



Fort Myers Beach Town Council

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

AMENDED Agenda

Monday, October 28, 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
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS
 - A. Local Planning Agency Appointments
- VIII. APPROVAL OF MINUTES
- IX. CONSENT AGENDA
- X. ITEMS REMOVED FROM CONSENT AGENDA
- XI. PUBLIC HEARINGS

- A. Ordinance 24-27; DCI20240155, 2545 & 2555 Estero Blvd., FMB Fire Control District

Second Reading and Final Public Hearing on proposed Ordinance 24-27 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 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

B. Ordinance 24-20; DCI20240130 Margaritaville Signs

Second Reading and Final Public Hearing on a proposed Ordinance 24-20 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS 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.

C. Resolution 24-190; VAC20240068, 3030 Shell Mound Blvd - FMB Art Association

A RESOLUTION VACATING A 12-FOOT WIDE UTILITY EASEMENT LOCATED OVER REAL PROPERTY OWNED BY THE FORT MYERS BEACH ART ASSOCIATION, GENERALLY LOCATED AT 3030 SHELL MOUND BOULEVARD, FORT MYERS BEACH; ACCEPTING AND APPROVING A NEW UTILITY EASEMENT AS A REPLACEMENT EASEMENT TO BE LOCATED ON REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A UTILITY EASEMENT AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD THIS RESOLUTION AND THE NEW UTILITY EASEMENT; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

D. Ordinance 24-26; CB Zoning District Amendment

Second reading and Final Public Hearing on a proposed Ordinance 24-26 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED "USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT" IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

- E. Ordinance 24-30; Unsafe Structures Appeal Process
Second Reading and Final Public Hearing on proposed Ordinance 24-30 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES”; AND 2) DIVISION 2 “LEE COUNTY’S BOARDS OF ADJUSTMENT AND APPEALS” OF ARTICLE II “BUILDING CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL’S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL’S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN’S BUILDING OFFICIAL’S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.
- F. Ordinance 24-34; DA20240170, Seagate/Home Rule Development Agreement **TITLE AMENDED**
First Reading of a proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN’S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER’S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. For approval and Second Reading on November 4, 2024.

G. Ordinance 24-17; Advisory Committees

Second Reading and Final Public Hearing of proposed Ordinance 24-17 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCY, BOARDS, COMMITTEES OR COMMISSIONS AND ADDING A VOTING REGISTRATION REQUIREMENT FOR MEMBERS OF THE LOCAL PLANNING AGENCY AND AUDIT COMMITTEE; ELIMINATING DUPLICATIVE AND UNENFORCEABLE LANGUAGE; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

H. Resolution 24-178; Updating Town Council Policies and Procedures Manual

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 2 AND 5 OF THE TOWN’S POLICIES AND PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE TOWN’S AGENCIES, BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; AND PROVIDING FOR AN EFFECTIVE DATE.

I. Ordinance 24-31; Codification of 2020 Charter Amendments

Second reading and Final Public Hearing on proposed Ordinance 24-31 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 4.02 “MAYOR,” 4.03 “VICE MAYOR,” 5.01 “ELECTIONS,” AND 5.03 “TERMS OF OFFICE” OF FORT MYERS BEACH TOWN CHARTER, TO CODIFY CHANGES TO THE DATE OF TOWN ELECTIONS FROM MARCH TO NOVEMBER AND TO ESTABLISH FOUR (4) YEAR TERMS OF OFFICE FOR TOWN COUNCIL MEMBERS, AS APPROVED BY THE VOTERS AT THE MARCH 2020 MUNICIPAL ELECTION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE

DATE.

- J. Ordinance 24-32; Amendment to Ordinance 05-04

Second Reading and Final Public Hearing on proposed Ordinance 24-32 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2 OF ORDINANCE 2005-04 TO REFLECT THE CHANGES TO THE TOWN CHARTER APPROVED BY THE TOWN VOTERS AT THE MUNICIPAL ELECTION ON MARCH 17, 2020; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

- A. Resolution 24-217, Special Event - 34th Annual American Sand Sculpting Championship

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING DURING THE AMERICAN SAND SCULPTING CHAMPIONSHIPS FROM 3:00 PM WEDNESDAY, NOVEMBER 20, 2024 TO 8 PM SUNDAY, NOVEMBER 24, 2024: 1) OPEN CONTAINERS OF ALCOHOL IN PUBLIC AREAS AS PROVIDED IN ORDINANCE 16-03 SECTION 22-(G); 2) WAIVING THE STANDARD VEHICLE PERMIT FEE FOR VEHICLES ON THE SAND; 3) WAIVING THE FEE FOR THE USE OF BAYSIDE VETERANS PARK; 4) DIRECTING NON-ENFORCEMENT OF THE NOISE ORDINANCE; 5) WAIVING PARKING FEES ALONG OLD SAN CARLOS FROM FIRST TO THIRD STREET (APPROXIMATELY 21 SPACES); AND PROVIDING AN EFFECTIVE DATE.

- B. Resolution 24-213, Bridge Loan Amendment Extending Maturity Date

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO SIGN AN AMENDMENT TO THE BRIDGE LOAN AGREEMENT AND PROMISSORY NOTE BETWEEN THE TOWN AND THE STATE OF FLORIDA, DEPARTMENT OF COMMERCE TO EXTEND THE MATURITY DATE OF THE EXISTING LOAN TO MAY 8, 2033; AND PROVIDING FOR AN EFFECTIVE DATE.

- C. Resolution 24-218, Ratifying Time Extension to FDEP Grant Agreement for BORC

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING THE TOWN MANAGER'S APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. LW738 WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE RECEIPT OF GRANT FUNDING FOR OUTDOOR RECREATION FACILITIES AS PART OF THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT TO EXTEND THE COMPLETION DATE TO AUGUST 31, 2025 AND THE GRANT EXPIRATION DATE TO DECEMBER 31, 2025; AND PROVIDING AN EFFECTIVE DATE.

- D. Resolution 24-211, Ratification of Emergency Information Technology Services Contract

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON SEPTEMBER 23, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVING A NEW CONTRACT WITH SOFTRIM LLC TO CONTINUE PROVIDING REMOTE INFORMATION TECHNOLOGY SUPPORT SERVICES AND SOFTWARE LICENSING, AND TO ADD FULL-TIME, ONSITE SUPPORT FOR A TOTAL ANNUAL AMOUNT OF \$191,784 FOR A TWO YEAR TERM AS AN EMERGENCY PURCHASE, APPROVING AN ADDENDUM TO THE SOFTRIM CONTRACT CONTAINING REQUIRED TERMS AND CONDITIONS UNDER FLORIDA LAW; AND PROVIDING AN EFFECTIVE DATE.

- E. 24-212, Ratify ICS Contract Hurricane Helene Beach Cleanup

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN SEPTEMBER 27, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ICS MATERIALS INC. TO TAKE EMERGENCY PROTECTIVE MEASURES TO REMOVE HAZARDS TO PUBLIC HEALTH AND SAFETY FROM THE BEACH; AND PROVIDING FOR AN EFFECTIVE DATE.

- F. Resolution 24-219, Axis Infrastructure Second Amendment

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A SECOND AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AXIS INFRASTRUCTURE, LLC TO EXTEND THE TERM OF THE PROFESSIONAL SERVICES AGREEMENT FOR ONGOING MISCELLANEOUS PROFESSIONAL SERVICES, TO SEPTEMBER 30, 2025 BY THE EXERCISE OF THE SECOND OF TWO ONE-YEAR RENEWAL OPTIONS; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT AND THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- G. Resolution 24-220, Multiple Committee Waiver **EXHIBIT A AMENDED**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, WAIVING THE PROHIBITION OF MEMBERSHIP OF MULTIPLE BOARDS OR COMMITTEES UNDER SECTION 2-98 OF ARTICLE IV. OF THE TOWN'S CODE OF ORDINANCES ; AND PROVIDING AN EFFECTIVE DATE.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON 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.

1. **Request:**

Meeting Date: October 28, 2024

Appoint Members to the FY2024-2025 Local Planning Agency (LPA)

Why the action is necessary:

Four seats on the Local Planning Agency expired September 30, 2023, leaving four vacancies on the committee.

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Originally on the October 21, 2024 meeting, this item was continued to the October 28, 2024 meeting.

The objectives of the Local Planning Agency (LPA) are to further the welfare of the citizens of town by helping to promote a better, more positive community environment and to ensure that the unique, natural characteristics of the island are preserved.

The LPA also serves as the Town's Historic Preservation Board.

There are currently four vacancies on the Local Planning Agency. Six applications have been received by the Town Clerk requesting appointment to the committee; all six applicants are residents of or owners of real property located within the territorial limits of the Town of Fort Myers Beach.

Additionally, staff has notified the community of the upcoming vacancies on all Town advisory committees and boards and encouraged new members to apply by the close of business on Thursday, September 19, 2024.

Per Ordinance 09-08, Section 34-113(a). The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of Town Council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency.

This agenda item was continued from the October 21, 2024 meeting.

Attachments:

1. Dunlap, James LPA
2. Eckmann, Douglas LPA

3. McLean, John LPA
4. Neaf, Anne LPA
5. Spradling, Tyler LPA
6. Sudduth, Don LPA

Financial Impact:

6. Alternative Action

Do not appoint/reappoint members and advertise for the vacancies

7. Management Recommendations:

Appoint /reappoint members to the committee

8. Recommended Approval:

Eva Spsychalski, Administrative Resources Coordinator
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/22/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

**RECEIVED**

By Amy Baker at 3:36 pm, Aug 27, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/23/24

Name: Dunlap James E
Last First Middle initial

Telephone Number: (616) 481-3217

Email Address: jedfmb@gmail.com

Home Address: 10087 Idle Plne Ln. Estero, Florida 34135

Mailing Address 131 Egret St. Fort Myers Beach 33931

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? Local Planning Agency

If yes, when is your term expiration? October, 2024

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Community Resource Advisory Board
☐ Cultural and Environmental Learning Center Advisory Board
☐ Historic Preservation Advisory Committee
☒ Local Planning Agency
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

See attached document for details.

Community Involvement:

See attached resume for details.

Interests / Activities:

Boating, Golfing, Scuba Diving

You may attach a resume in addition to the above information.

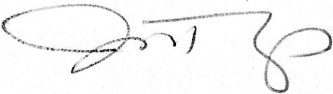
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

8/23/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

August 26, 2024

WHY ARE YOU SEEKING AN APPOINTMENT TO THIS BOARD OR COMMITTEE?

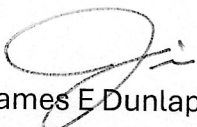
RESPONSE FOR LPA COMMITTEE INTEREST:

This is a moment in the history of our island that may never come again. A time where we are required to balance all we have known and loved about Fort Myers Beach with the responsibility and reality that every individual must step up, in their own way, and help shape what those that follow will be impacted by for decades. My personal belief is "It won't be the same, but we can still make it ours."

Although I was just appointed to this body in June of 2024, I believe I have been able to contribute and add value to the requests and conversations that have appeared before the LPA over the past two meetings. I have drawn upon my 38yrs in banking, along with the numerous community organizations I have chaired and helped develop long range strategic plans for, that has given me invaluable insights on how interdependent all these pieces and parts are to a thriving culture and economy. We are at that exact moment on Fort Myers Beach!

I am interested in furthering and fully participating in the conversation on how to further define and categorize what a "community benefit" is for all the residents of Fort Myers Beach. I believe it matters how clear we can be on what really counts and to what magnitude these benefits should be considered as tradeoffs in the "permanent" variances we are being asked to approve.

As the LPA reacts to requests for future development, there will continue to be tradeoffs on both sides. The decisions will be nuanced, but the benefits and alignment with what Fort Myers Beach values the most, should never be undermined. I have many years of experience in handling situations and conversations of these types that had significant consequences. I want to continue to offer and contribute that experience to our island.


James E Dunlap

131 Egret St

Fort Myers Beach, FL

NOTICE OF INTENT TO BE A CANDIDATE FOR FORT MYERS BEACH LOCAL PLANNING AGENCY

NAME: JAMES E. DUNLAP

PHONE: 616-481-3217

EMAIL: JEDFMB@GMAIL.COM

ACTIVE PARTICIPATION IN VOLUNTARY ORGANIZATIONS:

- 1999-2001 Chair, Orlando Convention and Visitors Bureau
- 2000-2001 Chair, Orlando Regional Chamber of Commerce
- 2003-2004 Co-chair, American Cancer Society Cattle Baron's Ball
- 2003-2009 Co-chair, Devos Children's Hospital/Make-A-Wish Foundation
- 2002-2004 Chair, Junior Achievement Business Hall of Fame
- 2006-2008 Treasurer and Chair, YMCA of Greater Grand Rapids
- 2004-2007 Chair, Heart of West Michigan United Way Campaign
- 2009-2010 Treasurer and Board Chair, The Right Place, Inc. (Economic Development)
- 2012-2016 Chair, West Michigan Policy Forum
- 2013-2014 Chair, Grand Rapids, MI Economic Club
- 2018-2024 Board Member, Shadow Wood Community Association, Estero, FL
- 2021-2024 Board President, Shadow Wood Community Association
- 6/2024-Present Local Planning Agency, Fort Myers Beach

PROFESSIONAL EXPERIENCE /ACCOMPLISHMENTS:

- 1979-2017 Retired Executive with Huntington National Bank, thirty-eight years
 - (\$189B in assets, 16th largest bank in US).
- 1993-2008 Regional President in various geographies within the Midwest and Florida
- 2009-2017 Senior Executive Vice President, Director Regional and Commercial Banking, Wealth Management, Capital Markets and Treasury Management as direct report to Chairman of the Board

ELECTED OFFICE EXPERIENCE

- 1993-1996 Village of Waterville, Ohio Council and Vice Mayor

SPECIAL RECOGNITION

- 1999,2000,2001 Recognized as one of Central Florida's seven most outstanding community leaders
- 2001 Banker of the Year, Central Florida
- 2007 Community Leader of the Year, Grand Rapids, Michigan
- 2010 West Michigan Business Person of the Year, West Michigan Economic Club

FULL TIME FLORIDA RESIDENT



RECEIVED

By Amy Baker at 3:03 pm, Aug 23, 2024

Town of Fort Myers Beach

Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☒ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☐ No ☒

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I have been a resident of FMB since 2007, since Ian destroyed our home at 120 Sabal we have been residing at our another property in Estero. Planning to rebuild on beach. Currently own residential property at 120 Sabal Drive. As a practicing professional engineer, I feel I can bring my expertise to the LPA.

Community Involvement:

Treasurer of St. Peter Lutheran Church. We are rebuilding church at 3751 Estero, Blvd. Former member of the AAC advisory committee.

Interests / Activities:

Full time environmental and water infrastructure engineer working in coastal communities in SW Florida.

Hobby is Florida native plant landscaping.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Douglas H Eckmann

Digitally signed by Douglas H Eckmann
Date: 2024.08.23 14:18:03 -04'00'

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Douglas H, Eckmann, P.E., BCEE, D.WRE, F.ASCE

Current residence:

4215 Tequesta Blvd.

Estero, FL 33928

Phone: 941-374-1010

Former residence prior to 9/28/22 (Hurricane Ian)

120 Sabal Drive

Fort Myers Beach, 33931

Work E-mail: Douglas.Eckmann@kimley-horn.com

Personal E-mail: doug.eckmann@gmail.com

Current Employment:

Kimley-Horn and Associates, Inc.

1514 Broadway

Fort Myers, FL 33901

Associate and Senior Project Manager

Kimley-Horn is a civil engineering consulting firm

Registrations and Licenses:

Licensed Professional Engineer in Florida No. 47259

Board Certified Environmental Engineer No. 88-10054

Board Certified Water Resource Engineer No. 00647

Elected to Fellow in the American Society of Civil Engineers (ASCE)

Diplomate of the American Academy of Environmental Engineers and Scientists (AAEES)

Diplomate of the American Academy of Water Resource Engineers (AAWRE)

Education:

Bachelor of Science in Mechanical Engineering (BSME)

Northwestern University (Evanston, IL)

Master of Business Administration (MBA)

St. Edward's University (Austin, TX)

Focus:

Civil-Environmental engineering professional specializing in water resources and water and wastewater infrastructure in Southwest Florida since 1993.

Interest in resilient, sustainable, and environmentally responsible development.

Native plant gardening enthusiast.

Spouse:

Courtney Eckmann (classical flutist); former music and PE teacher at Beach Elementary

From: [Eckmann, Doug](#)
To: [Amy Baker](#)
Subject: RE: Reappointment to LPA
Date: Friday, August 23, 2024 2:37:10 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[Advisory Committee Application Form signed.pdf](#)
[Doug Eckmann bio 08 23 24.pdf](#)

Amy, please find application and bio.

By way of explanation, we had our primary residence at 120 Sable until Ian. We now reside at 4215 Tequesta Dr. Estero. Currently planning to rebuild at 120 Sabal. So I own property on Fort Myers beach, but am not a current resident, although the 120 Sabal property remains our "homestead" for property taxes.

Best regards,

Doug Eckmann

Douglas H. Eckmann, P.E., BCEE, BC.WRE, F.ASCE | Associate
Kimley-Horn | 1514 Broadway, Suite 301, Fort Myers, FL 33901
Direct: 239-271-2652 | Mobile: 941-374-1010



RECEIVED

By Amy Baker at 3:15 pm, Aug 23, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 08/23/24

Name: McLean

Last

John

First

C

Middle initial

Telephone Number: (239) 314-9996

Email Address: johnmclean01@gmail.com

Home Address: 237 Egret St. FMB

Mailing Address 226 Delmar Ave. FMB

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)? LPA

If yes, when is your term expiration? 9/30/24

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☒ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I was selected by Town Council to fill the seat on the LPA vacated by Scott Safford when he was selected to join the TC. I wish to continue to serve and bring a thoughtful and balanced approach to the rebuilding of FMB.

Community Involvement:

In addition to serving on the LPA, I was an early volunteer for Lets Go FMB and for a time led the Residential Committee representing the residents voices as we began rebuilding our cherished beach community. I recently provided comments to the RFQ for FEMA's NFIP Community Rating System highlighting the FEMA's failure to explain why it had removed FMB's valued NFIP discount.

Interests / Activities:

I retired in 2022 after 20+ years with AT&T where I lead the team that supported F500 firms for Disaster Recovery/Business Continuity and Cyber Security solutions. Throughout my career, I have demonstrated pragmatic, collaborative, and measured decision making. I now enjoy serving on the LPA. I love living on FMB and enjoy all that it offers such as sunsets, boating, bike riding, dolphin and bird spotting. I also love to cook and read fiction and history.

You may attach a resume in addition to the above information.

<https://www.linkedin.com/in/john-mclean-2ab6b05/details/experience/>

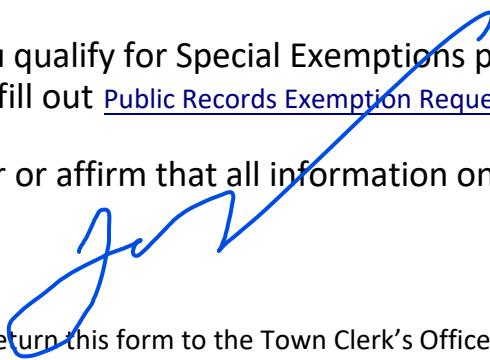
Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

08/23/24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 2:51 pm, Sep 06, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☒ Local Planning Agency
☐ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

N/A

Why are you seeking appointment to this board or committee?

Civic duty is an honor. I've lived in Ft. Myers Beach for 15 years. It would be a privilege to serve the community. I want to learn as much as I can from the current leaders, help shape the recovery from Hurricane Ian and be part of the long-term planning for the place that has changed my life for the better.

Community Involvement:

2007/8-2023? (I never really kept track.) Started the Spring and Fall neighborhood clean-ups in Sunset Bay, NY. Re-started the Reach The Beach 5K & Sunset Bay Experience fundraiser for the Sunset Bay Volunteer Fire Department. Volunteered for ticket sales/setups/takedowns/etc. Tuesdays & Thursdays during summers for weekly Basket Raffles. 2023-present - Volunteer gardener at "the Triangle" entrance to Sunset Bay, NY.

Interests / Activities:

Yoga Instructor at Bay Oaks Community Center, Mound House, Bayside Veterans Park, on Ft. Myers Beach & in the greater Ft. Myers area. Avid reader & Buffalo Bills fan (Wide right, 13 seconds, there's always next year.)

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Anne M. Neaf

Date September 3, 2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



RECEIVED

By Amy Baker at 9:35 am, Sep 12, 2024

Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/11/2024

Name: Spradling Tyler J
Last First Middle initial

Telephone Number: 239-823-4745

Email Address: tspradli@gmail.com

Home Address: 127 Curlew St Fort Myers Beach, FL 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)? NA

If yes, when is your term expiration? NA

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee *must attach resume
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☒ Local Planning Agency *must attach resume
☐ Marine and Environmental Resources Task Force
☐ Nuisance Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I was raised on Fort Myers Beach and have been a long time resident. I have gone from a kid on Fort Myers Beach and now am a property owner. I have worked in multiple different industries on the beach while growing up and understand the community. I feel that my passion for the community and responsible development would be invaluable to the committee.

Community Involvement:

Kiwanis club member
avid attendant of town hall meetings

Interests / Activities:

fishing, walking the beach, enjoying FMB.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Date

09/11/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

Tyler J. Spradling, D.O.

TylerSpradlingdo@gmail.com - (239) 823-4745
127 curlew st. Fort Myers Beach FL, 33931

Education

- 2018-2021 **The Florida State University College of Medicine Family Medicine Residency at Lee Health.** Fort Myers, FL
2018 – 2021 – Family medicine – Lifestyle medicine
- 2014-2018 **Nova Southeastern College of Osteopathic Medicine.** Fort Lauderdale, FL
2014-2018 - Doctor of Osteopathic Medicine, May 2018
- 2008-2012 **University of South Florida.** Tampa, FL
2008 – 2012 Bachelors of Arts in Chemistry with a focus in Biochemistry, May 2012

Professional Experience

- 2024 – present **Founder and CEO, Bloom Direct Primary Care.** Full scope direct primary care Clinic located in Bonita springs, FL. Comprehensive primary care including Nutrition and lifestyle counseling.
- 2023- present **Designated Health Authority. State of Florida Department of Juvenile Justice.**
Physician responsible for maintaining protocols and conducting physical And medical evaluations for youth currently incarcerated at Florida DJJ.
On call Physician for Florida DJJ
- 2021 - 2024 **Urgent Care Physician, Lee Health.** Fort Myers, FL
Full time urgent care physician for Lee Health in Fort Myers. Fast paced urgent Care in 4 different locations. Average patient volume 40-50 patient per day.
- 2021- 2024 **Hospitalist, part time. Physician at Complex Care Center, part time. Lee Health**
Per diem inpatient and complex care physician for Lee Health. Responsible for Admitting and working up patient in the hospital as well as discharge planning And follow up. Also, comprehensive outpatient medicine at complex care center Including infusion and wound care.
- Co-author – health promotion and wellness. Published in 2021
Co-authored chapter on wellness that included stress management, alcohol consumption, and exercise

Quality control technician and chemist. Bausch and Lomb. 2012- 2014-
Worked in quality control testing and monitoring samples from manufacturing

Undergraduate research assistant and teaching assistant. University of South
Florida 2011-2014 – aided in development and practical application of different
research projects under the direction of post-doctoral fellows and professors

Volunteer Experience

- | | |
|------------------|---|
| 1/2021 | International medicine experience. Numerous mission trips to the Dominican Republic and Nicaragua. |
| 1/2020 | Volunteer Physician – health screenings. Provided free health screenings for the Fort Myers Beach annual health fair sponsored by the beach Baptist Church |
| 12/2019 | Health screenings – Town of Fort Myers Beach – provided health screenings to People of the community – sponsored by the Fort Myers Beach Baptist Church |
| 8/2019 | Volunteer Physician – Preparticipation sports physical for the school district of Lee County |
| 9/2018 | team physician for Cypress Lake High School. Fort Myers, FL. Attended football and basketball games and was lead team physician on sideline working with athletic trainer |
| 1/2018 – present | Kiwanis club of Fort Myer Beach – member |

Awards and Acknowledgments

Outstanding Resident in Obstetrics FSU-FMRP – 2018-2019
Given to the one resident each year who best exemplifies compassion, skill, and knowledge in the field of obstetrics. Voted upon by a group of midwives and physicians

AFMRD award for advocacy for the FSU-FMRP – 2019-2020
Chosen by the program director and given to the one resident each year who best advocate for the program both on a local and national level

Professional memberships and committees

Lee County Medical Society. 2018- present

Florida State College of Medicine Family medicine Residency Clinic Operations
Workgroup, Resident member. 2019-2020

Worked alongside other physicians and as well as clinical and customer service representatives to assess and discuss ways to improve patient care and clinic logistics

Florida State College of Medicine Family medicine Residency Physician Wellness Committee, resident member. 2019-2020

Worked alongside other physicians and psychologists to identify resident wellness and way to improve resident and faculty physician wellness.

Florida State College of Medicine Family medicine Residency resident representative for the FAFP. 2018-2020. Represented the residency program at all state and national conferences for the FAFP and AAFP. Was main point of contact for the AAFP and FAFP and was active in recruitment and advocacy for the program

Hobbies and interest

Interest in Medicine – Geriatrics, Lifestyle medicine, Hospice medicine, and Primary care

Avid outdoorsmen including fishing, kayaking, and hunting

Musical instruments including guitar and ukulele

Cooking



Town of Fort Myers Beach

SEP 9 2024

Received by: _____

Town of Fort Myers Beach

Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: 09/08/24

Name: Sudduth Don
Last First Middle initial

Telephone Number: (407) 765-7228

Email Address: desudduth@gmail.com

Home Address: 6612 Estero Blvd, APT 703, Ft. Myers Beach, FL 33931

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)? LPA

If yes, when is your term expiration? Oct 2024

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee *must attach resume
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☒ Local Planning Agency *must attach resume
- ☐ Marine and Environmental Resources Task Force
- ☐ Nuisance Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

To continue the task of rebuilding our island while maintaining a realistic balance between the desire of residents and the reality of achieving a fully viable community. Although there is not solution that will please everyone, my hope is to protect all interests while charting a path to a viable and resilient community for residents and visitors.

Community Involvement:

As a full time resident prior to Ian, I look forward to being an involved participant in the community once we are restored.

Interests / Activities:

I love the sand, the water and the live music at our favorite spots for meals and fellowship with our friends, family and fellow residents/visitors.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Don Sudduth

Digitally signed by Don Sudduth
DN: OU=LPA, O=Town of Ft. Myers Beach, CN=Don Sudduth, E=desudduth@gmail.com
Reason: I am the author of this document
Location:
Date: 2024.06.08 10:53:54-0700'
Foxit PDF Reader Version: 2023.3.0

Date

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

1. Request:

Meeting Date: October 28, 2024

Second Reading and Final Public Hearing on proposed Ordinance 24-27 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 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; 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 existing CPD for the site does not allow for Essential Services uses like a Fire Station. It is necessary for the Town Council to approve an ordinance to allow for this use.

What the action accomplishes:

Approval of the CPD ordinance and the requested deviations will allow for the construction of a Fire Station and reduces potentially incompatible uses on the rear portion of the site.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

Judith Frankel, Principal Planner

5. Background:

Fort Myers Beach Fire Control, the owner and applicant for 2545 and 2555 Estero Blvd., is requesting to rezone the subject parcels from CPD (governed by RES 08-08) to a CPD that allows the development of a new Fort Myers Beach Fire Station. The Fire Control district intends to divide the total site into two parts. They will develop 1.17 acres fronting Estero Boulevard with a new Fire Station shown on the Master Concept Plan (MCP) in the application packet. The remaining 0.99 acres is intended to be sold and later developed and an MCP is not provided for that portion of the tract. However, the applicant has requested a reduction in the number of uses for that portion of the tract with the aim of reducing the impact of any future development on neighboring properties.

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council. The Town Council voted 5-0 to approve with conditions the Ordinance without changes, at 1st reading on September 23rd.

Attachments:

1. Ordinance 24-27 CPD Fire Station (2) ns
2. Staff Report
3. Exhibit A Application (1)
4. Exhibit B MCP
5. Exhibit C - Postcards
6. 24-27, Business Impact Estimate - FMB Fire Control District

Financial Impact:

A Business Impact Estimate has been prepared and published on the Town's website on September 13th, 2024

6. **Alternative Action**

APPROVE WITH CONDITIONS or DENY

7. **Management Recommendations:**

Staff finds that the request complies with the Comprehensive Plan and Land Development Code for the Town and recommends approval.

8. **Recommended Approval:**

Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/27/2024
Approved - 9/27/2024
Approved - 9/28/2024
Approved - 9/29/2024
Final Approval - 9/30/2024

ORDINANCE 24-27

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 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; 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, Fort Myers Beach Fire Control District, the owner, and Paul Torocco of Quattrone and Associates and Greg Stuart of Stuart and Associates, as agents for the property located at 2545 and 2555 Estero Blvd., parcels generally identified as STRAP numbers 194624W3004580000; 194624W3004580010 in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD adopted in Resolution 08-08 to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a Fire Station and a mixed use development with a density of 6 dwelling units to be later defined by a MCP amendment; and

WHEREAS, the subject property is a combination of two parcels located in the Boulevard 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 September 3rd, 2024; and

WHEREAS, at the September 3rd, 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 Section 34-85 of the Town Land Development Code; and

WHEREAS, at the September 3rd, 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; and

WHEREAS, on September 23rd, 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 Section 34-85 of the LDC; 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 the Fort Myers News-Press more than 10 days prior to the Town Council on October 7th, 2024; and

WHEREAS, at the October 7th, 2024 public hearing, 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 development regulations and 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 (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the CPD adopted in Resolution 08-08 to CPD with MCP with six deviations to the LDC) in order to develop a Fire Station and a mixed use development with a density of 6 dwelling units to be later defined by a MCP amendment; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Deviation from LDC section 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.

Deviation #2

Deviation from LDC 10-285(a) Major Street Access Connection, that requires a 250-ft center-line connection spacing; to require a 127-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 126-ft +/- Gulf Beach Road connection separation.

Deviation #3

Deviation from LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 75-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 40-ft access aisle width at Tropical Shores Way as depicted on the MCP.

Deviation #4

Deviation from LDC 10-416(c)(2.a) Parking Lot Internal Landscaping, that requires one tree planted per 250 sf and with one tree for each parking space permeable island; to require no landscaped permeable island and trees for the Fire Station's north oriented parking lot.

Deviation #5

Deviation from LDC 10-416(c)(2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average dimension of 10-ft; to require a minimum average dimension of 5-ft for the Fire Station's Estero Blvd. oriented parking lot.

Deviation #6

Deviation from LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.

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. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- b. 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.
- c. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- d. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- e. Urban services are available and adequate to serve the proposed use.
- f. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- g. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- h. 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.
- i. 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):

- a. Each item enhances the achievement of the objectives of the planned development; and
- b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-15 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/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 24-xx 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-xx is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan in Exhibit B, attached hereto and incorporated herein by this reference are 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 September 2024.

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
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 October 2024.

Attachments:

- A – Conditions of Approval and Schedule of Uses
- B – Master Concept Plan (MCP)

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 DCI20230246 with the attached conditions:

- 1) Any tenant with consumption on premises will be required to acquire a separate COP license.
- 2) A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
- 3) 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.
- 4) All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
- 5) The Fire Station shall provide flashing indicator light(s) facing Estero Blvd. to alert pedestrians and vehicles when emergency vehicles are exiting the station.
- 6) Deviations 1-5 shall only apply to the proposed Fire Station as shown on the provided site plan.
- 7) The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary.

SCHEDULE OF USE

- Civic
 - Principal
 - Essential services
 - Essential Services equipment
 - Essential Services building
 - Beach or Bay Access
 - Day care center, adult or child
 - Cultural Facility
 - Theater
 - Park, community or regional
 - Parking lot, shared, permanent
 - Place of worship
 - Religious Facility
 - Recreation Facility, private off-site or public
 - School
 - Accessory
 - Dwelling unit, caretaker
 - Subordinate commercial use
- Residential – 6 DU/Acre
 - Principal
 - Dwelling unit, multi-family
 - Dwelling unit, live/work

- Timeshare units
 - Assisted living facility-subject to LDC 34-1415
 - Accessory
 - Residential accessory uses
- Lodging
 - Principal
 - Rental of any permitted dwelling unit to a single family for periods of one day or longer
 - Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19
 - Bed and Breakfast
 - Accessory
 - Subordinate commercial uses
- Retail
 - Principal
 - Laundromat
 - Personal services
 - Retail store small
 - Accessory
 - ATM
 - Commercial accessory uses
- Office
 - Principal
 - Health care facility
 - Offices, general or medical
 - Personal Services
 - Wholesale establishment
 - Accessory
 - Administrative offices
 - Home occupation- no outside help
- Marine
 - Accessory
 - Dock - sole use by occupants of principal use



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning 20240155

CASE NAME: Fort Myers Beach Fire Station CPD

**Town Council
HEARING DATE:** October 7th, 2024, at 9 AM

**STAFF
RECOMMENDATION:** Approval with conditions

**PREPARED/
SUBMITTED BY:** Judith Frankel, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Fort Myers Beach Fire Control District

Request: The applicant is requesting to rezone 2.16 acres from a CPD (under Resolution 08-08) to a CPD with 6 deviations to include an Essential Services building

Subject property: See attached site plan

Physical Address: 2545 Estero Blvd.; 2555 Estero Blvd.

STRAP #: 194624W3004580000; 194624W3004580010

FLU: Boulevard

Zoning: CPD

Adjacent zoning and land uses:

North: RESIDENTIAL CONSERVATION (RC)
Multifamily residential

South:	RESIDENTIAL MULTIFAMILY (RM) Multifamily residential
East:	INSTITUTIONAL (IN) Places of Public Assembly, Schools and Civic Uses COMMERCIAL BOULEVARD (CB) Commercial Mixed-uses
West:	COMMERCIAL BOULEVARD (CB) Commercial Mixed-uses

II. BACKGROUND AND ANALYSIS

Background:

Fort Myers Beach Fire Control, the owner and applicant for 2545 and 2555 Estero Blvd., is requesting to rezone the subject parcels from CPD (governed by RES 08-08) to a CPD that allows the development of a new Fort Myers Beach Fire Station. The previous Fire Station, which was located at 3043 Estero Blvd., was damaged beyond repair by Hurricane Ian. These two parcels comprise a 2.16-acre tract where the former Topps Shopping Center was located. The Fire Control district intends to divide the total site into two parts. They will develop 1.17 acres fronting Estero Boulevard with a new Fire Station shown on the Master Concept Plan (MCP) in the application packet. The remaining 0.99 acres is intended to be sold and later developed. No MCP is provided for that portion of the tract, however the applicant has requested a reduction in the number of uses for that portion of the tract with the aim of reducing the impact of any future development on neighboring properties. Since no MCP is presented for the remaining .99 acres a CPD amendment and master concept plan will be required when development is proposed.

In 2008, the Town Council adopted Resolution 08-08 to approve the rezoning of the subject site from Commercial Boulevard to a CPD to allow for a phased redevelopment of a mixed-use complex that included a Topps Supermarket. CPD RES 08-08 allowed a number of uses by right, including Hotel/ Motel, Health Care Facility Offices, General Offices, Medical Offices, Personal Services, Restaurant, and Retail Store. The intensity was approved at 50,304 sf (0.53 FAR), which included 13 multifamily dwelling units or 36 hotel units. Development was required to be consistent with a master concept plan (MCP) entitled "The Topps Remodel". The MCP included 13 condominiums that were never constructed.

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council. The Town Council voted 5-0 to approve the Ordinance at 1st reading on September 23rd.

Analysis:

The site is located in the designated “Civic Complex/Heart of the Island” neighborhood and with a “Boulevard” land use designation in the Comprehensive Plan. The Boulevard land use category permits a maximum 1.5 F.A.R. LDC Section 34-953, states that building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CB zoning district for CPDs that are not primarily lodging. The CB zoning district permits a maximum FAR of 1.0 or a 94,089.6 square foot building area for the subject property. The Applicant is proposing a FAR of 0.34 (17,188 SF/50,965.2 SF) for the Fire Station and an FAR of 0.23 (10,000 SF/43,124.4 SF) for the rear portion of the property. This totals 0.57 FAR, which is compliant with Town regulations. The proposed Fire Station includes a ground level garage, covered entrance, exterior stairwell, balcony and interior administrative space.

The site is approximately one mile south of the Sky Bridge and to the west adjoins the previous FMB Town Hall along Tropical Shores Way. To the east, the site is bounded by Gulf Beach Road with the adjacent Bay Oaks Community Complex (park, pool & school) and residential uses zoned Commercial Boulevard along Estero Boulevard. To the north the property adjoins Residential Conservation zoned single family homes along Tropical Shores Way and a canal that adjoins Gulf Beach Road.

The applicant is requesting 6 deviations as allowed under section 34-212 of the LDC. Deviations 1 through 5 are related to parking and driveway configurations particular to the Fire Station and emergency vehicles. Deviation 6 will allow computed density to be rounded up for the remaining .99 acre rear portion of the tract. The rear portion of the tract which is proposed to be slightly less than 1 acre and so only allows a density of 5 units as the code requires that density calculations are rounded down to the nearest whole number. If the calculation is rounded up 6 units would be permitted. Special conditions for unique aspects of a parcel may be applied for the protection of public interest as defined in LDC section 34-932.

The existing CPD zoning is not sufficient for the proposed Fire Station. A Fire Station is classified as an Essential Services Building within the Civic land use sub-category in the Town’s Land Development Code (LDC). Due to this classification a re-zoning is necessary to allow the Fire Station. The proposed location was strategically chosen for greatest access and proximity to other civic services.

Under the proposed new CPD, the rear portion of the tract, not occupied by the Fire Station, will be allowed a variety of general uses that should minimally impact the neighboring residences. Any development at that location will be reviewed by Town Staff and will likely necessitate a CPD amendment MCP at that time.

The proposed new schedule of uses omits several uses that are currently allowed under Resolution 08-08. Deleted uses are restaurant, bar or cocktail lounge, on-premises

consumption of alcoholic beverages, commercial dock use (for water taxi), and transit terminal. New proposed uses are parks, places of worship, religious facility, school, assisted living facility, and bed and breakfast in addition to essential service building, for the fire station.

Requested Schedule of Uses

- Civic
 - Principal
 - Essential services
 - Essential Services equipment
 - Essential Services building
 - Beach or Bay Access
 - Day care center, adult or child
 - Cultural Facility
 - Theater
 - Park, community or regional
 - Parking lot, shared, permanent
 - Place of worship
 - Religious Facility
 - Recreation Facility, private off-site or public
 - School
 - Accessory
 - Dwelling unit, caretaker
 - Subordinate commercial use
- Residential – 6 DU/Acre
 - Principal
 - Dwelling unit, multi-family
 - Dwelling unit, live/work
 - Timeshare units
 - Assisted living facility-subject to LDC 34-1415
 - Accessory
 - Residential accessory uses
- Lodging
 - Principal
 - Rental of any permitted dwelling unit to a single family for periods of one day or longer
 - Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19
 - Bed and Breakfast
 - Accessory
 - Subordinate commercial uses
- Retail
 - Principal
 - Laundromat

- Personal services
 - Retail store small
 - Accessory
 - ATM
 - Commercial accessory uses
- Office
 - Principal
 - Health care facility
 - Offices, general or medical
 - Personal Services
 - Wholesale establishment
 - Accessory
 - Administrative offices
 - Home occupation- no outside help
- Marine
 - Accessory
 - Dock - sole use by occupants of principal use

Neighborhood Compatibility:

The proposed Fire Station fronts Estero Boulevard which will permit the necessary access for emergency vehicles. The location is close to several other public uses including the Bay Oaks Community Center. The rear portion of the property abuts a single-family home neighborhood. In consideration of the potential for nuisance noise, restaurant and bar land uses were removed from the requested schedule of uses. None of the proposed uses appear to create conflict with the adjacent uses. The rear portion of the lot will be required to install the applicable buffers to separate the uses.

III. Requested Deviations

The Applicant requests the following deviations consistent with LDC section 34-212(3) and 34-932(b).

1. Deviation One from LDC section 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.
 - a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access onto Estero Blvd characterized by being unimpeded and unobstructed by tall perimeter buffer trees. By eliminating potentially obscuring trees, the deviation advances the achievement of high order emergency response times. A double staggered hedge, augmented by additional shrub landscaping based on 18 shrubs per 100 LF, will serve to ensure that the public interest and public welfare in having an aesthetically pleasing and well landscaped Estero Blvd will be maintained. The deviation benefits the

public interest by securing a safe, effective and direct emergency vehicle egress and ingress. The deviation benefits the public health, safety and welfare since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation One is consistent with Comprehensive Plan policies 1-A-3, 1-B-2 and 3-A-4.

- b. Staff response: The deviation request relates to the proper functioning of the Fire Station. The applicant is offering significant landscaping to further the Town goal of beautification of Estero Blvd.
2. Deviation Two from LDC 10-285(a) Major Street Access Connection, that requires a 250-ft center-line connection spacing; to require a 127-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 126-ft +/- Gulf Beach Road connection separation.
- a. Applicant Justification: The deviation achieves the objectives of the Fire Station MCP in designing and developing a new Town of Fort Myers Beach Fire Station that has safe and effective direct access onto Estero Blvd to secure the highest order of emergency response times. The connection is identical to the long-standing Estero Blvd connection that served the Topps Shopping Center. By matching the existing connection spacing and location, the public interest and welfare in advancing effective and efficient emergency response time is achieved. The deviation benefits the public health, safety and welfare interest since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation Two is consistent with the Town of Fort Myers Beach Comprehensive Plan as identified by the following Objectives and Policies:
 - i. Intergovernmental Coordination OBJECTIVE 14-B Coordination of Services - to ensure coordination in establishing level of service standards for public facilities, providing for efficient delivery of services, monitoring progress of goals and construction of improvements.
 - ii. OBJECTIVE 14-A Intergovernmental Coordination of Plans — Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.
 - iii. POLICY IGC14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.
 - b. Staff response: The reduction in driveway spacing is necessary due to the functions of the Fire Station and situation of the site. The Town should consider requiring a flashing indicator light facing Estero Blvd. to alter pedestrians and vehicles when emergency vehicles are exiting the station.

3. Deviation Three from LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 75-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 40-ft access aisle width at Tropical Shores Way as depicted on the MCP.
 - a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by de-signing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access with full turning movements for large emergency response vehicles onto both Estero Blvd and Tropical Shores Way. The 75-ft and 40-ft aisle width standards advances the highest order of emergency response times. A twenty-five foot maximum width standard is not appropriate nor functional for large fire trucks and emergency response vehicles. The project is designed to facilitate large emergency vehicle ingress and egress turning movement requirements that require large driveway aisle connection width. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle egress and ingress based upon the Fire Control District's design criteria. Deviation Three is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.
 - b. Staff response: Emergency vehicles need extended width access aisle for the large vehicles.
4. Deviation Four from LDC 10-416(c)(2.a) Parking Lot Internal Landscaping, that requires one tree planted per 250 sf and with one tree for each parking space permeable island; to require no landscaped permeable island and trees for the Fire Station's north oriented parking lot.
 - a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a large unobstructed north site interior large emergency response vehicle parking and circulation area. This design feature is essential for the staging of emergency response vehicles at the new fire station while entering and exiting onto Tropical Shores Way. The alternative parking lot landscaping standards advances the highest order of emergency response times by maximizes efficient internal large vehicle movements. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle site parking and circulation movements within the site and towards Tropic Shores Way egress and ingress based upon the Fire Control District's design criteria. Deviation Four is consistent with policies IGC 14-A, IGC 14-B and IGC 14-D-8.
 - b. Staff response: Trees could impact the emergency vehicles' movement due to the height and volume of those vehicles.
5. Deviation Five from LDC 10-416(c) (2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average dimension of 10-ft; to require

a minimum average dimension of 5-ft for the Fire Station's Estero Blvd. oriented parking lot.

