                                                                                                                        |           |          |               |                         |                         | <table border="1"> <tr><td>EACH OCCURRENCE</td><td>\$</td></tr> <tr><td>AGGREGATE</td><td>\$</td></tr> <tr><td></td><td>\$</td></tr> </table>                                                                                                                                                                                                                                                                                                          | EACH OCCURRENCE                     | \$           | AGGREGATE                                 | \$           |                              | \$        |                                |              |                   |              |                        |              |  |    |
| EACH OCCURRENCE                           | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| AGGREGATE                                 | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
|                                           | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                               | Y/N       | N/A      |               |                         |                         | <table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTH-ER</td> </tr> <tr><td>E.L. EACH ACCIDENT</td><td>\$</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$</td></tr> </table>                                                                                                                                                                                                   | WC STATUTORY LIMITS                 | OTH-ER       | E.L. EACH ACCIDENT                        | \$           | E.L. DISEASE - EA EMPLOYEE   | \$        | E.L. DISEASE - POLICY LIMIT    | \$           |                   |              |                        |              |  |    |
| WC STATUTORY LIMITS                       | OTH-ER                                                                                                                                                                                                                                                                                               |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| E.L. EACH ACCIDENT                        | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| E.L. DISEASE - EA EMPLOYEE                | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| E.L. DISEASE - POLICY LIMIT               | \$                                                                                                                                                                                                                                                                                                   |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| A                                         | Professional Liability                                                                                                                                                                                                                                                                               | X         |          | RTP0018256    | 2/17/2020               | 2/17/2022               | <table border="1"> <tr><td>Each Claim</td><td>\$1,000,000</td></tr> <tr><td>Aggregate</td><td>\$2,000,000</td></tr> </table>                                                                                                                                                                                                                                                                                                                           | Each Claim                          | \$1,000,000  | Aggregate                                 | \$2,000,000  |                              |           |                                |              |                   |              |                        |              |  |    |
| Each Claim                                | \$1,000,000                                                                                                                                                                                                                                                                                          |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |
| Aggregate                                 | \$2,000,000                                                                                                                                                                                                                                                                                          |           |          |               |                         |                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                     |              |                                           |              |                              |           |                                |              |                   |              |                        |              |  |    |

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Blanket Additional Insured for business owner liability applies per form PPB3046 04 13 and RTP 101 (02/17).

For any and all work performed on behalf of Collier County.

Collier County Board of County Commissioners, OR, Board of County Commissioners in Collier County, OR, Collier County Government, OR, Collier County included as an additional insured under the captioned Commercial General Liability on a primary and non-contributory basis if and to the extent required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

|                                                                                             |                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Collier County of Board of County Commissioners<br>3295 Tamiami Trail E.<br>Naples FL 34112 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br><i>Stratum Insurance Agency LLC</i> |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **RLIPack<sup>®</sup> FOR PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY**

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:
  - a. In the performance of your ongoing operations;
  - b. In connection with premises owned by or rented to you; or
  - c. In connection with "your work" and included within the "product-completed operations hazard".
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
  - b. This insurance does not apply to the rendering of or failure to render any professional services.
  - c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.
3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

However, if you specifically agree in a contract or agreement that the insurance provided to an

additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
  - b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.
4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED ENDORSEMENT  
(Clients or Customers)**

It is agreed:

1. The definition of **Insured** in Section 5. g. also means any client or customer of the **Named Insured**, but only if a written contract between the **Named Insured** and such client or customer specifically requires that such client or customer be added as an Additional Insured to any professional liability or errors and omissions insurance maintained by the **Named Insured**.
2. Coverage afforded by reason of this Endorsement shall only apply to **Claim Expenses** for **Claims** (i) first made against such client or customer, during the **Policy Period** and on or after the effective date of this Endorsement, and first reported to the Insurer during the **Policy Period**, the Automatic Extended Reporting Period, or if applicable, during the Extended Reporting Period, and (ii) for vicarious or imputed liability of such client or customer based upon **Wrongful Acts** committed solely, by the **Named Insured**. The Policy will not provide coverage for any **Wrongful Act** committed by such client or customer.
3. Exclusion b. shall not apply to **Claims** by such client or customer.
4. The effective date of this Endorsement is: 02/17/2018.
5. Solely as respects the coverage afforded by reason of this Endorsement, this Policy is amended as follows:

A. Section **1. INSURING AGREEMENTS**, is deleted in its entirety and replaced with the following:

**"1. INSURING AGREEMENTS**

- a. The Insurer will pay on behalf of the **Insured**, **Claim Expenses** and **Damages** in excess of the Deductible and not exceeding the Limits of Liability shown on the Policy Declarations that the **Insured** shall become legally obligated to pay because of **Claims** first made against the **Insured** during the **Policy Period** and first reported to the Insurer during the **Policy Period**, the Automatic Extended Reporting Period, or if applicable, during the Extended Reporting Period, for **Wrongful Acts** to which this insurance applies.
- b. The Insurer will pay on behalf of the **Insured**, **Claim Expenses** and **Damages** in excess of the Deductible and not exceeding the Limits of Liability as described in Section 7. c. that the **Insured** shall become legally obligated to pay because of **Claims** alleging **Third Party Discrimination** first made against the **Insured** during the **Policy Period** and first reported to the Insurer during the **Policy Period**, the Automatic Extended Reporting Period, or if applicable, during the Extended Reporting Period."

B. Section **7. LIMITS OF LIABILITY AND DEDUCTIBLE** is deleted in its entirety and replaced with the following:

**"7. LIMITS OF LIABILITY AND DEDUCTIBLE**

Regardless of the number of **Insureds** under this Policy, **Claims** brought on account of **Wrongful Act(s)** or otherwise, the Insurer's liability is limited as follows:

- a. for **Claims** arising under Insuring Agreement 1. a. of this Policy, the Limit of Liability specified in Item 3. b. of the Policy Declarations as the Annual Aggregate shall be the Insurer's maximum liability for **Claims Expenses** and **Damages** for all **Claims** during the **Policy Year**.

- b. for **Claims** arising under Insuring Agreement 1. a. of this Policy, the Limit of Liability specified in Item 3. a. of the Policy Declarations as the Limit for each **Claim** shall be the Insurer's maximum liability for **Claims Expenses** and **Damages** for each **Claim** during the **Policy Year**, and subject to the Annual Aggregate Limit of Liability specified in Item 3. b. of the Policy Declarations.
- c. for **Claims** arising under Insuring Agreement 1. b. of this Policy, the Insurer's maximum liability for **Damages** and **Claim Expenses** shall not exceed \$25,000, subject to the Annual Aggregate Limit of Liability specified in Item 3. b. of the Policy Declarations.
- d. the Deductible amount stated in Item 4. of the Policy Declarations shall apply to **Damages** and **Claim Expenses** and shall apply separately to each and every **Claim**. The **Named Insured** must pay the Deductible stated in Item 4. of the Policy Declarations for **Damages** and **Claim Expenses**. Subject to the Limits of Liability, the Insurer shall only be liable to pay for **Damages** and **Claim Expenses** in excess of such Deductible, and such Deductible shall not be insured under this Policy.
- e. the Limit of Liability for the Automatic Extended Reporting Period and the Extended Reporting Period, if applicable, shall be part of and not in addition to the Limits of Liability specified in Item 3. of the Policy Declarations.
- f. **Claims** based upon or arising out of the same **Wrongful Act**, interrelated **Wrongful Acts**, or a series of similar or related **Wrongful Acts** shall be considered a single **Claim** subject to one **Claim** Limit and shall be considered first made during the **Policy Period**, the Automatic Extended Reporting Period or Extended Reporting Period, if applicable, in which the earliest **Claim** arising out of such **Wrongful Act(s)** was first made and all **Claim Expenses** and **Damages** from such **Claims** shall be subject to the one Limit of Liability that applies to such earliest **Claim**.
- g. the Limits of Liability of this Policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the **Policy Period** shown in Item 2. of the Policy Declarations, unless the **Policy Period** is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding twelve (12) month period for purposes of determining the Limits of Liability."

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **AMEND SUBROGATION ENDORSEMENT**

It is agreed that Section **14. SUBROGATION** is deleted in its entirety and replaced with the following:

### **“14. SUBROGATION**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery. The **Insureds** shall execute and deliver all instruments and papers and do whatever else is necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer to effectively bring suit in the name of the **Insureds**.