- a. Applicant Justification: The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a functionally unobstructed south site interior large emergency response vehicle and other vehicle parking and circulation area. The slight 5-ft parking island width reduction serves to advance efficient emergency response and other vehicle parking and circulation movement for the Estero Blvd oriented parking area. The deviation benefits the public health, safety and welfare interest by securing safe, effective and efficient south site parking and circulation movements along with safe and efficient Estero Blvd egress and ingress based upon the Fire Control District's design criteria. Deviation Five is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.
 - b. Staff response: The parking lot landscape requirement would hinder the movement of the emergency vehicles.
6. Deviation Six from LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.
- a. Applicant Justification: The deviation is established by Deviation Five Res. 08-08. In this case the di-minimus increase of 0.06 falls well within the established practice of granting reasonable density by, in this case, very slightly rounding up. Given the narrowest of margins, the public interest is not serviced by discounting one residential unit. The applicant's interest in regulatory consistency and reasonableness is upheld.
 - b. Staff response: This deviation will only apply to the smaller segment of the site. No dwelling units will be added to the larger (Fire Station) portion which reduces overall density available under the existing CPD.

IV. 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:

LDC Sec. 34-85 (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.

Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The site was vacant prior to Hurricane Ian. The redevelopment of the site makes the requests appropriate. At present, no Fire Station exists in Fort Myers Beach.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: 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.

Staff response: The density and intensity request are consistent with the Town of Fort Myers Beach Comprehensive Plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The proposed development will be required to meet performance standards set forth in 34-2031.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: The request will have no impact on environmentally critical areas and natural resources. The site has been comprehensively developed and current is characterized by almost 100% impervious with no onsite natural systems. The request does not include any revision to the environmentally critical areas.

(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.

Staff response: The FMB Fire Station is the primary use, with construction proposed to begin in 2025. The mixture and type of uses, along with site plan for future phase development is undetermined and will be subject to a formal CPD amendment process that includes an MCP. The available density will be 6 du/acre if the requested deviation 6 is approved. The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary. When compared to Res. 08-08, the 2024 CPD lessens intensity of impacts and eliminates a significant number of commercial uses including restaurants and water taxis. The CPD to CPD request is not perceived to negatively impact adjoining FMB civic 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.

Staff response: The applicant submitted a Traffic Impact Statement with Level of Service analysis for the CPD request. The report states that the CPD to CPD zoning request will not have an impact on the current level of service of Estero Boulevard.

(13) For planned development rezonings, see § 34-216 for additional considerations

LDC Sec. 34-85 (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.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regards to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: 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

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council.

LDC Sec. 34-216(b)(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;

Staff response: The proposed mix of uses is appropriate in this location, it is in the Boulevard Future land use. Most of the proposed 2024 uses are currently permitted CPD uses. The current CPD requests the following new additional uses: Essential services building; parks; Assisted living facility; Place of worship; Religious facility; School; Bed and breakfast

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: Sufficient safeguards are provided for the public interest through required buffering at the northern/rear portion of the property.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Staff response: 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.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Deviations number 7 requests a slight deviation from the maximum 6 dwelling units per acre. The proposed CPD does not present a commercial expansion into a residential area.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: No additional height is requested.

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: The applicant has submitted a traffic impact analysis. There are no anticipated adverse traffic impacts

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

Staff response: The requested deviations 1 through 5 allow the development of the site for unique Fire Station use. Deviation 6 allows for one additional dwelling unit for a total of six.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted;

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest. Additional conditions may need to be provided at a later date depending on the proposed use of the north/rear portion of the property.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan

V. 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 DCI20240115 with the following conditions.

Recommended Conditions

- 1) A local development order is required prior to any development of the site, in accordance with this planned development approval and consistent with the approved MCP.
- 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) All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131
- 4) The Fire Station shall provide flashing indicator light(s) facing Estero Blvd. to alert pedestrians and vehicles when emergency vehicles are exiting the station.
- 5) Deviations 1-5 shall only apply to the proposed Fire Station as shown on the provided MCP.
- 6) The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary.

V. EXHIBITS

Staff Report Exhibits:

A – Complete Application

B – Fire Station Master Concept Plan (MCP)

C - Postcards

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

Project Name: The Fort Myers Beach Fire Station CPD
Authorized Applicant: Scott Wirth, Fire Chief
STRAP Number(s): 194624W3004580000; 194624W3004580010

Current Property Status: Former Topps Shopping Center, Vacant & Paved
Current Zoning: CPD
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ yes, ☒ no FLUM Density Range: 6 Units Per Ac

Requested Action:

☐	DRI (with rezoning)
☒	Planned Development (also check below)
☒	Rezoning from: CPD to: CPD
☐	Amendment to Master Concept Plan/attendant documentation

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	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)
	NA

B. Phasing of Construction

☐	The development is to be constructed in a single phase.
☒	The development is to be constructed in phases as follows: (describe proposed phasing below)
	First Phase _ the Estero Blvd. Fire Station @ 17, 118 sf
	Future North Site Phase _ @ 10,000 sf



Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

[illegible]

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.

[illegible]



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]



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.

[illegible]

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
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

3/30/2021

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Authorized Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

Requested Action: Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments

If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing

If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance

Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance

For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance

Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification

Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments

If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

- a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
- b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
- c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
- d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
- e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
- f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
- g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
- h. Access and facilities for public transit, if applicable.
- i. The general location of stormwater management areas.
- j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
- k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
- l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.



August 1, 2024

To: Ms. Judith Frankel
Community Development Department, Town of Fort Myers Beach,
jfrankel@fmbgov.com. 239 940 8118

From: Greg Stuart, MAURP

Re Project: The Fort Myers Beach Fire Station CPD 2024-0155 _ Sufficiency Response 2
Revised Request Statement

Request: Rezone 2.16 ac. +/- From CPD to CPD for Essential Services Building

Strap #: 194624W3004580000 - 2545 Estero Blvd.
194624W3004580010 - 2555 Estero Blvd.

In response to your Department's request for additional information ,dated 20 July 2024, and on behalf of the Fort Myers Beach Fire Control District, I hope that the additional information along with the revised Request Statement will be satisfactory in providing evidence to schedule the LPA hearing in support the CPD to CPD request.

LAND USE & DEVELOPMENT STANDARD SUMMARY TABLE

Future Land Use	Boulevard
Zoning	CPD (08-08)
Parcel Number - 2545 Estero Blvd.	194624W3004580000
Parcel Number - 2555 Estero Blvd.	194624W3004580010
Project Site Area	2.16 ac. +/-
* Fire Station Site	1.17 ac. +/-
* North Site Future Phase	0.99 ac. +/-
Project Intensity _	
Fire Station	17,188 sf (1)
Fire Station FAR	33.7%
North Site Future Phase	10,000 sf
North Site Future Phase FAR	23.1%
* Future Phase Residential; or	6 units

* Future Phase Lodging;	15 rooms
Site Development Regulations _	
Min. Lot Area	30,000 sf
Min Lot Width	180-ft
Min Lot Depth	180-ft
Max. FAR	40%
Fire Station Building Height	30-ft/3-stories
Building Setback, Estero Blvd.	25-ft
Building Setback, Gulf Bch. Rd./Tropical Shores Way	15-ft
Building Setback, Rear/Waterbody	15-ft.
Flood Zone	AE13-ft

(1) Fire Station total FAR includes ground level, balcony, ancillary impervious pads and covered entrance at a 34% FAR. The heated and cooled Fire Station 14,800 sf intensity is equal to a 29% FAR.

PROJECT REQUEST AND USES

The application requests to rezone the subject parcel from CPD (RES 08-08) to CPD in a manner that permits by right the development of the new Fort Myers Beach Fire Station. The Fort Myers Beach Fire Station is classified as an Essential Services Building within the Civic land use sub-category. The Fire Station rests on part of a 2.16 acre tract. It consists of 1.17 acres of the previous Topps Shopping Center site and utilizes the former shopping center's driveway connection onto Estero Boulevard access. The intent of the rezoning is to allow by right a new Essential Services building and to maintain existing by-right complimentary and compatible RES 08-08 civic, retail, office, residential and lodging uses on the future development 0.99 acre parcel (see pages 4 - 6).

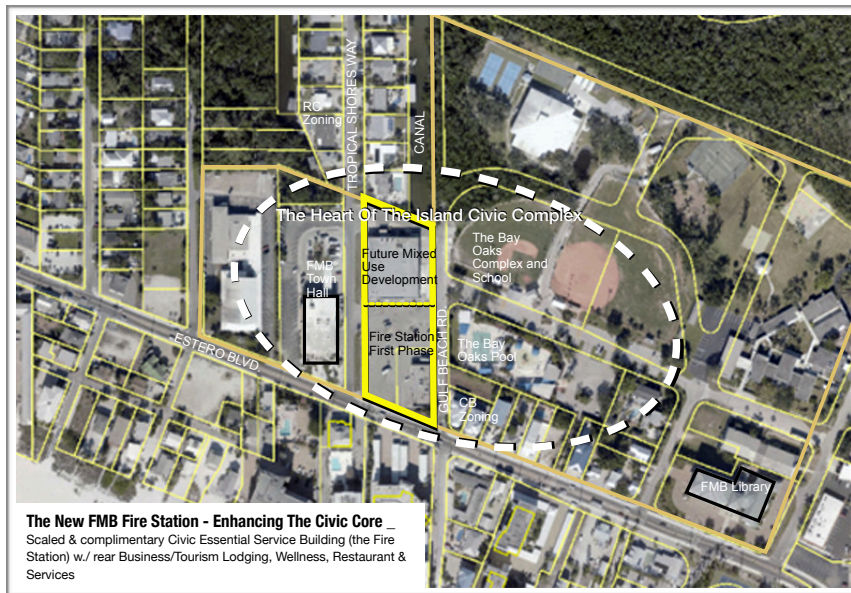
The current CPD (Res. 08-08) granted 13 units of residential density for the site and 50,304 square feet of commercial development. The approved master concept plan was a three phase plan. A Development Order was never submitted, building permits were never applied for, and the proposed buildings were never constructed. In early 2019 both of the existing Topps Center buildings were demolished. The site is currently a paved, vacant. The 2024 request deletes the previously approved Restaurant, Bar or cocktail lounge, On-premises consumption of alcoholic beverages, Dock use (for water taxi), and Transit terminal. The 2024 use request includes new Essential service building, Parks, Places of worship, Religious facility, School, Assisted living facility, and Bed and Breakfast. The Future Phase permits a not to exceed 6 residential units in any combination of site use. Hotel/Motel unit density will be subject to 34-1803 and 34-1415 density rules. All future phase development will be required to amend the CPD consistent with LDC Sec. 34-85 and 34-216 and through public hearing process.

SITE LOCATION

The two plus acre parcel is located with the Civic Complex Area and is classified as a future Boulevard Land Use. It is approximately one mile south of the Sky Bridge and to the west adjoins the FMB Town Hall civic use along Tropical Shores Way. To the east the site is bounded by Gulf Beach Road with the adjacent Bay Oaks Community Complex (park, pool & school) along with Estero Boulevard fronting seasonal and permanent residential uses zoned Commercial Boulevard. To the north the property adjoins Residential Conservation zoned single family homes along Tropical Shores Way and an 80-ft wide man-made canal that adjoins Gulf Beach Road.



LOCATION MAP



AIR PHOTO LOCATION MAP

THE USE SCHEDULE

2024 FMB Fire Station CPD Use Request	Existing 08-08 Permitted Uses
CIVIC:	
Principal:	
Essential services	Permitted by right
Essential service equipment	Permitted by right
Essential services building	
Beach or bay access (1)	Permitted by right
Day care center, adult or child (1)	Permitted by right
Cultural facility (1)	Permitted by right
Theater (1)	Permitted by right
Park, community or regional (1)	
Parking lot, shared, permanent	Permitted by right
Place of worship (1)	
Religious facility (1)	
Recreation facility, private off-site or public (1)	Permitted by right
School (1)	
Accessory:	
Dwelling unit, caretaker (1)	Permitted by right
Subordinate commercial uses	Permitted by right
RESIDENTIAL	
Principal:	
Dwelling unit, multi-family (1)(2)	Permitted by right - 13 units
Dwelling unit, live/work (1)(2)	Permitted by right - 13 units
Timeshare units (1)(2)(3)	Permitted by right - 13 units
Assisted living facility - subject to 34-1415 (1)(3)	
Accessory:	

2024 FMB Fire Station CPD Use Request	Existing 08-08 Permitted Uses
Residential accessory uses (1)	Permitted by right
LODGING	
Principal:	
Rental of any permitted dwelling unit to a single family for periods of one day or longer (1)(2)	Permitted by right
Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19 (1)(3)	Permitted by right
Bed and Breakfast (1)(2)(3)	
Accessory:	
Subordinate commercial uses (1)	Permitted by right
RETAIL:	
Principal:	
Laundromat (1)	Permitted by right
Personal services (1)	Permitted by right
Retail store small (1)	Permitted by right
Accessory:	
ATM (1)	Permitted by right
Commercial accessory uses (1)	Permitted by right
OFFICE:	
Principal:	
Health Care facility (1)	Permitted by right
Offices, general or medical (1)	Permitted by right
Personal services (1)	Permitted by right
Wholesale establishment (1)	Permitted by right
Accessory:	
Administrative office (1)	Permitted by right
Home occupation - no outside help (1)	Permitted by right
MARINE:	

2024 FMB Fire Station CPD Use Request	Existing 08-08 Permitted Uses
Accessory:	
Dock - sole use by occupants of principal use (1)	Permitted by right

(1) Permitted only within the site's rear, north Future Phase area.

(2) Not to exceed 6 units in any combination of uses.

(3) Subject to 34-1803 and 34-1415 density rules.

PART C. COMPREHENSIVE PLAN COMPLIANCE

The site is located in the designated "Civic Complex/Heart of the Island" neighborhood and with a Future Boulevard Land Use designation. Located between Town Hall and Bay Oaks Park, School and the Library along Estero Blvd., the Town Plan characterizes this area as a "mix of residential and commercial uses with little coherent integration among them". From the 2008 CPD site zoning, in April, 2008 the Town of Fort Myers Beach issued Comprehensive Plan goals, objectives and policies consistency findings. In approving CPD RES 08-08 the Town allowed by right a number of uses by right, including Hotel/ Motel, Health Care Facility Offices, General Offices, Medical Offices, Personal Services, Restaurant, and Retail Store. The maximum allowable intensity was set at 50,304 sf, along with 13 MF dwelling units or 36 hotel units. Since that date and in regard to this specific property, it is the Applicant's understanding that the FMB Comprehensive Plan has not undergone any significant amendments that would change the regulatory framework used for consideration regarding the CPD to CPD zoning request. Other than the vacation and subsequent demolition of the site's Topps Grocery store, there has not been any significant external change to the adjoining and adjacent neighborhoods since the original approval. Therefore, the requested new uses and site plan will remain consistent the FMB Comprehensive Plan as per the original consistency findings. The FMB Comprehensive Plan consistency assessment is as follows.

Policy 1-A-3 _ In commercial and mixed-use areas, the town shall identify specific portions of Estero Boulevard where changes in land development regulations could work towards a more coherent "framing" of the Boulevard. New regulations should accomplish the following design goals over time through infill and redevelopment: (i) bringing buildings closer to the sidewalk; encouraging or requiring compatible means of meeting the mandatory flood elevation requirements (for example; using dry-flood proofing techniques); (iii) locating most parking to the rear of buildings, limiting curb cuts, and promoting shared parking areas; (iv) facilitating pedestrian and bicycle access and contributing to the interconnectedness of the circulation system; (v) adopting design guidelines that encourage architecture and urbanism along Estero Boulevard that contributes to the human scale and "beach cottage character"

- ▶ Response _ Other than the project's requested deviations, the project complies to the existing regulatory land use framework. Due to the functional requirements of a fire station, the building cannot be built close to Estero Blvd. and requires a minimum 13-ft FF flood elevation. Most of the project's required parking is within the rear of the site. Pedestrian and bicycle circulation will be facilitated by new sidewalk construction along Gulf Beach Road and Tropical Shores Way. The CPD will comply with flood elevation standards and FMB Architectural Design Standards. The CPD request remains consistent with 1-A-3.

Policy 1-B-2 _ Improve the appearance of the town throughout by landscaping public property and rights-of-way with native vegetation.

- ▶ Response _ The new MCP presents a comprehensive redevelopment of the 2.16 acre site. It features a code required pedestrian and bike path system along Tropical Shores Way and Gulf Beach Road, providing multi-modal interconnections with Estero Blvd. Both roads will incorporate Type D landscaping. Estero Blvd will feature a double staggered hedge augmented with 18 shrubs per 100 LF (see Deviation One). The CPD request remains consistent with 1-B-2.

Policy 3-A-4 _ A "heart of the island" plan should be prepared to coordinate the public and private actions needed to fully implement this concept, including identifying the sequence of actions, responsibilities for implementation, and potential funding sources. Initial actions should include: (i) develop a design concept consistent with the new streetscape plan for Estero Boulevard, identifying approximate costs, potential funding sources, and suggested phasing; (ii) refine regulations that would allow a compatible mix of uses such as residential, live-work spaces such as studios or galleries, and small-scale specialty retail uses consistent with the historic theme, including eased setback and parking regulations.

- ▶ Response _ The towns' Civic Core identify and functionality is enhanced by the new fire station. This essential service building functionally enhances and is complimentary with the adjacent Town Hall, Bay Oaks Community Complex and FMB Library. The future phase's mixed use may feature limited lodging, small retail or office. The Civic Core's Town Hall is strengthened by having adjoining emergency services adjacent to principle governmental functions. This locational proximity advances inter-governmental coordination and communications. The Civic Core's Town Hall is further strengthened by having adjoining lodging, conference and office space uses that can support and are complimentary to principle governmental functions. These type of potential mixed uses next to the FMB Town Hall are highly advantageous for business travelers and professional, trade and other parties doing business with the town. The lodging and/or associated mixed uses can allow for increased Bay Oaks Park utilization with associated fee revenues due to proximate pedestrian access. The fire station along with the request's mixed uses will serve to "knit" together the various private business and public civic library, school, park and town hall uses

through landscape, sidewalk and architectural improvements consistent with FMB design standards. The CPD request remains consistent with 3-A-4.

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.

- ▶ Response _ The new MCP is a comprehensive redevelopment of the 2.16 acre site. It features a comprehensive pedestrian and bike path system along Tropical Shores Way, Gulf Beach Road, providing multi-modal interconnections with Estero Blvd. The CPD request remains consistent with 4-A-2.

Policy 4-A-3 _The town shall protect residential neighborhoods from intrusive commercial activities.

- ▶ Response _ The requested CPD does not present a commercial expansion into a residential area since the entire site has historically been used as commercial/retail grocery and package store. The new CPD de-intensifies the site's historic and allowable uses and intensities previously developed (the Topps Center) and/or granted by RES 08-08. The 2.16 acre site is functionally separate from the Tropical Shores Way residential and seasonal rental neighborhood street. Approximately three-quarters of the site's perimeter consists of non-residential to non-residential uses, including the Town Hall and the Bay Oaks community complex. All of these facts lead to a finding of "no commercial intrusion into residential neighborhoods", including the Tropical Shores Way neighborhood. Finally, in regard to the Tropical Shores Way neighborhood, the subject property has a limited adjoining non-residential to residential neighboring shared border due to the canal. The CPD's northern future development phase shares a 110-ft border with the 106/108 Tropical Shores Way single family home and associated neighborhood area. The remaining northern site boundary adjoins a man-made canal. The site's entire northern boundary will incorporate a 15-ft Type C Buffer with solid screening wall. The project's first phase fire station has adjacent non-residential to residential uses associated with the seasonal rental 2601 Estero Blvd and 100 Gulf Beach Road homes. The project's Gulf Beach Road will include a 15-ft Type D buffer. The project's perimeter buffering will serve to ameliorate potential non-residential to residential compatibility impacts. The project remains consistent with 4-A-3.

Policy 4-B-5 _"BOULEVARD": a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. For new residential development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). To obtain approval for

new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 46.9% of the land in this category, and this percentage shall not exceed 70%.

- ▶ Response _ The development is located within the Future Boulevard category. It is noted that the new CPD does not present a commercial expansion into a residential area. This is so in that the entire site has been used for years as commercial/retail grocery surrounded by Fort Myers Beach civic uses. The requested CPD de-intensifies the allowable uses and intensities previously granted by 08-08. It is noted that the 2.16 acre site is functionally separate from the Tropical Shores Way residential and seasonal rental neighborhood street. The project is mixed use, with an essential civic use for one-half of the site (the new fire station). The other half of the site may be used for lodging, retail, residential or civic uses, consistent with 4-B-5. Approximately three-quarters of the site's perimeter consist of non-residential to non-residential use (commercial, Town Hall and the Bay Oaks community complex). The proposed project contains a mix of uses and will not negatively impact the adjacent civic uses of the Bay Oaks complex and City Hall. The subject property has limited adjoining non-residential to residential neighboring context. Specifically, the northern future development phase shares a 110-ft border with the 106/108 Tropical Shores Way single family home and associated neighborhood area. The remaining northern site boundary adjoins a man-made canal. The northern boundary will incorporate a 15-ft Type C Buffer with solid screening wall. The project's initial fire station phase has adjacent non-residential to residential uses associated with 2601 Estero Blvd and 100 Gulf Beach Road. The project's Gulf Beach Road will include a 15-ft Type D buffer. The project's perimeter buffering will serve to ameliorate potential non-residential to residential compatibility impacts, consistent with 4-B-5.

Policy 4-C-2 _COMMERCIAL INTENSITY: 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).

- ▶ Response _ The CPD's requested 27,188 sf presents a 28.8% site building coverage, which is well below the regulatory 40% standard and is far less than the former CPD's 50,304 sf intensity. The CPD will comply with the FMB building height rules and standards and will be under the 40% FAR rule. The CPD request remains consistent with 4-C-2.

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: (iv) In the "Boulevard" category, where mixed-use development including some commercial uses may be permissible, landowners may seek commercial rezoning only through the planned development process. Proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. The following principles shall be considered by the town when evaluating requests for new commercial uses: (a.) Shopping and services for residents and overnight guests are strongly preferred over shopping and services that will attract additional day visitors during peak-season congestion. (b.) Shopping and services that contribute to the pedestrian character of the town are strongly preferred over buildings designed primarily for vehicular access. (vi) The neighborhood context of proposed commercial uses is of paramount importance. The sensitivity of a proposed commercial activity to nearby residential areas can be affected by: (a.) the type of commercial activities (such as traffic to be generated, hours of operation, and noise); (b) its physical scale (such as the height, and bulk of proposed buildings); and (c) the orientation of buildings and parking). Commercial activities that will intrude into residential neighborhoods because of their type, scale, or orientation shall not be approved.

- ▶ Response _ The CPD request is not a new commercial use. The site has been used for retail neighborhood shopping and package store retail. The new CPD reduces the amount of previously approved commercial uses and intensities, from 50,304 sf to 27,188 sf, of which 17,188 sf is Essential services building (the fire station) and the remaining 10,00 sf within the north site future development phase. The CPD remains consistent with 4-C-3.

Policy 4-C-4 _BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the build-back situations (see Policies 4-D-1 and 4-E-1),

- ▶ Response _ The CPD fire station and the future development phase will comply with the Town of Fort Myers Beach LDC 34-631 building height rules with a maximum building height of 30-ft above flood elevation and not to exceed three stories. (see CR zoning district standard).

Policy 4-C-6 _MOTEL DENSITIES: The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit.

- ▶ Response _ The CPD's future phase lodging intensity request is based on 6 units per acre on 0.99 acres at a Boulevard land use 2.5 coefficient, equal to 15 motel/hotel rooms. The new CPD remains consistent with 34-1803 and 34-1415 density rules.

Policy 4-C-8 _ DENSITY TRANSFERS:

- ▶ Response _ No density transfers are proposed.

Policy 4-E-1 _ PRE-DISASTER BUILD BACK:

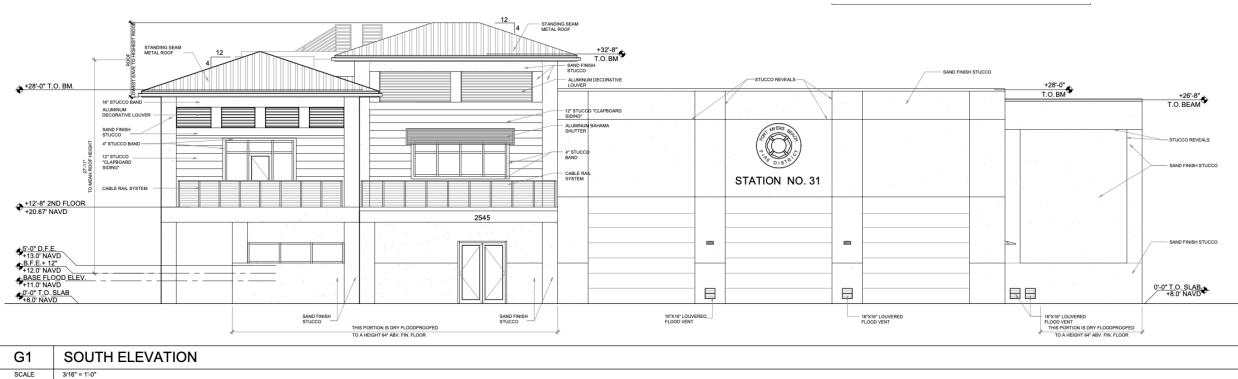
- ▶ Response _ The pre-disaster build back policy is not being utilized for this development.

Policy 7-J-2 _ TRAFFIC IMPACT ANALYSIS AND POTENTIAL DESIGN IMPROVEMENTS THAT COULD OFFSET TRAFFIC IMPACTS:

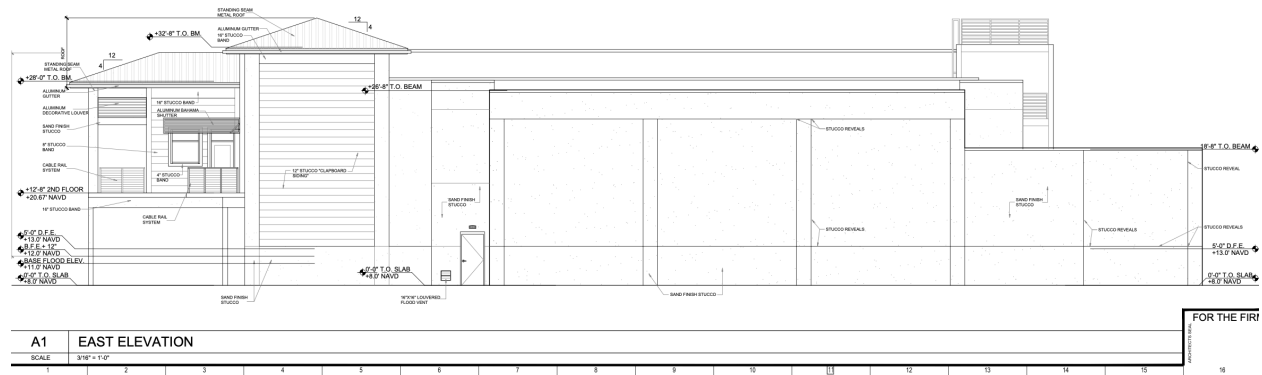
- ▶ Response _ The applicant has submitted a traffic impact analysis. There are no unanticipated traffic impacts and the request serves to de-intensify the site.

PART D. DESIGN STANDARDS COMPLIANCE

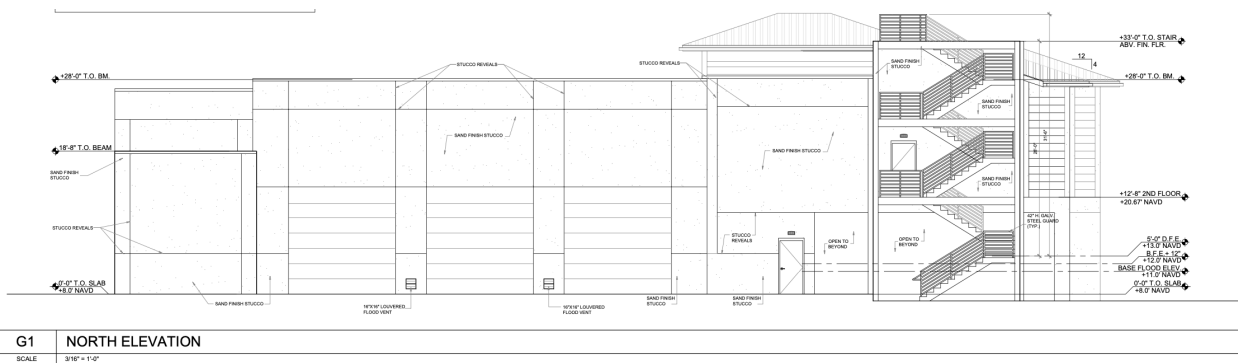
Referring to the revised Architectural Elevations, the CPD's new fire station and MCP will comply with LDC Division Seven 34-991 through 997 Commercial Design Standards as required by 34-951. The same will be true for the future development areas non-residential mixed uses. The new Fire Stations requires a building height deviation, from 33 feet/3 stories, to 35-ft/3 stories (see Deviation Six). All other uses shall meet the 30-ft height standard. The new Fire Station's exterior walls and principal facade comply with 34-994 and 34-995. It roof line and materials will comply with 34-996. The project will include an open space 9/11 Memorial Area consistent with 34-997.



FIRE STATION ESTERO BLVD. FACADE ELEVATION



FIRE STATION GULF BEACH ROAD FACADE ELEVATION



FIRE STATION NORTH CANAL ORIENTATION FACADE ELEVATION



- (1) *Whether there exists an error or ambiguity which must be corrected.*
 - ▶ Response _ Though there is no error or ambiguity in that the site is a formally improved but demolished shopping center, the RES 08-08 MCP is no longer valid and useful to the Fort Myers Beach Fire Control District. The need to replace the Town's Hurricane Ian destroyed fire station is of paramount importance.
- (2) *Whether there exist changed or changing conditions which make approval of the request appropriate.*
 - ▶ Response _ The change of conditions that makes the approval of the CPD request is the vital importance to construct a new fire station to replace the Town's formal fire station that was destroyed by Hurricane Ian
- (3) *The impact of a proposed change on the intent of this chapter.*
 - ▶ Response _ The proposed CPD provides a new primary Fire Station MCP that will allow for the future development of complimentary civic, lodging, retail and office uses that support the Civic Complex/Heart of the Island neighborhood and Boulevard

Future Land Use. These new future uses will be implemented through a formal CPD and MCP Amendment Process consistent with LDC 34-85 and 34-2126. It is noted that almost all of the requests uses are permitted uses as per the previously adopted Resolution 08-08 (see pages 4 - 6).

(4) *The testimony of any applicant.*

- ▶ Response _ The Applicant has documented that the CPD to CPD request is consistent with the Town's Comprehensive Plan and Land Development Code.

(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.*

- ▶ Response _ The Applicant has documented that the CPD to CPD request is consistent with the Town's Comprehensive Plan goals, objectives and policies. The Future Phase residential density is based on 1 acre/6 units and a 2.5 hotel unit conversion coefficient. Building coverage is far lower than what was previously built and what was approved by 08-08. The requested 27,188 sf FAR is below a permissible 40% FAR site intensity. The density and intensity request is consistent with the Town of Fort Myers Beach Comprehensive Plan.

(8) *Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

- ▶ Response _ The Applicant has provided documentation that the previous approval found that the proposed uses and intensities will not cause increased air, water or noise pollution. Given that the fire station and future mixed uses are much lower in functional intensities, such as and including trip generation, noise and light generation and other impacts, the request continues to meet all performance and locational standards.

(9) *Whether urban services are, or will be, available and adequate to serve a proposed land use change.*

- ▶ Response _ All required urban services are available to adequately serve the new fire station and future phase mixed uses.

(10) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

- ▶ Response _ The site has been comprehensively developed and current is characterized by almost 100% impervious with no onsite natural systems. The request does not include any revision to the environmentally critical areas.

(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.*

- ▶ Response _ The property was previously used for a grocery store and a liquor package store; these are fairly intense commercial uses. The FMB Fire Station is the primary use, with construction to begin in 2025. The mixture, type and density of uses, along with site plan for future phase development is undetermined and will be subject to a formal CPD amendment process. The north site future development phase will include a north property line Type C buffer with screening wall to mitigate potential impacts to the Tropical Shores neighborhood. The north site future development phase will include a 5-ft Type A buffer for the shared fire station boundary. When compared to Res. 08-08, the 2024 CPD lessens intensity of impacts and eliminates a significant number of non-residential public activities and uses including restaurants and water taxis. As per previous 08-08 findings, the CPD to CPD request will not impact adjoining FMB civic 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.*

- ▶ Response _ The applicant submitted a Traffic Impact Statement with Level of Service analysis for the CPD request. The report states that the CPD to CPD zoning request will not have an impact on the current level of service of Estero Boulevard.

(13). *LDC Section 34-216 specifies that “the recommendation made to the town council must be supported by the guidelines set forth in § 34-85” as well the findings must address whether the criteria found in this section can be addressed. These criteria are discussed below:*

a. The proposed use or mix of uses is appropriate at the subject location;

- ▶ Response _ Most of the proposed 2024 uses are currently permitted CPD uses. The 2024 CPD requests the following new additional uses:
 - ▶ Essential services building; parks; Assisted living facility; Place of worship; Religious facility; School; Bed and breakfast;
- ▶ Response _ The 2024 CPD deletes the following uses:
 - ▶ Restaurant, Bar or cocktail lounge, On-premises consumption of alcoholic beverages, Dock use (for water taxi), and Transit terminal. New 2024 uses are Essential service building, Parks, Places of worship, Religious facility, School, Assisted living facility, and Bed and Breakfast.
- ▶ Response _ The 2024 MCP will have the FMB Fire Station as the initial site and building development. The new MCP meets all of the development standards, with the exception of identified requested code deviations. The mix of uses proposed

continue to be appropriate for the Civic Complex/Heart of the Island neighborhood and Boulevard Future Land Use.

b. *Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;*

- ▶ Response _ The applicant's MCP, development standards and low intensity provide safeguards to accommodate 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.
2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.
3. Policy 4-C-4 on building heights taller than the standard height limit.
4. Policy 4-C-8 on density transfers.
5. Policy 4-E-1 on pre-disaster build back.
6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

- ▶ Response _ Refer to the Comprehensive Plan Consistency Assessment identified on pages 6 through 11.

PART F. SCHEDULE OF DEVIATIONS AND JUSTIFICATION

As key elements to the CPD to CPD zoning request, the Owner/Applicant requests the following deviations consistent with 34-212(3) and 34-932(b).

Deviation One LDC 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.

- ▶ Request _ The deviation advances the objective of building a new fire station MCP by designing and developing a Town of Fort Myers Beach Fire Station that maximizes safe and effective Estero Blvd direct access characterized by having unimpeded and unobstructed views hindered by tall perimeter buffer trees. By eliminating potentially obscuring trees, the deviation advances the achievement of high ordered emergency response times. A double staggered hedge, augmented by additional shrub landscaping based on 18 shrubs per 100 LF, will serve to ensure that the public interest and welfare in having an aesthetically pleasing, well landscaped Estero Blvd will be maintained. The deviation benefits the public interest by securing a safe, unobstructed direct emergency vehicle egress and ingress. The deviation benefits public health, safety and welfare since it fully advances the development of the new

FMB Fire Station based upon the Fire Control District's design criteria. Deviation One is consistent with policies 1-A-3, 1-B-2 and 3-A-4.

Deviation Two LDC 10-285(a) Major Street Access Connection, that requires a 250-ft centerline connection spacing; to require a 152-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 102-ft +/- Gulf Beach Road connection separation.

- ▶ Request _ The deviation achieves the objectives of the Fire Station MCP in designing and developing a new Town of Fort Myers Beach Fire Station that has safe and effective direct access onto Estero Blvd so as to secure high-ordered emergency response times. The connection is at the same centerline location as the access connection that served the Topps Shopping Center. By matching the existing connection spacing and location, the public interest and welfare in advancing effective and efficient emergency response time is achieved. The deviation benefits the public health, safety and welfare interest since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation Two is consistent with the Town of Fort Myers Beach Comprehensive Plan as identified by the following Objectives and Policies:
 - Intergovernmental Coordination OBJECTIVE 14-B Coordination of Services - to ensure coordination in establishing level of service standards for public facilities, providing for efficient delivery of services, monitoring progress of goals and construction of improvements.
 - OBJECTIVE 14-A Intergovernmental Coordination of Plans – Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.
 - POLICY IGC14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.

Deviation Three LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 76-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 43-ft access aisle width at Tropical Shores Way as depicted on the MCP.

- ▶ Request _ The deviation advances the objectives of the development of a new FMB fire station by designing and developing a facility that has maximum safe and effective direct access with full turning movements for large emergency response vehicles onto both Estero Blvd and Tropical Shores Way. The 76-ft and 43-ft aisle width standards advances the high-ordered emergency response times. A twenty-five foot maximum width standard is not appropriate nor functional for large fire trucks and emergency

response vehicles. The project is designed to facilitate large emergency vehicle ingress and egress turning movement requirements that require large driveway aisle connection widths. The deviation benefits public health, safety and welfare interests by securing safe, effective and direct emergency vehicle egress and ingress based upon the Fire Control District's design criteria. Deviation Three is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Four LDC 10-416(c)(2.a) Parking Lot Internal Landscaping, that requires one tree planted per 250 sf and with one tree for each parking space permeable island; to require no landscaped permeable island and parking lot trees for the Fire Station's north oriented parking lot.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a large unobstructed north site parking lot and staging area for large emergency response vehicles. This deviation is essential for the staging and maintaining emergency response vehicles adjacent to Tropical Shores Way. The alternative parking lot landscaping deviation advances the high-ordered emergency response times by maximizes efficient internal large vehicle movements. The deviation benefits public health, safety and welfare interests by securing safe, effective and direct emergency vehicle site parking and circulation movements within the site and towards Tropic Shores Way egress and ingress based upon the Fire Control District's design criteria. Deviation Four is consistent with policies IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Five LDC 10-416(c)(2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average diminution of 10-ft; to require a minimum average dimension of 6.5-ft for the Fire Station's Tropical Shores Way oriented handicapped parking space.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a functionally unobstructed south site interior large emergency response vehicle and other vehicle parking and circulation area. The slight 3.5-ft parking island width reduction serves to advance efficient emergency response and other vehicle parking and circulation movement for the Estero Blvd oriented parking area. The deviation benefits public health, safety and welfare interests by securing safe, effective and efficient south site parking and circulation movements along with safe and efficient Estero Blvd egress and ingress based upon the Fire Control District's design criteria. Deviation Five is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Six LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.

- ▶ Request _ The deviation is established by Deviation Five Res. 08-08. In this case the diminution increase of 0.06 falls well within the established practice of rounding up. Given the narrowest of margins, the public interest is not serviced by discounting one residential unit. The applicant's interest in regulatory consistency and reasonableness is upheld.

FINDINGS AND CONCLUSIONS

The planning and zoning land use findings presented herein demonstrate entitlement to the requested Fort Myers Beach Fire Control District CPD zoning request. The Request Statement confirms adherence to the Town of Fort Myers Beach Comprehensive Plan and the Land Development Code. It is consistent with the intensity set forth in the Town Plan and LDC, is compatible with existing and planned uses, has adequate services and infrastructure required to service the project.



Greg Stuart, MAURP

GS/24006/applicationdevelop/finalreport_1augfinalfmbfirestation_requeststatement.pgs

PART F. SCHEDULE OF DEVIATIONS AND JUSTIFICATION - revised 08/01/24

As key elements to the CPD to CPD zoning request, the Owner/Applicant requests the following deviations consistent with 34-212(3) and 34-932(b).

Deviation One LDC 10-416(d)(3) Type D Site Perimeter ROW Buffer Standard, that requires a 15-ft landscape buffer with 5 trees per 100 LF, a double hedge and no wall; for Estero Blvd. to require a 15-ft landscape buffer with a double hedge augmented with 18 shrubs per 100 LF and no wall.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access onto Estero Blvd characterized by being unimpeded and unobstructed by tall perimeter buffer trees. By eliminating potentially obscuring trees, the deviation advances the achievement of high order emergency response times. A double staggered hedge, augmented by additional shrub landscaping based on 18 shrubs per 100 LF, will serve to ensure that the public interest and public welfare in having an aesthetically pleasing and well landscaped Estero Blvd will be maintained. The deviation benefits the public interest by securing a safe, effective and direct emergency vehicle egress and ingress. The deviation benefits the public health, safety and welfare since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation One is consistent with policies 1-A-3, 1-B-2 and 3-A-4.

Deviation Two LDC 10-285(a) Major Street Access Connection, that requires a 250-ft center-line connection spacing; to require a 127-ft +/- Fire Station driveway to Tropical Shores Way connection separation, and a 126-ft +/- Gulf Beach Road connection separation.

- ▶ Request _ The deviation achieves the objectives of the Fire Station MCP in designing and developing a new Town of Fort Myers Beach Fire Station that has safe and effective direct access onto Estero Blvd so as to secure the highest order of emergency response times. The connection is identical to the long-standing Estero Blvd connection that served the Topps Shopping Center. By matching the existing connection spacing and location, the public interest and welfare in advancing effective and efficient emergency response time is achieved. The deviation benefits the public health, safety and welfare interest since it fully advances the development of the new FMB Fire Station based upon the Fire Control District's design criteria. Deviation Two is consistent with the Town of Fort Myers Beach Comprehensive Plan as identified by the following Objectives and Policies:

- Intergovernmental Coordination OBJECTIVE 14-B Coordination of Services - to ensure coordination in establishing level of service standards for public facilities, providing for efficient delivery of services, monitoring progress of goals and construction of improvements.
- OBJECTIVE 14-A Intergovernmental Coordination of Plans – Ensure coordination of this comprehensive plan with comprehensive plans of Lee County and the Lee County School Board, other units of local government providing services but not having regulatory authority over the use of land, and with regional and state plans.
- POLICY IGC14-D-8 The town will exchange information with the Fort Myers Beach Fire Control District and solicit input from the fire district on development proposals.

Deviation Three LDC 34-2013(a)(3) Parking Lot Access Aisle Width, that requires a maximum 25-ft width at the property line; to allow a 75-ft access aisle width at Estero Blvd. as depicted on the MCP, and a maximum 40-ft access aisle width at Tropical Shores Way as depicted on the MCP.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has maximum safe and effective direct access with full turning movements for large emergency response vehicles onto both Estero Blvd and Tropical Shores Way. The 75-ft and 40-ft aisle width standards advances the highest order of emergency response times. A twenty-five foot maximum width standard is not appropriate nor functional for large fire trucks and emergency response vehicles. The project is designed to facilitate large emergency vehicle ingress and egress turning movement requirements that require large driveway aisle connection width. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle egress and ingress based upon the Fire Control District's design criteria. Deviation Three is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

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- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a large unobstructed north site interior large emergency response vehicle parking and circulation area. This design feature is essential for the staging emergency response vehicles at the new fire station while entering and exiting onto Tropical Shores Way. The alternative parking lot landscaping standards advances the highest order of emergency re-

sponse times by maximizes efficient internal large vehicle movements. The deviation benefits the public health, safety and welfare interest by securing safe, effective and direct emergency vehicle site parking and circulation movements within the site and towards Tropic Shores Way egress and ingress based upon the Fire Control District's design criteria. Deviation Four is consistent with policies IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Five LDC 10-416(c)(2.c) Min. Average Width of Parking Lot Landscaping Area, that requires a minimum average diminution of 10-ft; to require a minimum average dimension of 5-ft for the Fire Station's Estero Blvd. oriented parking lot.

- ▶ Request _ The deviation advances the objectives of the new Fire Station MCP by designing and developing a Town of Fort Myers Beach Fire Station that has a functionally unobstructed south site interior large emergency response vehicle and other vehicle parking and circulation area. The slight 5-ft parking island width reduction serves to advance efficient emergency response and other vehicle parking and circulation movement for the Estero Blvd oriented parking area. The deviation benefits the public health, safety and welfare interest by securing safe, effective and efficient south site parking and circulation movements along with safe and efficient Estero Blvd egress and ingress based upon the Fire Control District's design criteria. Deviation Five is consistent with policies 1-A-3, 1-B-2, 3-A-4, IGC 14-A, IGC 14-B and IGC 14-D-8.

Deviation Six LDC 34-632(1) that requires computed to be round down to the next whole number, which would allow a computed density of 5.94 units, to be rounded up to but not to exceed 6 dwelling units any combination of uses for the future development area.

- ▶ Request _ The deviation is established by Deviation Five Res. 08-08. In this case the diminus increase of 0.06 falls well within the established practice of granting reasonable density by, in this case, very slightly rounding up. Given the narrowest of margins, the public interest is not serviced by discounting one residential unit. The applicant's interest in regulatory consistency and reasonableness is upheld.

FMB Fire Control District _ The Estero Blvd. Fire Station

Future Land Use _ Boulevard

Zoning _ CPD

2024 FMB Fire Station CPD Use Request
CIVIC:
Principal:
Essential services
Essential service equipment
Essential services building
Beach or bay access (1)
Day care center, adult or child (1)
Cultural facility (1)
Theater (1)
Park, community or regional (1)
Parking lot, shared, permanent
Place of worship (1)
Religious facility (1)
Recreation facility, private off-site or public (1)
School (1)
Accessory:
Dwelling unit, caretaker (1)
Subordinate commercial uses
RESIDENTIAL
Principal:

2024 FMB Fire Station CPD Use Request
Dwelling unit, multi-family (1)(2)
Dwelling unit, live/work (1)(2)
Timeshare units (1)(2)(3)
Assisted living facility - subject to 34-1415 (1)(3)
Accessory:
Residential accessory uses (1)
LODGING
Principal:
Rental of any permitted dwelling unit to a single family for periods of one day or longer (1)(2)
Hotel/Motel - guest units must comply with LDC Chapter 34, Article IV, Div. 19 (1)(3)
Bed and Breakfast (1)(2)(3)
Accessory:
Subordinate commercial uses (1)
RETAIL:
Principal:
Laundromat (1)
Personal services (1)
Retail store small (1)
Accessory:
ATM (1)
Commercial accessory uses (1)
OFFICE:
Principal:
Health Care facility (1)
Offices, general or medical (1)
Personal services (1)
Wholesale establishment (1)

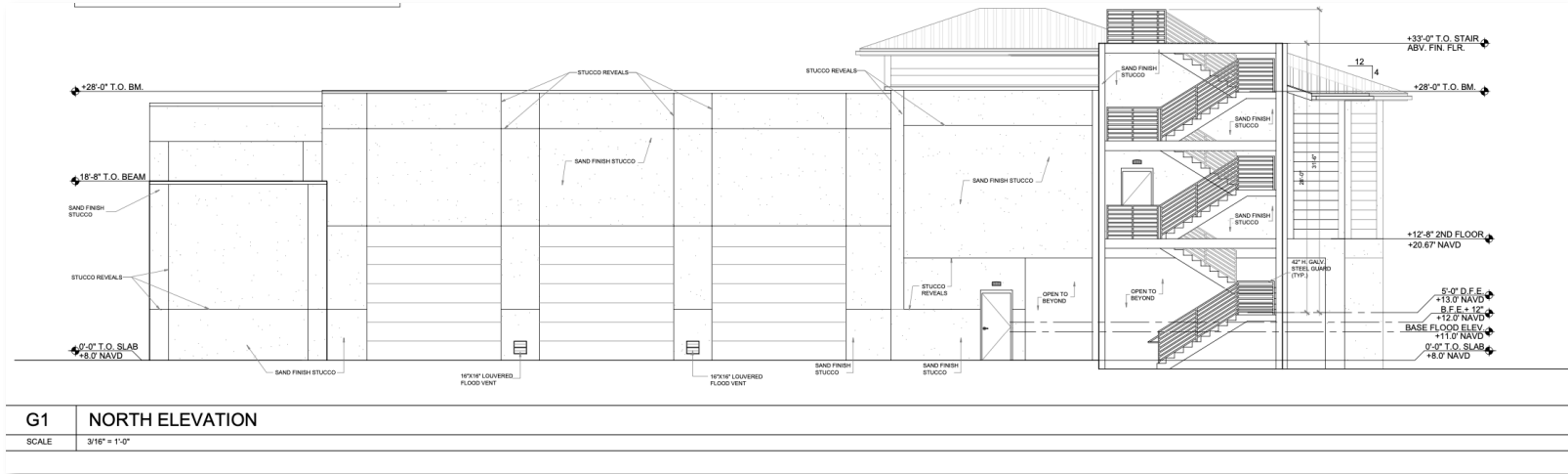
2024 FMB Fire Station CPD Use Request
Accessory:
Administrative office (1)
Home occupation - no outside help (1)
MARINE:
Accessory:
Dock - sole use by occupants of principal use (1)

Footnotes _

- (1) Permitted only within the site's rear, north Future Phase area.
- (2) Not to exceed 6 units in any combination of uses
- (3) Subject to 34-1803 and 34-1415 density rules.

General Comment _ Deleted RES 08-08 uses are Restaurant, Bar or cocktail lounge, On-premises consumption of alcoholic beverages, Dock use (for water taxi), and Transit terminal. New 2024 uses are Essential service building, Parks, Places of worship, Religious facility, School, Assisted living facility, and Bed and Breakfast.

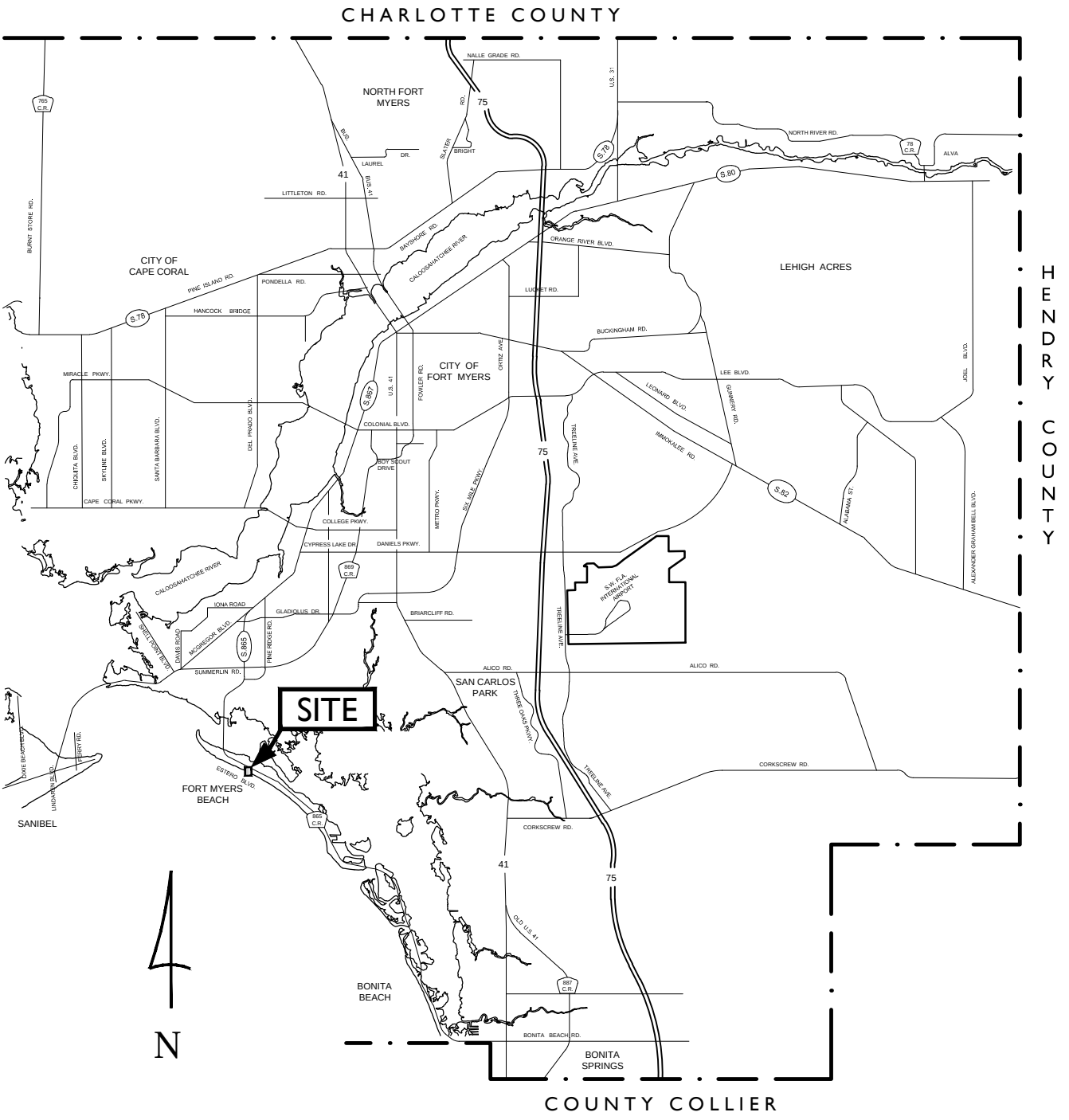
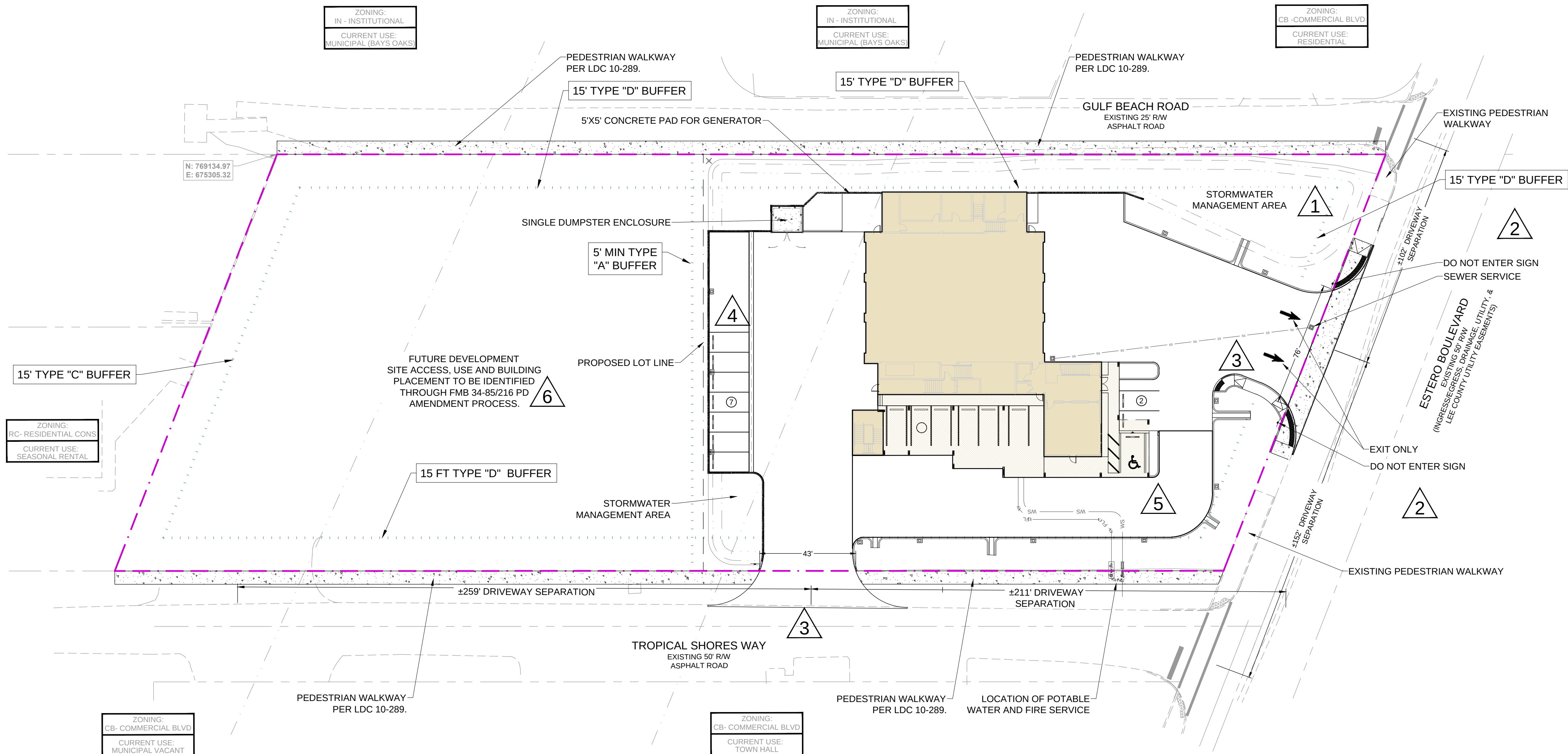
THE NORTH CANAL FACADE ELEVATION



FMB FIRE STATION HEADQUARTERS

LOCATED IN SECTION 19, TOWNSHIP 46 -S, RANGE 24 -E, LEE COUNTY, FLORIDA

ZONING MCP



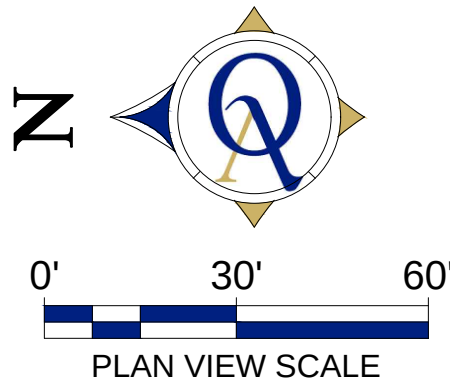
LOCATION MAP

(NOT TO SCALE)

LAND USE & DEVELOPMENT STANDARD SUMMARY TABLE

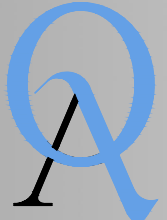
Future Land Use	Boulevard
Zoning	CPD (08-08)
Parcel Number - 2545 Estero Blvd.	194624W3004580000
Parcel Number - 2555 Estero Blvd.	194624W3004580010
Project Site Area	2.16 ac. +/-
* Fire Station Site	1.17 ac. +/-
* North Site Future Phase	0.99 ac. +/-
Project Intensity -	
Fire Station	17,188 sf (1)
Fire Station FAR	33.7%
North Site Future Phase	10,000 sf
North Site Future Phase FAR	23.1%
* Future Phase Residential; or	6 units
* Future Phase Lodging;	15 rooms
Site Development Regulations -	
Min. Lot Area	30,000 sf
Min Lot Width	180 ft
Min Lot Depth	180 ft
Max. FAR	40%
Fire Station Building Height	30 ft/3 stories
Building Setback, Estero Blvd.	25 ft
Building Setback, Gulf Bch. Rd./Tropical Shores Way	15 ft
Building Setback, Rear/Waterbody	15 ft.
Flood Zone	AE13-ft
(1) Fire Station total FAR includes ground level, balcony, ancillary impervious pads and covered entrance at a 34% FAR. The heated and cooled Fire Station 14,800 sf intensity is equal to a 29% FAR.	

- **DEVIATION SCHEDULE:**
- DEVIATION ONE LDC 10-416(D)(3) TYPE D SITE PERIMETER ROW BUFFER STANDARD, THAT REQUIRES A 15-FT LANDSCAPE BUFFER WITH 5 TREES PER 100 LF, A DOUBLE HEDGE AND NO WALL; FOR ESTERO BLVD. TO REQUIRE A 15-FT LANDSCAPE BUFFER WITH A DOUBLE HEDGE AUGMENTED WITH 18 SHRUBS PER 100 LF AND NO WALL.
- DEVIATION TWO LDC 10-285(A) MAJOR STREET ACCESS CONNECTION, THAT REQUIRES A 250-FT CENTERLINE CONNECTION SPACING; TO REQUIRE A 127-FT +/- FIRE STATION DRIVEWAY TO TROPICAL SHORES WAY CONNECTION SEPARATION, AND A 126-FT +/- GULF BEACH ROAD CONNECTION SEPARATION.
- DEVIATION THREE LDC 34-2013(A)(3) PARKING LOT ACCESS AISLE WIDTH, THAT REQUIRES A MAXIMUM 25-FT WIDTH AT THE PROPERTY LINE; TO ALLOW A 76-FT ACCESS AISLE WIDTH AT ESTERO BLVD. AS DEPICTED ON THE MCP, AND A MAXIMUM 43-FT ACCESS AISLE WIDTH AT TROPICAL SHORES WAY AS DEPICTED ON THE MCP.
- DEVIATION FOUR LDC 10-416(C)(2.A) PARKING LOT INTERNAL LANDSCAPING, THAT REQUIRES ONE TREE PLANTED PER 250 SF AND WITH ONE TREE FOR EACH PARKING SPACE PERMEABLE ISLAND; TO REQUIRE NO LANDSCAPED PERMEABLE ISLAND AND TREES FOR THE FIRE STATION'S NORTH ORIENTED PARKING LOT.
- DEVIATION FIVE LDC 10-416(C)(2.C) MIN. AVERAGE WIDTH OF PARKING LOT LANDSCAPING AREA, THAT REQUIRES A MINIMUM AVERAGE DIMINUTION OF 10-FT; TO REQUIRE A MINIMUM AVERAGE DIMENSION OF 5-FT FOR THE FIRE STATION'S ESTERO BLVD. ORIENTED PARKING LOT.
- DEVIATION SIX LDC 34-632(1) THAT REQUIRES COMPUTED DENSITY TO BE ROUND DOWN TO THE NEXT WHOLE NUMBER, WHICH WOULD ALLOW 5.94 UNITS, TO BE ROUNDED UP TO BUT NOT TO EXCEED 6 DWELLING UNITS FOR ANY COMBINATION OF USES FOR THE FUTURE DEVELOPMENT AREA.



P:\2021 Projects\210405 FMB FIRE STATION-PRO-SIGNED-ACTIVE\01-CADD FILES\07-ZONING\210405-ZONING MCP

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Quattrone & Associates, Inc.
Engineers, Planners, & Development Consultants
4301 Veronica Shoemaker Blvd. | Fort Myers, FL 33916 | 239.936.5222 | QAInc.net

210405-ZONING MCP.DWG



Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM/ 6PM

DATE: LPA September 3rd, 2024 (9AM) 1st Town Council September 23rd, 2024 (6PM) 2nd Town Council October 7th 2024 (9AM)

CASE: CPD20240155

ADDRESS: 2545 and 2555 Estero Blvd

APPLICANT: Fort Myers Beach Fire Department

REQUEST: Requesting a rezoning from CPD (Reso. 08-08) to CPD with a Fire Station

TOWN CONTACT: JUDITH FRANKEL [JFRANKEL@FMBGOV.COM](mailto:jfrankel@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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/ 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
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»



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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **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 2545 AND 2555 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-00458.0000; 19-46-24-W3-00458.0010 IN FORT MYERS BEACH, TO ALLOW A FIRE STATION AND A MIXED USE DEVELOPMENT INCLUDING CIVIC, RESIDENTIAL, LODGING, RETAIL, OFFICE AND MARINE USES; 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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

¹ 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 Fort Myers Beach 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):

The proposed ordinance amends the zoning district map for the Town of Fort Myers Beach. This serves the public health, safety and orderly development of the Town. Fort Myers Beach Fire Control, the owner and applicant for 2545 and 2555 Estero Blvd., is requesting to rezone the subject parcels from CPD (governed by RES 08-08) to a CPD that allows the development of a new Fort Myers Beach Fire Station. The Fire Control district intends to divide the total site into two parts. They will develop 1.17 acres fronting Estero Boulevard with a new Fire Station shown on the Master Concept Plan (MCP) in the application packet. The remaining 0.99 acres is intended to be sold and later developed and an MCP is not provided for that portion of the tract. However, the applicant has requested a reduction in the number of uses for that portion of the tract with the aim of reducing the impact of any future development on neighboring properties.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 24-27.

Ordinance 24-27 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:

This rezoning does not increase restrictions on existing businesses. The schedule of allowed uses is altered for a .99 acre portion of the lot to be more compatible with the abutting neighborhood.

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: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach 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 Fort Myers Beach 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].*

Not applicable.

1. **Request:**

Meeting Date: October 28, 2024

Second Reading and Final Public Hearing on a proposed Ordinance 24-20 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS 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 signs as currently designed/ placed are not compliant with the LDC or the approved CPD, this request is to legalize both signs for setbacks and height, as well as sign-type deviation for the pole sign on the corner of Estero and Crescent.

What the action accomplishes:

Allows the existing, non-compliant signs to remain where they've been installed.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance to amend an existing
CPD

4. **Submitter of Information:**

Jason Smalley, Senior Planner

5. **Background:**

During the construction of the "Margaritaville" resort, a sign package was approved requiring standard 3' setbacks from the rear of a sidewalk, both signs in-question were constructed within the 3' setback. The pole sign on the corner of Estero and Crescent is also too tall, pole signs are not allowed as a sign-type and will require deviations for all three issues (sign-type, maximum height and setbacks); the monument sign across Estero at the entrance to the aquatic center also requires two deviations for setbacks from the sidewalk and maximum height.

Attachments:

1. 24-20_DCI20240130_MARGARITAVILLE SIGN_jas
2. Exhibit A_Amended Deviation List
3. Exhibit B_Margaritaville MCP_2024 Amended
4. TC #2 Staff Report Signs
5. Narrative Statement
6. Comment Response Letter
7. Deviation Narrative
8. MCP_Deviations

Financial Impact:

N/A

6. **Alternative Action**

Approve with conditions

7. **Management Recommendations:**

N/A

8. **Recommended Approval:**

Sarah Propst, Community Development, Planning Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/27/2024
Approved - 9/27/2024
Approved - 9/27/2024
Approved - 9/29/2024
Final Approval - 9/30/2024

ORDINANCE 24-XX

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING TOWN OF FORT MYERS BEACH ORDINANCE NO. 24-01, AND APPROVING DEVIATIONS 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 Morris-Depew, 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 24-01 amended the existing CPD to remove limitations on development of the beachfront lot 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, on September 9, 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 and held before the Town Council on October 7, 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, 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 is the amended deviations list; and

WHEREAS, Exhibit B is the approved Master Concept Plan including location of the two signs relevant to this amendment; and

WHEREAS, the Town Council finds that this request to amend existing ordinance 24-01 for a CPD, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #5

Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Deviation #6

Deviation seeks relief from LDC Section 30-5(a)(1)(b)(3)(iii) which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Deviation #7 & 8

Deviation seeks relief from LDC Section 30-5(a)(1)(b)(3)(iv), which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation #9

Deviation seeks relief from LDC Section 30-5(a)(1)(b)(3)(iii) which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

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 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 five requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216 and 34-1803):

1. 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.
2. The proposed development, as modified by these deviations, clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan.
3. The proposed development, with the modified deviations being approved, does not exceed any maximum intensities contained in the Fort Myers Beach Comprehensive Plan.
4. Granting these deviations will enhance the achievement of the objectives of the proposed development.
5. The general intent of the LDC to protect the public health, safety, and welfare will be preserved and promoted with these deviations.
6. These deviations operate to the benefit, or at least not to the detriment, of the public interest.
7. These deviations are consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to amend Ordinance 24-01 and amend conditions of approval of the commercial planned development zoning, **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 amend Town of Fort Myers Beach's Ordinance no. 24-01 and amend the deviations 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 24-01 is amended by this Ordinance and the list of approved deviations 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 7th day of October 2024.

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Scott Safford	_____
Karen Woodson	_____

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:**

Gretchen R. H. Vose, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of October 2024.

Exhibit-A Amended Deviations List

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.

Deviation #5

Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Deviation #6

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Deviation #7 & 8

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation #9

Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

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DEVELOPED BY:



OWNER
TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

PLANNING, CIVIL, SURVEY & LANDSCAPE ARCHITECTURE
MORRIS-DEFEW ASSOCIATES, INC.
2914 CLEVELAND AVENUE
FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

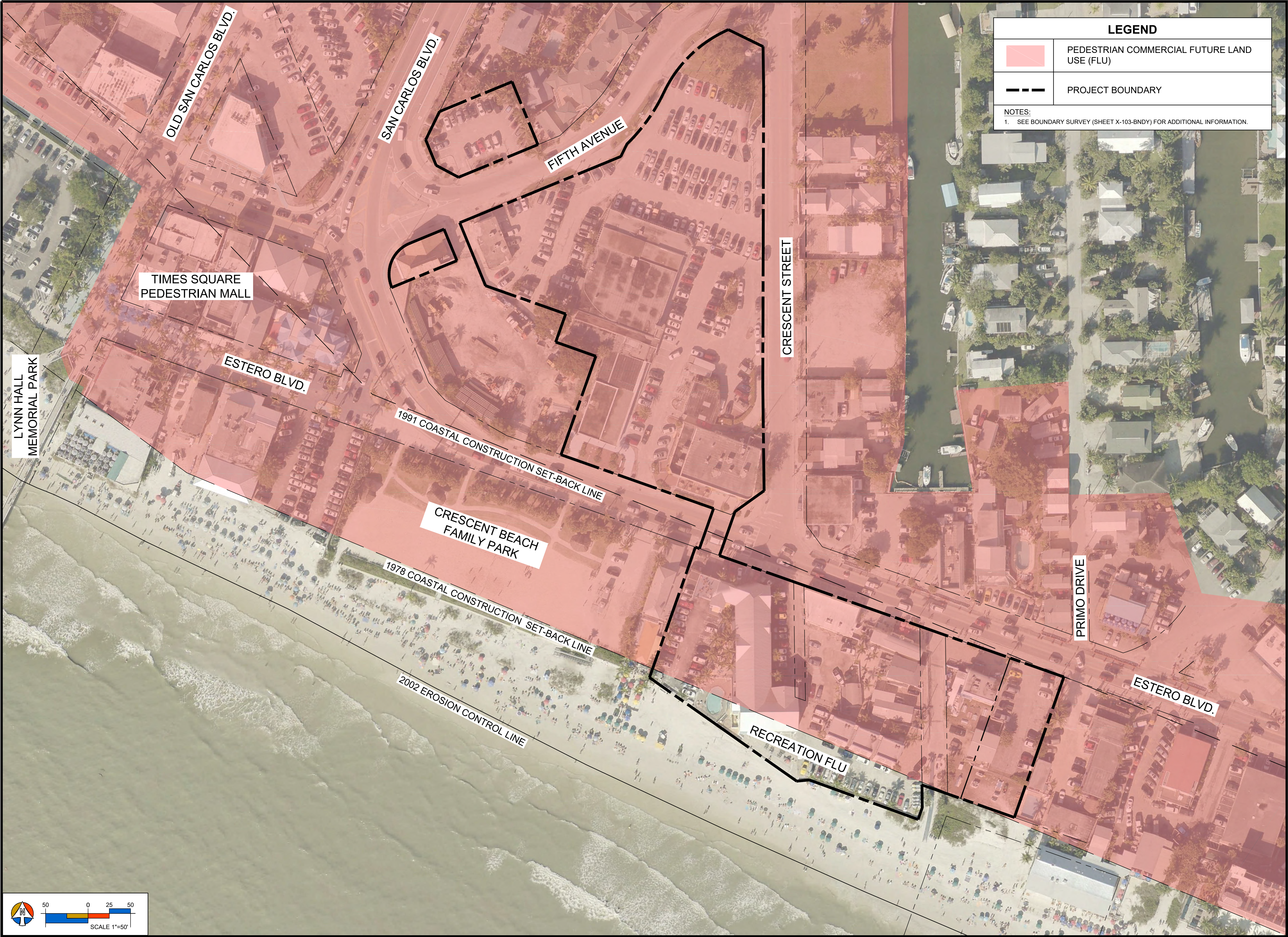
Sheet Index	
Sheet Number	Sheet Name
X-G01	COVER SHEET
X-101-FLU	FUTURE LAND USE AND PROJECT BOUNDARY
X-102-BNDY.00	BOUNDARY SURVEY (1 OF 2)
X-103-BNDY.01	BOUNDARY SURVEY (2 OF 2)
X-104-DA	DEVELOPABLE AREA EXHIBIT
X-105-FAR.00	FLOOR AREA RATIO - FIRST FLOOR (GRADE)
X-106-FAR.01	FLOOR AREA RATIO - 2ND FLOOR
X-107-FAR.02	FLOOR AREA RATIO - 3RD FLOOR
X-108-FAR.03	FLOOR AREA RATIO - 4TH FLOOR & ROOF
X-109-MCP.00	MASTER CONCEPT PLAN FIRST FLOOR
X-110-MCP.01	MASTER CONCEPT PLAN SECOND FLOOR
X-111-MCP.02	MASTER CONCEPT PLAN THIRD FLOOR
X-112-MCP.03	MASTER CONCEPT PLAN FOURTH FLOOR
X-113-MCP.04	MASTER CONCEPT PLAN DEVIATIONS AND NOTES
X-114-MCP.05	MASTER CONCEPT PLAN BUILDING HEIGHT

Sheet Index	
Sheet Number	Sheet Name
X-A201	EXTERIOR ELEVATIONS
X-A202	EXTERIOR ELEVATIONS
X-A203	EXTERIOR ELEVATIONS
X-A301	BUILDING SECTIONS
X-501	PARKING LOCATIONS & CALCULATIONS
X-502-RW.00	RIGHT OF WAY & SIDEWALK/BUFFER PLAN
X-503-RW.01	RIGHT OF WAY & SIDEWALK/BUFFER PLAN
X-504-RW.02	RIGHT OF WAY & SIDEWALK/BUFFER PLAN
X-505-COP.01	CONSUMPTION ON PREMISES DIAGRAM
X-506-COP.02	CONSUMPTION ON PREMISES DIAGRAMS PEDESTRIAN CIRCULATION
X-507-VT	VISIBILITY TRIANGLES

MASTER CONCEPT PLAN & EXHIBITS

ZONING APPLICATION NO. DC117-0001

21 MAY 2018



LEGEND	
	PEDESTRIAN COMMERCIAL FUTURE LAND USE (FLU)
	PROJECT BOUNDARY
NOTES: 1. SEE BOUNDARY SURVEY (SHEET X-103-BNDY) FOR ADDITIONAL INFORMATION.	

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

TPI

HOSPITALITY

100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

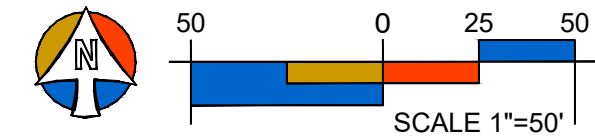
CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

PLANNING, CIVIL, SURVEY & LANDSCAPE ARCHITECTURE
MORRIS-DEFEW ASSOCIATES, INC.
2814 CLEVELAND AVENUE
FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	6/8/2018
SHEET TITLE:	
FUTURE LAND USE AND PROJECT BOUNDARY	
SHEET NUMBER:	X-101-FLU
JOB/FILE NUMBER:	15069-14



CONSULTANTS:
ARCHITECT
PLUMMER & ASSOCIATES, INC.
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WILLMAR, MN 56201
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**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

Page 109 of 676



LEGEND	
#	PARCEL DESIGNATION
---	LOT / RIGHT-OF-WAY / PROJECT BOUNDARY

TOTAL PARCEL AREA			
PARCEL	LAND AREA (SQ. FT.)	PERMITTED FAR	BUILDING AREA (SQ. FT.)
1	117,840	1.4	164,977
2	64,086	1.4	89,720
3	9,041	1.0	9,041
4	2,969	N/A	0
5	14,315	N/A	0
6	11,740	N/A	0
AREA TOTAL	219,991	--	263,738

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

**TPI** HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

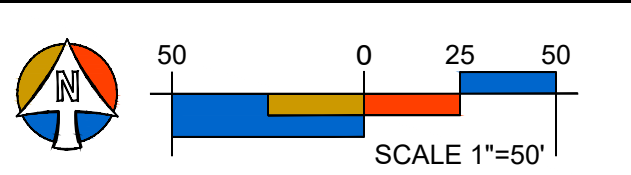
CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
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MORRIS-DEPEW ASSOCIATES, INC.
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DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	6/8/2018
SHEET TITLE:	DEVELOPABLE AREA EXHIBIT
SHEET NUMBER:	X-104-DA
JOB/FILE NUMBER:	15069-14



MASTER CONCEPT PLAN -
SQUARE FOOTAGE

SQUARE FOOTAGE PER USE						
NORTH OF ESTERO (BAYSIDE)	USE	1ST / GRADE	2ND FLOOR	3RD FLOOR	4TH FLOOR /	TOTAL
	PARKING	95,751 S.F.	0 S.F.	0 S.F.	0 S.F.	95,751 S.F.
	GUEST UNIT	0 S.F.	14,500 S.F.	33,395 S.F.	36,850 S.F.	84,745 S.F.
	GUEST UNIT ACCESSORY	1,772 S.F.	37,040 S.F.	17,575 S.F.	13,900 S.F.	70,287 S.F.
PEDESTRIAN OVERPASS						
	ACCESS TO PEDESTRIAN BRIDGE	663 S.F.	2,028 S.F.	0 S.F.	0 S.F.	2,691 S.F.
SOUTH OF ESTERO (BEACHSIDE)						
	RESTAURANT	7,200 S.F.	8,670 S.F.	0 S.F.	0 S.F.	15,870 S.F.
	INDOOR STORAGE	2,000 S.F.	0 S.F.	0 S.F.	0 S.F.	2,000 S.F.
	OUTDOOR REC. RESTROOMS	2,508 S.F.	0 S.F.	0 S.F.	0 S.F.	2,508 S.F.
	RESTAURANT - PRIVATE REST.	2,030 S.F.	1,756 S.F.	0 S.F.	0 S.F.	3,786 S.F.
	ADMIN OFFICES	0 S.F.	0 S.F.	1,800 S.F.	0 S.F.	1,800 S.F.
	GUEST UNIT	0 S.F.	0 S.F.	5,340 S.F.	6,000 S.F.	11,340 S.F.
	GUEST UNIT ACCESSORY	320 S.F.	320 S.F.	2,870 S.F.	2,080 S.F.	5,590 S.F.
TOTALS		112,244 S.F.	64,314 S.F.	60,980 S.F.	58,830 S.F.	296,368 S.F.

PROJECT:

A PROPOSED
FMB/TPI
JOINT EFFORT TO
RESTORE AND TO
REINVIGORATE THE
DOWNTOWN BEACH
AREA

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
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PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS

DATE

PROJECT MANAGER:

JDH

DRAWING BY:

ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE:

-

SHEET TITLE:

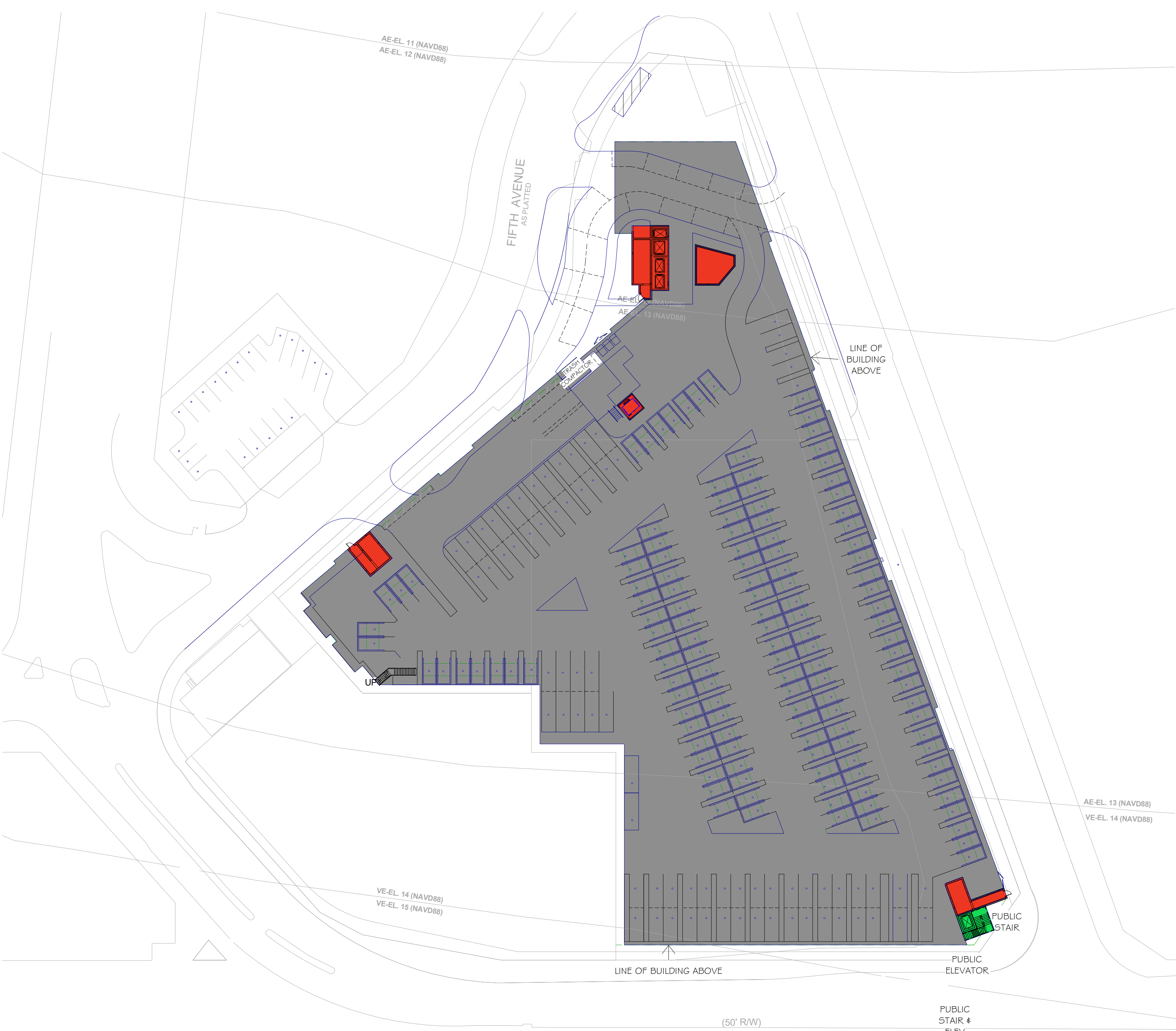
MCP S.F. - 1ST
FLOOR (GRADE)

SHEET NUMBER:

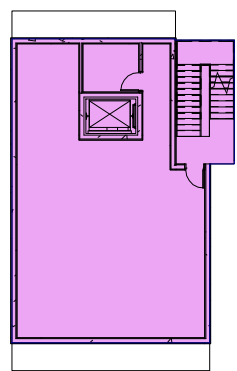
X-105-FAR.00

JOB/FILE NUMBER:

30479



MCP FAR BREAKDOWN - FIRST FLOOR
(GRADE)
① 1" = 40'-0"



SQUARE FOOTAGE PER USE

SQUARE FOOTAGE PER USE						
NORTH OF ESTERO (BAYSIDE)	USE	1ST / GRADE	2ND FLOOR	3RD FLOOR	4TH FLOOR /	TOTAL
	PARKING	95,751 S.F.	0 S.F.	0 S.F.	0 S.F.	95,751 S.F.
	GUEST UNIT	0 S.F.	14,500 S.F.	33,395 S.F.	36,850 S.F.	84,745 S.F.
	GUEST UNIT ACCESSORY	1,772 S.F.	37,040 S.F.	17,575 S.F.	13,900 S.F.	70,287 S.F.
PEDESTRIAN OVERPASS	ACCESS TO PEDESTRIAN BRIDGE	663 S.F.	2,028 S.F.	0 S.F.	0 S.F.	2,691 S.F.
SOUTH OF ESTERO (BEACHSIDE)						
	RESTAURANT	7,200 S.F.	8,670 S.F.	0 S.F.	0 S.F.	15,870 S.F.
	INDOOR STORAGE	2,000 S.F.	0 S.F.	0 S.F.	0 S.F.	2,000 S.F.
	OUTDOOR REC. RESTROOMS	2,508 S.F.	0 S.F.	0 S.F.	0 S.F.	2,508 S.F.
	RESTAURANT - PRIVATE REST.	2,030 S.F.	1,756 S.F.	0 S.F.	0 S.F.	3,786 S.F.
	ADMIN OFFICES	0 S.F.	0 S.F.	1,800 S.F.	0 S.F.	1,800 S.F.
	GUEST UNIT	0 S.F.	0 S.F.	5,340 S.F.	6,000 S.F.	11,340 S.F.
	GUEST UNIT ACCESSORY	320 S.F.	320 S.F.	2,870 S.F.	2,080 S.F.	5,590 S.F.
TOTALS		112,244 S.F.	64,314 S.F.	60,980 S.F.	58,830 S.F.	296,368 S.F.