However, it is agreed that the Insurer waives its rights of subrogation under this Policy against clients of the **Insured** as respects **Claim(s)** arising from **Professional Services** under the client's contract requiring waiver of subrogation but only to the extent required by written contract.”

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/18/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| <b>PRODUCER</b><br>Commercial Lines - (305) 443-4886<br>USI Insurance Services LLC<br>2601 South Bayshore Drive, Suite 1600<br>Coconut Grove, FL 33133 | <b>CONTACT NAME:</b> Risk Management Department<br><b>PHONE (A/C, No, Ext):</b> (866) 443-8489 <b>FAX (A/C, No):</b> (800) 889-0021<br><b>E-MAIL ADDRESS:</b> Work.Comp@Trinet.com                                                                                                                                                                                                                                                                                                                        |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------|---------------------------------------------------------|-------|------------|--|------------|--|------------|--|------------|--|------------|--|
| <b>INSURED</b><br>TriNet HR III, Inc.<br>RE: Angie Brewer And Associates LC<br>9000 Town Center Parkway<br>Bradenton, FL 34202                         | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Indemnity Insurance Company of North America</td> <td>43575</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A: Indemnity Insurance Company of North America | 43575 | INSURER B: |  | INSURER C: |  | INSURER D: |  | INSURER E: |  | INSURER F: |  |
| INSURER(S) AFFORDING COVERAGE                                                                                                                          | NAIC #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
| INSURER A: Indemnity Insurance Company of North America                                                                                                | 43575                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
| INSURER B:                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
| INSURER C:                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
| INSURER D:                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
| INSURER E:                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |
| INSURER F:                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                               |        |                                                         |       |            |  |            |  |            |  |            |  |            |  |

**COVERAGES****CERTIFICATE NUMBER:** 14986990**REVISION NUMBER:** See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                        | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                   |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          | <b>COMMERCIAL GENERAL LIABILITY</b><br><input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER:                         |           |          |               |                         |                         | EACH OCCURRENCE \$<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$<br>MED EXP (Any one person) \$<br>PERSONAL & ADV INJURY \$<br>GENERAL AGGREGATE \$<br>PRODUCTS - COMP/OP AGG \$<br>\$ |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY<br><input type="checkbox"/> AUTOS ONLY |           |          |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$<br>\$                                    |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br>DED    RETENTION \$                                                                                                                                                    |           |          |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$<br>\$                                                                                                                                                 |
| A        | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                            | Y/N<br>N  | N/A      | WLR_C66084139 | 7/1/2019                | 7/1/2020                | X PER STATUTE    OTH-ER<br>E.L. EACH ACCIDENT \$ 2,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 2,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 2,000,000                                        |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: For any and all work performed on behalf of Collier County. Workers' Compensation coverage is limited to worksite employees of Angie Brewer And Associates LC through a co-employment agreement with TriNet HR III, Inc.

**CERTIFICATE HOLDER****CANCELLATION**

|                                                                                                                            |                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Collier County Board of County<br>Commissioners Collier County Purchasing Dept<br>3295 Tamiami Trail E.<br>Naples FL 34112 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br> |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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ACORD 25 (2016/03)

(This certificate replaces certificate# 14335788 issued on 8/24/2019)

**FIRST AMENDMENT TO AGREEMENT #20-7690**

**FOR**

**LOAN AND/OR GRANT ACQUISITION AND COMPLIANCE SERVICES**

THIS AMENDMENT is made and entered into on this 24<sup>th</sup> day of July, 2020, by and between **Angie Brewer & Associates, L.C., a Florida limited liability company** (the "Vendor") and **Collier County**, a political subdivision of the State of Florida, (the "County"):

WHEREAS, on June 9, 2020 (Agenda Item 16.C.4), the County entered into an Agreement with Vendor to provide loan and/or grant acquisition and compliance services; and

WHEREAS, the Agreement contained a Scrivener's Error on the Exhibit "B" Fee Schedule wherein the percentage shown in line a. on the chart had transposed numbers; and

WHEREAS, the parties desire to amend the Agreement to correct the referenced Scrivener's Error.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed by the parties as follows:

1. The percentage amount shown in line a. below should equal the fractional amount shown of \$68.00/1,000.
2. The correction is reflected on the chart below.

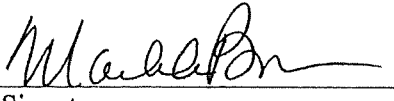
| <b>For all services related to the acquisition or compliance of loans and/or grants:</b> | <b>Estimated % of Cost per \$1,000</b>    |
|------------------------------------------------------------------------------------------|-------------------------------------------|
| a. Under \$2 million                                                                     | a. \$68.00/1,000 or <del>6.08</del> 6.80% |
| b. Between \$2 million and \$5 million                                                   | b. \$43.00/1,000 or 4.30%                 |
| c. Over \$5 million but less than \$15 million                                           | c. \$31.00/1,000 or 3.10%                 |
| d. Between \$15 million and \$25 million                                                 | d. \$24.00/1,000 or 2.40%                 |
| e. Over \$25 million                                                                     | e. \$18.00/1,000 or 1.80%                 |

Remainder of Page Left Intentionally Blank  
Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto, have each, respectively, by an authorized person or agent, have executed this Amendment on the date and year first written above.

VENDOR  
ANGIE BREWER & ASSOCIATES, L.C.

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By:   
Signature

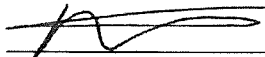
Mark A. Brewer, President  
↑Type/print signature and title↑

7/24/20  
Date

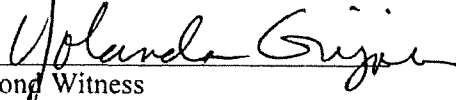
By:   
Sandra Herrera,  
Director of Procurement Services Division

7/24/20  
Date

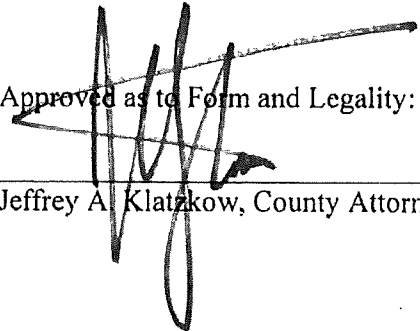
Vendor's Witnesses:

  
First Witness

Ken Wahlers  
↑Type/print witness name↑

  
Second Witness

Yolanda Grijalva  
↑Type/print witness name↑

  
Approved as to Form and Legality:

Jeffrey A. Klatzkow, County Attorney

## CONSULTANT AGREEMENT

**AGREEMENT**, made and entered into on ~~February 16, 2021~~ February 16, 2021, by and between Angie Brewer & Associates, LC, hereinafter referred to as the "Consultant" and the Town of Fort Myers Beach, hereinafter referred to as the "Client".

**Whereas**, the Client desires to obtain the services of the Consultant for Funding Management Services to include Planning, Application, Administration, Compliance and Program Management Services for the SRF Program or other grant and/or loan funding sources; and

**Whereas**, the Consultant desires to provide services to the Client, to assist with the successful Funding Management Services to include Planning, Application, Administration, Compliance and Program Management Services for the SRF Program or other grant and/or loan funding sources; and

**Whereas**, on the 9<sup>th</sup> day of June, 2020, the Consultant was awarded a contract with Collier County, Florida, pursuant to Request for Proposal Solicitation 20-7690 – Loan and/or Grant Acquisition and Compliance Services (the "Collier County Agreement"); and

**Whereas**, the Collier County Agreement provides for an initial term commencing June 9, 2020 and continuing until June 9, 2023 with two (2) optional one (1) year renewals; and

**Whereas**, the Town of Fort Myers Beach has determined that utilizing the procurement process conducted by Collier County and the execution of this contract is beneficial to the citizens of the Town of Fort Myers Beach;

**NOW, THEREFORE**, in consideration of the premises aforesaid and the covenants and agreements hereinafter set forth, the parties hereto mutually covenant and agree as follows:

1. **Commencement.** The Consultant shall commence the Work immediately upon receipt of a Purchase Order, Notice to Proceed or signed Task Authorization from the Client.
2. **Scope.** The Consultant agrees to provide all necessary and proper Funding Management Services to include Planning, Application, Administration, Compliance and Program Management Services for the SRF Program or other grant and/or loan funding sources as outlined in the written proposals to be submitted by the Consultant to the Client.
3. **Payment.** The Consultant will provide services as required by the project on a "Lump Sum" or a Task Completion basis. The Client shall make payment to the Consultant within 30 days of receipt of an invoice for services performed. No costs will be incurred by the Consultant above the limit authorized without prior approval from the Client.
4. **Notices.** All notices from the Client to the Consultant shall be mailed to the following address:

Angie Brewer & Associates, LC  
9080 58<sup>th</sup> Drive East, Suite 200  
Bradenton, Florida 34202

All notices from the Consultant to the Client shall be mailed to the address given to the Consultant for:

TOWN OF FORT MYERS BEACH

2525 ESTERO BOULEVARD

FORT MYERS BEACH, FL 33931

Either party may provide notice to the other of any change in contact or mailing address as set forth above.