A PROPOSED
FMB/TPI
JOINT EFFORT TO
RESTORE AND TO
REINVIGORATE THE
DOWNTOWN BEACH
AREA

FORT MYERS
BEACH FLORIDA



TPI **HOSPITALITY**
100% Employee Owned

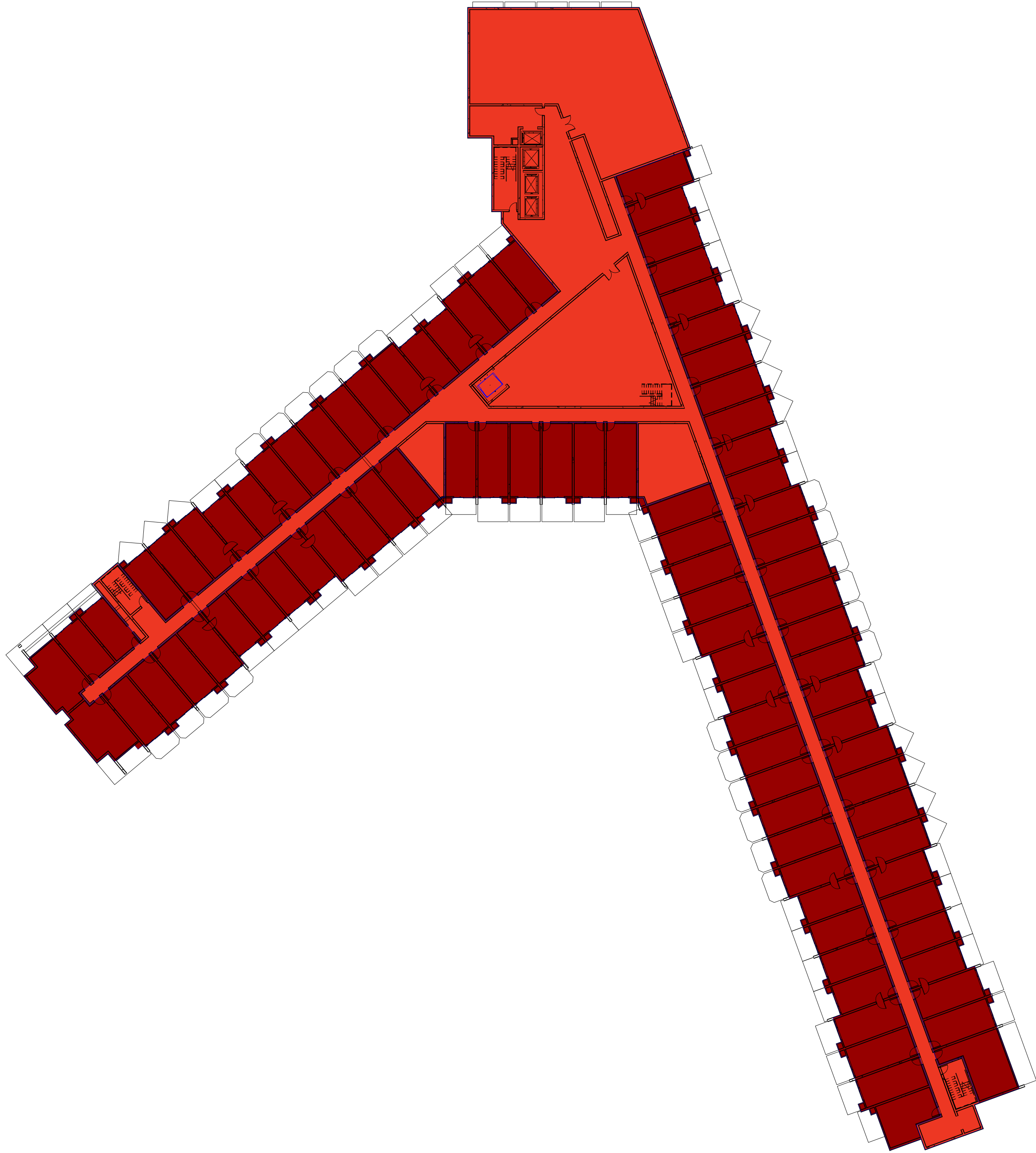
TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

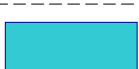
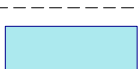
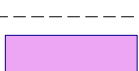
LANDSCAPE ARCHITECTURE
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

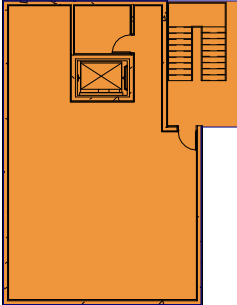
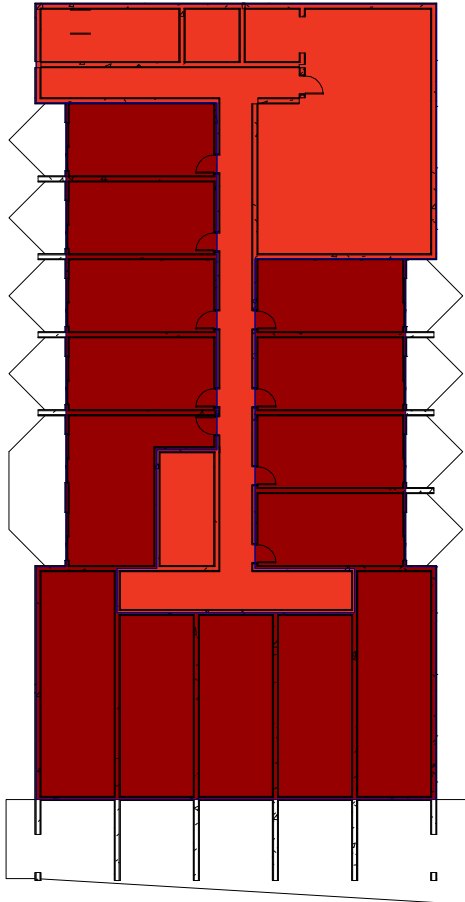
REVISIONS	DATE
PROJECT MANAGER:	JDH
DRAWING BY:	ADO
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	-
SHEET TITLE:	
MCP S.F. - 2ND FLOOR	
SHEET NUMBER:	X-106-FAR.01
JOB/FILE NUMBER:	30479



MASTER CONCEPT PLAN -
SQUARE FOOTAGE

SQUARE FOOTAGE PER USE						
NORTH OF ESTERO (BAYSIDE)	USE	1ST / GRADE	2ND FLOOR	3RD FLOOR	4TH FLOOR /	TOTAL
	PARKING	95,751 S.F.	0 S.F.	0 S.F.	0 S.F.	95,751 S.F.
	GUEST UNIT	0 S.F.	14,500 S.F.	33,395 S.F.	36,850 S.F.	84,745 S.F.
	GUEST UNIT ACCESSORY	1,772 S.F.	37,040 S.F.	17,575 S.F.	13,900 S.F.	70,287 S.F.
PEDESTRIAN OVERPASS						
	ACCESS TO PEDESTRIAN BRIDGE	663 S.F.	2,028 S.F.	0 S.F.	0 S.F.	2,691 S.F.
SOUTH OF ESTERO (BEACHSIDE)						
	RESTAURANT	7,200 S.F.	8,670 S.F.	0 S.F.	0 S.F.	15,870 S.F.
	INDOOR STORAGE	2,000 S.F.	0 S.F.	0 S.F.	0 S.F.	2,000 S.F.
	OUTDOOR REC. RESTROOMS	2,508 S.F.	0 S.F.	0 S.F.	0 S.F.	2,508 S.F.
	RESTAURANT - PRIVATE REST.	2,030 S.F.	1,756 S.F.	0 S.F.	0 S.F.	3,786 S.F.
	ADMIN OFFICES	0 S.F.	0 S.F.	1,800 S.F.	0 S.F.	1,800 S.F.
	GUEST UNIT	0 S.F.	0 S.F.	5,340 S.F.	6,000 S.F.	11,340 S.F.
	GUEST UNIT ACCESSORY	320 S.F.	320 S.F.	2,870 S.F.	2,080 S.F.	5,590 S.F.
TOTALS		112,244 S.F.	64,314 S.F.	60,980 S.F.	58,830 S.F.	296,368 S.F.

① MCP FAR BREAKDOWN - THIRD FLOOR
1/32" = 1'-0"



PROJECT:

A PROPOSED
FMB/TPI
JOINT EFFORT TO
RESTORE AND TO
REINVIGORATE THE
DOWNTOWN BEACH
AREA

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT

RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**

MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
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TRANSPORTATION

DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS

DATE

PROJECT MANAGER:

JDH

DRAWING BY:

ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE:

-

SHEET TITLE:

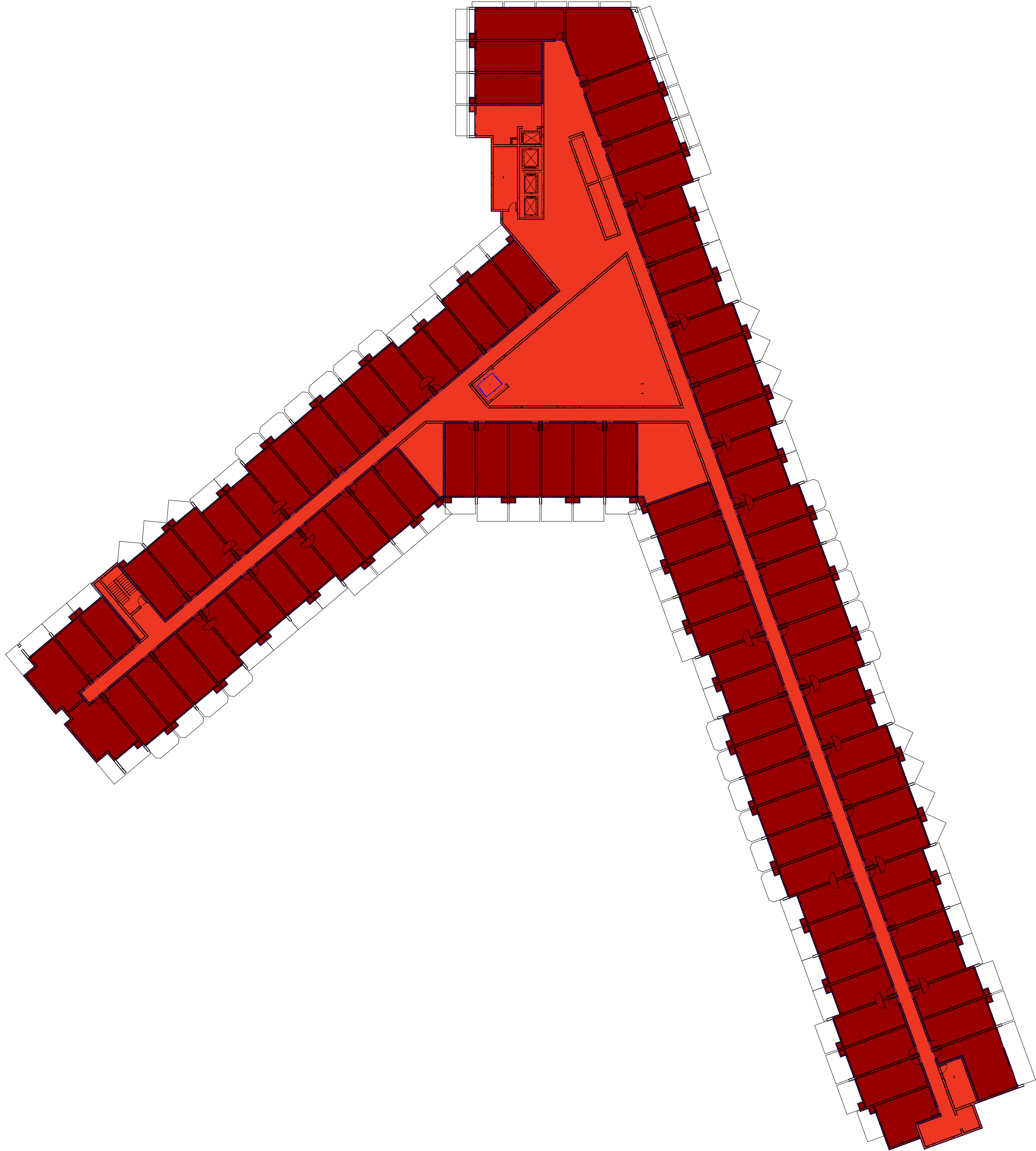
MCP S.F. - 3RD
FLOOR

SHEET NUMBER:

X-107-FAR.02

JOB/FILE NUMBER:

30479



MASTER CONCEPT PLAN -
SQUARE FOOTAGE

SQUARE FOOTAGE PER USE						
NORTH OF ESTERO (BAYSIDE)	USE	1ST / GRADE	2ND FLOOR	3RD FLOOR	4TH FLOOR /	TOTAL
	PARKING	95,751 S.F.	0 S.F.	0 S.F.	0 S.F.	95,751 S.F.
	GUEST UNIT	0 S.F.	14,500 S.F.	33,395 S.F.	36,850 S.F.	84,745 S.F.
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PEDESTRIAN OVERPASS						
	ACCESS TO PEDESTRIAN BRIDGE	663 S.F.	2,028 S.F.	0 S.F.	0 S.F.	2,691 S.F.
SOUTH OF ESTERO (BEACHSIDE)						
	RESTAURANT	7,200 S.F.	8,670 S.F.	0 S.F.	0 S.F.	15,870 S.F.
	INDOOR STORAGE	2,000 S.F.	0 S.F.	0 S.F.	0 S.F.	2,000 S.F.
	OUTDOOR REC. RESTROOMS	2,508 S.F.	0 S.F.	0 S.F.	0 S.F.	2,508 S.F.
	RESTAURANT - PRIVATE REST.	2,030 S.F.	1,756 S.F.	0 S.F.	0 S.F.	3,786 S.F.
	ADMIN OFFICES	0 S.F.	0 S.F.	1,800 S.F.	0 S.F.	1,800 S.F.
	GUEST UNIT	0 S.F.	0 S.F.	5,340 S.F.	6,000 S.F.	11,340 S.F.
	GUEST UNIT ACCESSORY	320 S.F.	320 S.F.	2,870 S.F.	2,080 S.F.	5,590 S.F.
TOTALS		112,244 S.F.	64,314 S.F.	60,980 S.F.	58,830 S.F.	296,368 S.F.

PROJECT:

A PROPOSED
FMB/TPI
JOINT EFFORT TO
RESTORE AND TO
REINVIGORATE THE
DOWNTOWN BEACH
AREA

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
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CONSULTANTS:

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2891 CENTER POINTE DRIVE, UNIT 100
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PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS

DATE

PROJECT MANAGER:

JDH

DRAWING BY:

ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE:

-

SHEET TITLE:

MCP S.F. - 4TH
FLOOR

SHEET NUMBER:

X-108-FAR.03

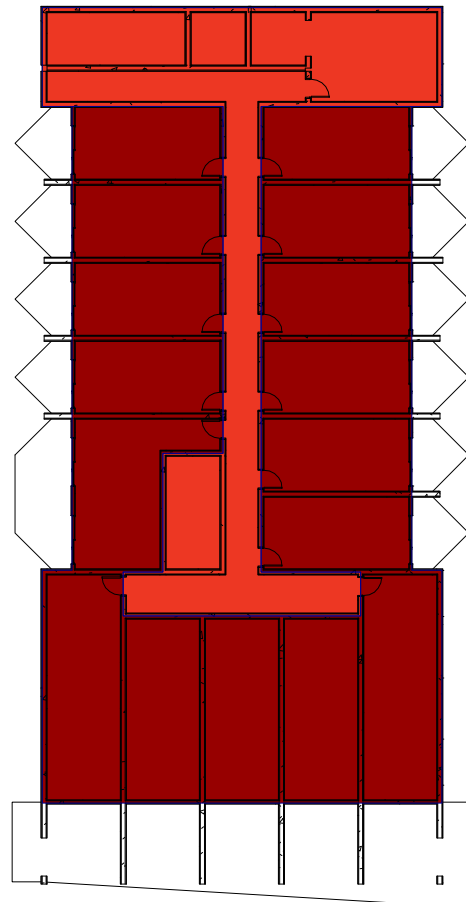
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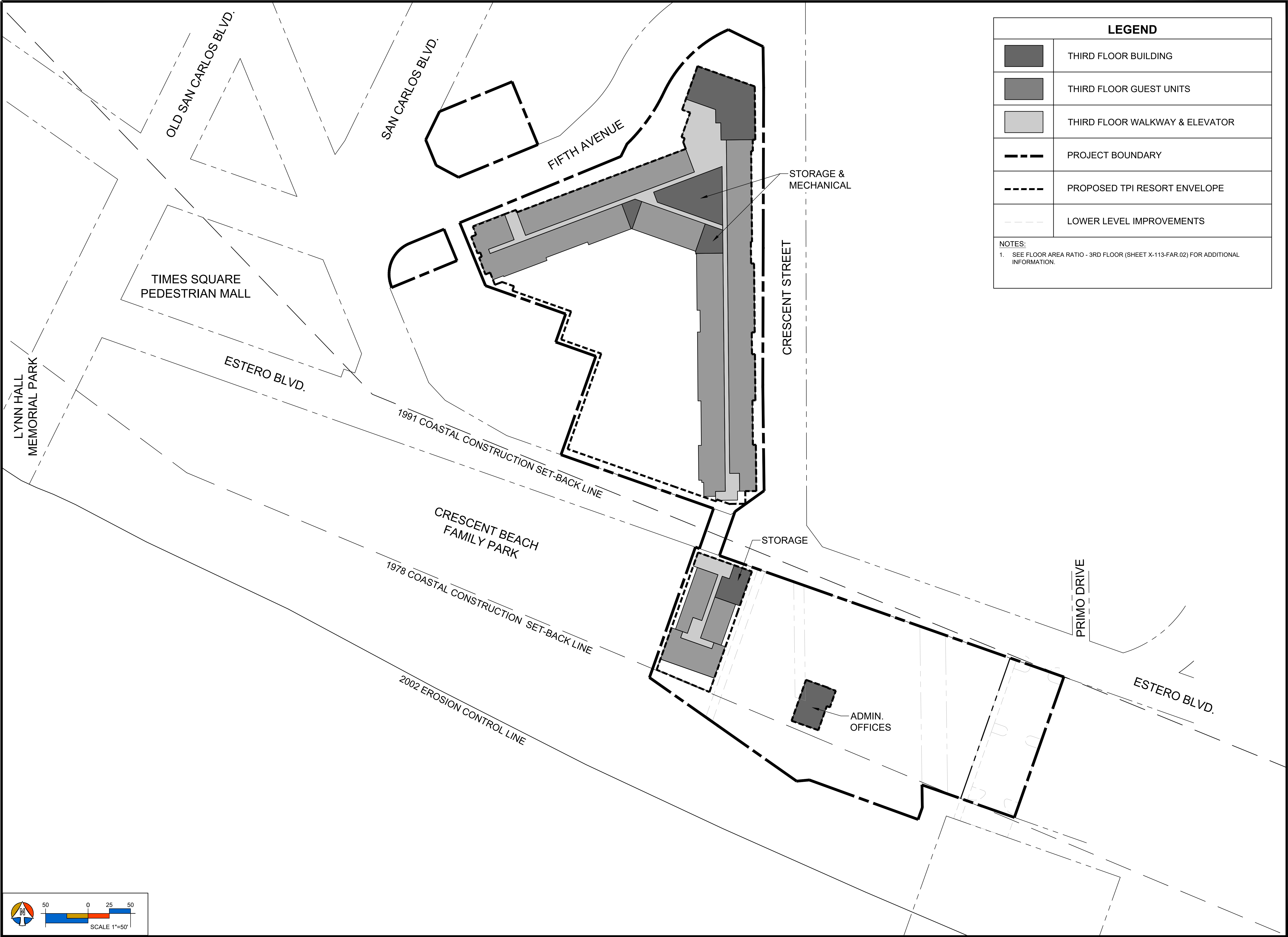
30479

MCP FAR BREAKDOWN - FOURTH

FLOOR

1/32" = 1'-0"





LEGEND

	THIRD FLOOR BUILDING
	THIRD FLOOR GUEST UNITS
	THIRD FLOOR WALKWAY & ELEVATOR
	PROJECT BOUNDARY
	PROPOSED TPI RESORT ENVELOPE
	LOWER LEVEL IMPROVEMENTS

NOTES:
1. SEE FLOOR AREA RATIO - 3RD FLOOR (SHEET X-113-FAR.02) FOR ADDITIONAL INFORMATION.

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

TPI HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

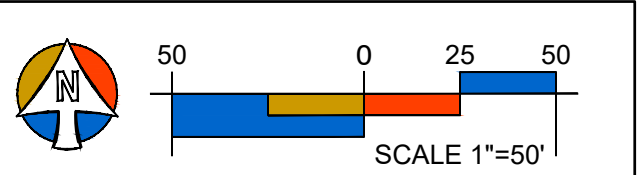
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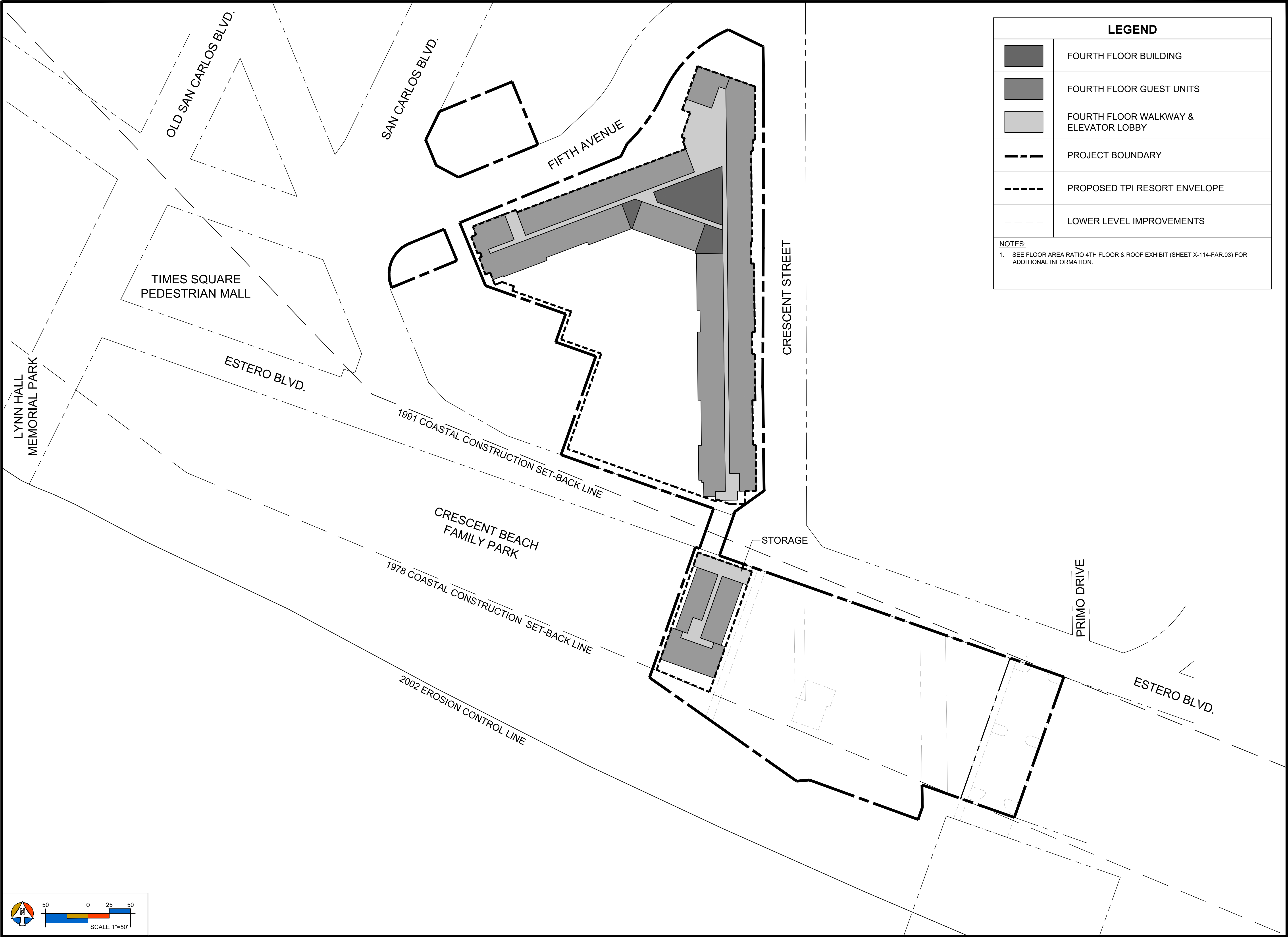
ARCHITECT
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TRANSPORTATION
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FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	6/8/2018
SHEET TITLE:	
MASTER CONCEPT PLAN THIRD FLOOR	
SHEET NUMBER:	X-111-MCP.02
JOB/FILE NUMBER:	15069-14





LEGEND

	FOURTH FLOOR BUILDING
	FOURTH FLOOR GUEST UNITS
	FOURTH FLOOR WALKWAY & ELEVATOR LOBBY
	PROJECT BOUNDARY
	PROPOSED TPI RESORT ENVELOPE
	LOWER LEVEL IMPROVEMENTS

NOTES:
1. SEE FLOOR AREA RATIO 4TH FLOOR & ROOF EXHIBIT (SHEET X-114-FAR.03) FOR ADDITIONAL INFORMATION.

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:



TPI HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

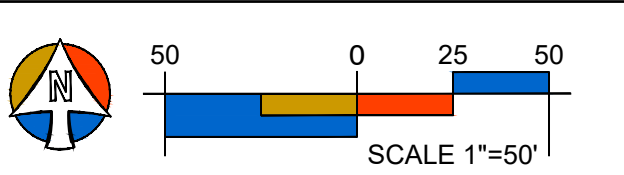
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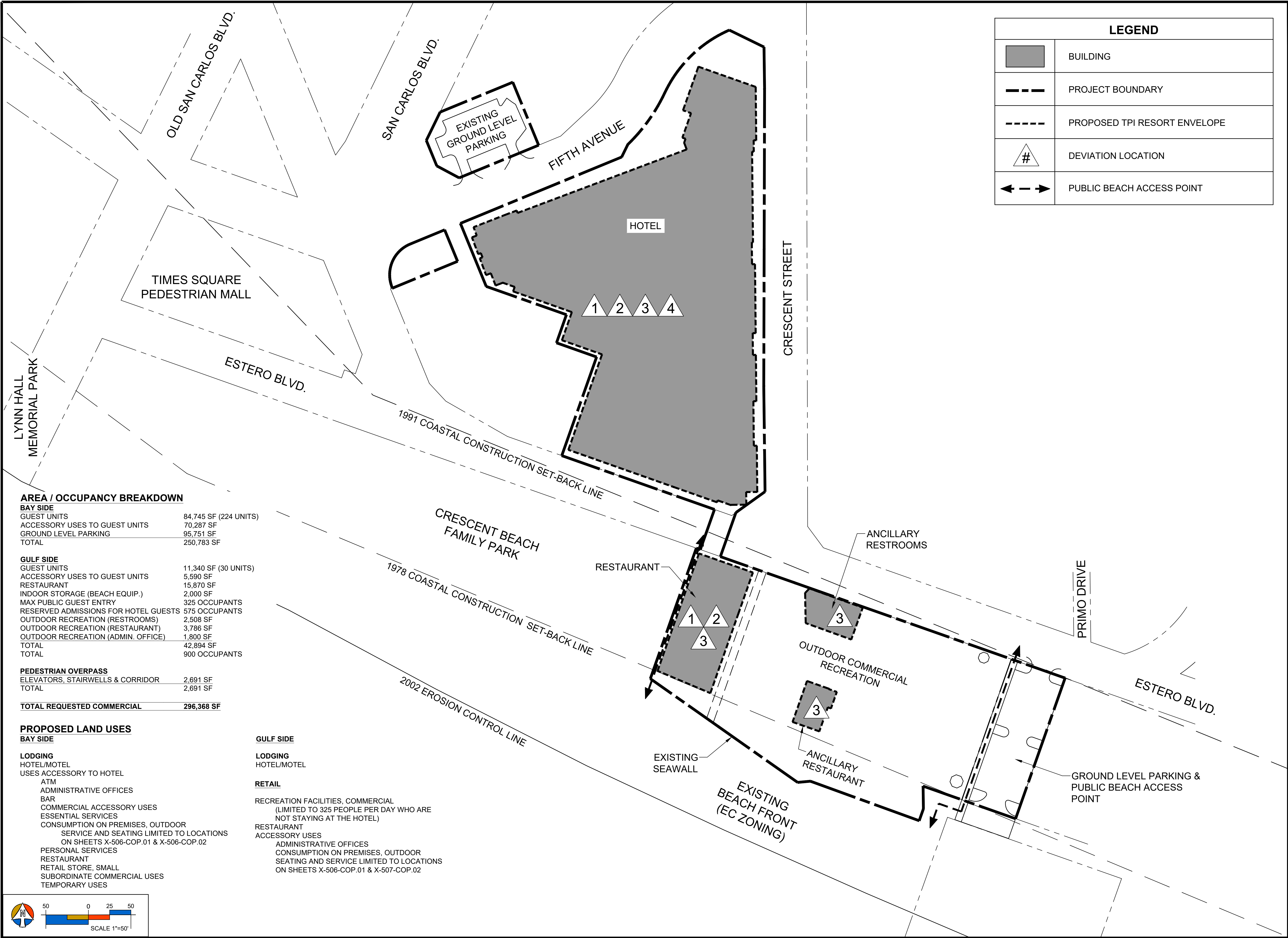
ARCHITECT
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FORT MYERS, FL 33901
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REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	6/8/2018
SHEET TITLE:	MASTER CONCEPT PLAN FOURTH FLOOR
SHEET NUMBER:	X-112-MCP.03
JOB/FILE NUMBER:	15069-14





LEGEND	
	BUILDING
	PROJECT BOUNDARY
	PROPOSED TPI RESORT ENVELOPE
	DEVIATION LOCATION
	PUBLIC BEACH ACCESS POINT

AREA / OCCUPANCY BREAKDOWN

BAY SIDE	
GUEST UNITS	84,745 SF (224 UNITS)
ACCESSORY USES TO GUEST UNITS	70,287 SF
GROUND LEVEL PARKING	95,751 SF
TOTAL	250,783 SF

GULF SIDE	
GUEST UNITS	11,340 SF (30 UNITS)
ACCESSORY USES TO GUEST UNITS	5,590 SF
RESTAURANT	15,870 SF
INDOOR STORAGE (BEACH EQUIP.)	2,000 SF
MAX PUBLIC GUEST ENTRY	325 OCCUPANTS
RESERVED ADMISSIONS FOR HOTEL GUESTS	575 OCCUPANTS
OUTDOOR RECREATION (RESTROOMS)	2,508 SF
OUTDOOR RECREATION (RESTAURANT)	3,786 SF
OUTDOOR RECREATION (ADMIN. OFFICE)	1,800 SF
TOTAL	42,894 SF
TOTAL	900 OCCUPANTS

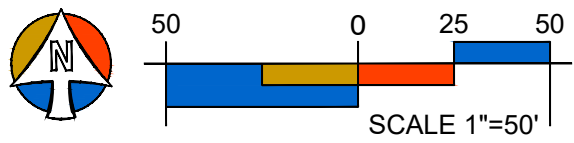
PEDESTRIAN OVERPASS	
ELEVATORS, STAIRWELLS & CORRIDOR	2,691 SF
TOTAL	2,691 SF

TOTAL REQUESTED COMMERCIAL	296,368 SF
----------------------------	------------

PROPOSED LAND USES

BAY SIDE	
LODGING	
HOTEL/MOTEL	
USES ACCESSORY TO HOTEL	
ATM	
ADMINISTRATIVE OFFICES	
BAR	
COMMERCIAL ACCESSORY USES	
ESSENTIAL SERVICES	
CONSUMPTION ON PREMISES, OUTDOOR	
SERVICE AND SEATING LIMITED TO LOCATIONS	
ON SHEETS X-506-COP.01 & X-506-COP.02	
PERSONAL SERVICES	
RESTAURANT	
RETAIL STORE, SMALL	
SUBORDINATE COMMERCIAL USES	
TEMPORARY USES	

GULF SIDE	
LODGING	
HOTEL/MOTEL	
RETAIL	
RECREATION FACILITIES, COMMERCIAL	
(LIMITED TO 325 PEOPLE PER DAY WHO ARE	
NOT STAYING AT THE HOTEL)	
RESTAURANT	
ACCESSORY USES	
ADMINISTRATIVE OFFICES	
CONSUMPTION ON PREMISES, OUTDOOR	
SEATING AND SERVICE LIMITED TO LOCATIONS	
ON SHEETS X-506-COP.01 & X-507-COP.02	



PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

TPI HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

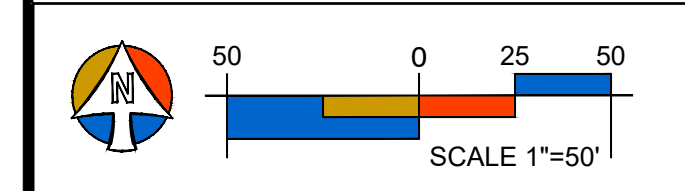
CONSULTANTS:

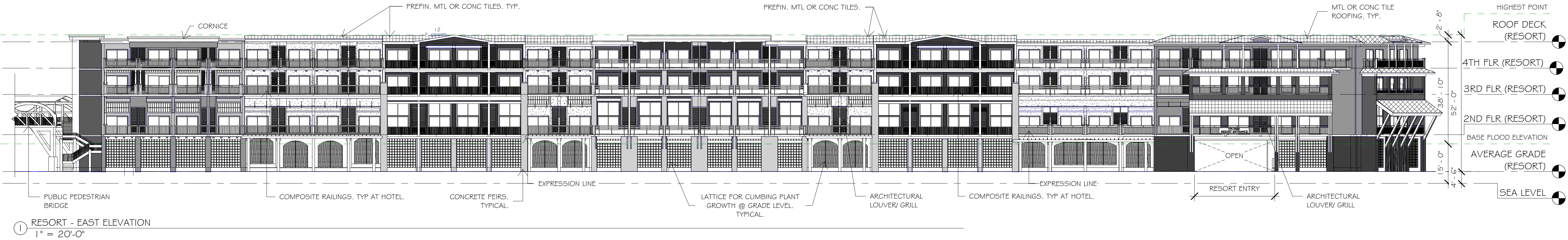
ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

PLANNING, CIVIL, SURVEY & LANDSCAPE ARCHITECTURE
MORRIS-DEPEW ASSOCIATES, INC.
2914 CLEVELAND AVENUE
FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

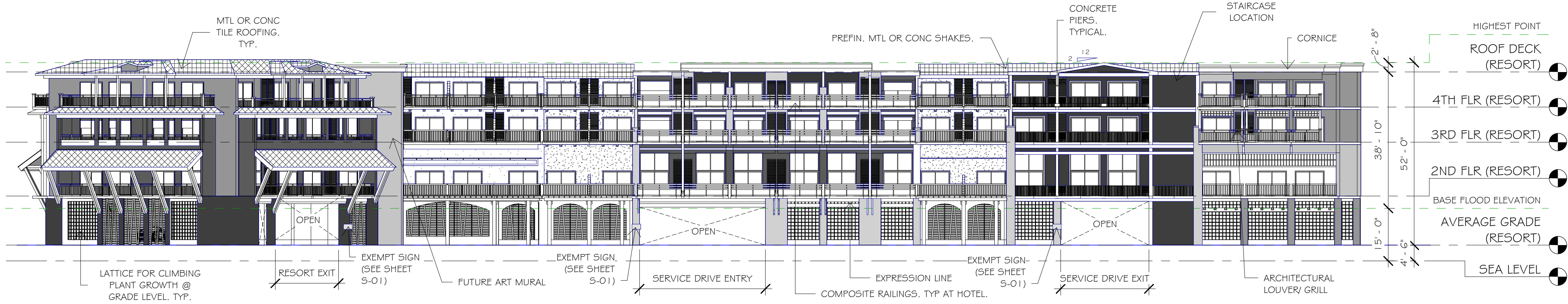
TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	6/8/2018
SHEET TITLE:	
MASTER CONCEPT PLAN DEVIATIONS AND NOTES	
SHEET NUMBER:	X-113-MCP.04
JOB/FILE NUMBER:	15069-14

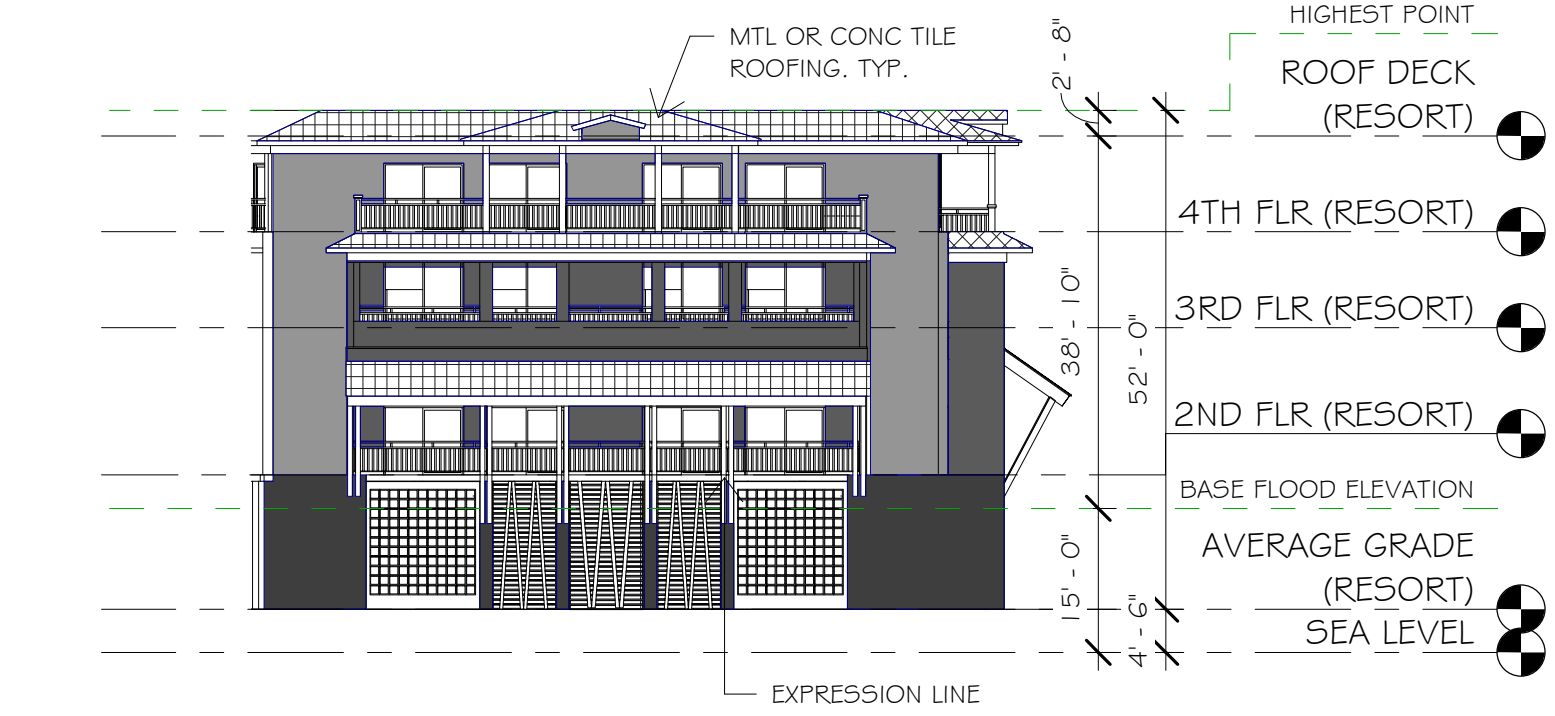




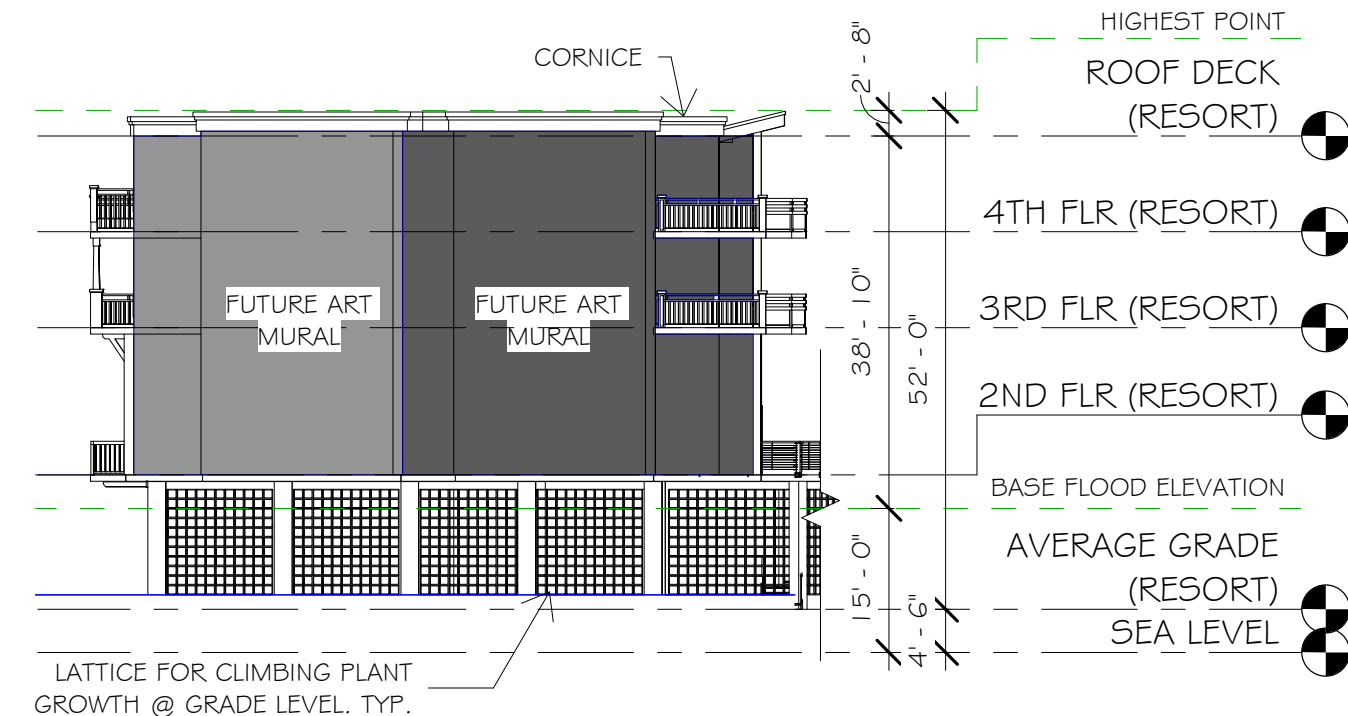
1 RESORT - EAST ELEVATION
1" = 20'-0"



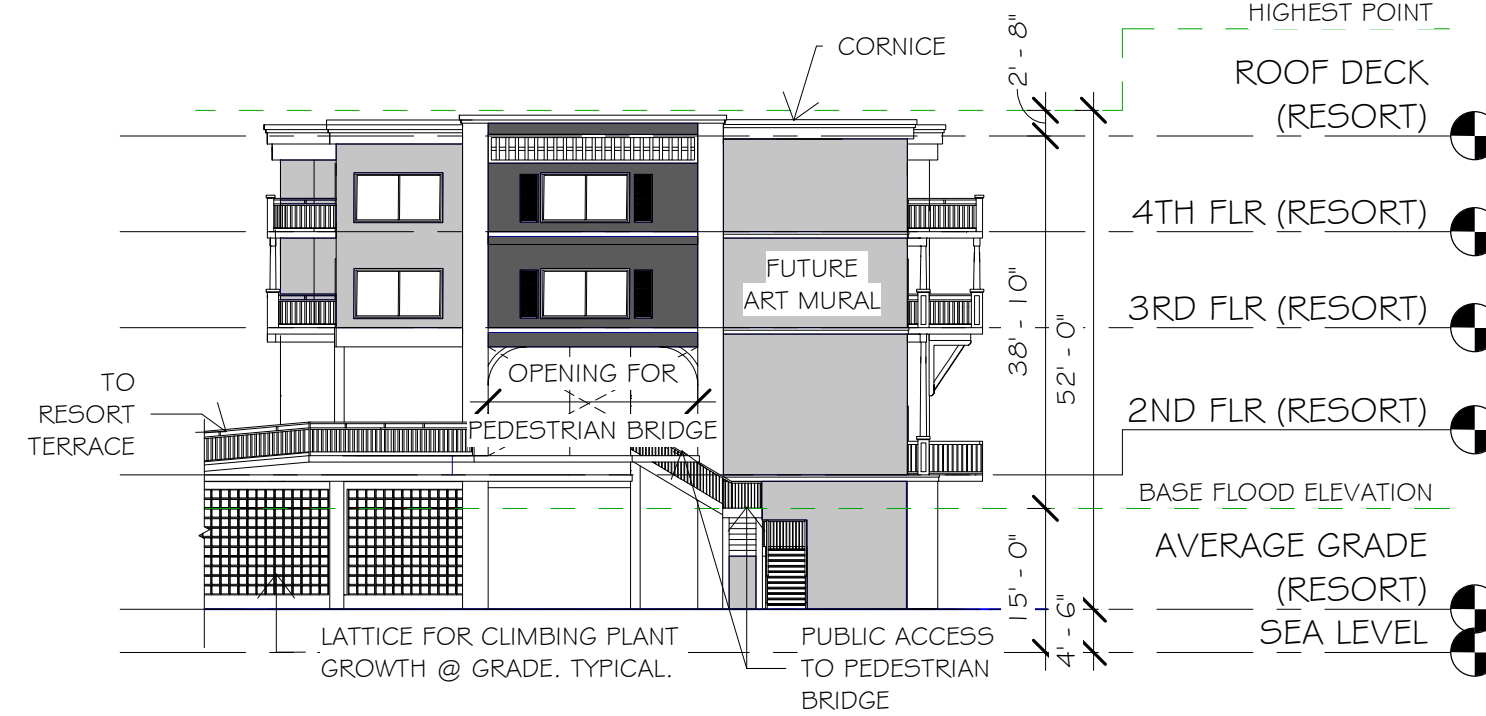
3 RESORT - NORTHWEST ELEVATION
1" = 20'-0"