5. **No Partnership.** Nothing herein contained shall create or be construed as creating a partnership between the Client and the Consultant.
6. **Default and Termination.** Upon the failure of either party to perform pursuant to the terms of this Agreement, either party may terminate this agreement upon thirty (30) days written notice. The Consultant shall be compensated for all services provided and costs incurred related to this Agreement through the date of termination. The defaulting party may cure, during the notice period, and this agreement shall remain in full force and effect.
7. **Agreement.** This Agreement is the entire Agreement of the parties and consists of the attached component parts, all of which are as fully a part of the Agreement as if herein set out verbatim.
8. **Changes.** Within the general scope of this Agreement the Client may, at any time, by written notice to Consultant, issue additional instructions, require additional services or direct the omission of services covered by this Agreement. In such event, there will be made an equitable adjustment in price and/or time of performance.
9. **Compliance.** The Consultant shall comply with all local, state and federal laws relative to the performance of these services.
10. **Insurance.** The Consultant will provide proof of all applicable and available insurance required by the Client.
11. **Performance.** The Client is to provide cooperation and information to the Consultant, as reasonably required, to assist the Consultant in the performance of its obligations pursuant to this Agreement. Consultant shall be the sole liaison between all parties and funding agencies involved with the work authorized under this Agreement. The Client shall provide the Consultant all requested information, instructions and requests for any actions on a timely basis to allow the appropriate performance of Consultant's work.
12. **Indemnity and Liability.** The Client hereby indemnifies and holds Consultant, its directors, officers, agents and employees harmless against any and all claims, actions, or demands against Consultant, its directors, officers, agents and employees and against any and

all damages, liabilities or expenses, including counsel fees, for injury to or death of any person and for loss of or damage to any all property arising out of the negligent acts, errors, or omissions of the Client under this Agreement. The Consultant hereby indemnifies and holds Client, its directors, officers, agents and employees harmless against any and all claims, actions, or demands against Client, its directors, officers, agents and employees and against any and all damages, liabilities or expenses, including counsel fees, for injury to or death of any person and for loss of or damage to any all property arising out of the negligent acts, errors, or omissions of the Consultant under this Agreement.

13. **Standards.** All services hereunder shall be performed by employees, agents, or subcontractors of Consultant who are experienced and skilled in their profession and in accordance with the standards of workmanship in their professions. Consultant's findings, recommendations, and professional advice shall be based on practices and procedures customary in its profession. Proprietary information utilized in the performance of the work by the Consultant shall remain the sole property of the Consultant.
14. **Venue.** In the event of any litigation arising from this Agreement, shall be held in the Circuit Court of the Twelfth (12<sup>TH</sup>) Judicial Circuit of Florida, in and for Manatee County.
15. **Statutory Labor Rate Changes.** The Parties agree that a change in the State or Federal Minimum Wage Rate will result in a commensurate increase to Hourly Labor Rates, Lump Sum, Task Completion or other compensation under this Agreement.

**IN WITNESS WHEREOF**, the Client and the Consultant, have each, respectively, by an authorized person or agent, hereunder set their hands and seals on the date and year first written above.

**Town of Fort Myers Beach** *st*

**Angie Brewer & Associates, LC**

By: *Roger T. Hernstadt*

By: *Mark A. Brewer*

ROGER T. HERNSTADT - TOWN MANAGER  
Name and Title

Mark A. Brewer, President  
Name and Title

ATTEST:

ATTEST:

Witness: *Amy Baker* *Town Clerk*

Witness: *Yolanda Brijnen*



**FIRST AMENDMENT TO AGREEMENT #20-7690**

**FOR**

**LOAN AND/OR GRANT ACQUISITION AND COMPLIANCE SERVICES**

**THIS AMENDMENT** is made and entered into on this 24<sup>th</sup> day of July, 2020, by and between **Angie Brewer & Associates, L.C.**, a Florida limited liability company (the "Vendor") and **Collier County**, a political subdivision of the State of Florida, (the "County"):

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**WHEREAS**, the Agreement contained a Scrivener's Error on the Exhibit "B" Fee Schedule wherein the percentage shown in line a. on the chart had transposed numbers; and

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2. The correction is reflected on the chart below.

| <b>For all services related to the acquisition or compliance of loans and/or grants:</b> | <b>Estimated % of Cost per \$1,000</b>    |
|------------------------------------------------------------------------------------------|-------------------------------------------|
| a. Under \$2 million                                                                     | a. \$68.00/1,000 or <del>6.08</del> 6.80% |
| b. Between \$2 million and \$5 million                                                   | b. \$43.00/1,000 or 4.30%                 |
| c. Over \$5 million but less than \$15 million                                           | c. \$31.00/1,000 or 3.10%                 |
| d. Between \$15 million and \$25 million                                                 | d. \$24.00/1,000 or 2.40%                 |
| e. Over \$25 million                                                                     | e. \$18.00/1,000 or 1.80%                 |

Remainder of Page Left Intentionally Blank  
Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto, have each, respectively, by an authorized person or agent, have executed this Amendment on the date and year first written above.

VENDOR  
ANGIE BREWER & ASSOCIATES, L.C.

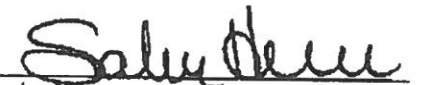
BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

By:   
Signature

Mark A. Brewer, President

↑Type/print signature and title↑

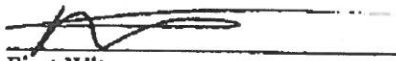
7/24/20  
Date

By:   
Sandra Herrera,  
Director of Procurement Services Division

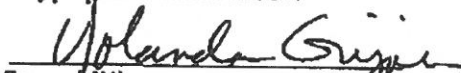
Date

7/24/20

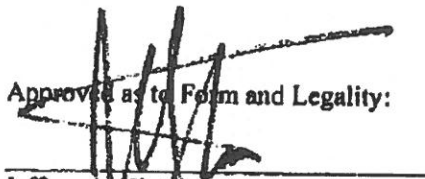
Vendor's Witnesses:

  
First Witness

Ken Wahlers  
↑Type/print witness name↑

  
Second Witness

Yolanda Grigalva  
↑Type/print witness name↑

  
Approved as to Form and Legality:  
Jeffrey A. Klatzkow, County Attorney



February 17, 2023

Mark Brewer  
 Angie Brewer & Associates, L.C.  
 9080 58<sup>th</sup> Drive East, Suite 200  
 Bradenton, FL 34202  
 Via Email: [president@angiebrewer.com](mailto:president@angiebrewer.com)

**RE: Contract Renewal for # 20-7690 "Loan and/or Grant Acquisition & Compliance Services"**

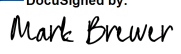
Dear Mr/s. Brewer,

Collier County would like to renew the above contract under the same terms and conditions for an additional **one (1)** year period in accordance with the renewal clause in the contract.

If you are agreeable, please indicate your intentions by providing the information requested below and executing the acceptance section:

|                                                                                     |                                                                                                                                                |
|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><b>I am agreeable to renewing the above referenced contract under the same terms, conditions, and pricing as the existing contract.</b></p> |
| <p>_____</p>                                                                        | <p>I am not agreeable to the renewal of this contract.</p>                                                                                     |

By executing the section below, this contract will be in effect from **6/9/2023** until **6/8/2024**.

| Acceptance of Contract Renewal |                                                                                                       |
|--------------------------------|-------------------------------------------------------------------------------------------------------|
| Company Name                   | Angie Brewer & Associates, LC                                                                         |
| Company Signature              | DocuSigned by:<br> |
| Print Name                     | <small>700055FB301140C...</small><br>Mark Brewer                                                      |
| Signature Date                 | 2/23/2023                                                                                             |





Page 2 of 2

**RE: Contract Renewal for # 20-7690 "Loan and/or Grant Acquisition & Compliance Services"**

| Updated Contact Information<br>(Only if addressee information on the first page is incorrect) |       |
|-----------------------------------------------------------------------------------------------|-------|
| Contact Name                                                                                  | _____ |
| Telephone Number                                                                              | _____ |
| FAX Number                                                                                    | _____ |
| Email Address                                                                                 | _____ |

Collier County Procurement Services is pleased to announce, it has partnered with BidSync to provide Free web-based Bidding services to its vendors, suppliers, and contractors.

We are now "live on the new bidding platform". Register today at [www.bidsync.com](http://www.bidsync.com).

For Registration Assistance, please contact BidSync customer service at

**800-990-9339** Or email: [support@bidsync.com](mailto:support@bidsync.com).

Please return this letter to the Procurement Services Division with your response no later than **2/24/2023**. You may email your response to email [Renewals@colliercountyfl.gov](mailto:Renewals@colliercountyfl.gov). If you have any questions, you may contact me at 239-252-8407.

Respectfully,

DocuSigned by:  

 Sue Zimmerman

EB98B3B2B065449...

Sue Zimmerman, CPM

Contract Manager – Procurement Services Division

C: Tara Castillo, PUD: Financial & Ops Support



**Certificate Of Completion**

Envelope Id: 3BB687FF1C574B80A4E2B36C63F798DB

Status: Completed

Subject: Complete with DocuSign: 20-7690 AngieBrewer 1of2\_1YrRenewal.pdf

Source Envelope:

Document Pages: 2

Signatures: 2

Envelope Originator:

Certificate Pages: 2

Initials: 1

Vanessa Miguel

AutoNav: Enabled

3295 Tamiami Trail East, Naples, Florida

Enveloped Stamping: Enabled

Naples, FL 33967

Time Zone: (UTC-05:00) Eastern Time (US &amp; Canada)

Vanessa.Miguel@colliercountyfl.gov

IP Address: 165.225.222.100

**Record Tracking**

Status: Original

Holder: Vanessa Miguel

Location: DocuSign

2/17/2023 2:27:13 PM

Vanessa.Miguel@colliercountyfl.gov

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: Collier County Board of County

Location: DocuSign

Commissioners

**Signer Events**

Sue Zimmerman

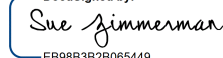
Sue.Zimmerman@colliercountyfl.gov

Procurement Contract Manager

Collier County- Procurement Services Division

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



EB98B3B2B065449...

**Timestamp**

Sent: 2/17/2023 3:09:18 PM

Viewed: 2/17/2023 3:19:13 PM

Signed: 2/17/2023 3:19:19 PM

Signature Adoption: Pre-selected Style

Using IP Address: 165.225.222.100

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

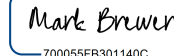
Mark Brewer

president@angiebrewer.com

Angie Brewer &amp; Associates, LC

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



700055FB301140C...

Sent: 2/17/2023 3:19:20 PM

Viewed: 2/23/2023 9:20:43 AM

Signed: 2/23/2023 9:25:47 AM

Signature Adoption: Pre-selected Style

Using IP Address: 47.205.32.229

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Renewals

renewals@colliercountyfl.gov

Security Level: Email, Account Authentication  
(None)**COPIED**

Sent: 2/23/2023 9:25:49 AM

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

| Witness Events          | Signature        | Timestamp            |
|-------------------------|------------------|----------------------|
| Notary Events           | Signature        | Timestamp            |
| Envelope Summary Events | Status           | Timestamps           |
| Envelope Sent           | Hashed/Encrypted | 2/17/2023 3:09:18 PM |
| Certified Delivered     | Security Checked | 2/23/2023 9:20:43 AM |
| Signing Complete        | Security Checked | 2/23/2023 9:25:47 AM |
| Completed               | Security Checked | 2/23/2023 9:25:49 AM |
| Payment Events          | Status           | Timestamps           |



X Supplemental Task Authorization NO.: STA #4

CONTRACT/PROJECT NAME: 240-000-0116 Grant and Loan Services

CONSULTANT: Angie Brewer & Associates, LC PROJECT NO.: \_\_\_\_\_

SOLICIT NO.: \_\_\_\_\_ CONTRACT NO.: \_\_\_\_\_

REQUESTED BY: Joe Onzick DATE OF REQUEST: 01/31/2024

PURCHASE ORDER NUMBER: \_\_\_\_\_

|             |                                                                          |                          |
|-------------|--------------------------------------------------------------------------|--------------------------|
| EXHIBIT "A" | SCOPE OF PROFESSIONAL SERVICE:                                           | DATED: <u>01/31/2024</u> |
| EXHIBIT "B" | COMPENSATION & METHOD OF PAYMENT:                                        | DATED: <u>01/31/2024</u> |
| EXHIBIT "C" | TIME AND SCHEDULE OF PERFORMANCE:                                        | DATED: <u>01/31/2024</u> |
| EXHIBIT "D" | CONSULTANT'S/PROVIDER'S ASSOCIATED<br>SUB-CONSULTANT(S)/SUB-CONTRACTORS: | DATED: <u>N/A</u>        |

RECOMMENDED:

ACCEPTED: Angie Brewer & Associates, LC

TOWN APPROVAL:

Date to Proceed: \_\_\_\_\_ Cost of STA: \$183,225.00

Completion Due Date: June 9, 2024

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

240-000-0116 Grant and Loan Services

**Overview**

**STA NO. 4: 240-000-0116 Grant and Loan Services**

The following services will be provided by Angie Brewer & Associates, LC:

**1: Program Coordination**

*Program Coordination* – The Consultant shall coordinate with Town, FDEP, Consulting Engineers, Project Representatives and others as necessary to ensure that all requirements are met. This includes ongoing contact with all personnel related to the project. The Consultant will coordinate and be involved in site visits by funding agency representatives, ie. FDEP, EPA, OIG or DOL. The Consultant shall act as the Liaison between FDEP and the Town to identify and resolve issues regarding the SRF Loan Program. Also, all status and other reporting will be accomplished for successful management and completion of the project. This includes General Funding Services, SRF Loans, Federal and State Grants for specific projects for the Town's eligible activities. This currently includes Stormwater, Drinking Water and Wastewater improvement projects including Tier 1 and any other projects deemed by the Town to be in their best interests.

**2: Funding Reconciliation**

*Funding Reconciliation* – The Consultant shall review and compare the project information with the funding documents to ensure that all SRF requirements are met and consistency between all aspects of the project is achieved.

**3: Processing**

*Pay Estimate(s)* – The Consultant shall provide professional services to review and verify eligible costs per contractor pay estimate.

*Engineering Invoice(s)* – The Consultant shall provide professional services to review and verify eligible costs related to engineering.

*FDEP Reimbursement Request(s)* – The Consultant shall compile required documents and prepare Reimbursement Requests for submittal to FDEP. The Reimbursement Request shall include all properly authorized expenditures for which documentation is available on the date of preparation. The Consultant shall submit the Reimbursement Request to the Engineer for Certification and then to the Town for signature. The Consultant shall be responsible to ensure appropriate parties receive copies of the Reimbursement Request upon receiving the originally signed copy at its office.

*Change Order(s)* – The Consultant shall review and process Construction Contract Change Orders/Field Changes. This will result in a request for

eligibility determination to be submitted to FDEP. Upon receipt of eligibility determination, all appropriate project information will be modified to allow for the eventual reimbursement of costs if applicable.

#### **4: Program Management**

*Program Management Meeting(s)* – The Consultant shall prepare for and attend Program Management Meetings. Meeting minutes shall be prepared and disseminated to appropriate parties upon completion. These meetings are held for the purpose of discussing FDEP program requirements, reimbursement requests, eligibility requests' status, construction progress, contract changes/issues, payment procedures/status, monitoring issues, additional funding needs and other information regarding the project.

*MBE/WBE Monitoring* – The Consultant shall provide a form to be completed by the contractor and submitted with each pay estimate. The information submitted by the contractor shall be used to prepare the Minority/Women's Business Enterprises (MBE/WBE) Utilization Report. This report shall be submitted to the Town and FDEP on a monthly basis during construction.

*Agency Monitoring Visit(s)* – The Consultant shall prepare for and attend agency monitoring visits. The Consultant shall provide responses to any agency questions.