2 RESORT - NORTH END ELEVATION
1" = 20'-0"



4 RESORT - SW END ELEVATION
1" = 20'-0"



8 RESORT - SE END ELEVATION
1" = 20'-0"

EXTERIOR MATERIALS LEGEND	
	STUCCO COLOR #1
	STUCCO COLOR #2
	STUCCO COLOR #3
	STUCCO COLOR #4
	STUCCO COLOR #5
	STUCCO COLOR #6
	STUCCO COLOR #7
	STUCCO COLOR #8
	TYP. ROOFING

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

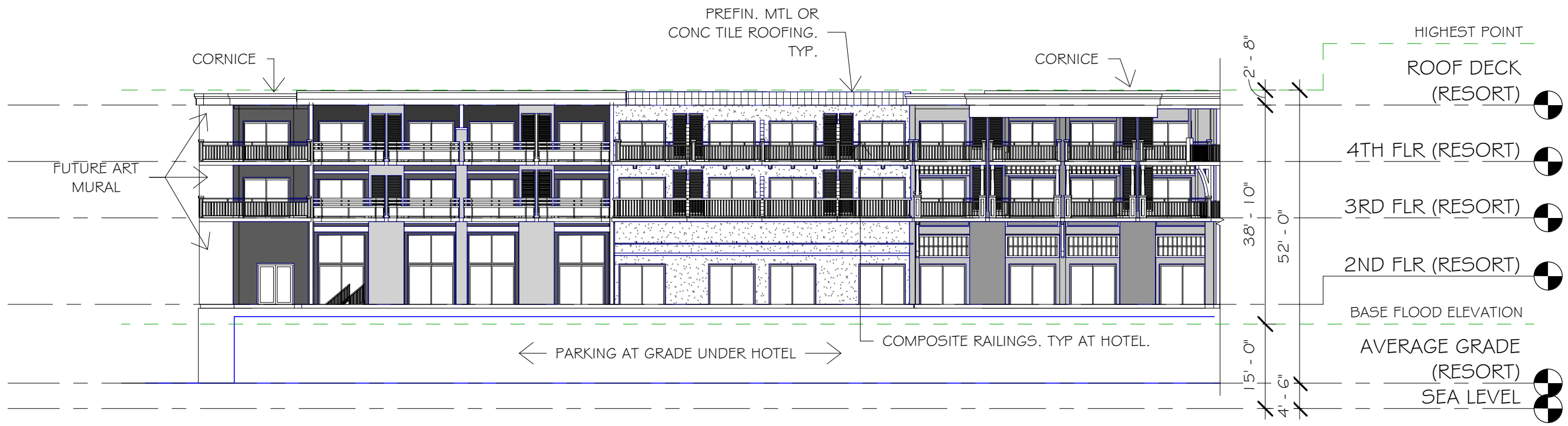
CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

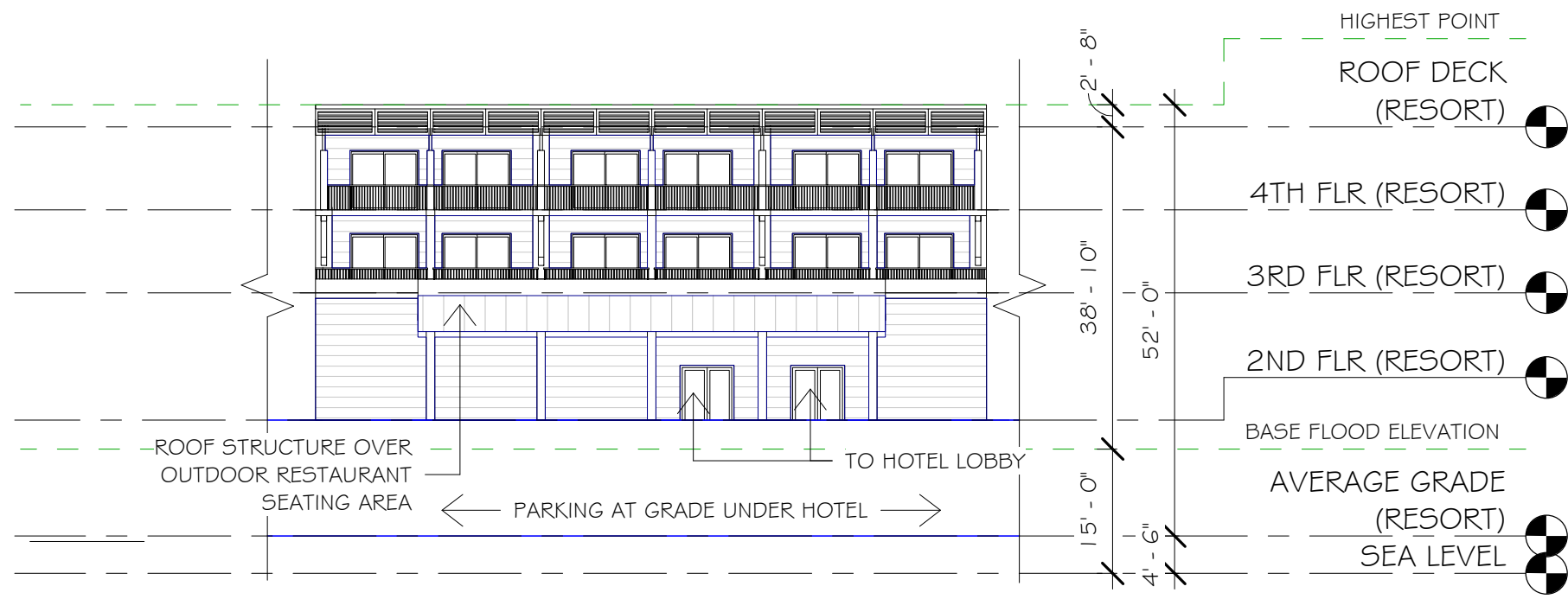
PLANNING, CIVIL, SURVEY & LANDSCAPE ARCHITECTURE
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

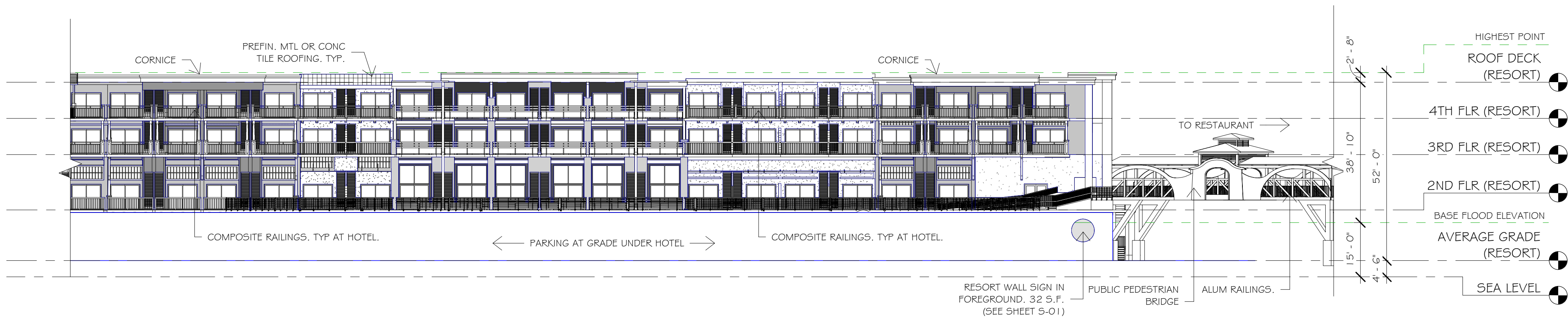
REVISIONS	DATE
PROJECT MANAGER:	JDH
DRAWING BY:	ADO
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	-
SHEET TITLE:	EXTERIOR ELEVATIONS
SHEET NUMBER:	X-A201
JOB/FILE NUMBER:	30479



RESORT - INTERIOR COURTYARD - WEST
ELEVATION
② 1" = 20'-0"



RESORT - INTERIOR COURTYARD -
NORTH ELEVATION
② 1" = 20'-0"



RESORT - INTERIOR COURTYARD - EAST
ELEVATION
② 1" = 20'-0"

EXTERIOR MATERIALS LEGEND	
	STUCCO COLOR #1
	STUCCO COLOR #2
	STUCCO COLOR #3
	STUCCO COLOR #4
	STUCCO COLOR #5
	STUCCO COLOR #6
	STUCCO COLOR #7
	STUCCO COLOR #8
	TYP. ROOFING

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

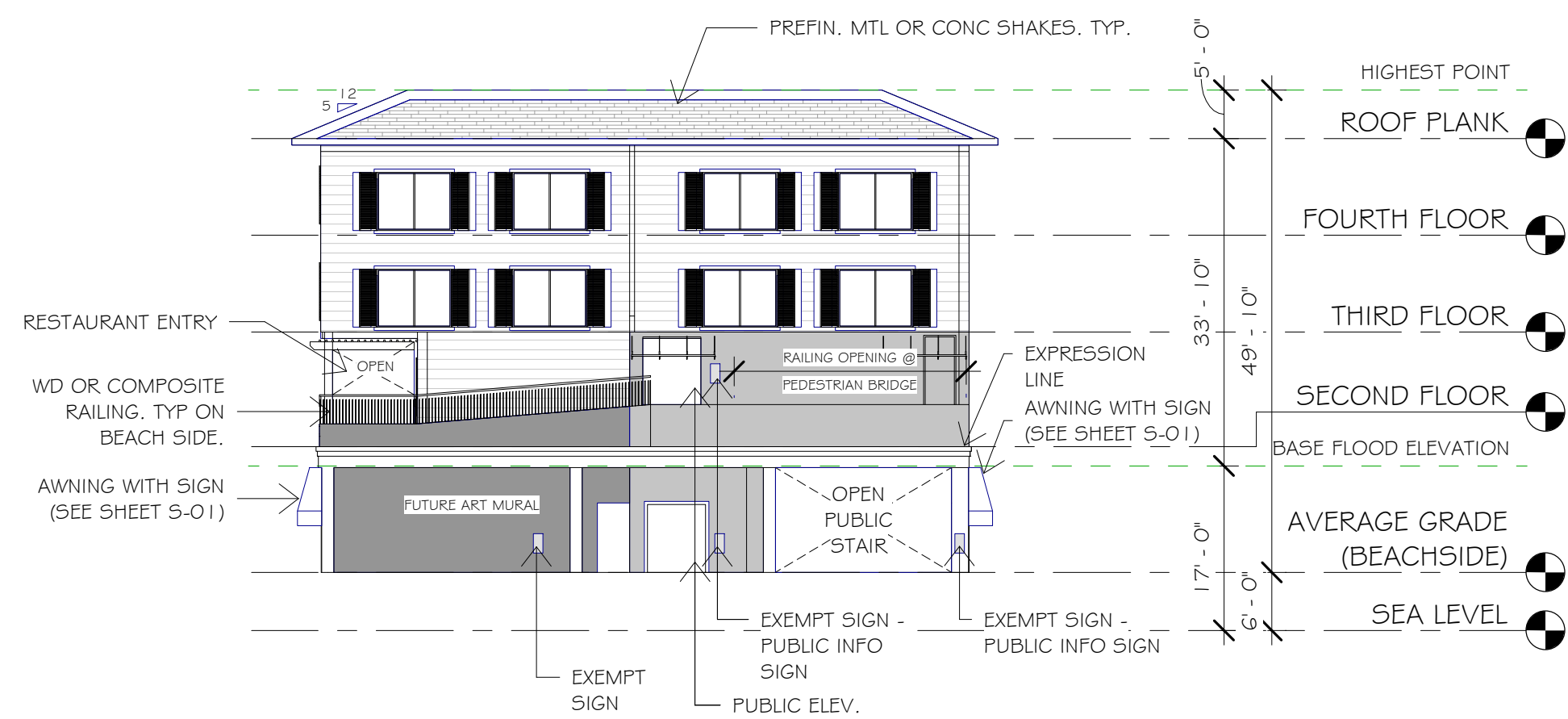
ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

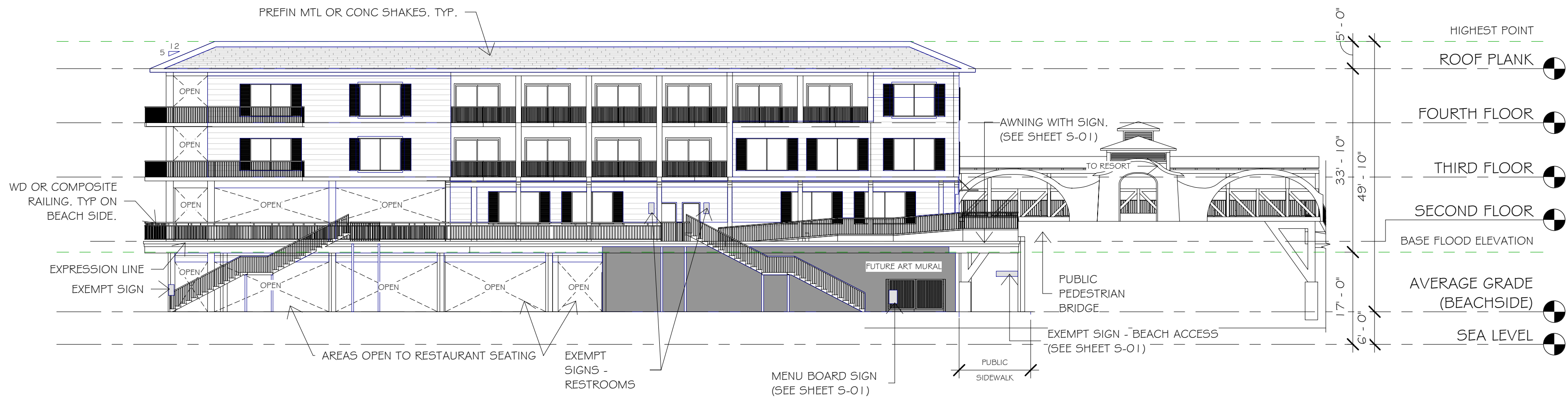
TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	JDH
DRAWING BY:	ADO
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	-
SHEET TITLE:	EXTERIOR ELEVATIONS
SHEET NUMBER:	X-A202
JOB/FILE NUMBER:	30479

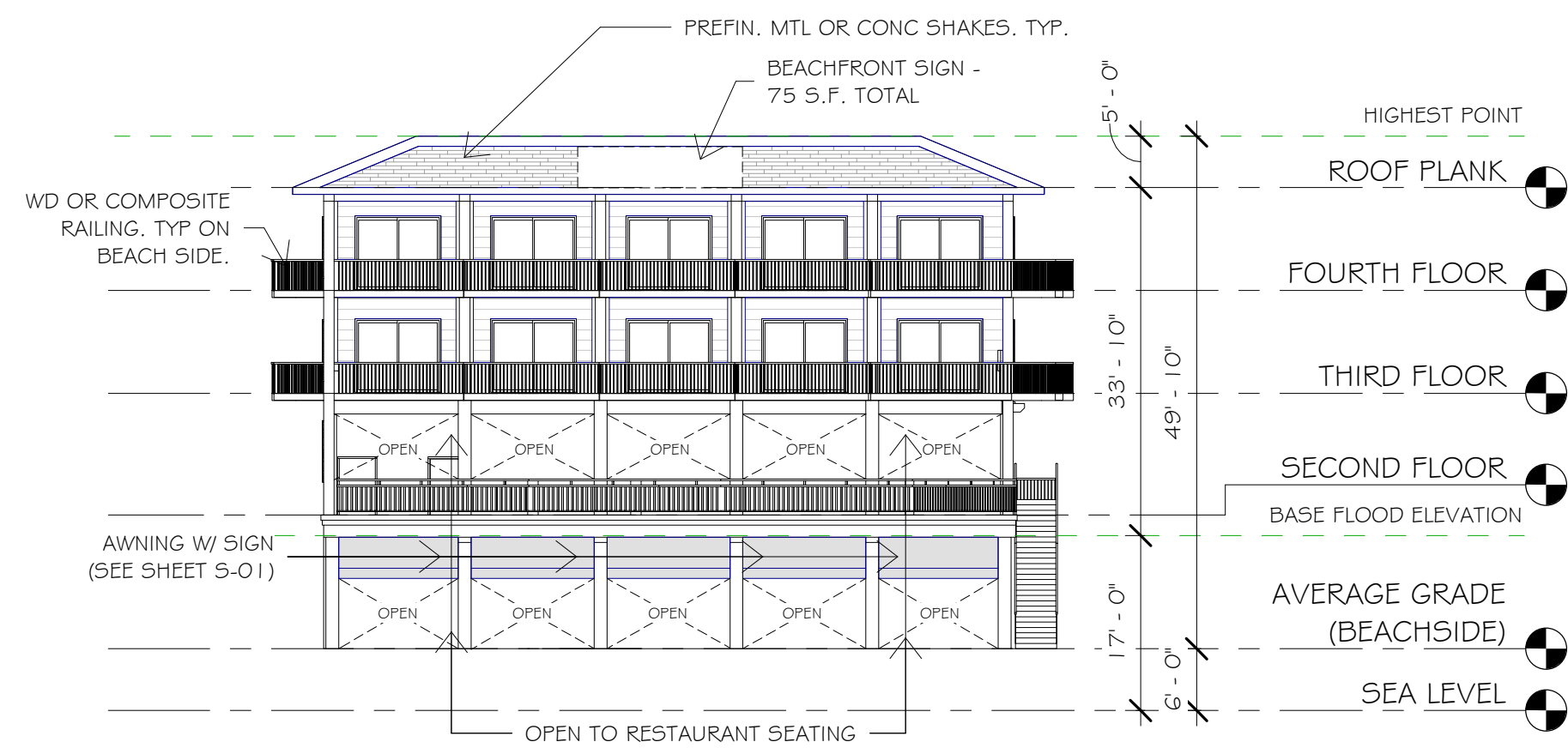
RESTAURANT



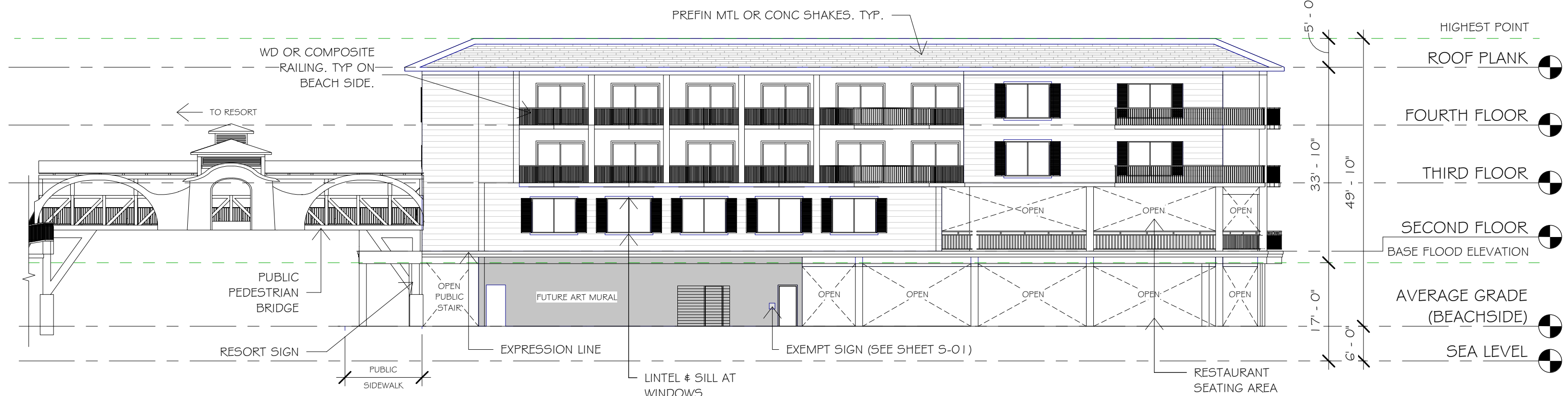
BEACHSIDE RESTAURANT - NORTH
ELEVATION
1/16" = 1'-0"



BEACHSIDE RESTAURANT - EAST
ELEVATION
1/16" = 1'-0"

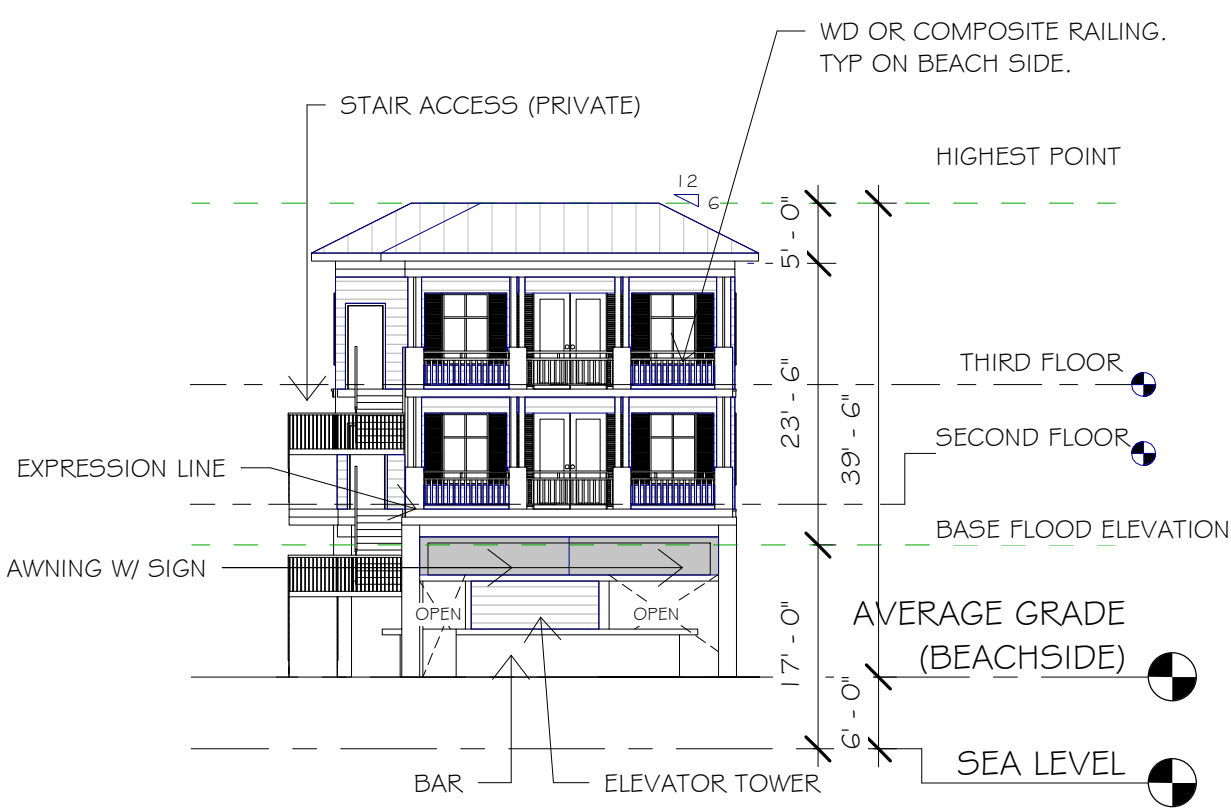


BEACHSIDE RESTAURANT - SOUTH
ELEVATION
1/16" = 1'-0"

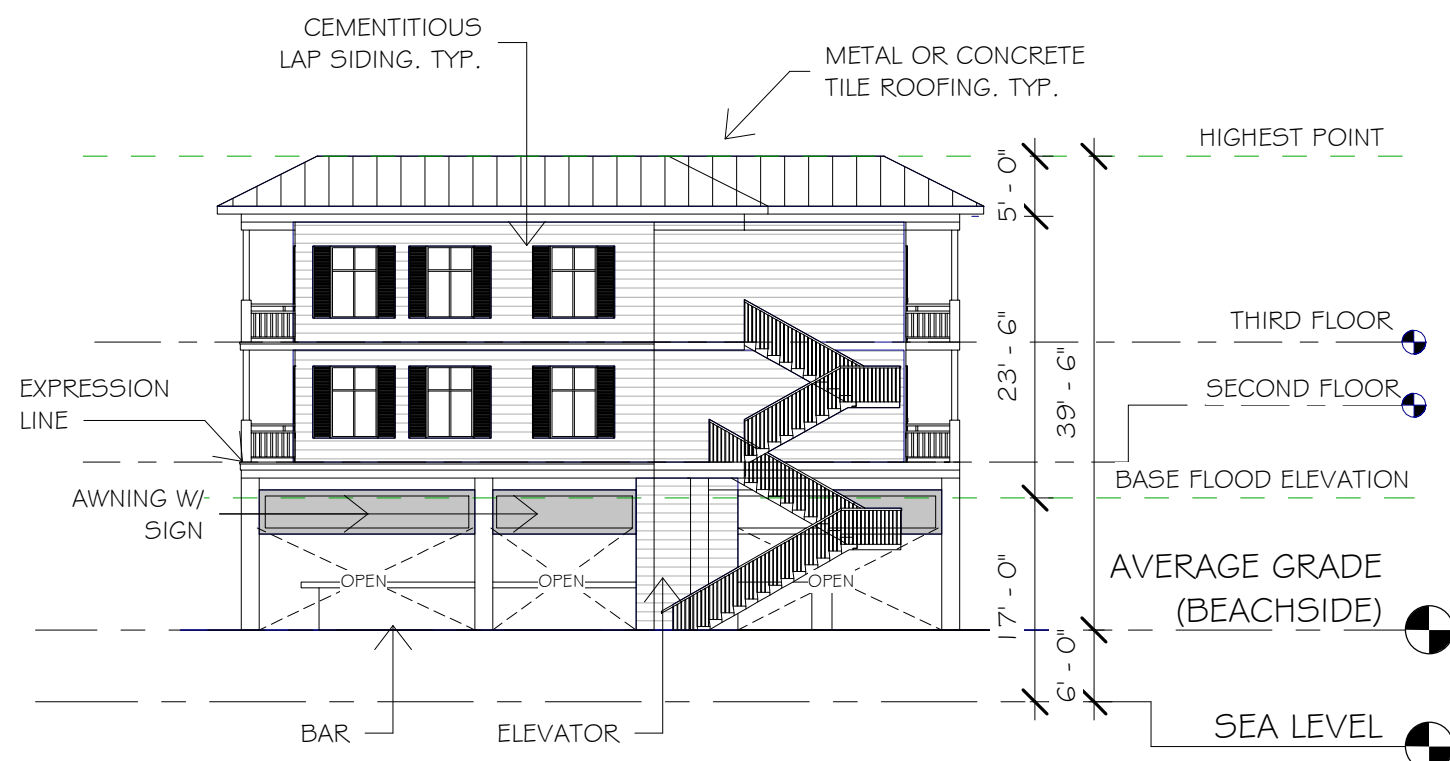


BEACHSIDE RESTAURANT - WEST
ELEVATION
1/16" = 1'-0"

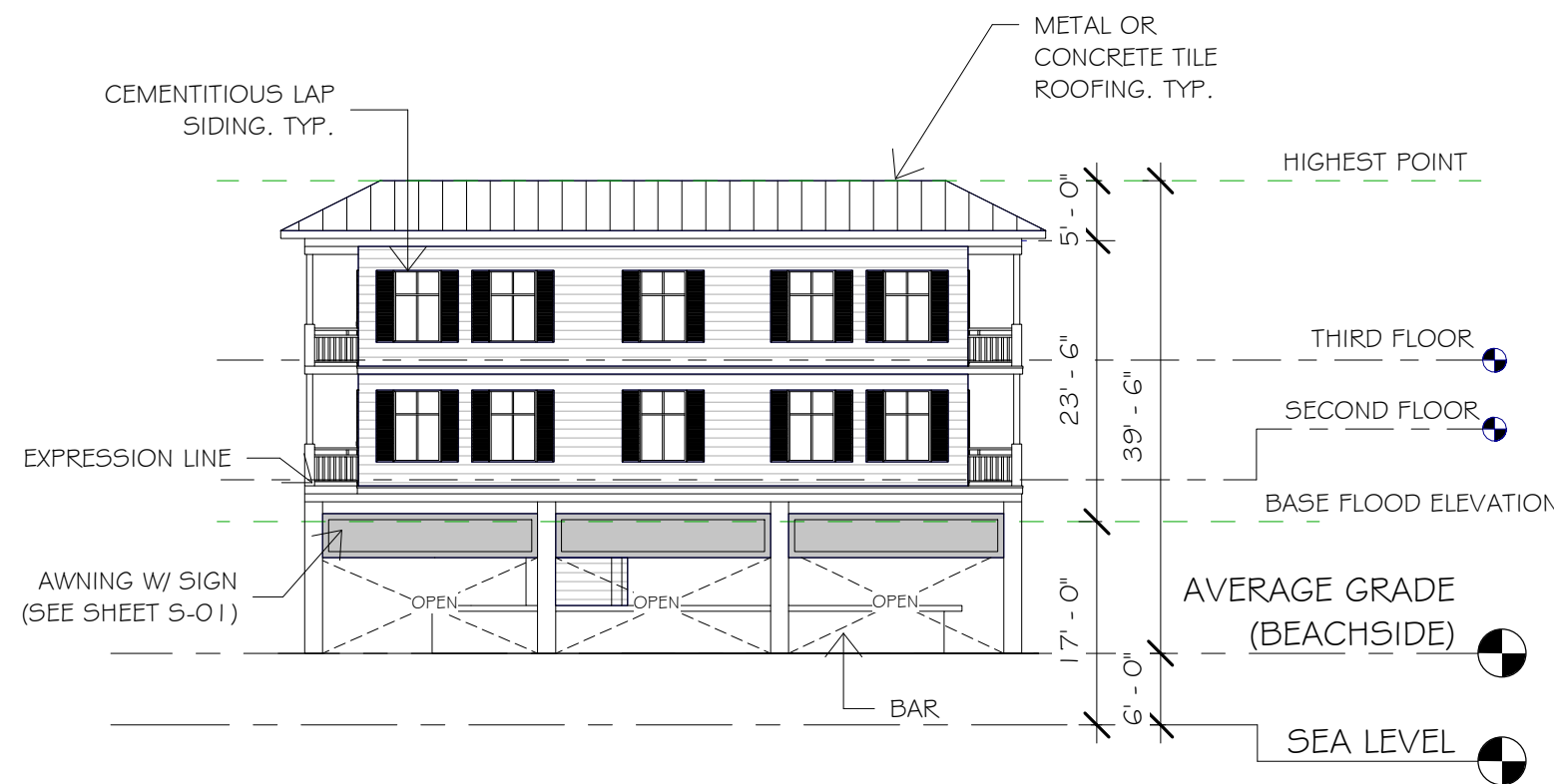
POOL VENUE



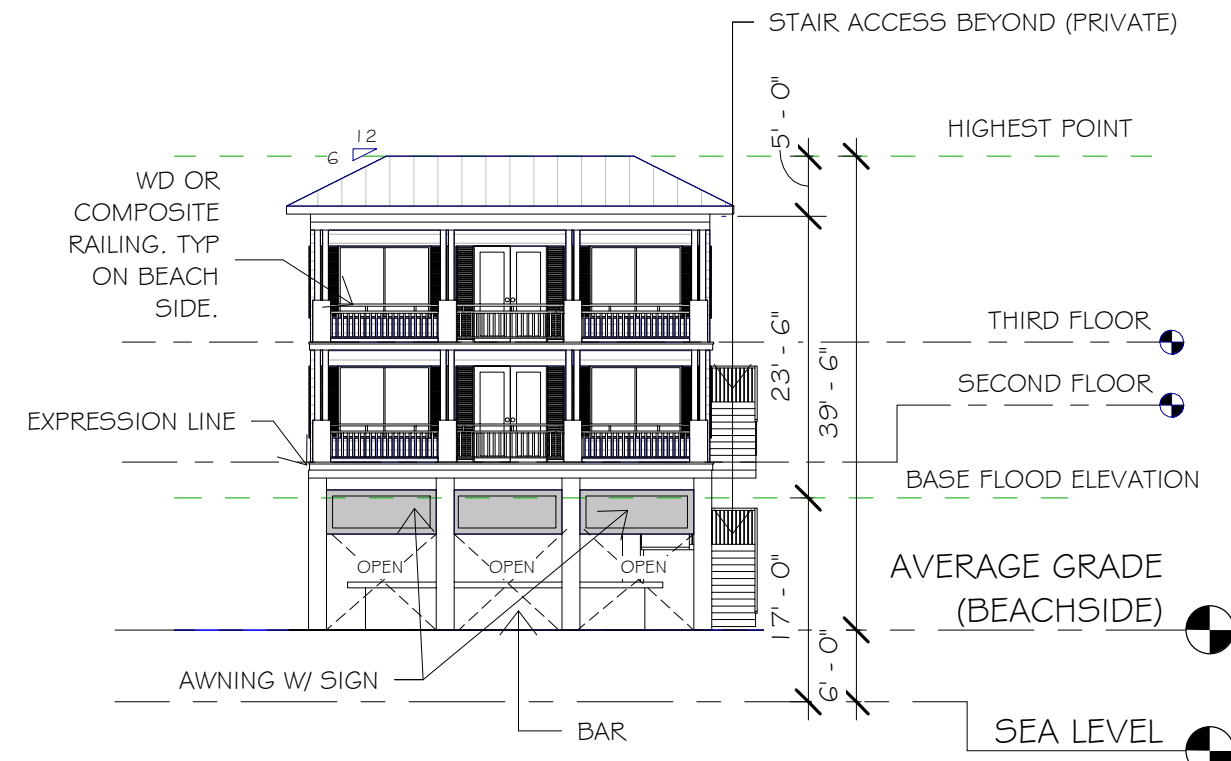
POOL BAR - NORTH ELEVATION
1/16" = 1'-0"



POOL BAR - WEST ELEVATION
1/16" = 1'-0"



POOL BAR - EAST ELEVATION
1/16" = 1'-0"



POOL BAR - SOUTH ELEVATION
1/16" = 1'-0"

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS DATE

PROJECT MANAGER: Checker

DRAWING BY: Author

JURISDICTION: TOWN OF FORT MYERS BEACH

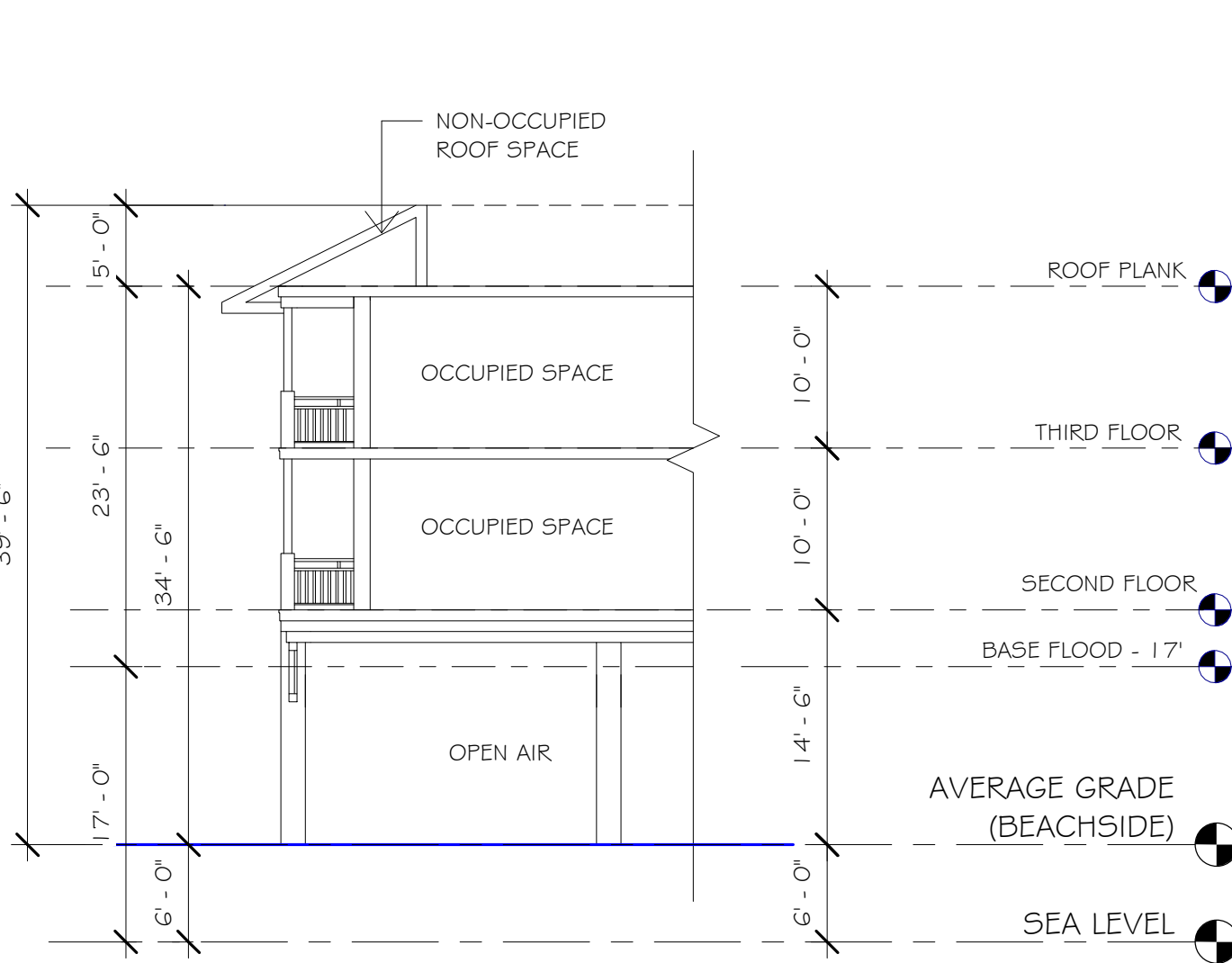
DATE: -

SHEET TITLE:

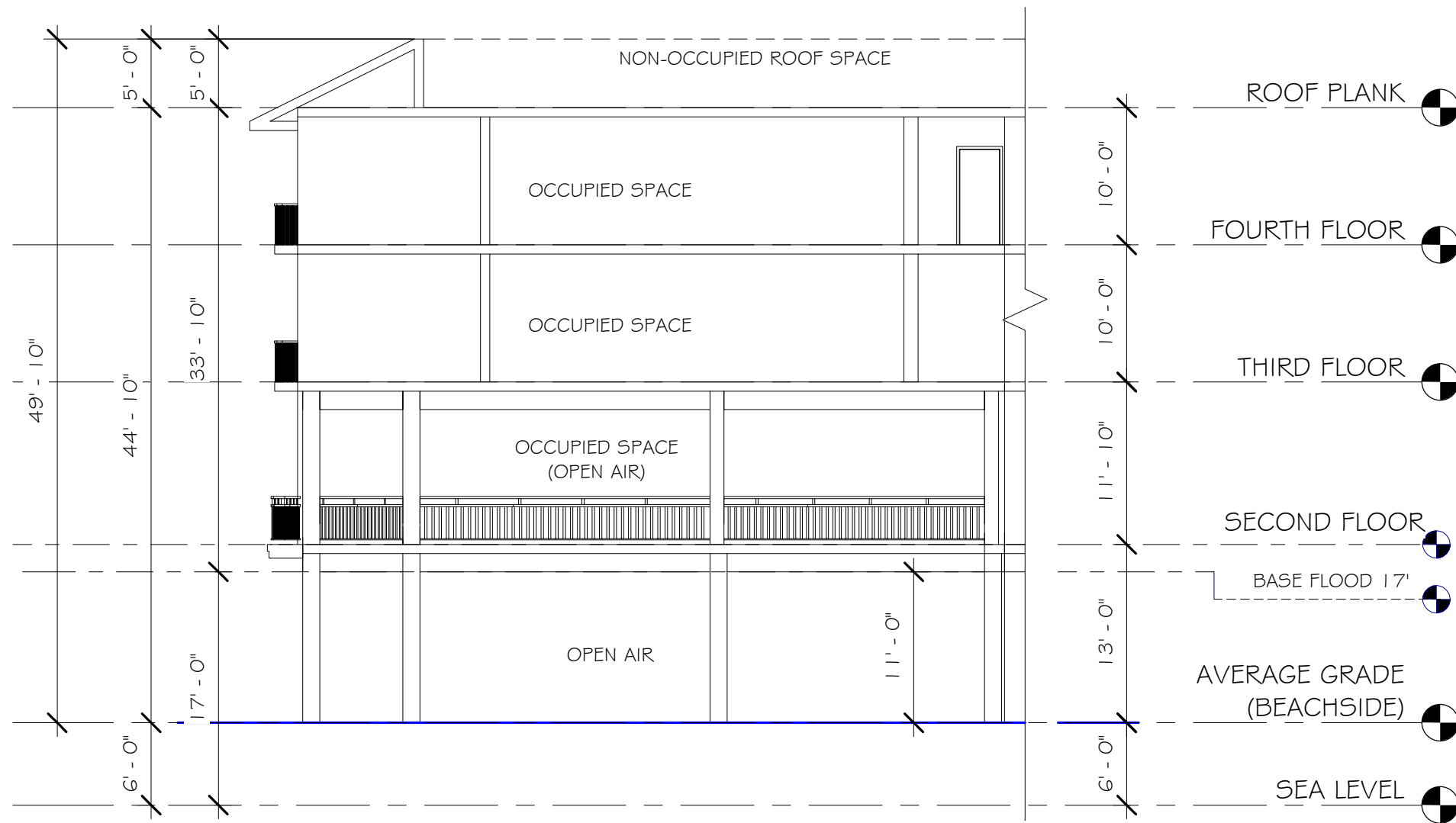
EXTERIOR
ELEVATIONS

SHEET NUMBER: X-A203

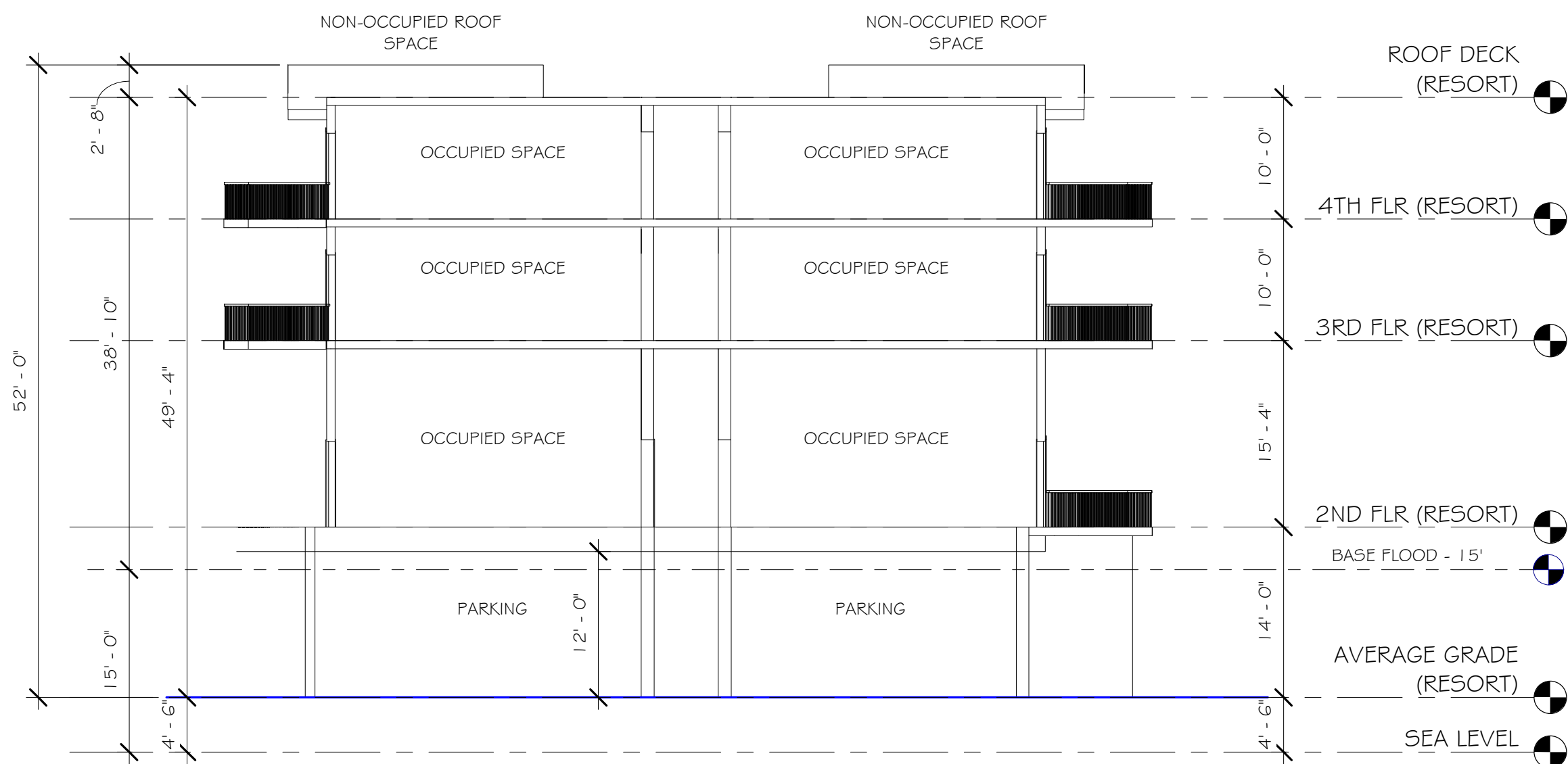
JOB/FILE NUMBER: 30479



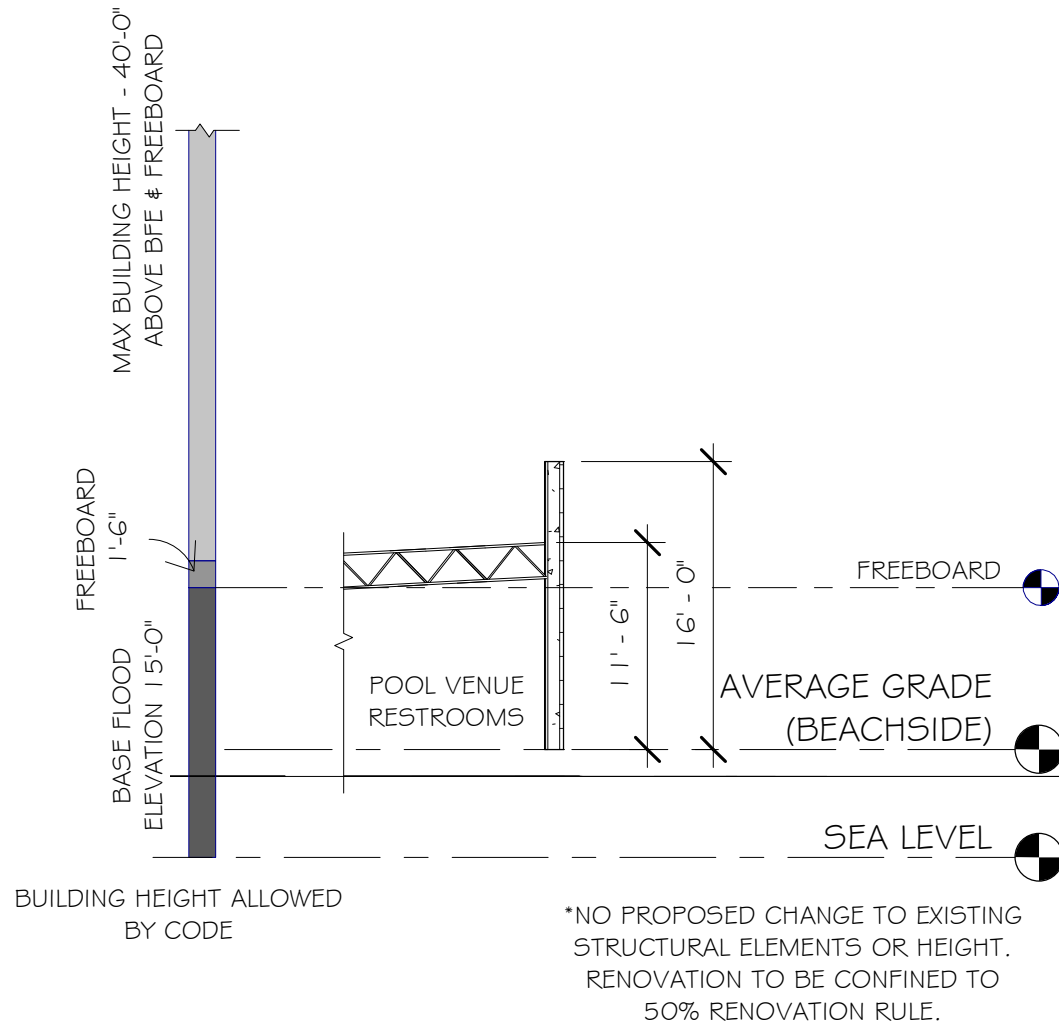
① SCHEMATIC BUILDING SECTION - BAR
BUILDING INSIDE AQUATICS VENUE
3/32" = 1'-0"



② SCHEMATIC BUILDING SECTION -
BEACHSIDE RESTAURANT
3/32" = 1'-0"



③ SCHEMATIC BUILDING SECTION - HOTEL
BUILDING
3/32" = 1'-0"



④ SCHEMATIC BUILDING SECTION @ POOL
VENUE RESTROOMS
3/32" = 1'-0"

(EXISTING BUILDING)

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS DATE

PROJECT MANAGER: JDH

DRAWING BY: ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

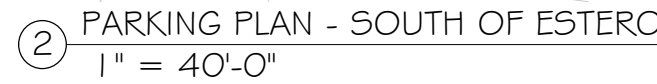
DATE: -

SHEET TITLE:

BUILDING
SECTIONS

SHEET NUMBER: X-A301

JOB/FILE NUMBER: 30479



Friday, April 20, 2018

TOTAL REQUIRED WITH 67% DOWNTOWN REDUCTION FACTOR APPLIED	357
--	------------

PARKING PLAN NOTES:

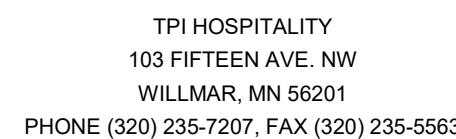
**MINOR MODIFICATIONS MAY BE NECESSARY AS WE FULLY DEVELOP THE STRUCTURAL DESIGN AND LOCATE COLUMNS MORE PRECISELY. **

PROJECT:

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



CONSULTANTS:

RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

MORRIS DEPEW
2891 CENTER POINTE DRIVE, UNIT 100
FORT MYERS, FL 33916
PHONE (239) 337-3993, FAX (239) 337-3994

DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
-----------	------

PROJECT MANAGER: JDH

DRAWING BY: ADO

JURISDICTION: TOWN OF FORT MYERS BEACH

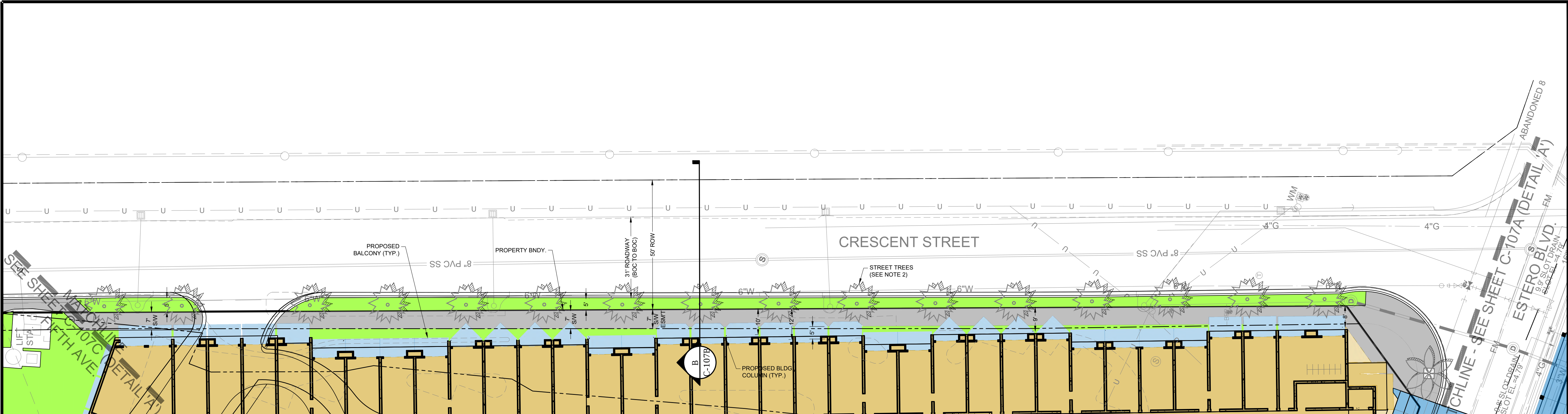
DATE: _____

SHEET TITLE:

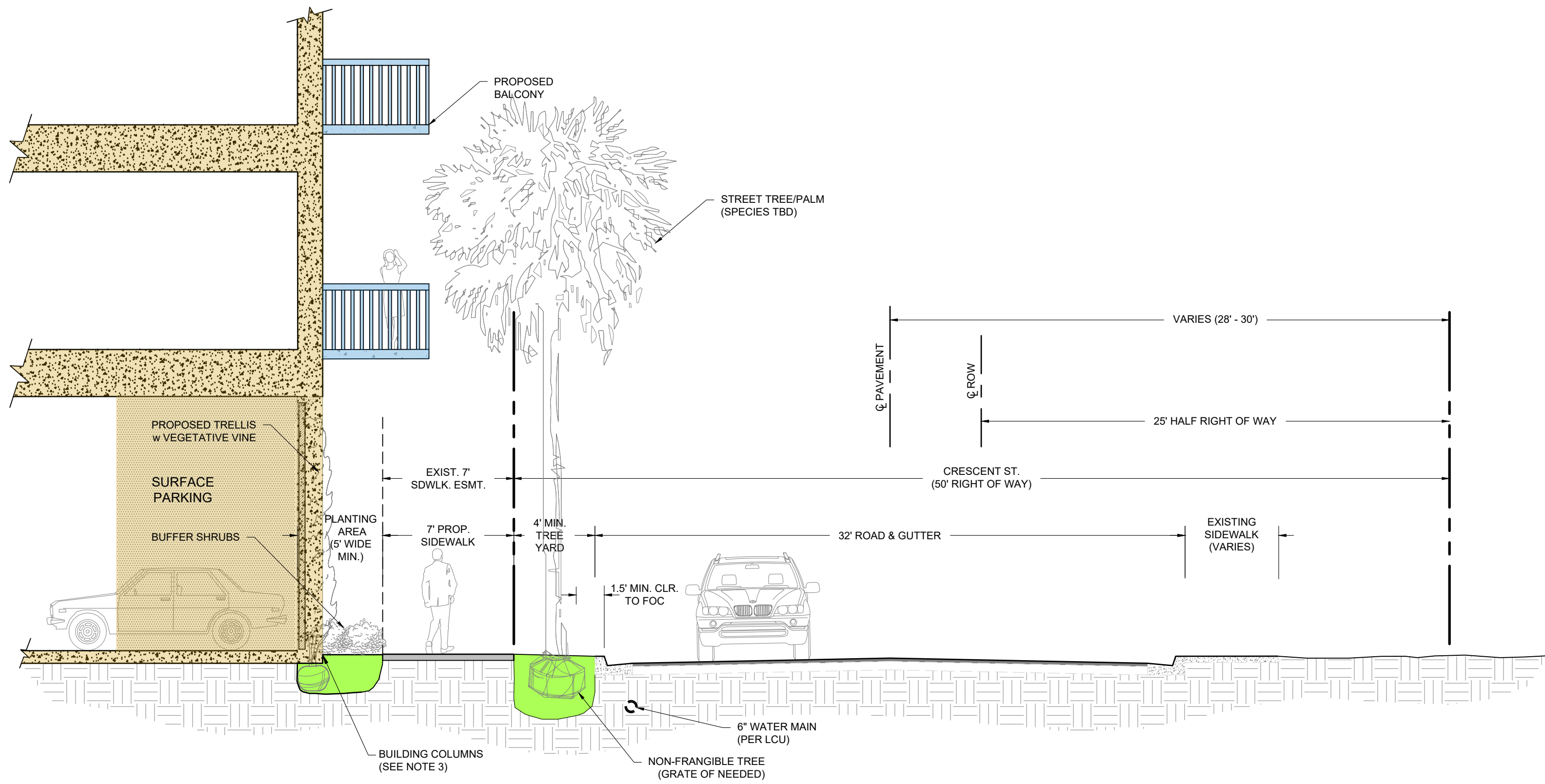
PARKING LOCATIONS & CALCULATIONS

SHEET NUMBER: X-501

JOB/FILE NUMBER: 30479



CRESCENT STREET
Scale: 1"=20'



CRESCENT ST. STREETSCAPE CROSS-SECTION

Scale: 1"=5'

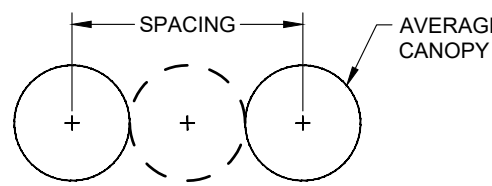
LEGEND

	PROPOSED BUILDING
	PROPOSED BUILDING OVERHANG
	PROPOSED SIDEWALK
	PROPOSED LANDSCAPE AREA

NOTES:

1. FINAL STREET TREE SPACING BASED ON SPECIES SELECTED.
2. STREET TREE SPACING IS SPECIES DEPENDANT. TREES/PALMS SHALL BE SPACED SO AS TO PROVIDE A CONTINUOUS CANOPY BASED ON AVERAGE CANOPY SIZE FOR THE SPECIES, BUT WITH EVERY OTHER TREE/PALM REMOVED. NOTE: FOR COCONUT PALMS THE AVERAGE CANOPY IS ±20' WIDE RESULTING IN A 40' AVERAGE SPACING & 12' FOR SABAL PALMS RESULTING IN A 24' AVERAGE SPACING. FINAL LOCATION AND SPACING BASED ON EXISTING CONDITIONS (I.E. UTILITIES) AND TO ENHANCE ARCHITECTURAL DETAILS OF THE PROPOSED BUILDING.
3. BUILDING COLUMNS MAY ENCROACH A MAX. OF 2' INTO THE 5' WIDE PLANTING AREA.
4. THE 5' PLANTING AREA IS MEASURED TO THE REAR (I.E. GARAGE SIDE) OF THE VEGETATED GREENSCREEN.
5. THE HORIZONTAL OFFSET FOR THE PROPOSED STREET TREES ALONG ESTERO BLVD WILL BE BASED ON THE CURRENT FDOT/COUNTY MINIMUM STANDARDS IN PLACE AT THE TIME OF THE DEVELOPMENT ORDER APPLICATION SUBMITTAL.

TREE SPACING DIAGRAM



PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT

RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE

MORRIS-DEPEW ASSOCIATES, INC.
2914 CLEVELAND AVENUE
FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION

DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS DATE

PROJECT MANAGER: TME

DRAWING BY: DAL

JURISDICTION: TOWN OF FORT MYERS BEACH

DATE: 4/27/2018

SHEET TITLE:

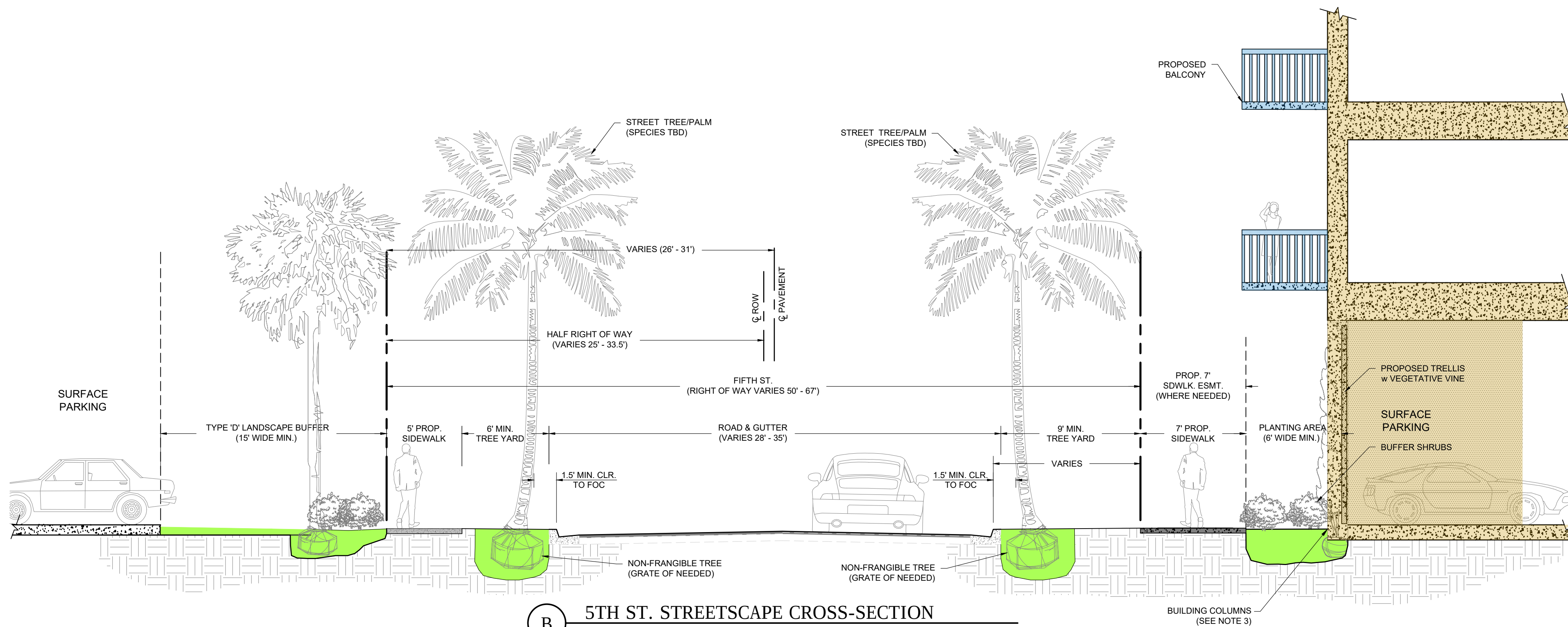
RIGHT OF WAY &
SIDEWALK/BUFFER
PLAN

SHEET NUMBER: X-503-RW.01

JOB/FILE NUMBER: 15069-13



A FIFTH AVENUE
Scale: 1"=20'



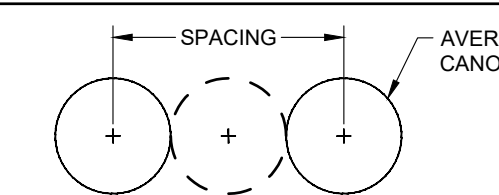
LEGEND

	PROPOSED BUILDING
	PROPOSED BUILDING OVERHANG
	PROPOSED SIDEWALK
	PROPOSED LANDSCAPE AREA

NOTES:

1. FINAL STREET TREE SPACING BASED ON SPECIES SELECTED.
2. STREET TREE SPACING IS SPECIES DEPENDANT. TREES/PALMS SHALL BE SPACED SO AS TO PROVIDE A CONTINUOUS CANOPY BASED ON AVERAGE CANOPY SIZE FOR THE SPECIES, BUT WITH EVERY OTHER TREE/PALM REMOVED. NOTE: FOR COCONUT PALMS THE AVERAGE CANOPY IS 420' WIDE RESULTING IN A 40' AVERAGE SPACING & 12' FOR SABAL PALMS RESULTING IN A 24' AVERAGE SPACING. FINAL LOCATION AND SPACING BASED ON EXISTING CONDITIONS (I.E. UTILITIES) AND TO ENHANCE ARCHITECTURAL DETAILS OF THE PROPOSED BUILDING.
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5. THE HORIZONTAL OFFSET FOR THE PROPOSED STREET TREES ALONG ESTERO BLVD WILL BE BASED ON THE CURRENT FDOT/COUNTY MINIMUM STANDARDS IN PLACE AT THE TIME OF THE DEVELOPMENT ORDER APPLICATION SUBMITTAL.

TREE SPACING DIAGRAM



PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS-DEPEW ASSOCIATES, INC.
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FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS DATE

PROJECT MANAGER: TME

DRAWING BY: DAL

JURISDICTION: TOWN OF FORT MYERS BEACH

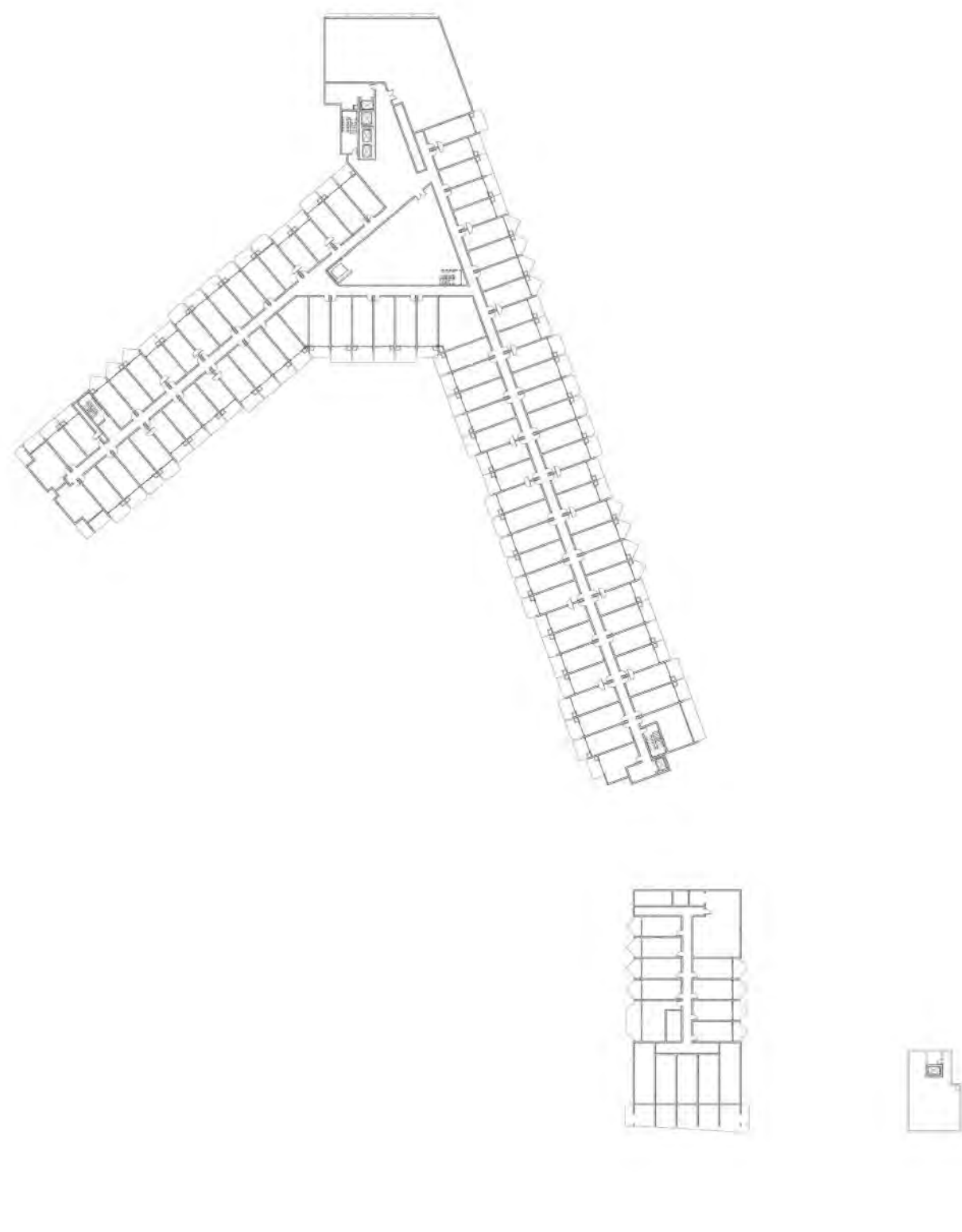
DATE: 4/27/2018

SHEET TITLE:

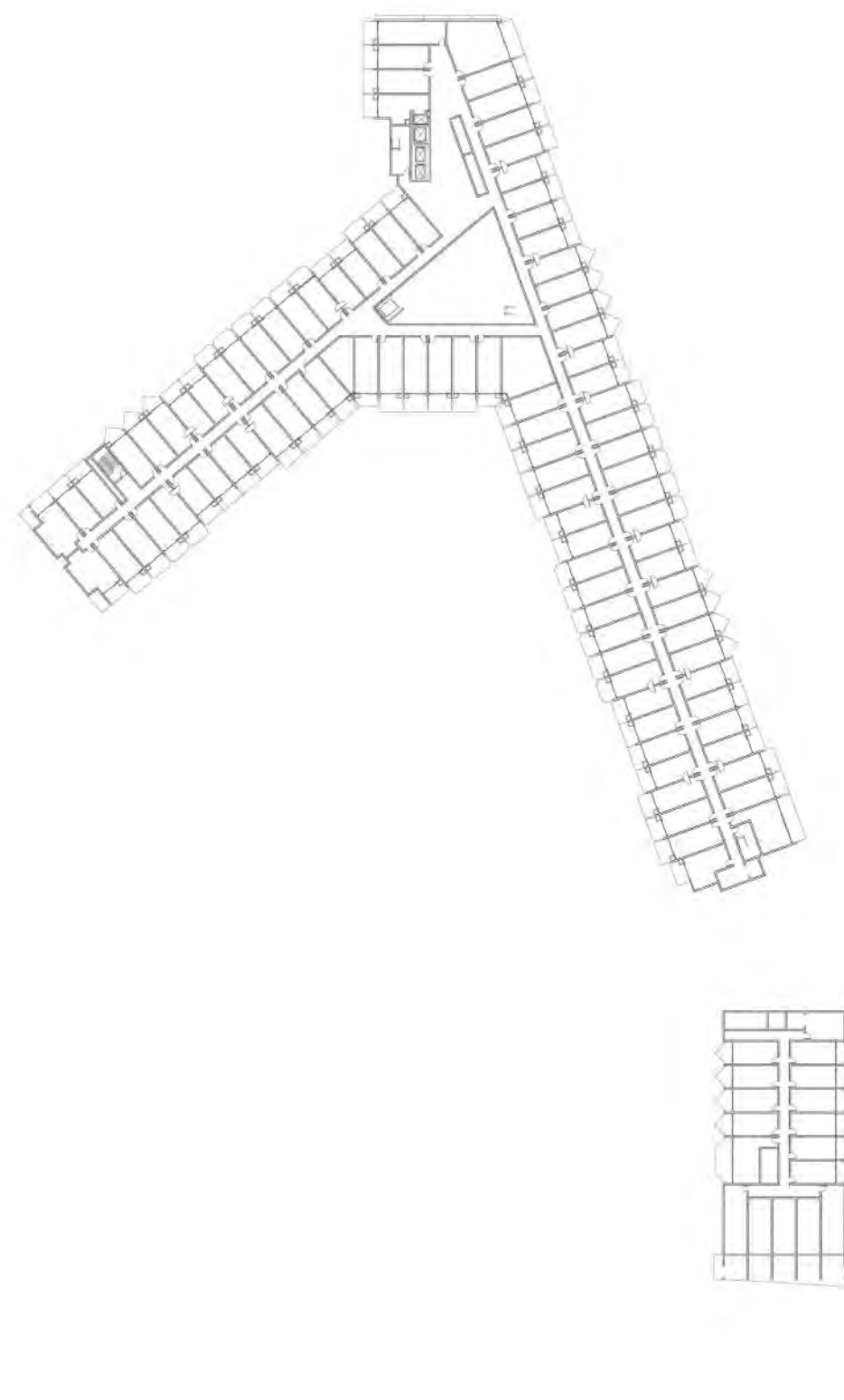
RIGHT OF WAY &
SIDEWALK/BUFFER
PLAN

SHEET NUMBER: X-504-RW.02

JOB/FILE NUMBER: 15069-13



THIRD FLOOR



FOURTH FLOOR

CONSUMPTION ON PREMISES DIAGRAM

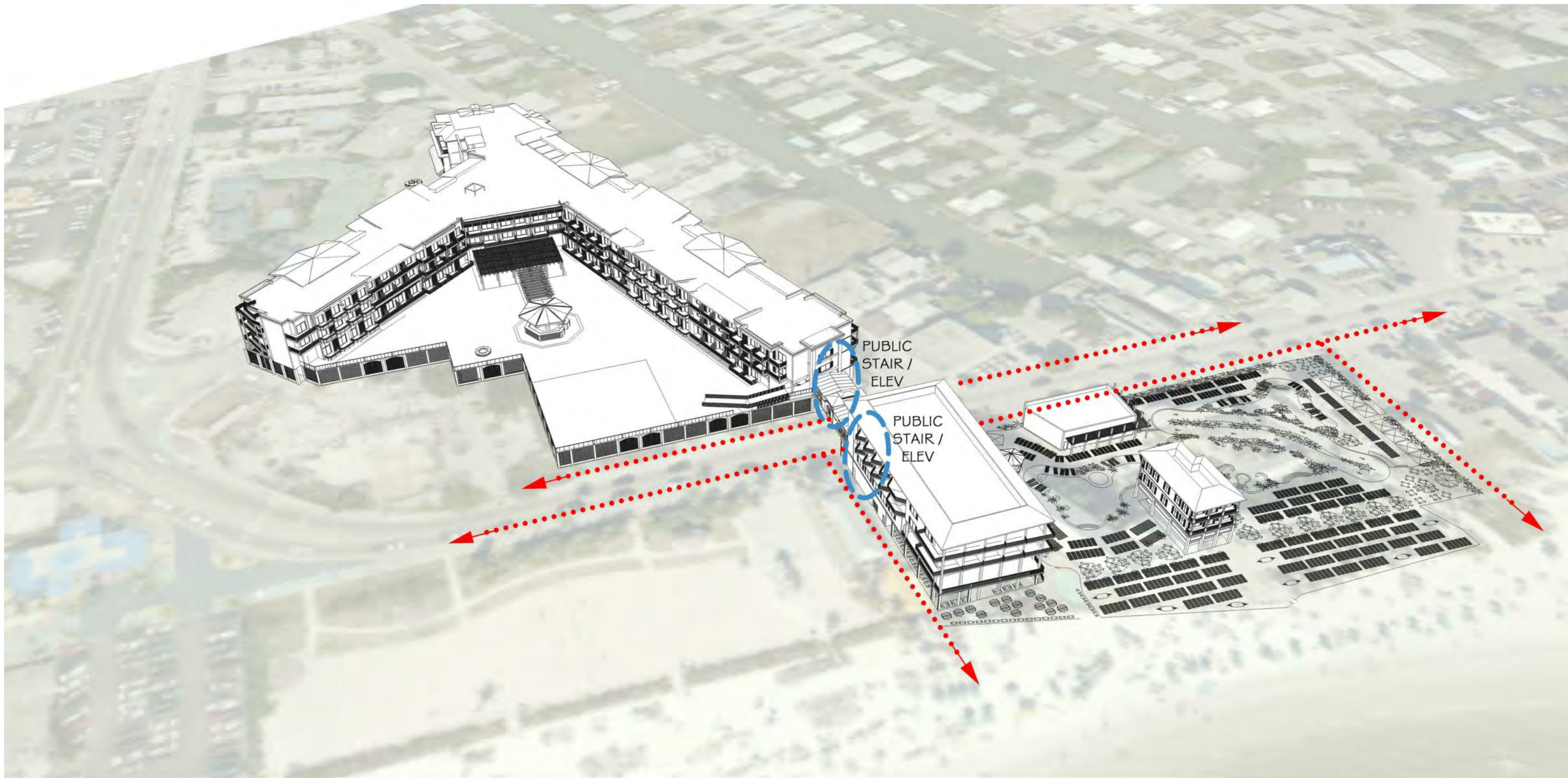
POINT OF SALE - 
COP SEATING - 

POOL AREA - 
MULTI-PURPOSE - 

CONSUMPTION ON PREMISES DIAGRAM

POINT OF SALE - 
COP SEATING - 

POOL AREA - 
MULTI-PURPOSE - 



PEDESTRIAN CIRCULATION THROUGH SITE

PEDESTRIAN CIRCULATION 
PUBLIC STAIRS / ELEVATOR 

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
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LANDSCAPE ARCHITECTURE**
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TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
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REVISIONS DATE

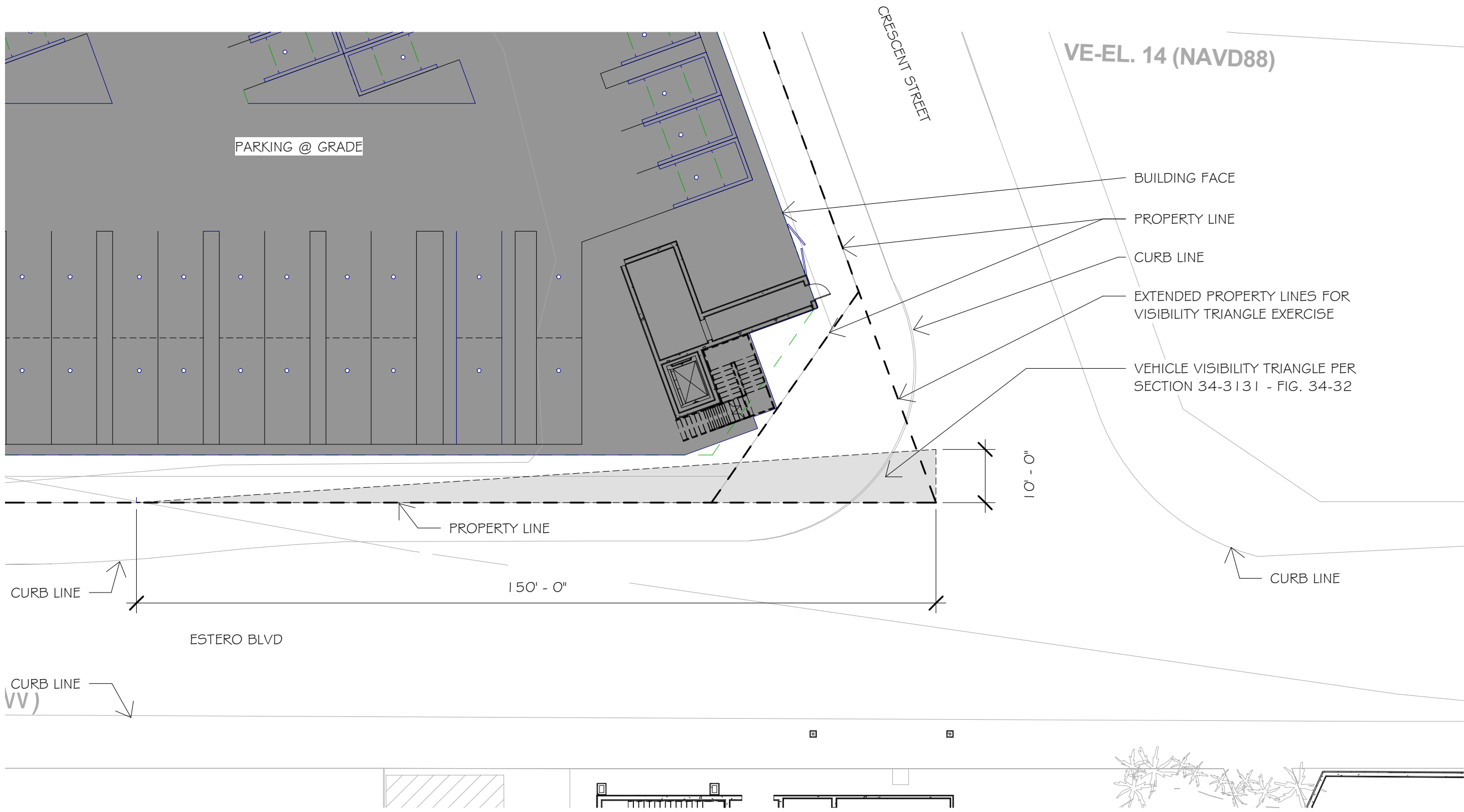
PROJECT MANAGER: JDH
DRAWING BY: ADO
JURISDICTION: TOWN OF FORT MYERS BEACH
DATE: -

SHEET TITLE:

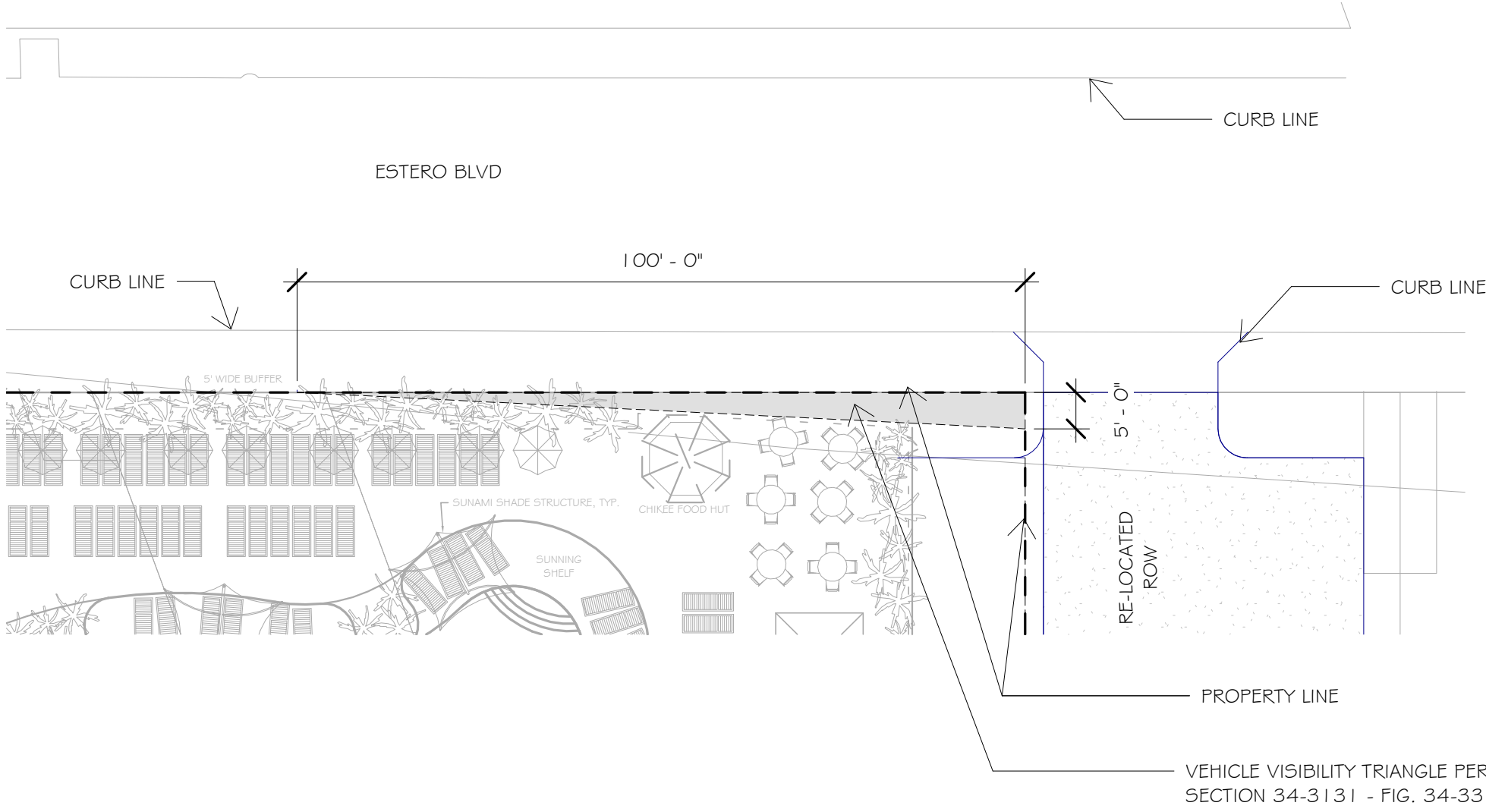
CONSUMPTION ON
PREMISES
DIAGRAMS &
PEDESTRIAN
CIRCULATION

SHEET NUMBER: X-506-COP.02

JOB/FILE NUMBER: 30479



① VISIBILITY TRIANGLE - INTERSECTION OF
CRESCENT ST. / ESTERO BLVD.
1" = 20'-0"



② VISIBILITY TRIANGLE - INTERSECTION OF
RE-LOCATED CANAL / ESTERO BLVD
1" = 20'-0"

PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS
BEACH FLORIDA

CLIENT:



TPI HOSPITALITY
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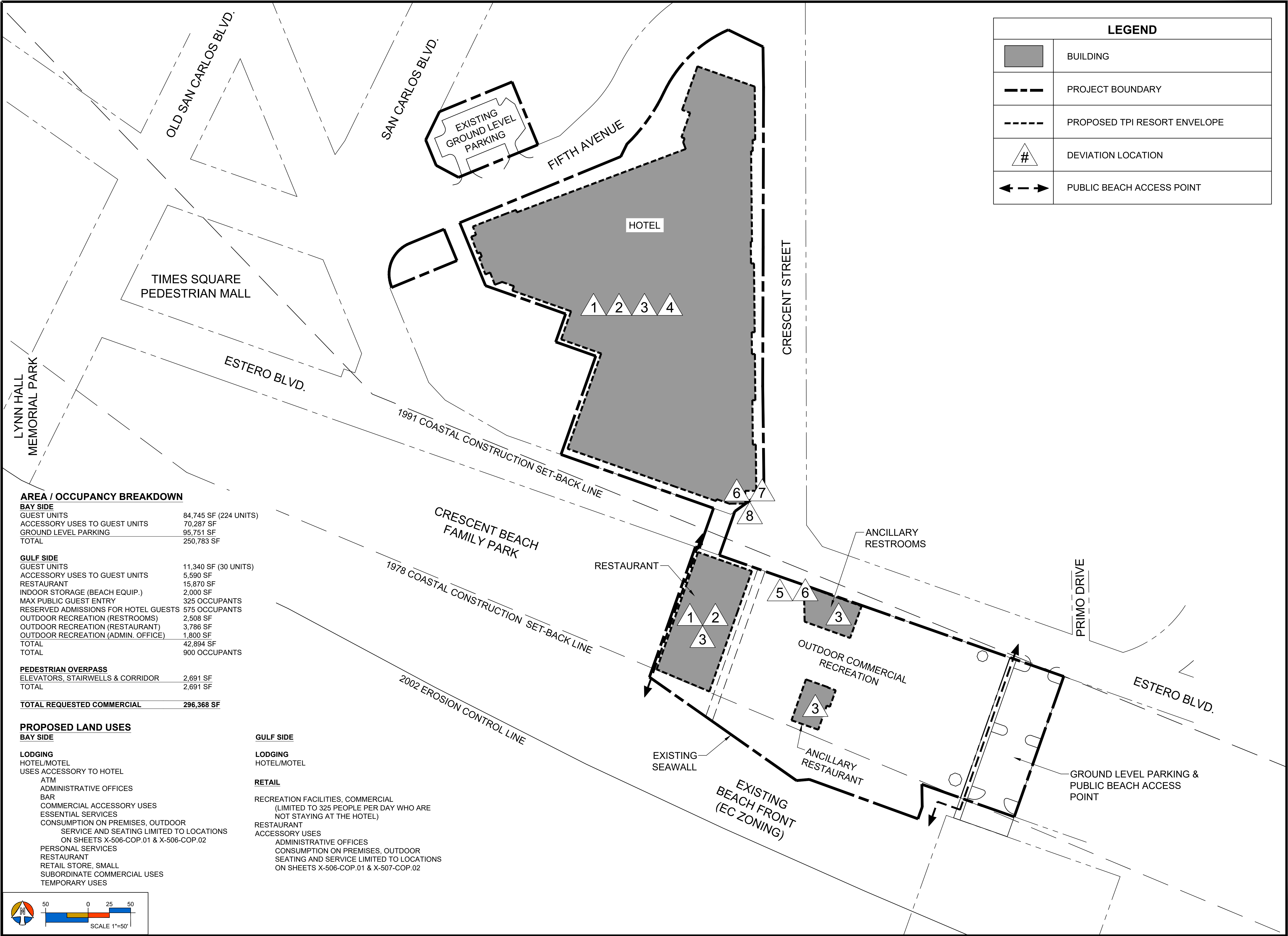
REVISIONS DATE

PROJECT MANAGER: JDH
DRAWING BY: ADO
JURISDICTION: TOWN OF FORT MYERS BEACH
DATE: -

SHEET TITLE:
VISIBILITY
TRIANGLES

SHEET NUMBER: X-507-VT

JOB/FILE NUMBER: 30479



LEGEND	
	BUILDING
	PROJECT BOUNDARY
	PROPOSED TPI RESORT ENVELOPE
	DEVIATION LOCATION
	PUBLIC BEACH ACCESS POINT

AREA / OCCUPANCY BREAKDOWN

BAY SIDE	
GUEST UNITS	84,745 SF (224 UNITS)
ACCESSORY USES TO GUEST UNITS	70,287 SF
GROUND LEVEL PARKING	95,751 SF
TOTAL	250,783 SF

GULF SIDE	
GUEST UNITS	11,340 SF (30 UNITS)
ACCESSORY USES TO GUEST UNITS	5,590 SF
RESTAURANT	15,870 SF
INDOOR STORAGE (BEACH EQUIP.)	2,000 SF
MAX PUBLIC GUEST ENTRY	325 OCCUPANTS
RESERVED ADMISSIONS FOR HOTEL GUESTS	575 OCCUPANTS
OUTDOOR RECREATION (RESTROOMS)	2,508 SF
OUTDOOR RECREATION (RESTAURANT)	3,786 SF
OUTDOOR RECREATION (ADMIN. OFFICE)	1,800 SF
TOTAL	42,894 SF
TOTAL	900 OCCUPANTS

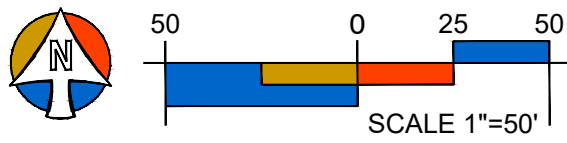
PEDESTRIAN OVERPASS	
ELEVATORS, STAIRWELLS & CORRIDOR	2,691 SF
TOTAL	2,691 SF

TOTAL REQUESTED COMMERCIAL	296,368 SF
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PROPOSED LAND USES

BAY SIDE	
LODGING	
HOTEL/MOTEL	
USES ACCESSORY TO HOTEL	
ATM	
ADMINISTRATIVE OFFICES	
BAR	
COMMERCIAL ACCESSORY USES	
ESSENTIAL SERVICES	
CONSUMPTION ON PREMISES, OUTDOOR	
SERVICE AND SEATING LIMITED TO LOCATIONS	
ON SHEETS X-506-COP.01 & X-506-COP.02	
PERSONAL SERVICES	
RESTAURANT	
RETAIL STORE, SMALL	
SUBORDINATE COMMERCIAL USES	
TEMPORARY USES	

GULF SIDE	
LODGING	
HOTEL/MOTEL	
RETAIL	
RECREATION FACILITIES, COMMERCIAL	
(LIMITED TO 325 PEOPLE PER DAY WHO ARE	
NOT STAYING AT THE HOTEL)	
RESTAURANT	
ACCESSORY USES	
ADMINISTRATIVE OFFICES	
CONSUMPTION ON PREMISES, OUTDOOR	
SEATING AND SERVICE LIMITED TO LOCATIONS	
ON SHEETS X-506-COP.01 & X-507-COP.02	



PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:

TPI HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
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REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	07/31/2024
SHEET TITLE:	
MASTER CONCEPT PLAN DEVIATIONS AND NOTES	
SHEET NUMBER:	X-113-MCP.04
JOB/FILE NUMBER:	15069-14



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: PD Amendment, 20240130

CASE NAME: 251 Crescent Street (incl. all associated addresses) approving five (5) deviations for a pole sign and monument sign adjacent to Estero Blvd.