#### **5: Davis-Bacon Compliance**

*Contractor Compliance Preparation* – The Consultant shall review the contractor and subcontractors current Davis Bacon practices and policies to determine compliance with the funding program and funding agreement requirements. The Consultant shall suggest changes required to ensure compliance with the program requirements.

*Provide Required Signage* – The Consultant shall provide digital or physical copies of required signage with directions for posting the signs. The contractor is responsible for the production and display of the signs.

*Compliance Monitoring* – The Consultant shall provide monthly monitoring of Federal Labor Standards requirements, including labor interviews and verification of information reported by the contractors and subcontractors during construction.

*Certified Payroll(s)* – The Consultant shall provide professional services to review and verify certified payrolls as submitted by the contractors and subcontractors. The Consultant shall prepare detailed exception reports as required.

*Coordination* – The Consultant shall monitor all applicable federal and state regulations. The Consultant shall assist the contractors with conformance of additional wage rates as required for the program.

#### **6: American Iron and Steel (AIS) Compliance**

*Contractor Compliance Preparation* – The Consultant shall review the contractor and subcontractors current materials acquisition processes to determine compliance with the funding program and funding agreement requirements. The Consultant shall suggest methods to ensure compliance with the program requirements.

*American Iron and Steel Compliance* – The Consultant shall provide

monthly monitoring of the project for compliance with the American Iron and Steel requirements. The Consultant shall complete the required documentation for compliance.

#### **4: Closeout and Audit Assistance**

*Project Closeout* – Consultant shall prepare closeout information required for FDEP regarding the project. The Final Request for Reimbursement is included in this task. This includes the Final Construction Inspection, Preliminary Administrative Closeout, and Final Administrative Closeout conducted by FDEP representatives. The necessary closeout documents shall be prepared regarding final eligibility for construction, engineering, administration, design and other project costs and submitted to FDEP to allow closeout of the loan. This effort will result in the preparation, review and approval of the Final Loan Amendment.

*Annual Audit Assistance* – The Consultant shall provide necessary data to the Town to allow inclusion of the loan in the required Single Audit Report prepared as part of the Annual Audit. This also includes corresponding with FDEP regarding eligibility requests and assistance during the annual audit.

*Project Specific Audit* – The Consultant will also provide closeout and other information to the Town's Independent Auditors in order to allow for the required Project Audit within 12 months of execution of the Final Loan Amendment.

#### **Hourly Breakdown:**

| Labor Category | Principal | Sr. Funding Manager | Senior Project Manager II | Sr. Funding Coordinator | Sr. Funding Specialist | Funding Specialist | Admin/ Clerk II | Admin/ Clerk I |
|----------------|-----------|---------------------|---------------------------|-------------------------|------------------------|--------------------|-----------------|----------------|
| Rate           | \$185.00  | \$155.00            | \$135.00                  | \$110.00                | \$100.00               | \$88.00            | \$63.00         | \$54.00        |
|                |           |                     |                           |                         |                        |                    |                 |                |
| Hours          | 140.00    | 280.00              | 112.00                    | 168.00                  | 210.00                 | 262.50             | 350.00          | 262.50         |

*Total Cost (of Job):* *\$183,225.00*

EXHIBIT BDate: 01/31/2024

COMPENSATION AND METHOD OF PAYMENT FOR  
240-000-0116 Grant and Loan Services

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

| Task Number                                      | Task Title              | Amount of Compensation | Indicate Basis of Compensation<br>LS or NTE | If Applicable<br>Indicate<br>(W.I.P.P.) |
|--------------------------------------------------|-------------------------|------------------------|---------------------------------------------|-----------------------------------------|
| #1                                               | Grant and Loan Services | \$183,225.00           | NTE                                         | WIPP                                    |
| TOTAL<br>(Unless list is continued on next page) |                         | \$183,225.00           | NTE                                         |                                         |

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated January 31, 2024, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto January 31, 2024 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".



ATTACHMENT NO. 1 TO EXHIBIT B

Date: 01/31/2024

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR  
240-000-0116 Grant and Loan Services

Consultant or Sub-consultant Name: Angie Brewer & Associates, LC  
(A separate Attachment No. 1 should be included for each Sub-Consultant)

| (1)<br>Project Position or Classification<br>(Function to be Performed)             | (2)<br>Current Direct*<br>Payroll Average<br>Hourly Rate | (3)<br><br>Multiplier** | (4)<br>Hourly Rate<br>To Be Charged<br>(Column 2x3) |
|-------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------|-----------------------------------------------------|
| Hourly Rates are fully burdened to include<br>all costs per Collier County Contract |                                                          |                         |                                                     |

\*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

\*\*NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

\*\*\*NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 01/31/2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR  
240-000-0116 Grant and Loan Services

CONSULTANT OR SUB-CONSULTANT NAME: Angie Brewer & Associates, LC  
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

## EXHIBIT C

Date: 01/31/2024

### TIME AND SCHEDULE OF PERFORMANCE FOR

#### 240-000-0116 Grant and Loan Services

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

| Phase and/or Task Reference As Enumerated in EXHIBIT "A" | NAME OR TITLE Of Phase and/Task | Number Of Calendar Days For Completion Of Each Phase And/or Task | Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed |
|----------------------------------------------------------|---------------------------------|------------------------------------------------------------------|----------------------------------------------------------------------------------|
| #1                                                       | Grant and Loan Services         | 420 days                                                         | 420 days                                                                         |
|                                                          |                                 |                                                                  |                                                                                  |
|                                                          |                                 |                                                                  |                                                                                  |
|                                                          |                                 |                                                                  |                                                                                  |
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|                                                          |                                 |                                                                  |                                                                                  |
|                                                          |                                 |                                                                  |                                                                                  |

EXHIBIT D

Date: 01/31/2024

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR  
240-000-0116 Grant and Loan Services

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

| Service and/or<br>Work to be<br>Provided or<br>Performed | Name and Address of Individual<br>or Firm |  |  |  | Sub-Consultant<br>Services are<br>Exempted from<br>Prime Consultant's<br>Insurance<br>Coverage |    |
|----------------------------------------------------------|-------------------------------------------|--|--|--|------------------------------------------------------------------------------------------------|----|
|                                                          |                                           |  |  |  | Yes                                                                                            | No |
|                                                          | NONE                                      |  |  |  |                                                                                                |    |

1. **Requested Motion:**

**Meeting Date:** February 5, 2024

Discussion and direction to staff regarding appointment of Town Council Seat #5

**Why the action is necessary:**

**What the action accomplishes:**

Provides direction to staff to proceed

2. **Agenda:**

COUNCILMEMBERS ITEMS AND  
REPORTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

---

5. **Background:**

As of January 30, 2024, the Clerk's Office received five (5) applications for appointment to the vacant seat. A copy of the information received has been provided to you all by email and is attached to this agenda item as well. Staff is seeking direction regarding the next action to be taken.

**Attachments:**

1. Boan, James
2. Hill, Barbara
3. Pedone, Salvatore
4. Safford, Scott
5. Schoonover, Esward

**Financial Impact:**

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 1/30/2024  
Approved - 1/31/2024  
Approved - 1/31/2024  
Final Approval - 1/31/2024

**RECEIVED**

By Amy Baker at 10:12 am, Jan 29, 2024



Today's Date: January 26, 2024

Name: James Boan

Home Address: 21067 Saint Peters, Fort Myers Beach

Mailing Address: Same as Home.

Email Address: jbam3@comcast.net

I qualify for Special Exemptions per 119.071(4)(d)3 F.S. ☐ Y ☒ N

If yes, fill out a Public Records Exemption Request form and submit to the Town Clerk with this application.

**Supplemental Questions:**

I fully understand and acknowledge that, if appointed, I will be required to submit a Form 6 electronically to the Florida Commission on Ethics. ☒ Y ☐ N

Describe why you wish to be appointed to fill the remaining term of seat #5 on the Town Council:

I have more than 45 years of local government experience. I am currently on the LPA and a member of "Let's Go FMB". I am retired and have the time to perform the duties of a Council member. In addition to a background in Planing and Zoning, I have extensive experience in Public Finance, Human Resources, Contract Management, Public Insurance and Municipal Litigation. I believe that my past experiences as an attorney and public official could help in rebuilding our island.

I plan to run for election in November 2024 to permanently fill seat #5: ☒ Y ☐ N

I have attached a recent copy of my resume with current references to this application. ☒ Y ☐ N

I swear or affirm that all information on this form is true and accurate.