TOWN COUNCIL HEARING DATE: October 7, 2024 at 9 AM

STAFF RECOMMENDATION: APPROVE WITH CONDITIONS

**PREPARED/
SUBMITTED BY:** Jason Smalley; Senior Planner

I. LPA OUTCOME

Discussion of the signs mainly focused on what codes the signs had violated and whether an amendment to the existing CPD was absolutely necessary. It was noted by staff that if the signs had met minimum setbacks and dimensions then they would be eligible for an administrative amendment, but the signs did not meet code and thus must go through the full CPD amendment process. The LPA recommended approval by a vote of 7-0

TOWN COUNCIL OUTCOME #1

Discussion focused largely on the reasons for the requested deviations and a brief question about the maximum allowed sign dimensions. The final outcome from the first reading was 4-0 with one member abstaining.

II. APPLICATION SUMMARY

Applicant/Owner: Morris-Depew/ TPI-FMB LLC (TPI)

Request: CPD amendment approving deviations for a monument and pole sign; **1)** allow for a pole sign, **2)** allow for pole sign to be 9-feet tall and, **3)** allow sign to be less than 3-feet setback from the rear of a sidewalk or right-of-way; **4)** allow for monument sign to be 7.5-feet tall and, **5)** allow for monument sign to be setback a minimum of 6-inches from

the rear of a sidewalk or right-of-way.

Subject property: See attached site plan.

Physical Address: 251 Crescent St (incl. all associated addresses)

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-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)

FLU: Pedestrian Commercial

Zoning: Commercial Planned Development (CPD)

Adjacent zoning and land uses:

North: CPD; Resort

South: Environmentally Critical Area (EC)

East: Downtown; Commercial Office/ Multi-Use

West: Downtown; Public Park

III. BACKGROUND AND ANALYSIS

Background:

Morris-Depew, the contractor for TPI has applied to amend an existing CPD (24-01) to allow for five (5) deviations from the LDC to approve two existing signs, a pole sign and a monument sign. The signs have been installed at the corner of Estero Blvd and Crescent St., and the entrance to the applicant's aquatic center entrance on Estero Blvd.

A sign permit was applied for in August of 2022 and completed in November of 2022. In January of 2024 the Town received a signed Certificate of Completion from the applicant's inspector asserting that the signs had been installed to proper code. It was determined at the time that the signs had not met the minimum setback requirements of 3-feet from the rear of a sidewalk/ right-of-way. During the review of the non-compliant setbacks it was determined that the type of sign (pole sign) and heights of both the pole and monument signs were not compliant and that all deviations from the LDC should be approved through

the CPD amendment process.

Analysis:

The signs in-question have already been installed in their approved locations, the size and placement of the signs do not appear to be injurious to the wider neighborhood, nor present a risk to motorists or pedestrians. The right-of way adjacent to both signs are controlled by Lee County despite being within the Town's jurisdiction.

Five deviations from the Land Development Code are requested. Those are listed below and include the applicant's justification as well as a staff comment.

Requested Deviations:

1. Deviation seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

Applicant Justification: As shown on the MCP, the location of the monument sign on Estero Blvd. provides pedestrians, the general public, and vehicular traffic with the ability to identify the location of the Margaritaville Beach Resort. As shown on the MCP, the location of the directional pole sign provides pedestrians with the ability to quickly navigate to other locations within the resort. Due to the location of the resort, bisecting Estero Blvd., the enhanced wayfinding signage is necessary for the traveling public to safely locate the resort while passing by in a generally congested area of Estero Blvd. Well-designed and strategically placed signage enhances navigation and improves the overall wayfinding experience by providing clear visual cues to help guide people to their destination.

Staff Comment: While pole signs are specifically disallowed in the Town's Land Development Code (LDC), the prohibition seems to be generally aesthetic in nature. Allowing the pole sign does not pose a risk to the wider community.

2. Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Applicant Justification: The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus. The monument sign provides the iconic brand identity for the Margaritaville Beach Resort brand, making it easy for pedestrians and the traveling public to safely locate while traveling along Estero Blvd. Relocating the signs would disrupt the established visual identity of the commercial development, which has been operating on Fort Myers Beach since December 2023

Staff Comment: The proposed heights are not out of scale for the size of the resort and the zone in which they are located, the signs do not appear to pose a risk to motorists or pedestrians wishing to cross Estero, or motorists driving north or south on Estero Blvd.

- 3. Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.**

Applicant Justification: The location of the directional pole sign provides pedestrians with the ability to quickly navigate to other locations within the resort. Due to the location of the resort, bisecting Estero Blvd., the enhanced wayfinding signage is necessary for the traveling public to safely locate the resort while passing by in a generally congested area of Estero Blvd. Well-designed and strategically placed signage enhances navigation and improves the overall wayfinding experience by providing clear visual cues to help guide people to their destination. The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus.

Staff Comment: The location of the monument sign placed closer to the sidewalk/ right-of-way may present a minor risk to bicyclists, but in the months that the signs have been present the Town is not aware of pedestrians/ bicyclists at risk from running into the signs.

- 4. Deviation seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.**

Applicant Justification: *The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus. The monument sign provides the iconic brand identity for the Margaritaville Beach Resort brand, making it easy for pedestrians and the traveling public to safely locate while traveling along Estero Blvd. Relocating the signs would disrupt the established visual identity of the commercial development, which has been operating on Fort Myers Beach since December 2023*

Staff Comment: The proposed heights are not out of scale for the size of the resort and the zone in which they are located, the signs do not appear to pose a risk to motorists or pedestrians wishing to cross Estero, or motorists driving north or south on Estero Blvd.

Neighborhood Compatibility:

Margaritaville resort is within the Town's Downtown zoning district and was previously

approved through a CPD, the request for deviations to sign size and placement are not likely to change the character of the neighborhood or constitute a nuisance to neighbors.

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.

Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Staff response: The previous structure was destroyed by Hurricane Ian and redevelopment of the site makes the requests appropriate.

(3) The impact of a proposed change on the intent of this chapter.

Staff response: 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.

Staff response: The proposed development is in compliance with the intensity of the previously approved CPD

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Staff response: The signs do not currently meet size, type or location requirements in the LDC, approval of the amendment would validate the deviations.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Staff response: 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.

Staff response: The signs are currently installed in the requested locations on-site, the signs do not appear to be a risk to health and safety of motorists and pedestrians.

(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.

Staff response: The sign placement in these locations will not place an 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.

Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed uses comply with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: 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.

a. The proposed use or mix of uses is appropriate at the subject location;

Staff response: The proposed mix of uses is appropriate in this location, it is in the Pedestrian Commercial Future land use and will be located in the Civic Center Mixed-Use District.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Staff response: 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;

Staff response: 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.

Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Staff response: Not applicable

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: Not applicable

4. Policy 4-C-8 on density transfers.

Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.

Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Staff response: Not applicable

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
Staff response: The requested deviations allow the development of the signage.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and

Staff response: The proposed deviations preserve public health.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and

Staff response: The deviations are not a detriment to the public interest, it will be the responsibility of the applicant to ensure that any signage does not interfere with official signage along Estero or Crescent.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

Staff response: The deviations are consistent with the comprehensive plan.

IV. RECOMMENDATION

Staff finds that the CPD amendment meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of **DCI20240130** with the attached conditions.

V. CONDITIONS OF APPROVAL

1. 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.
2. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131

Staff Report Exhibits:

A – Amended Master Concept Plan

Margaritaville Beach Resort
Commercial Planned Development Amendment
Request Narrative
July 31, 2024

I. PROPERTY INFORMATION & REQUEST

The 5.8+/-acre Subject Property is located at 251 Crescent Street, in the Town of Fort Myers Beach. It is located more specifically at the base of the Sky Bridge located on the north and south sides of Estero Blvd. and in between Crescent Street and Fifth Street. It is zoned Commercial Planned Development pursuant to Zoning Resolution #18-04 and is designated Pedestrian Commercial on the Future Land Use Map. Since the adoption of 18-04, amendments to the CPD were approved by Ordinances 23-09 and 24-01.

The applicant is requesting approval of a CPD amendment to allow for four (4) sign deviations. Approval of these deviation requests will allow for an existing 7.5 foot tall monument sign and an existing 9 foot tall directional pole sign to remain in their locations proximate to the intersection of Estero Blvd. and Crescent St. with 6-inch minimum setbacks.



Figure 1: Aerial Location Map

II. Background

Subsequent to sign permit approval (Permit 221492), the Applicant received notification that two (2) separate signs at the Resort do not comply with the Town's LDC. The Applicant is submitting this application to request relief from the strict requirements of the LDC in order to memorialize the approval of this signage and ensure that it will be allowed to remain as permitted.

One of the signs is a Monument Sign, shown in Figure 4 below, located on Estero Blvd. Deviations are being requested for this signage as follows:

- To provide relief from the maximum height requirement
- To provide relief from the minimum setback requirement

The other signage, shown in Figures 2 and 3 below, meets the definition of Directional Sign, pursuant to LDC 30-3:

Directional sign. Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area.

The signs point to various destinations on the resort campus and do not contain any advertising. Additionally, as each of the individual sign arrows is less than 4 sq ft in area, this signage also qualifies as an Exempt Sign, pursuant to LDC 30-4(a):

The following signs do not require a sign permit... Directional or instructional signs or symbols, such as entrance, exit, caution, slow, direction arrows, etc. located on and pertaining to a parcel or development and not to exceed four square feet in area or containing any advertising.

However, Town planning staff is indicating that because this signage was already processed and approved as part of a larger sign permit package, it no longer qualifies as exempt, and deviations must be approved to allow it to remain. Staff indicated that it should be considered a "Pole Sign" and deviations should be requested as follows:

- To allow a pole sign which is not a permitted sign type.
- To provide relief from the maximum height requirement.
- To provide relief from the minimum setback requirement.

Please refer to the enclosed Deviations and Justifications narrative, which provides a detailed analysis of the deviation requests.



Figure 2: Margaritaville Directional Pole Sign



Figure 3: Margaritaville Directional Pole Sign



Figure 4: Margaritaville Monument Sign

Narrative Statements Per Supplement PH-D

A. Comprehensive Plan Amendments

There are no Comprehensive Plan Amendments pending that could affect the future use of this property.

B. Phasing of Construction

Not Applicable – the resort is entirely built out. This request is limited to signage deviations for an existing resort sign.

C. Comprehensive Plan Compliance - Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

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. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the

adopted redevelopment plan). 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. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Nonresidential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

The Applicant's request is in direct compliance with the Pedestrian Commercial FLU category. The established Margaritaville Beach Resort contributes significantly to the walkable and pedestrian-oriented nature of this area of Fort Myers Beach. The resort provides pedestrian connectivity along both sides of Estero Blvd. utilizing innovative design techniques including a pedestrian bridge and provides a beachfront destination for tourists and locals alike. The development has already been approved and this request is limited to signage deviations for existing resort signage.

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.

The Margaritaville Beach Resort is an approved and fully developed and operational development on Fort Myers Beach. Thus, the CPD is in full compliance with the design standards as outlined in LDC Sec. 34-991 – 34-997 as this project was previously approved and this request is limited to four (4) signage deviations for two (2) signs.

E. Decision-making Compliance - Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

LDC Sec. 34-85. - Rezonings.

(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.

There is no error or ambiguity which must be corrected. The request is limited to signage deviations for an existing and built sign at the previously approved and fully developed Margaritaville Beach Resort.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The location of the sign is a result of building setbacks that were approved previously through the planned development approval process, as well as coordination with Lee County Department of Transportation and utility providers that mandated avoidance of existing equipment. The area that was ultimately allotted for the placement of the subject monument sign is confined, leaving no other alternative than the location that is the subject of this request. Had the

directional pole sign been installed without a sign permit, it would be exempt and allowed. Because it was included in a larger sign permit package it is no longer considered exempt by reviewing staff and deviations are now being requested.

(3) The impact of a proposed change on the intent of this chapter.

There is no considerable impact the proposed change has on the intent of this chapter. The request is limited to signage deviations for existing signs at a fully operational resort in the heart of Fort Myers Beach. The signage is necessary and critical for wayfinding purposes and provides visibility and identification of the resort to the traveling public as well as the pedestrian traffic. The signage upholds the intent of the LDC by assisting pedestrians and motorists with navigation and safely locating the resort, which is located on an often congested stretch of Estero Blvd.

(4) The testimony of any applicant.

To be provided at the hearing for the Town Council to consider.

(5) The recommendation of staff and of the local planning agency.

To be provided prior to the hearing for the Town Council to consider.

(6) The testimony of the public.

To be provided at the hearing for the Town Council to consider.

(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 request is consistent with the goals, objectives, policies, intent, and with the densities, intensities and general uses as set forth in the Fort Myers Beach Comprehensive Plan. The signs are located in the Pedestrian Commercial FLU, which encourages walkability and pedestrian-oriented design. The signs provide wayfinding for pedestrians and the traveling public and assist in identifying the resort. The request enhances the pedestrian orientation and aesthetic of the downtown area of the island as laid out in policy 4-B-6. Additionally, the development has already been approved and built and this amendment does not change the density, intensity, or any of the uses associated with the property.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The CPD meets or exceeds all performance and locational standards set forth for the proposed use, which is a beachfront resort, except where deviations have been approved or requested.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

The CPD is completely developed and has adequate access to available urban services and existing public infrastructure.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The site has been approved by FDEP through their permitting process and has already been developed. This request for signage deviations adjacent to the existing buildings and public rights-of-way does not change the site in any way that would cause harm to the environment.

(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 is compatible with existing and planned uses in the surrounding area, which consist mainly of tourist support uses such as restaurants, bars, retail shops, and other beach resorts. The CPD and the Applicant's sign deviation requests will not cause damage, hazard, nuisance, or other detriment, but in fact will serve as a net gain for the community and will provide the essential wayfinding necessary for a beach resort located in the Pedestrian Commercial FLU.

(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.

The request will not place any undue burden upon existing transportation or other services as it only requests four (4) deviations from the sign code and does not change the density or intensity of the existing approved development.

(13) For planned development rezonings, see § 34-216 for additional considerations.

The Applicant is only requesting approval of sign deviations for an existing CPD, not a rezoning. Only 34-216(a)(4) is applicable.

LDC Sec. 34-216(a)(4), Deviations:

a. Each item enhances the achievement of the objectives of the planned development

LDC 34-612 states that the purpose of the planned development districts is to provide a degree of flexibility for a landowner to propose the development of land in a manner that differs from the specific provisions of this code. The requested deviations allow for signs to be located proximate to Estero Blvd. and Crescent St. with enhanced visibility to provide pedestrians and visitors to the resort with the ability to easily identify and locate the resort and be directed to various locations around the resort. Due to input from FDOT and Teco Gas, the

monument sign needed to be relocated closer to the right-of-way. The CPD allows for a beachfront resort that spans Estero Blvd. and requires enhanced visibility.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted

With safety at the forefront of this request, the deviation does not adversely impact the general public health, safety or welfare.

The location of the signs is also a result of building setbacks that were approved previously through the planned development approval process, as well as coordination with Lee County Department of Transportation and utility providers that mandated avoidance of existing equipment. The area that was ultimately allotted for the placement of the subject monument sign is confined, leaving no other alternative than the location that is the subject of this request. The location of the directional pole sign proximate to the intersection of Estero Blvd. and Crescent St. serves the purpose of that signage as a wayfinding tool.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest

The requested deviations are directly aligned with providing a benefit to the public interest. The monument sign in the current location will enhance the visibility of the resort and reinforces the pedestrian oriented nature of this area of Fort Myers Beach. The human-scale design of the monument sign and the placement of the directional pole sign in a key location work together to enhance the users experience with a scenic approach to wayfinding.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

The requested deviations are consistent with the Pedestrian Commercial FLU, which encourages pedestrian-oriented design to improve walkability and wayfinding.

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.

Please see attached Schedule of Deviations and Justification Narrative, which outlines the requested deviations and their associated justifications. Please see attached revised Deviations sheet from the Master Concept Plan, which provides the locations that the requested deviations will be applied to.

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.

LDC section 34-219(b)(1)b provides that the authority is granted to the Director to eliminate unnecessary processing delays for proposed changes that are in conformance with all Town regulations and plans. The request is seeking relief from the LDC through a deviation, so this request does not meet this criterion.

The deviations do not adversely impact public health, safety or welfare. For the reasons listed above, the Applicant respectfully requests approval of the four (4) sign deviations.

July 31, 2024

SENT VIA EMAIL

Kendra Rosa
Zoning Coordinator
Town of Fort Myers Beach
Community Development Department
zoningpermits@fmbgov.com

RE: 251 Crescent St, Fort Myers Beach, FL 33931 Strap # 244623W3000060000
PD Amendment -MCP # 20240130 – To allow signs deviations

Dear Kendra:

The purpose of this letter is to provide a response to the Community Development Department review comments dated July 17, 2024 for the above referenced application. We always appreciate interaction with Staff on matters related to this application and welcome additional calls and emails that will assist us to address all the concerns in the most efficient manner to the extent this request can be approved.

[Community Development Department](#)

Comment/Condition:

1. *Narrative disputes that the applicant even needs approval for the revised “directional sign”, but staff has been clear that this sign was originally permitted as part of the larger sign package and its original approval wasn’t as a “directional sign”. Their narrative and request for administrative amendment of their existing MCP doesn’t address staff’s position that this sign should be approved as part of the deviation requests. The applicant has proposed a “pole sign” which is a disallowed type of sign, the deviation ask is to approve a pole sign, the height of the pole sign and allow for the reduced setbacks to a public right-of-way.*

Response: Please see attached revised narrative, revised schedule of deviations, and revised MCP Deviations sheet which have been updated to request deviations to allow a pole sign.

Comment/Condition:

2. “Revised MCP”: This document has deviations listed that aren’t relevant to this ask. “Meeting Building” and “Ancillary Retail” are noted on this MCP, those uses in those areas haven’t been approved and aren’t relevant. The deviations should be focused on just the locations of the two signs in question.

Response: Please see attached revised MCP which is based on the most recently approved MCP.

Comment/Condition:

3. "Request Narrative": This document references "Zoning Resolution 18-04" but there was a newer, updated CPD ordinance and MCP approved through Ord. 24-01, you will be amending this CPD.

Response: Please see attached revised narrative which clarifies that since the adoption of 18-04, amendments to the CPD were approved by Ordinance 23-09 and 24-01.

Comment/Condition:

4. "Request Narrative": In this document it is noted that you are requesting an "administrative amendment" but that isn't correct, this will be a full MCP Amendment.

Response: Please see attached revised narrative which no longer requests or references an administrative amendment.

Please let us know if there is anything else needed for the approval of this request.

Sincerely,

MORRIS-DEPEW ASSOCIATES, INC.

Ben Smith
Director of Planning, Morris-Depew Associates Inc

Enclosure:
Revised Narrative
Revised Schedule of Deviations
Revised MCP Deviations Sheet

Cc: Jason Smalley, Senior Planner, Town of Fort Myers Beach

Margaritaville Beach Resort
Commercial Planned Development
Schedule of Deviations and Justifications
July 31, 2024

Deviation 5 seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires monument signs not to exceed 5-feet in height above finished grade, to allow for one (1) monument sign to be a maximum height of 7.5-feet above finished grade in the location shown on the MCP.

Deviation 6 seeks relief from LDC Section 30-5(a)(1)b.3.iv, which requires freestanding signs in commercial districts to be setback at least 3-feet from any public right-of-way or easement, to allow for one (1) monument sign and one (1) directional pole sign to be setback a minimum of 6 inches from the public right-of-way in the locations shown on the MCP.

Deviation 7 seeks relief from LDC Section 30-5(a)(1)b.3.iii which requires freestanding signs in commercial districts not to exceed 5-feet in height above finished grade, to allow for one (1) directional pole sign to be a maximum height of 9-feet above finished grade in the location shown on the MCP.

Deviation 8 seeks relief from LDC Section 30-8 which prohibits pole signs, to allow for one (1) directional pole sign in the location shown on the MCP.

As shown on the MCP, the location of the monument sign on Estero Blvd. provides pedestrians, the general public, and vehicular traffic with the ability to identify the location of the Margaritaville Beach Resort. As shown on the MCP, the location of the directional pole sign provides pedestrians with the ability to quickly navigate to other locations within the resort. Due to the location of the resort, bisecting Estero Blvd., the enhanced wayfinding signage is necessary for the traveling public to safely locate the resort while passing by in a generally congested area of Estero Blvd. Well-designed and strategically placed signage enhances navigation and improves the overall wayfinding experience by providing clear visual cues to help guide people to their destination. The heights and setbacks demonstrate a human-scale approach to wayfinding signage and works in concert with the other wayfinding resort signage to assist the user in orienting themselves and navigating to a specific destination within the resort campus. The monument sign provides the iconic brand identity for the Margaritaville Beach Resort brand, making it easy for pedestrians and the traveling public to safely locate while traveling along Estero Blvd. Relocating the signs would disrupt the established visual identity of the commercial development, which has been operating on Fort Myers Beach since December 2023. As one of the first major developments to open on Fort Myers Beach post-Hurricane Ian, the resort offers

a beachfront venue attracting visitors from around the world. For first-time visitors to Fort Myers Beach the monument sign at this exact location is critical to locating the resort and making the left turn on Crescent Street to park or enter the resort, and the directional pole sign location is critical to navigating the resort campus. The placement of the signs has been carefully considered to maximize visibility and accessibility for both pedestrians and motorists and provides essential wayfinding for the general public, which is essential to a tourist-oriented destination. The monument sign aligns with the intent of the LDC, which permits monument signs within landscaped medians. By doing so, the code implicitly acknowledges the value of strategic placement in enhancing streetscape aesthetics and promoting effective wayfinding. The directional pole sign aligns with the intent of the LDC which allows for directional signs to be exempt from permitting. In this context, the requested deviations uphold the underlying principles of the code while accommodating the signage of the resort. With safety at the forefront of this request, the deviation does not adversely impact the general public health, safety or welfare.

The location of the signs is also a result of building setbacks that were approved previously through the planned development approval process, as well as coordination with Lee County Department of Transportation and utility providers that mandated avoidance of existing equipment. The area that was ultimately allotted for the placement of the subject monument sign is confined, leaving no other alternative than the location that is the subject of this request.

For these reasons, the Applicant respectfully requests approval of these deviation requests to allow the existing monument sign and the existing directional pole sign to remain in the locations shown on the MCP. Photographs of the existing signs and their exact locations are provided in the Figures below.



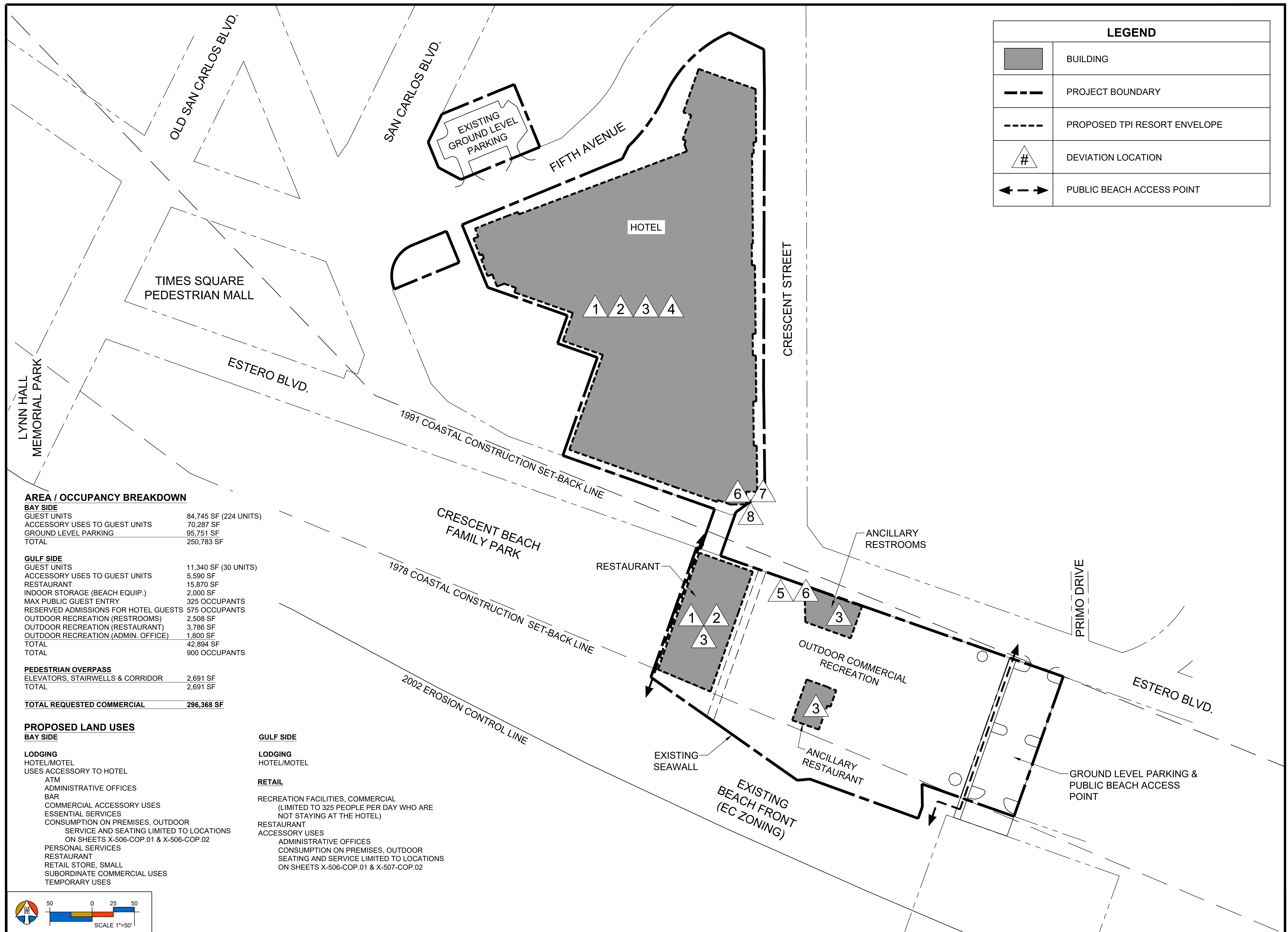
Figure 1: Existing Monument Sign



Figure 2: Existing Directional Pole Sign



Figure 3: Sign Location Map



PROJECT:

TPI-FMB CPD

LOCATION:

FORT MYERS BEACH
FLORIDA

CLIENT:



TPI

HOSPITALITY
100% Employee Owned

TPI HOSPITALITY
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7207, FAX (320) 235-5563

CONSULTANTS:

ARCHITECT
RAMAKER & ASSOCIATES, INC.
103 FIFTEEN AVE. NW
WILLMAR, MN 56201
PHONE (320) 235-7775, FAX (320) 235-8673

**PLANNING, CIVIL, SURVEY &
LANDSCAPE ARCHITECTURE**
MORRIS-DEPEW ASSOCIATES, INC.
2914 CLEVELAND AVENUE
FORT MYERS, FL 33901
PHONE (239) 337-3993, FAX (239) 337-3994

TRANSPORTATION
DAVID PLUMMER & ASSOCIATES
2149 MCGREGOR BLVD.
FORT MYERS, FL 33901
PHONE (239) 332-2617, FAX (239) 332-2645

REVISIONS	DATE
PROJECT MANAGER:	TME
DRAWING BY:	DAL
JURISDICTION:	TOWN OF FORT MYERS BEACH
DATE:	07/31/2024
SHEET TITLE:	
MASTER CONCEPT PLAN DEVIATIONS AND NOTES	
SHEET NUMBER:	X-113-MCP.04
JOB/FILE NUMBER:	15069-14

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION VACATING A 12-FOOT WIDE UTILITY EASEMENT LOCATED OVER REAL PROPERTY OWNED BY THE FORT MYERS BEACH ART ASSOCIATION, GENERALLY LOCATED AT 3030 SHELL MOUND BOULEVARD, FORT MYERS BEACH; ACCEPTING AND APPROVING A NEW UTILITY EASEMENT AS A REPLACEMENT EASEMENT TO BE LOCATED ON REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A UTILITY EASEMENT AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD THIS RESOLUTION AND THE NEW UTILITY EASEMENT; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council approves easement vacations and relocations.

What the action accomplishes:

Vacation of the easement will allow Fort Myers Beach Art Association to develop the site to suit their needs.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

The subject utility easement crosses the southern third of the property at 3030 Shell Mound Blvd. The property consists of two whole plats and a portion of a third. The easement is located at the boundary between plats. See Exhibit B. The easement is visible on the original plat map dated 1958. In order for the site to be developed, the easement must be vacated. The applicant has shown that this vacation does not adversely impact future Town infrastructure. The Town has reviewed the site, and no Town utilities are located in the easement. Refer to Exhibit E for the letters of no objection from the Town and other utility providers.

At their September 3rd meeting, the LPA voted 7-0 to recommend approval of the application to the Town Council.

Attachments:

1. Resolution EXHIBIT. A- Existing Easement Survey
2. Staff Memo
3. EXHIBIT. A- Survey
4. EXHIBIT B - Easement Location
5. EXHIBIT C - 1958 Plat Map
6. EXHIBIT D - Current Plat Map
7. EXHIBIT E -Letters of No Objection (LONO)
8. EXHIBIT F - Application
9. EXHIBIT E-Postcards
10. 24-190, VAC20240068, 3030 Shell Mound FMB Art Assoc ns
11. Exhibit B to Resolution Relocated Easement Description

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Find that the request to vacate the utility easement meets the requirements of the comprehensive plan and approve.

8. **Recommended Approval:**

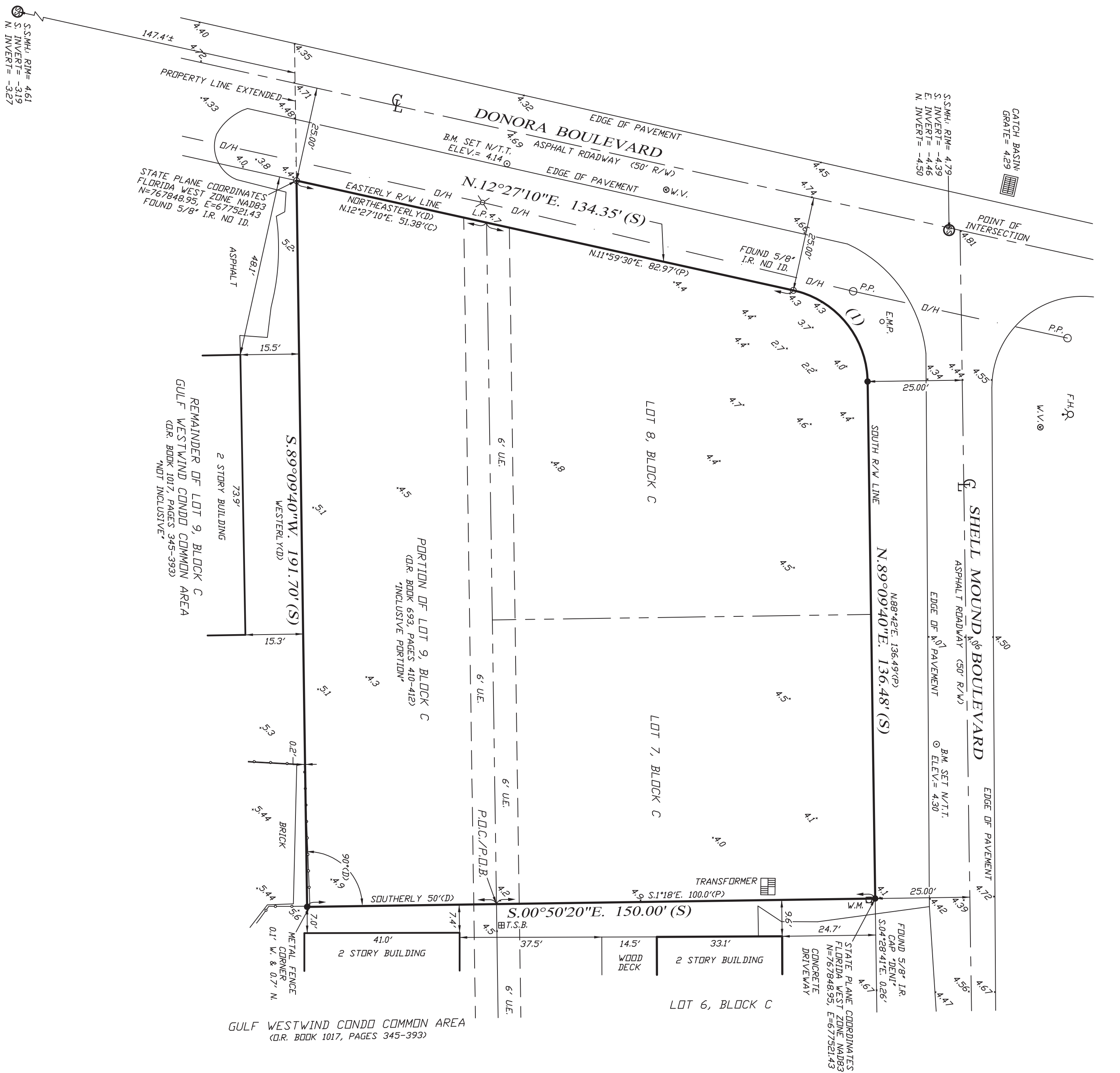
Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/14/2024
Approved - 10/16/2024
Approved - 10/22/2024
Approved - 10/22/2024
Final Approval - 10/22/2024

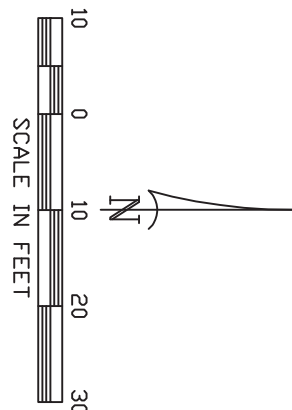
EXHIBIT 6-2

Curve number 1

Radius= 25.00'
Delta= 76°42'30"
Arc= 33.47'
Chord= 31.03'
Chord Brg.= N.50°48'25"E.



BOUNDARY SURVEY OF
LOTS 7, 8 &
A PORTION OF LOT 9, BLOCK C,
ZIMMER'S ADDITION TO
SHELL MOUND PARK,
CITY OF ST. LOUIS, MISSOURI



S.S.MH: RIM= 4.66
W. INVERT= -3.73
E. INVERT= -3.84

- LEGEND:
- | | | |
|---------------------------------|----------|-----------------------|
| ● SET 1/2" IRON ROD (CAP LB392) | R.V.B. | RECLAIM WATER BOX |
| □ FOUND IRON ROD (G2) | V.M. | WATER METER |
| □ CONCRETE MONUMENT (C.M.) | D/H | DYERHAD PUMPER |
| □ PERMANENT REFERENCE MONUMENT | P.P. | POWER POLE |
| □ PUBLIC UTILITY EASEMENT | GA&W | GUY ANCHOR & WIRE |
| □ DRAINAGE EASEMENT | T.S.B. | TELEPHONE SERVICE BOX |
| □ POINT OF CURVAUTUE | N/D | NAIL & DISK |
| □ OFFICIAL RECORDS BOOK | N/T/T | NAIL & TINNAB |
| □ AS PER SURVEY | ELEV. | ELEVATION |
| □ AS PER DECED | B.M. | BENCHMARK |
| □ COMPUTED | 0 | TYPICAL ELEVATION |
| □ CURVE NUMBER | A/C | ARC CONDITIONER |
| □ LINE NUMBER | V.M. | VALVE EQUIPMENT |
| □ RIGHT-OF-WAY | P.C. | POTI EQUIPMENT |
| □ CENTERLINE | C.M.P. | CORROGATED METAL PIPE |
| □ SANITARY SEWER MANHOLE | CONCRETE | CONCRETE |
| □ FIRE HYDRANT | ARMED | ARMED |
| □ WATER VALVE | E.M.P. | ELECTRIC METER POLE |
| □ LIGHT POLE | P.D.C. | POINT OF COMMENCEMENT |
| | P.O.B. | POINT OF BEGINNING |

SURVEY NOTES:

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE SOUTH RIGHT-OF-WAY LINE OF SHELL MOUND BOULEVARD, AS BEING 189°09'40"E.
 2. FIELD NOTES IN ZIMMERS ADDITION TO SHELL MOUND PARK.
 3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
 6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
 7. THIS MAP/PLAN IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006, FS 668.030, FS 472.020, 5.1-17062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
 8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
 9. ISSUANCE OF THIS DRAWING FROM THIS FIRM SHALL NOT RELIEVE THE BUILDER AND/OR CONTRACTORS OF THE RESPONSIBILITY TO REVIEW AND VERIFY ALL NOTES, DIMENSIONS, ELEVATIONS, AND ADHERENCE TO APPLICABLE BUILDING CODES PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION. BUILDER MAY NEED TO ADJUST ELEVATION AND/OR SETBACKS PRIOR TO CONSTRUCTION IF OTHER RESTRICTIONS EXIST OR APPLY.
 10. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 1824, 20 SCALE DRAWING.
 11. SITE BENCHMARK DERIVED FROM NATIONAL DATUM OF 1988 (NAVD 1988).
 12. BENCHMARK DESIGNATION 872 5366 F, ELEVATION 2560 NAVD 1988.
- FLDLOD ZONE: 14°E ELEVATION 11' NAVD 1988
COMMUNITY NO. 120673 PANEL NO. 0558
SUFFIX --- G REVISION DATE: 11/17/2022
MAP NUMBER 1207100596G
- THIS SURVEY IS CERTIFIED TO:
MAASTRCHT ENGINEERING, INC.