Signed: James Boan

Date: 1-26-24



# **Resume**

**This is the "bio" that was released by  
the last firm I worked for**

## **JAMES S. BOAN (OF COUNSEL)**

James Boan brings nearly 45 years of public service to the Odelson & Sterk, Ltd. team. He earned his undergraduate degree from the University of Illinois at Urbana-Champaign in 1973, his Master's Degree from George William College in 1978, and his Juris Doctorate from Northern Illinois University College of Law in 1983. He is admitted to practice in the U.S. District Court for the Northern District of Illinois.

Early in his career, Jim held Superintendent and Director positions with the Bolingbrook Park District. He served as Village Administrator and then Chief of Staff in Bolingbrook from 1997 until 2001 when he became Village Attorney, a position he has held for nearly 20 years. As Village Attorney, his practice focuses on local governmental matters, real estate, finance and taxation, and planning, zoning, annexation and land use.

Jim is active in the Will County Governmental League and the Illinois Municipal League Home Rule Attorneys Committee.

He is a member of the Illinois State Bar Association and was the former Chairman of the Kendall County Board. In April 2011, the Bolingbrook Park District formally dedicated 27 acres of open woodlands as the James S. Boan Woods at the Hidden Oak Conservation Area in Bolingbrook in recognition of his many years of public service. Recently, Jim was awarded the Bolingbrook Chamber of Commerce Lifetime Achievement Award.

He joins the firm as Of Counsel where he will provide consultation on local government, finance, land use, zoning, and economic development matters.

## **Professional References**

**Anita Cerecedo. Chair Local Planning Agency**

**Roger Claar. Former Mayor of Bolingbrook, Illinois**

**Mary Alexander Basta. Mayor of Bolingbrook, Illinois**

**Burt Odelson. Founder and Senior Partner,**

**Odelson, Murphey, Frazier & McGrath. Ltd.**



Today's Date: 1/19/24

Name: Barbara Anderson Hill

Home Address: 340 Madison Court, Ft Myers Beach, FL 33931

Mailing Address: same

Email Address: barbarahill@comcast.net

I qualify for Special Exemptions per 119.071(4)(d)3 F.S. ☐ Y ☒ N  
If yes, fill out a Public Records Exemption Request form and submit to the Town Clerk with this application.

Supplemental Questions:

I fully understand and acknowledge that, if appointed, I will be required to submit a Form 6 electronically to the Florida Commission on Ethics. ☒ Y ☐ N

Describe why you wish to be appointed to fill the remaining term of seat #5 on the Town Council:

Serving in leadership positions on two of the town's advisory boards demonstrates my commitment as a volunteer. I believe my balanced perspective as a FMB resident/property owner since 2005 (and before that, as a teenager growing up on this island in the 50s) might be beneficial as a member of Town Council as we work together to rebuild our community of both businesses and residents while keeping it fun, funky and safe. I also want to nurture our unique cultural, environmental and recreational resources to benefit and enrich all residents and visitors.

I plan to run for election in November 2024 to permanently fill seat #5: ☐ Y ☒ N

I have attached a recent copy of my resume with current references to this application. ☒ Y ☐ N

I swear or affirm that all information on this form is true and accurate.

Signed: Barbara Hill

Date: 1/19/2024

Town of Fort Myers Beach

JAN 19 2024

Received by: \_\_\_\_\_

BARBARA ANDERSON HILL  
340 Madison Court, Fort Myers Beach, FL 33931  
(239) 293-3603  
barbarahill@comcast.net

## RESUME

### TOWN OF FORT MYERS BEACH

Chair, CELCAB, October 2011-present; member since 2007

Vice Chair, BORCAB, January 2020-present; member since 2019

### RESIDENCY

Full time resident of Fort Myers Beach 1954 to 1962 and 2005 to present. Parents owned and operated The Shrimp Box next to the pier 1965-1973 and were full time residents of Fort Myers Beach from 1954 until their passing.

### REFERENCES

Bill Veach, Anita Cereceda, Ed Ryan

### EDUCATION

1994 Post-Graduate, Museum Management Program, University of Colorado at Boulder  
1987 Master of Fine Arts Degree, College of Fine Art, University of South Florida, Tampa  
1984 Bachelor of Arts Degree, College of Fine Art, University of South Florida, Tampa  
1959 Graduate, Fort Myers Jr. Sr. High School

### PROFESSIONAL EXPERIENCE

Owner, Hill Fine Art Consulting 2004 to present. Clients include cultural organizations, municipal public art agencies, visual artists

|                                                                           |             |
|---------------------------------------------------------------------------|-------------|
| Alliance for the Arts, Fort Myers, FL                                     | 2015 - 2019 |
| City of Fort Myers, FL; Consultant                                        | 2006 - 2015 |
| Lee Trust for Historic Preservation, Inc. Traveling exhibition co-curator | 2013 - 2015 |
| Bob Rauschenberg Gallery, Edison State College, guest curator             | 2011 - 2012 |
| Millennia Gallery, Orlando, FL, art advisory services                     | 2004        |
| Holocaust Museum, Naples, FL, museum consultant                           | 2004        |

### Full Time Positions

|                                                                                 |                             |
|---------------------------------------------------------------------------------|-----------------------------|
| Executive Director, Edison & Ford Winter Estates Foundation, Fort Myers, FL     | 2005 - 2007                 |
| Executive Director/Curator, The von Liebig Art Center, Naples, FL               | 1998 - 2004                 |
| Public Art Administrator, City of Tampa, FL                                     | 1996 – 1998 and 1990 - 1991 |
| Manager, Grants and Major Gifts, Ringling Museum of Art, Sarasota, FL           | 1995 - 1996                 |
| Curator Exhibitions/Collection Manager, Florida Gulf Coast Art Center, Belleair | 1991 - 1994                 |
| Gallery Director, Gilman Stein Gallery, Tampa, FL                               | 1987 - 1990                 |

- Leadership Institute, Class of 2004
- Chair, Exhibitions Exchange Committee, Florida Art Museum Directors Assn. 2003-2004
- *Women of Achievement 2002 Award*, American Association of University Women
- *Southwest Florida's Men and Women of the Year 2001 Award*, Gulf Shore Life Magazine, Naples, FL
- Leadership Collier, Class of 2000
- Founding member, Florida Association of Public Art Professionals, 1998
- Advisory Board, U.S.F Contemporary Art Museum, Tampa, FL 1990-1999
- U. S. Fulbright Scholarship Candidate to Norway, 1987
- Honor Society of Phi Kappa Phi, University of South Florida Chapter, 1984
- Founding Member, Barrier Island Group (BIG) for the Arts, Sanibel Island, 1983
- Owner, Touch of Clay School, Sanibel Island, FL 1977-1982
- President, Board of Directors, Ceramic League of Miami, Miami, FL, 1970s

#### Member

- Advisory Council, Institute of Research in Art, College of Art, University of South Florida
- University of South Florida President's Council Society, Tampa, FL
- Emeritus Board Member, Florida Association of Public Art Professionals

#### Adjunct Teaching Experience

|                                                      |             |
|------------------------------------------------------|-------------|
| Art Instructor, Edison State College, Fort Myers, FL | 1984 - 1987 |
| University of South Florida, Fort Myers, FL campus   | 1986 - 1987 |

#### Independent Curator, Florida

|                                                                                                                |           |
|----------------------------------------------------------------------------------------------------------------|-----------|
| <i>Mally Khorasantchi: Time for Joy</i> , Dunham Gallery, BIGArts, Sanibel Island                              | 2020      |
| <i>Laura Waller: Rockland</i> , Tampa, NYC, Dunedin Fine Art Center, Dunedin                                   | 2019      |
| Co-curator, <i>Art Calusa</i> , premiered Ft Myers, traveling throughout state                                 | 2013-2016 |
| Co-curator, <i>Diana Rutherford: 13 Portraits</i> , Alliance for the Arts, Ft Myers                            | 2014      |
| <i>Theo Wujcik Retrospective</i> , Bob Rauschenberg Gallery, E.S. College, Ft Myers                            | 2014      |
| <i>Undercurrent/Overview 2</i> , Tampa Museum of Art, Tampa                                                    | 1998      |
| <i>Bicultural Identities</i> , Three émigrés from Bosnia, China and Viet Nam, Dunedin Fine Art Center, Dunedin | 1998      |
| <i>Sculpture Exhibition Program</i> , NationsBank Plaza, Tampa                                                 | 1994-95   |
| <i>Florida Woman Artists</i> , Art collection for Woman's Care of Brandon, Brandon                             | 1990-91   |

#### Essays for Artist Publications

|                                                                         |                  |
|-------------------------------------------------------------------------|------------------|
| Mally Khorasantchi, introduction, co-editor for "Roots" publication     | 2019             |
| Arturo Correa, catalog essay, "Searching", Ascasco Gallery, Miami, FL   | 2016             |
| Mally Khorasantchi art writer, editor for monographs                    | 2011, 2016, 2019 |
| Marylyn Dintenfass, essay for <i>Parallel Park</i> , Hudson Hills Press | 2011             |

Collection Catalog *Collection of Contemporary Art by Florida Women*, Woman's Care of Brandon, FL

1991



### Exhibition Publications

|                                                                                                                                              |           |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <i>Port Side: Paintings by Laura Waller</i> , Clayton Galleries, Tampa, FL                                                                   | 2017      |
| <i>The Working Waterfront: Port Tampa Bay, New Paintings by Laura Waller</i> , Clayton Galleries, Tampa, FL                                  | 2015      |
| <i>Art Calusa: Reflections on Representation</i> , traveling statewide exhibition premiering in Ft. Myers                                    | 2013-2016 |
| <i>Searching for the Image: Six Artists from the New York Studio School</i><br>The von Liebig Art Center, Naples; co-curator, Graham Nickson | 2003      |
| <i>Domesticity Revisited</i> , The von Liebig Art Center, Naples, FL                                                                         | 2000      |
| <i>Refiguring the 90s</i> , The von Liebig Art Center, Naples, FL                                                                            | 1999      |
| <i>Remnants: Installations by Five Cuban American Artists</i> , Florida Gulf Coast Art Center, Belleair, FL                                  | 1994      |

### Presenter, Panelist

|                                                                                                                             |                  |
|-----------------------------------------------------------------------------------------------------------------------------|------------------|
| Presenter, "How Communities Succeed with Public Art", Florida Redevelopment Association Annual Conference, Sanibel Marriott | 2018             |
| Presenter, "Traveling Exhibits: Shows to Go", Florida Association of Museums Annual Conference, Ritz Carlton, Naples        | 2018             |
| Lecture, "What do Jurors look for?", SWFL Pastel Society                                                                    | 2017             |
| Presenter, "Artist as Entrepreneur", Alliance for the Arts, Ft Myers                                                        | 2014             |
| Selection Panel, Florida Art-in-State Buildings Program, FGCU, Estero, FL                                                   | 2002, 2004, 2011 |
| Lecturer, BIG Arts, Sanibel Island                                                                                          | 2011             |
| Presenter, Greater Naples Leadership Arts Day, Naples                                                                       | 2011             |
| Lecturer, "Collecting Contemporary Art", Naples Resort, Naples                                                              | 2010             |
| Grant Review Panelist, Palm Beach Cultural Council                                                                          | 2009-2010        |
| Public Art Committee, City of Naples Public Art Program                                                                     | 2001-2004        |
| Presenter: Florida Association of Museums Annual Conference                                                                 | 2004             |
| Panelist, U.S. Government Art in Architecture Program, Federal Courthouse, Tampa,                                           | 1997             |
| Florida Division of Cultural Affairs, Cultural Program Grant Review Panelist                                                | 1996             |
| Women's Issues Symposium, Brevard Museum of Art, Melbourne                                                                  | 1996             |
| Panelist: Artist Survival Workshop, Hillsborough County Arts Council                                                        | 1992             |

### Juror, Fine Art Exhibitions:

Fort Myers Beach Art Association; Sanibel-Captiva Art League; Marco Island Center for the Arts; Marco; Art Center Manatee, Bradenton, FL; Art Galleries of Florida Gulf Coast University, Estero, FL; Spartanburg Art Museum, Spartanburg, S.C.; Tampa Museum of Art, Tampa, FL; Lee County Alliance for the Arts, Ft. Myers, FL; BIG Arts, Sanibel Island, FL; 2012, United Arts Council of Collier County/Rookery Bay, Naples, FL; Brevard Art Museum, Melbourne, FL; University of South Florida Contemporary Art Museum, Tampa, FL; The Art Center, St. Petersburg, FL

Juror, Outdoor Art Festivals: Craftart, St. Petersburg; Naples National Art Festival, Naples; Artfest, Ft Myers; Gasparilla Art Festival, Tampa; Sunfest Art Festival, Palm Beach; Tarpon Springs Art Festival, Tarpon Springs, FL; BIG Arts Festival, Sanibel.

JAN 22 2024



Received by: \_\_\_\_\_

Today's Date: 1/23/24

Name: SALVATORE O. PERONE

Home Address: 190 JEFFERSON ST. F.M.B. 33931-3712

Mailing Address: " " " "

Email Address: SALPERONE15@G.MAIL.COM

I qualify for Special Exemptions per [119.071\(4\)\(d\)3 F.S.](#)

☐ Y

☒ N

If yes, fill out a [Public Records Exemption Request form](#) and submit to the Town Clerk with this application.

SLP  
1-25-24

Supplemental Questions:

I fully understand and acknowledge that, if appointed, I will be required to submit a Form 6 electronically to the Florida Commission on Ethics. ☒ Y ☐ N

Describe why you wish to be appointed to fill the remaining term of seat #5 on the Town Council:

NOW IS A GOOD TIME FOR ME TO  
CONSIDER THIS. I WELCOME  
THE OPPORTUNITY!

I plan to run for election in November 2024 to permanently fill seat #5: ☒ Y ☐ N

I have attached a recent copy of my resume with current references to this application.

☐ Y ☒ N

I swear or affirm that all information on this form is true and accurate.

Signed: Salvatore O. Perone

Date: 1/23/24

239-699-0258



JAN 7 2024

Mr. [Name] [Address] [City, State, Zip]

Re: [Subject]

Dear Mr. [Name]:

On [Date], [Description of Event]

[Additional Information]

[Additional Information]

[Additional Information]

[Additional Information]

10

X

1-25-24

[Additional Information]

[Additional Information]

[Additional Information]

[Additional Information]

X

X

[Additional Information]

[Signature]

[Date]

987-654-3210



Today's Date: 1/19/24

Name: Scott M. Safford

Home Address: 189 Sabal Dr. FMB, FL 33931

Mailing Address: Same

Email Address: scott@gypsyvacation.com

I qualify for Special Exemptions per 119.071(4)(d)3 F.S. ☐ Y ☒ N  
If yes, fill out a Public Records Exemption Request form and submit to the Town Clerk with this application.

Supplemental Questions:

I fully understand and acknowledge that, if appointed, I will be required to submit a Form 6 electronically to the Florida Commission on Ethics. ☒ Y ☐ N

Describe why you wish to be appointed to fill the remaining term of seat #5 on the Town Council:

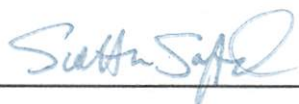
My time and experience on the Local Planning Agency (LPA) has prepared me for the Fort Myers Beach Town Council in many ways. I have developed skills in the following areas:

Understanding of Zoning and Land Use: I have a deep understanding of zoning regulations, land use policies, and urban planning principles. This knowledge is

I plan to run for election in November 2024 to permanently fill seat #5: ☐ Y ☒ N

I have attached a recent copy of my resume with current references to this application. ☒ Y ☐ N

I swear or affirm that all information on this form is true and accurate.

Signed: 

Date: 1/19/24

**Town of Fort Myers Beach**

**JAN 19 2024**

Received by: 

My time and experience on the Local Planning Agency (LPA) has prepared me for the Fort Myers Beach Town Council in many ways. I have developed skills in the following areas:

**Understanding of Zoning and Land Use:** I have a deep understanding of zoning regulations, land use policies, and urban planning principles. This knowledge is invaluable when making decisions that impact the development, recovery and growth of the town.

**Community Planning Expertise:** I have been involved in community planning initiatives. This experience allows me to contribute insights into creating a vision for the town's future, aligning development projects with the community's needs and aspirations.

**Collaboration with Stakeholders:** My role on the LPA required collaboration with various stakeholders, including developers, community members, and elected officials. This collaborative approach is essential for a Town Council position, where effective communication and cooperation with diverse groups are key to successful decision-making and positive outcomes.

**Problem-Solving Skills:** Working on the LPA has honed my ability to analyze complex issues related to land use and development. This skill is transferable to the Town Council, where we are faced with multifaceted challenges that require thoughtful analysis and effective solutions.

**Community Engagement:** I have engaged with the local community to gather input and feedback on planning matters. This community-centric approach is beneficial for a Town Council member, fostering a sense of inclusivity and ensuring that decisions reflect the needs and desires of residents.

**Project Evaluation and Approval:** Having been involved in evaluating and approving development projects on the LPA, I bring valuable experience to the Town Council in assessing the feasibility and impact of proposed initiatives.

**Budgeting Considerations:** I have an MBA in International Finance and my understanding of budgeting, especially in the context of community planning, can be advantageous when reviewing and approving town budgets on the council.

I have lived and owned a business on the island for over 12 years. Like everyone, we were impacted by Hurricane Ian. I am committed to rebuilding both our home and business. I would like to translate my experiences and challenges into beneficial change for the island.

# **Scott M. Safford**

189 Sabal Dr., Fort Myers Beach, Florida, 33931 | [scott@gypsyvacation.com](mailto:scott@gypsyvacation.com) | (239) 224-9542

---

## **Professional Summary:**

Dedicated and community-focused professional with a proven track record in urban planning and community development. Adept at navigating zoning regulations, collaborating with stakeholders, and contributing to the growth and vision of the community. Seeking a position on the Town Council to leverage my experience in local planning for the benefit of Fort Myers Beach.

## **Professional Experience:**

### **CFO | The Sea Gypsy Inn/Sea Gypsy Vacation Rentals | 10/2012 – Present**

Established and currently manage a portfolio of vacation rental properties, specializing in providing memorable and comfortable stays for guests.

Implemented strategic marketing initiatives, resulting in a steady increase in bookings and revenue year over year.

- Developed and maintained strong relationships with guests, earning high satisfaction ratings and positive reviews.
- Implemented efficient property management systems, optimizing occupancy rates and minimizing downtime between bookings.

## **Community Experience:**

### **Local Planning Agency | Fort Myers Beach, FL | 11/2016 - Present**

- Conducted zoning and land use analyses, ensuring adherence to local regulations and community planning goals.
- Facilitated the review and approval process for development proposals, providing recommendations to the Town Council.
- Collaborated with architects, developers, and community stakeholders to align projects with the town's long-term vision.
- Established strong relationships with community leaders, residents, and businesses to create a collaborative approach to urban planning.

## **Professional Memberships:**

- Let's Go FMB!, Founding Board Member
- Leadership Lee, Class of 2024
- University of Dallas, National Alumni Board

## **Education:**

**MBA International Finance | Thunderbird | Glendale, AZ | 1987**

**BA Economics | University of Dallas | Irving, TX | 1986**

## **Skills:**

- Fluent in Spanish
- Stakeholder Collaboration
- Project Management
- Community Engagement
- Strategic Planning

## **References:**

Bob Beville - Board Member, Captains For Clean Water

Ketih Wilkins - Former Interim Town Manager, Fort Myers Beach

Hank Zuba - Lee County Planning Agency, Lee County, Florida



Today's Date: 1/15/24

Name: Edward Joseph Schoonover

Home Address: 8180 Lagoon Rd, Fort Myers Beach, FL 33931

Mailing Address: 8180 Lagoon Rd, Fort Myers Beach, FL 33931

Email Address: ed.schoonover@jandjholmes.com

I qualify for Special Exemptions per 119.071(4)(d)3 F.S. ☐ Y ☒ N  
If yes, fill out a Public Records Exemption Request form and submit to the Town Clerk with this application.

Supplemental Questions:

I fully understand and acknowledge that, if appointed, I will be required to submit a Form 6 electronically to the Florida Commission on Ethics. ☒ Y ☐ N

Describe why you wish to be appointed to fill the remaining term of seat #5 on the Town Council:

I have a sincere appreciation for the work the current council is doing in rebuilding our town and would like to assist the council in continuing to do so on an interim basis. I believe my extensive experience in municipal and private institutions will be a great benefit as we navigate the waters of rebuilding. I am a strong proponent of making the island more bikeable and walkable while easing traffic loads and expanding economic opportunity for entrepreneurs.

I plan to run for election in November 2024 to permanently fill seat #5: ☐ Y ☐ N  
MAYBE

I have attached a recent copy of my resume with current references to this application. ☒ Y ☐ N

I swear or affirm that all information on this form is true and accurate.

Signed: 

Date: 1/15/24

# ED SCHOONOVER

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## TOWN COUNCIL CANDIDATE

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### CONTACT

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218.820.3389

[ed.schoonover@jandjholmes](mailto:ed.schoonover@jandjholmes.com)

[.com](http://ed.schoonover.com)

8180 Lagoon Rd

Fort Myers Beach, FL 33931

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### RECIPIENT

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Amy Baker, Town Clerk

CC: Current Town Council

Fort Myers Beach, FL 33931

To whom it may concern,

I was never much interested in the operations of this town in the past. It started with a desire to build an exotic pool on our property nearly 3 years ago only to be denied by the previous administration. It was enhanced after Hurricane Ian when I felt and publicly stated that we were lacking leadership in a trying time for our community by the prior administration. The "It" is my desire to serve the town's residents and provide leadership in difficult times. Let this cover letter announce my intention to be nominated to fill position #5 on the town council.

Enclosed is my Resume and list of professional references that have agreed to take calls on this matter. Letters can be provided by request.

Sincerely,



Edward J Schoonover



# ED SCHOONOVER

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## Town Council Candidate

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### CONTACT

218.820.3389  
ed.schoonover@jandjhomes.com  
8180 Lagoon Rd  
Fort Myers Beach, FL  
33931

### PROFILE

I have nearly 25 years of experience working in a municipal government. I spent most of my time working in the Parks and Recreation Department but have spent time in various other departments including: Planning, Engineering, Surveying and Public Works. I then spent time managing and assisting operations for a large family YMCA. My latest chapter has been in property management as our companies own and operate 29 properties in both the residential and commercial realms. We are proud of our laundromat and services chain of stores that covers the North Central Minnesota Area. We have been full time residents of Fort Myers Beach since 2018.

### EXPERIENCE

Owner/Property Manager and Development Coordinator

#### **2013 – Present JMKs, J2, Chip, JMK and Sons Properties**

Our companies own and operate a variety of properties. We have had HUD/HAP properties that required us to have extensive knowledge in Section 8 and affordable housing plans. Also included in our property profile are several group homes serving developmentally disabled adults and children. Our commercial side includes office buildings and a chain of service-related storage units and wash facilities.

Maintenance and Operations Director

#### **2010 – 2013 Brainerd (MN) Family YMCA**

I managed and oversaw all aspects of building operations. Some aspects of management included: Manage staff, coordinate barrier removal for ADA compliance, seek and award bids for projects with various contractors, I participated in the complete remodel of a Gymnasium floor and the reconstruction and remodeling of two pools.

Operations Specialist

#### **1982 – 2008 Brainerd Area Civic Center**

Assisted in management and operations under the auspices of both nonprofit and municipal management. Major focuses were: superior customer service, maintaining playing surfaces and facilities to an NHL type standard, implementing utility saving projects reducing water and electricity expenses.

# Ed Schoonover

## Town Council Candidate

8180 Lagoon Rd  
Fort Myers Beach, FL 33931  
218.820.3389  
ed.schoonover@jandjholmes.com

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### REFERENCES

#### **Chuck "Gringo" Grillo**

#### **Retired NHL teams front office**

218.821.8400

*Mr. Grillo is the former vice president and director of player personnel for the San Jose Sharks (NHL). Mr. Grillo was the Head Scout for the Pittsburgh Penguins (NHL) and has won a Stanley Cup in that role. Mr. Grillo was one of our major tenants at Brainerd Area Civic Center and can testify to my work ethic and attention to detail*

#### **Bob Motzko**

#### **Head Coach Minnesota Golden Gophers Men's Hockey (NCAA)**

320.291.6431

*Mr. Motzko serves as head coach of the perennial top ten in the nation Gopher men's hockey teams. Mr. Motzko has won an International Gold Medal leading the men's junior hockey team. Mr. Motzko served on the LSVB board with me and can testify to my leadership and ability to get things done.*

#### **Randy Klinger**

#### **Special Education Teacher, Sarasota, FL**

218.839.0990

*Mr. Klinger was the Executive Director of the Brainerd Family YMCA and worked closely with me on various major projects. Mr. Klinger is currently a special ed teacher with life experience of helping others succeed. Mr. Klinger can testify to my management abilities and experience securing quality contractors to complete major projects under cost and on time.*