REVISED	DESCRIPTION	B/C	
	Phillip M Mould, LS6515, Mould, LS6515, State of Florida Date: 2023, 12/08 12-47:19 -05'00'		
	PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER LS6515 – STATE OF FLORIDA		
DATE OF LAST FIELD WORK: 11/29/23			
DRAWN	CHECK	SCALE	PROD. #
RBM	PMM	1"-20"	ZASWP-C-7
SURVEY DATE	FILE NO.	SHT. –	
11/29/23	46-24-29	DF –	- 1
HARRIS-JURGENSEN, LLC. 3046 E. PRADO BL. D/L S., SUITE 100 CHIEF HEIGHTS, INDIANA 33094 PHONE: (330) 484-3434 FAX: (330) 457-2921			

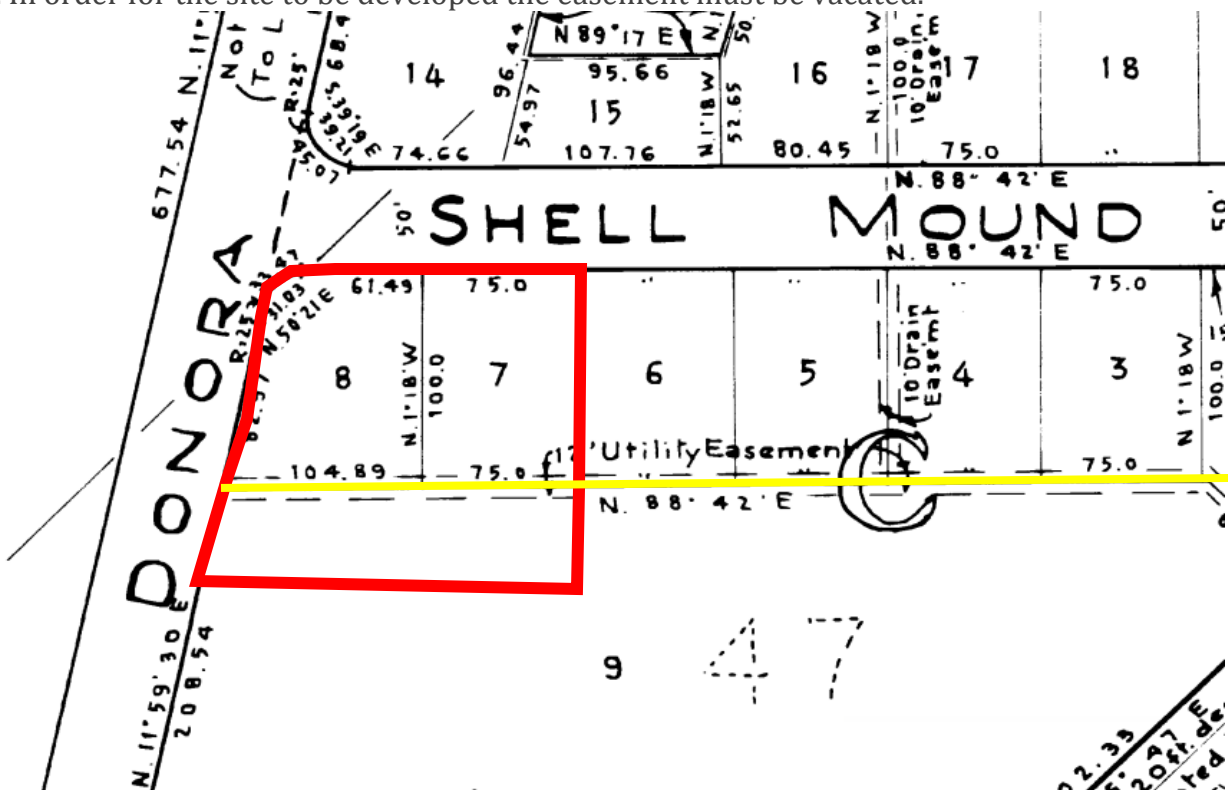


**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Judith Frankel, AICP,
Date: September 23rd, 2024
Re: VAC20240068, Vacation and Relocation of Utility Easement

BACKGROUND

The subject utility easement crosses the southern third of the property at 3030 Shell Mound Blvd. This property is owned by the Fort Myers Art Association, Inc., which is planning to build a facility for their organization on the site. The property is comprised of two whole plats and a portion of a third. The easement is located at the boundary between plats, as seen in the diagram below. The easement is visible in the original plat map dated 1958 in Exhibit C. In order for the site to be developed the easement must be vacated.



FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



PROPOSED SOLUTION

The current location of the utility easement crosses through the middle of the property of a planned redevelopment of the site by the owners, Fort Myers Beach Art Association. Staff has suggested relocation of the easement to the southern property boundary to maintain the Town's ability to locate future utilities if necessary. The applicant is amenable to this solution and has suggested a 6-foot easement to the Town.

Review Criteria

The applicant has shown that this vacation does not adversely impact utility infrastructure. The Town has reviewed the site, and no Town utilities are located in the easement. Refer to Exhibit E for the letters of no objection from the Town and other utility providers.

Objective 7-I, Policy 7-J-1 of the Comprehensive Plan states that the "Town shall strictly limit vacations of rights-of-way and easements to preserve future access". However, that does not apply in this case as the easement does not allow any public access. The request to vacate the utility easement meets the requirements of the Comprehensive Plan.

Summary

Staff recommends that the Town Council approves of the Vacation of Easement with the condition that the property owner provide the Town a minimum 6-foot easement at the southern property boundary. Vacation of the easement will allow Fort Myers Beach Art Association to develop the site to suit their needs.

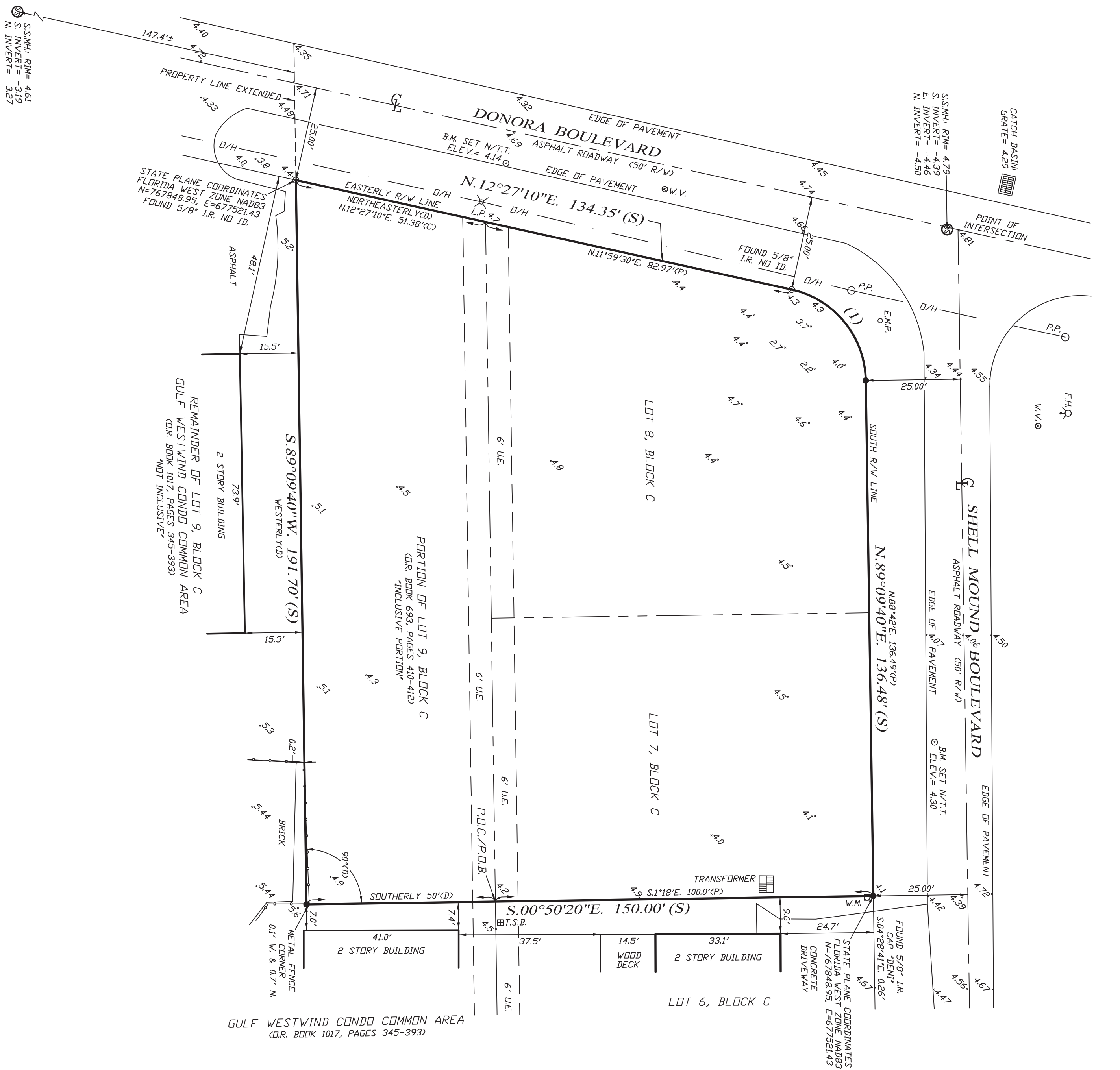
MEMO ATTACHMENTS

Exhibit A – Property Survey
Exhibit B – Easement
Exhibit C – 1958 Plat Map
Exhibit D – Current Play Map
Exhibit E – Letters of No Objection
Exhibit F- Application
Exhibit G - Postcards

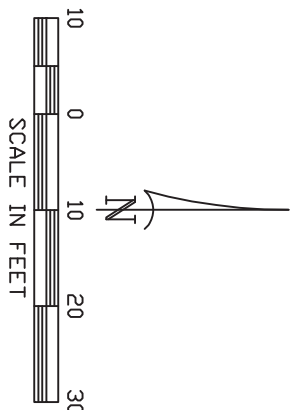
EXHIBIT 6-2

Curve number 1

Radius= 25.00'
Delta= 76°42'30"
Arc= 33.47'
Chord= 31.03'
Chord Brg.= N.50°48'25"E.



BOUNDARY SURVEY OF
LOTS 7, 8 &
A PORTION OF LOT 9, BLOCK C,
ZIMMER'S ADDITION TO
SHELL MOUND PARK,



S.S.MH: RIM= 4.66
W. INVERT= -3.73
E. INVERT= -3.84

- LEGEND:
- | | | | |
|--------|--------------------------------|--------|-----------------------|
| ● | SET 1/2" IRON STD. (CAP LB692) | R.W.B. | RECLAIM WATER BOX |
| ○ | CONCRETE RING (C9) | D/H | DRAINAGE |
| □ | CONCRETE MOUND (CM) | P | POWDER |
| R.M. | PERMANENT REFERENCE MONUMENT | G&W | GUY ANCHOR |
| CUE | PUBLIC UTILITY EASEMENT | T.S.B | TELEPHONE SERVICE BOX |
| DIC. | DRAINAGE EASEMENT | N/D | NAIL & DISK |
| P.C. | POINT OF CURVA/TURE | N/T, I | NAIL & TINNAB |
| DIR. | OFFICIAL RECORDS BOOK | ELEV. | ELEVATION |
| (S) | AS PER SURVEY | B.M. | BENCHMARK |
| (P) | AS PER PLOT | ○ | TYPICAL ELEVATION |
| (C) | AS PER C.D | A/C | AIR CONDITIONER |
| (D) | COMPLETED | V.C | WATER SYSTEM |
| (I) | CURVE NUMBER | C.B.S | CORROGATED METAL PIPE |
| L1 | LINE NUMBER | CONC. | CONCRETE |
| R/W | RIGHT-OF-WAY | ARROW | DRAINAGE |
| § | CENTERLINE | E.M.P | ELECTRIC METER POLE |
| S.S.H. | SANITARY SEWER MANHOLE | P.O.B. | POINT OF BEGINNING |
| F.H. | FIRE HYDRANT | | |
| W.V. | WATER VALVE | | |
| L.P. | LIGHT POLE | | |

SURVEY NOTES:

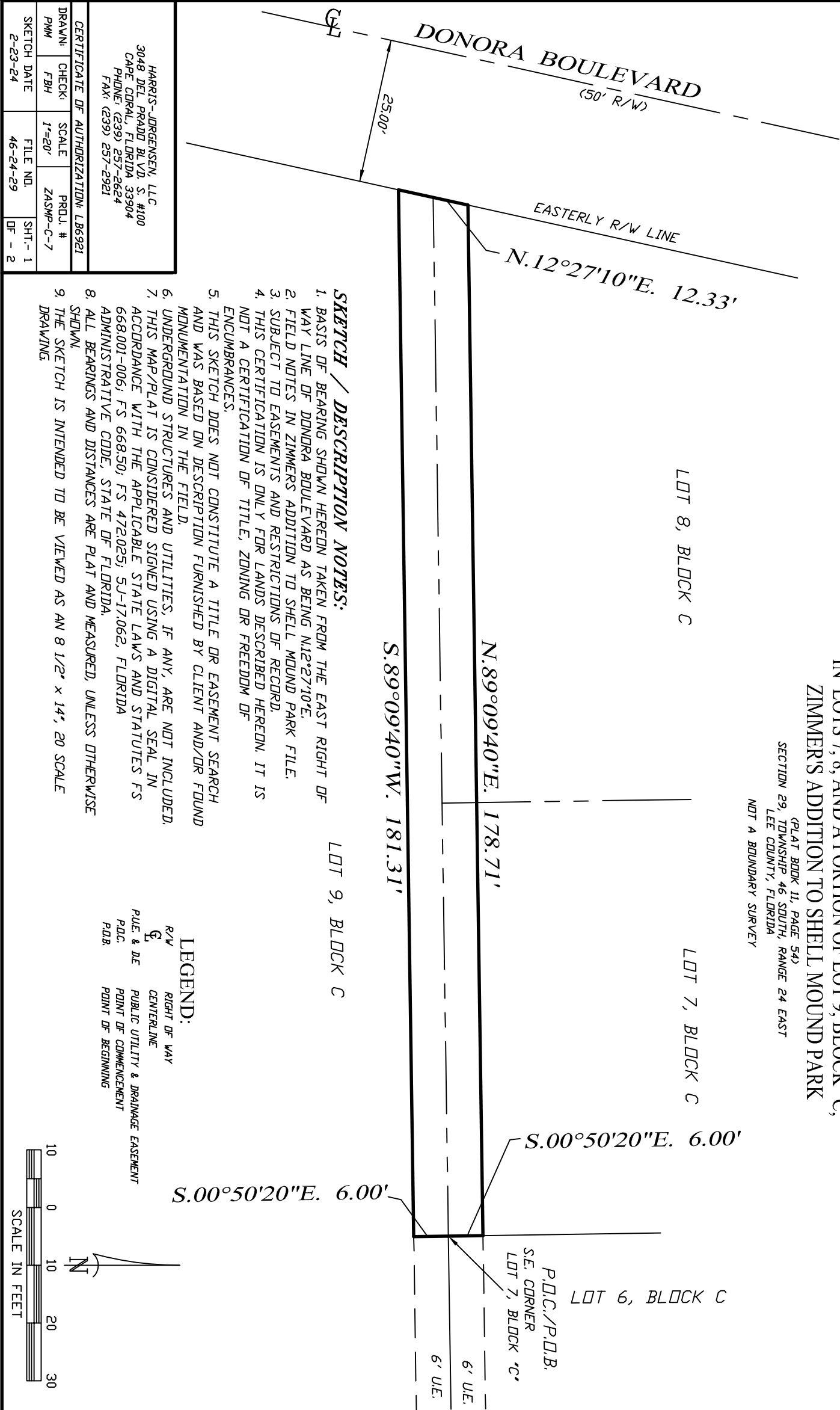
1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE SOUTH RIGHT-OF-WAY
2. LINE OF SHELL MOUND BLUEVAUD, AS BEING N89°09'40"E,
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5. THIS SURVEY DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS
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6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE
WITH THE APPLICABLE STATE LAWS AND STATUTES (FS 666.001-.0061, FS 668.05
FS 472.0205, 5J-17-1062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA,
ALL RELATIONS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. ISSUANCE OF THIS DRAWING, FROM THIS FIRM SHALL NOT RELIEVE THE BUILDER
AND/OR CONTRACTORS OF THE RESPONSIBILITY TO REVIEW AND VERIFY ALL NOTES,
DIMENSIONS, ELEVATIONS, AND ADHERENCE TO APPLICABLE BUILDING CODES PRIOR TO
COMMENCEMENT OF ANY CONSTRUCTION. BUILDER MAY NEED TO ADJUST ELEVATION
AND/OR SETBACKS PRIOR TO CONSTRUCTION IF OTHER REQUIREMENTS EXIST OR APPL.Y.
10. THIS SURVEY IS INTENDED TO BE VIEWED AS AN 18X24, 20 SCALE DRAWING.
11. SITE ELEVATIONS ARE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988).
12. SITE BENCHMARK DERIVED FROM MTIONAL GEODETIC SURVEY (MGS)
BENCHMARK DESIGNATION: 872 5366 F, ELEVATION: 22.60 NAVD 1988.
FLOOD ZONE: 44C ELEVATION: 11' NAVD 1988
COMMUNITY MAP: 120673 PANEL NO.: 0598
SUFFIX: --- G REVISION DATE: 11/17/2022
MAP NUMBER: 12071005086

REVISED	DESCRIPTION	BY	Philip M Mould, L56515
			State of Florida
			Date: 2023.12.08
			12:47:19 -05:00
			PHILLIP M. MOULD
			PROFESSIONAL SURVEYOR AND MAPPER
			LS5515 - STATE OF FLORIDA
DATE OF LAST FIELD WORK	11/29/23		
DRAWN	CHECK	SCALE	PROJ. #
RBH	PMW	1"=20'	ZASMC-C-7
SURVEY DATE	FILE NO.	SHT. - 1	
11/29/23	46-24-29	DF - 1	
HARRIS-JORGENSEN, LLC. 3048 DEL PRADO BLVD. S. SUITE 10 CAPE CORAL, FLORIDA 33904 PHON: (239) 257-2624 FAX: (239) 257-2921			
FLORIDA CERTIFICATE OF AUTHORIZATION - LB5921			

(SEE SHEET 2 OF 2 EXHIBIT F FOR DESCRIPTION TO ACCOMPANY THIS SKETCH)

SKETCH TO ACCOMPANY DESCRIPTION (PROPOSED)
VACATION OF A UTILITY EASEMENT
IN LOTS 7, 8, AND A PORTION OF LOT 9, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK

(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA
NOT A BOUNDARY SURVEY



(SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY DESCRIPTION)

**VACATION OF A UTILITY EASEMENT
IN LOTS 7, 8, AND A PORTION OF LOT 9, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK**

(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
LEE COUNTY, FLORIDA

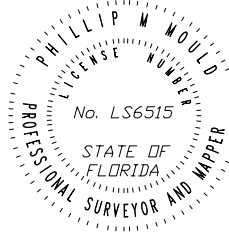
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PORTION OF LAND LYING IN LOT 7, LOT 8, AND A PORTION OF LOT 9, BLOCK "C," ZIMMER'S ADDITION TO SHELL MOUND PARK, AS RECORDED IN PLAT BOOK 11, PAGE 54, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PLOT OR PORTION OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7, BLOCK "C," FOR A POINT OF BEGINNING; THENCE RUN S.00°50'20"E. FOR 6.00 FEET; THENCE RUN S.89°09'40"W. TO A POINT ALONG THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD (50 FEET WIDE) FOR 181.31 FEET; THENCE RUN N.12°27'10"E. ALONG SAID EAST RIGHT OF WAY LINE FOR 12.33 FEET; THENCE RUN N.89°09'40"E. TO A POINT ALONG THE EAST LINE OF SAID LOT 7, BLOCK "C," FOR 178.71 FEET; THENCE RUN S.00°50'20"E. TO SAID SOUTHEAST CORNER OF LOT 7, BLOCK "C," FOR 6.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 2158.68 SQUARE FEET, MORE OR LESS.

		Phillip Mould 2024.02.23 13:11:50 -05'00'	
PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER LS6515 - STATE OF FLORIDA			
HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921			
DRAWN:	CHECK:	PROJ. #	
PMM	FBH	ZASMP-C-7	
SKETCH DATE:		FILE NO.	SHT.-2
2-23-24		46-24-29	OF - 2

ZIMMER'S ADDITION TO SHELL MOUND PARK

A SUBDIVISION OF PART OF LOTS 45 & 47 CASE'S SUBDIVISION

(According to plat recorded in Plat Book 1 at page 58) *

SECTION 29 T. 46 S., R. 24 E.

ESTERO ISLAND, LEE COUNTY, FLORIDA.

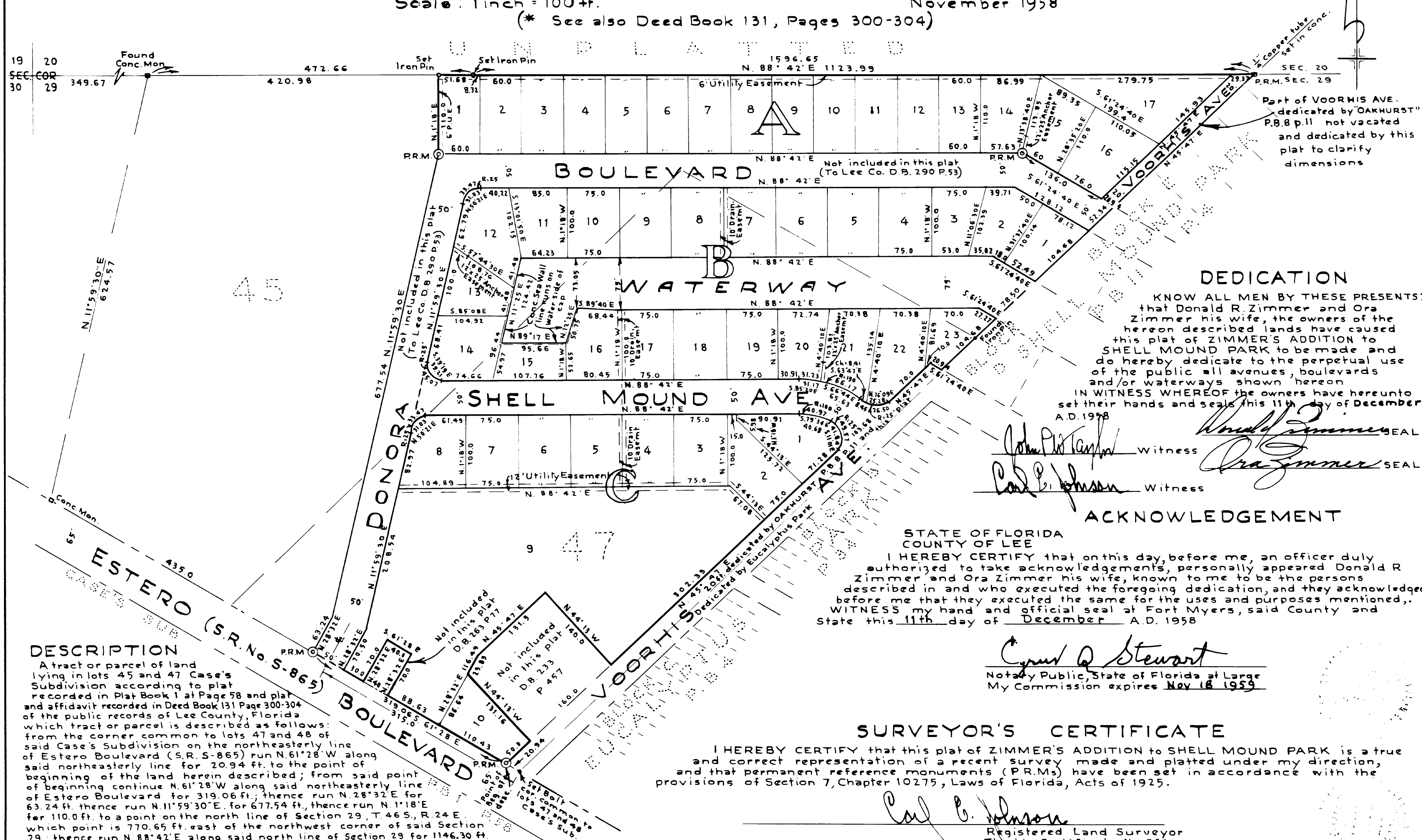
Scale: 1 inch = 100 ft.

November 1958

(* See also Deed Book 131, Pages 300-304)

NOTES

P.R.M.s are 4"x4"x24" Concrete Monuments or 4" x 4" x 60" Concrete Posts, except where otherwise noted. Bearings are calculated from assumed North. South bearing on Sec. Line between Sec. 29 & 30. Both chord and arc distances are shown on curved lines, with chord bearings.



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that Donald R. Zimmer and Ora Zimmer his wife, the owners of the hereon described lands have caused this plat of ZIMMER'S ADDITION to SHELL MOUND PARK to be made and do hereby dedicate to the perpetual use of the public all avenues, boulevards and/or waterways shown hereon. IN WITNESS WHEREOF the owners have hereunto set their hands and seals this 11th day of December A.D. 1958.

Donald R. Zimmer SEAL
Witness *Ora Zimmer* SEAL
Witness *Carl E. Johnson*

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF LEE
I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements, personally appeared Donald R. Zimmer and Ora Zimmer his wife, known to me to be the persons described in and who executed the foregoing dedication, and they acknowledged before me that they executed the same for the uses and purposes mentioned. WITNESS my hand and official seal at Fort Myers, said County and State this 11th day of December A.D. 1958.

Cyril Q. Stewart
Notary Public, State of Florida at Large
My Commission expires Nov 18 1959

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK is a true and correct representation of a recent survey made and platted under my direction, and that permanent reference monuments (P.R.M.s) have been set in accordance with the provisions of Section 7, Chapter 10275, Laws of Florida, Acts of 1925.

Carl E. Johnson
Registered Land Surveyor
Florida Certificate No. 351

APPROVALS

This plat accepted this 17th day of December A.D. 1958 in open meeting of the Board of County Commissioners of Lee County, Florida.

D.J. Farabee Clerk
William C. Pitt Chairman
Tacey A. Bause Co. Road Supt

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK has been examined by me and from my examination I find that said plat complies in form with the requirements of Chapter 10275 Laws of Florida, Acts of 1925. I FURTHER CERTIFY that said plat was filed for record at 3:30 P.M. this 23rd day of January A.D. 1959 and was duly recorded in Plat Book 11 at Page 54 of the public records of Lee County, Florida.

D.J. Farabee
Clerk of the Circuit Court in and for Lee County, Florida

DESCRIPTION

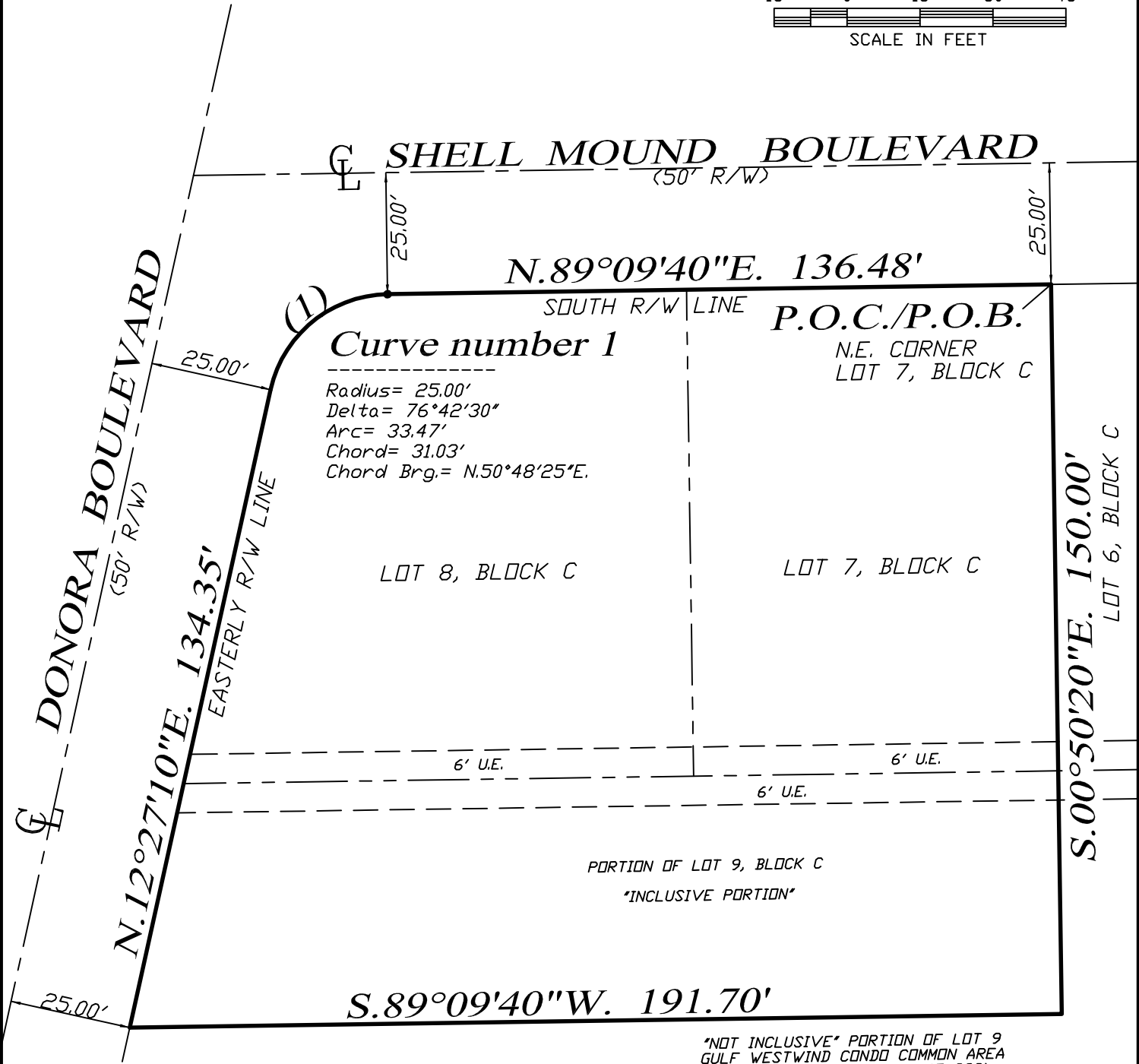
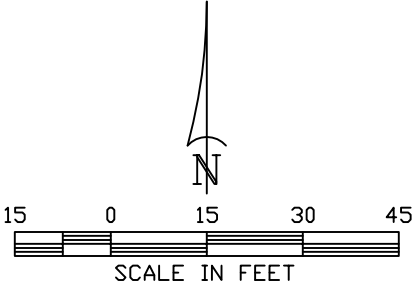
A tract or parcel of land lying in lots 45 and 47 Case's Subdivision according to plat recorded in Plat Book 1 at Page 58 and plat and affidavit recorded in Deed Book 131 Page 300-304 of the public records of Lee County, Florida which tract or parcel is described as follows: from the corner common to lots 47 and 48 of said Case's Subdivision on the northeasterly line of Estero Boulevard (S.R. S-865) run N. 61° 28' W. along said northeasterly line for 20.94 ft. to the point of beginning of the land herein described; from said point of beginning continue N. 61° 28' W. along said northeasterly line of Estero Boulevard for 319.06 ft.; thence run N. 28° 32' E. for 63.24 ft. thence run N. 11° 59' 30" E. for 677.54 ft. thence run N. 1° 18' E. for 110.0 ft. to a point on the north line of Section 29, T. 46 S., R. 24 E. which point is 770.65 ft. east of the northwest corner of said Section 29, thence run N. 88° 42' E. along said north line of Section 29 for 1146.30 ft. thence run S. 45° 47' W. for 1443.57 ft. along the northwesterly line of Voorhis Ave. as shown on the plat of Oakhurst recorded in Plat Book 8 at Page 11 of said public records; to the point of beginning. ALSO All of said Voorhis Ave. subject to the dedication by said plat of Oakhurst of that part not vacated by order of the Lee County Commissioners, recorded in Misc. Book 49 at Page 513 EXCEPTING Donora Boulevard as deeded to Lee County by deed recorded in Deed Book 290 at Page 53. EXCEPTING parcel deeded by deed recorded in Deed Book 263 at Page 77 EXCEPTING parcel deeded by deed recorded in Deed Book 233 at Page 457.

SKETCH TO ACCOMPANY DESCRIPTION
A PORTION OF LOT 9, AND ALL OF LOTS 7 AND LOT 8, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK

(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

NOT A BOUNDARY SURVEY

LEGEND:
R/W RIGHT OF WAY
CL CENTERLINE
U.E. UTILITY EASEMENT
P.O.C. POINT OF COMMENCEMENT
P.O.B. POINT OF BEGINNING



SKETCH / DESCRIPTION NOTES:

1. BASIS OF BEARING SHOWN HEREDON TAKEN FROM THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD AS BEING N.12°27'10"E.
2. FIELD NOTES IN ZIMMERS ADDITION TO SHELL MOUND PARK FILE.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREDON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THE SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14", 30 SCALE DRAWING.

NOT INCLUSIVE PORTION OF LOT 9
GULF WESTWIND CONDO COMMON AREA
(O.R. BOOK 1017, PAGES 345-393)

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921			
CERTIFICATE OF AUTHORIZATION: LB6921			
DRAWN: PMM	CHECK: FBH	SCALE 1"=30'	PROJ. # ZASMP-C-7
SKETCH DATE 2-23-24		FILE NO. 46-24-29	SHT.- 1 OF - 2

EXHIBIT "A"

DESCRIPTION TO ACCOMPANY SKETCH

(SEE SHEET 1 OF 2 FOR SKETCH TO ACCOMPANY DESCRIPTION)

A PORTION OF LOT 9, AND ALL OF LOTS 7 AND LOT 8, BLOCK "C," ZIMMER'S ADDITION TO SHELL MOUND PARK

(PLAT BOOK 11, PAGE 54)

SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

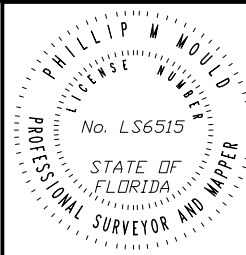
NOT A BOUNDARY SURVEY

DESCRIPTION:

A PLOT OR PARCEL OF LAND BEING A PORTION OF LOT 9, AND ALL OF LOT 7, AND LOT 8, BLOCK "C," ZIMMER'S ADDITION TO SHELL MOUND PARK, AS RECORDED IN PLAT BOOK 11, PAGE 54, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PLOT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 7, BLOCK "C," FOR A POINT OF BEGINNING; THENCE RUN S.00°50'20"E. FOR 150.00 FEET; THENCE RUN S.89°09'40"W. TO A POINT ALONG THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD (50 FEET WIDE) FOR 191.70 FEET; THENCE RUN N.12°27'10"E. ALONG SAID EAST RIGHT OF WAY LINE TO A POINT OF CURVATURE FOR 134.35 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE RIGHT FOR 33.47 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 25.00 FEET, A CENTRAL DELTA ANGLE OF 76°42'30", A CHORD THAT BEARS N.50°48'25"E., AND A CHORD DISTANCE OF 31.03 FEET; THENCE RUN N.89°09'40"E. ALONG THE SOUTH RIGHT OF WAY LINE OF SHELL MOUND BOULEVARD (50 FEET WIDE) TO THE AFORESAID NORTHEAST CORNER OF LOT 7, BLOCK "C," FOR 136.48 FEET, TO THE POINT OF BEGINNING.

CONTAINING: 25941.41 SQUARE FEET, MORE OR LESS.

		Phillip Mould 2024.02.23 14:14:17 -05'00'	
PHILLIP M. MOULD PROFESSIONAL SURVEYOR AND MAPPER LS6515 - STATE OF FLORIDA			
HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921			
DRAWN: PMM	CHECK: FBH	PROJ. # ZASMP-C-7	
SKETCH DATE: 2-23-24		FILE NO. 46-24-29	SHT.-2 OF - 2



CenturyLink

2/6/2024

Aaron Spence

P860262

No Reservations/No Objection

SUBJECT: Vacation request for a portion of a platted utility easement, as shown on Lots 7, 8 & 9, Block C, of Zimmers Addition to Shell Mound Park, as recorded in Plat Book 11, Page 54, in Lee County, Florida.

To Whom It May Concern:

CenturyLink of Florida, Inc. d/b/a CENTURYLINK ("CenturyLink") has reviewed the request for the subject vacation and has determined that it has no objections with respect to the areas proposed for vacation as shown and/or described on Exhibit "A-1" and "A-2", said Exhibits attached hereto and incorporated by this reference.

It is the intent and understanding of CenturyLink that this Vacation shall not reduce our rights to any other existing easement or rights we have on this site or in the area.

This vacation response is submitted WITH THE STIPULATION that if CenturyLink facilities are found and/or damaged within the vacated area as described, the Applicant will bear the cost of relocation and repair of said facilities.

If you have any questions please contact Jerry Peacock at 850-933-8440 or jerry.a.peacock@lumen.com.

Sincerely yours,

CenturyLink Right of Way Team



February 7th, 2024

Attn: Mr. Spence

RE- Letter of No Objection- Easement Release Fort Myers Beach Art Gallery

Dear Mr. Spence,

Thank you for contacting Comcast regarding your request to vacate the easement. This is to inform you that Comcast does not have facilities within the site's development area. We currently have no objection to your plans at this location.

If you have any further question or concerns, please do not hesitate to contact me at (574) 808-8943.

Sincerely,

Christopher Plank
Construction Manager SWFL

12600 Westlinks Dr. Suite #4
Fort Myers, FL 33913
574-808-8943
Christopher.Plank@Comcast.com



15834 Winkler Rd
Fort Myers, Florida 33908

29th January, 2024

Re: No Objection Letter ~ Fort Myers Beach Art Gallery

Mr. Spence,

Florida Power and Light Company has reviewed your proposed construction on the property located at 3030 Shell Mound Blvd, Lee County, and has no objection to the construction at this location. This "no objection" is provided with the stipulation that any FPL facilities within easements at this property retain all rights.

If you have any questions regarding this matter, please contact me at 239-634-8057.

Sincerely,

A handwritten signature in black ink that reads "Drayton L. Diggs". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Drayton Diggs
FPL Distribution Engineer

Carmine Marceno
Sheriff



"Proud to Serve"

State of Florida
County of Lee

June 19, 2024

Aaron Spence
Maastricht Engineering, Inc.
7370 College Pkwy., Suite 211
Fort Myers, FL 33907

Mr. Spence,

The Lee County Sheriff's Office has reviewed your request to vacate a 12-foot utilities easement located at 3030 Shell Mound Blvd. on Fort Myers Beach, and we have no objection to the request and planned construction at this location. This proposed change will not impact the ability of this Agency to provide services in the Fort Myers Beach community.

Respectfully,

A handwritten signature in black ink that reads "Stan Nelson". The signature is written in a cursive style.

Stan Nelson
Director, Planning & Research



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



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

June 11, 2024

Mr. Aaron Spence, Civil Designer
Maastricht Engineering, Inc.
7370 College Parkway, Suite 211
Fort Myers Beach, FL 33907
aaron@maastricht-eng.com

RE: Request for Letter of No Objection for Vacation of a 12' Utility Easement at
3030 Shell Mound Blvd

Mr. Spence:

This letter is in response to your request for a letter of no objection regarding the proposed easement vacation at 3030 Shell Mound Blvd. The easement identified on the provided documents appear to be as follows:

1. **An easement that runs along the southern 3rd of the site, located at 3030 Shell Mound Blvd, Fort Myers Beach Art Gallery.**

The proposed vacation shall not obstruct fire department and/or emergency access to any on-site structure(s) or areas of gathering. No objection with the understanding of the provided comment.

Approvals are based on information provided for review. If you should require any other assistance please contact our office.

Yours in Fire Safety,

Jennifer Campbell, Fire Official
Fort Myers Beach Fire District
Life Safety

Shaping Our Community Through Excellence

www.fmbfirefl.gov



FMBgov.com

Dan Allers, Mayor | Jim Atterholt, Vice Mayor | John R. King, Council Member | Karen Woodson, Council Member | [Scott Safford](#), Council Member

Sarah Propst, AICP, PMP

Sr. Planner/Project Manager
Town of Fort Myers Beach
2731 Oak St
Fort Myers Beach, FL. 33931

Date: August 27, 2024

Subject: Letter of No Objection

Sarah:

This letter is to confirm that The Town of Ft Myers Beach does not have any utilities in the 12' utility easement that runs along the southern 3rd of the site, located at 3030 Shell Mound BLVD, Fort Myers Beach, FL 33931. We have no objections to the vacation of the easement.

Thanks,



Mark Ashton
Utilities

Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931
Phone (239) 560-2081

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;

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2731 Oak St, Fort Myers Beach, FL 33931



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. Please do not submit the instructions at the end of the application.

Site Address: 3030 Shell Mound Blvd, Fort Myers Beach, FL 33931

STRAP Number: 29-46-24-W1-0120C.0070

Applicant: Fort Myers Beach Art Association, Inc. Phone: 860-331-7142

Contact Name: Stephen Eaton Phone: 860-331-7142

Email: stepheneaton1948@gmail.com Fax: _____

Current Zoning District: Institutional

Future Land Use Map (FLUM) Category: Mixed Residential

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*: Maastricht Engineering, INC. Phone: 239-362-1605

**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: 7370 College Parkway, Suite 211, Fort Myers, FL 33907

Email: petem@maastricht-eng.com Fax: _____

Contact Name: Peter Maastricht, P.E. Phone: 239-362-1605



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☒ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* ☐ 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: Maastricht Engineering, INC. Phone: 239-362-1605
Address: 7370 College Parkway, Suite 211, Fort Myers, FL, 33907
Email: petem@maastricht-eng.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Fort Myers Beach Art Association, Inc. Phone: 860-331-7142
Address: P.O. Box 2359, Fort Myers Beach, FL 33932
Email: stepheneaton1948@gmail.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 _____ 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

JOAN ZOELLI, PRES., 14868 Crescent Cove Dr, Ft Myers, FL 33908

Percentage of Stock

non stock corporation

STEPHEN EATON, TRES., 8291 Grand Palm Dr #1, Ft Myers, FL 33926

non stock corporation

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.

Stephen Eaton

Signature

Stephen Eaton

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, Peter Maastricht, P.E. (name), as President (title)
of Maastricht Engineering, 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

Fort Myers Beach Art Association, Inc.

Name of Entity (corporation, partnership, LLP, LLC, etc)

Stephen Eaton

Signature

Stephen Eaton

Typed or Printed Name

TREASURER

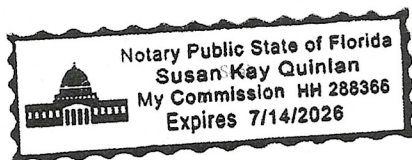
Title

2/29/2024

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 29 day of February 2024, by Stephen Eaton ☒ who is personally known to me OR ☐ who has produced _____ as identification.



Susan Kay Quinlan
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 29-46-24-W1-0120C.0070

Property Address: 3030 Shell Mound Blvd, Fort 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: Case's Subdivision Lots 45 & 47

Book: 11 Page: 54 Unit: _____ Block: 0120C Lot(s): 0070

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) 172.4 feet
Depth (please provide an average width if irregular in shape) 151.0 feet
Frontage on street: 304.3 feet. Frontage on waterbody: N.A. feet
Total land area: 0.597 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Heading South on San Carlos Boulevard after passing over the Sky Bridge
into Fort Myers Beach, turn left onto Estero Boulevard. Continue East for 1.3 Miles
and make a left onto Donora Boulevard. Continue for about 0.1 Miles and the
property, 3030 Shell mound Boulevard will be on your right.

☒ 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 | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

SUPPLEMENT -PH-G

Petition for Vacation of Platted Rights-of-Way and Easements

This is the second part of a two part application. Please be sure to include the Administrative Action Application, which requires general information, with this supplemental form requiring specific information regarding a **Vacation of a Right-of-Way or Easement**. Please submit *two paper copies* and *one digital/electronic copy* of all required applications, supplemental information, exhibits and documents.

Fees: \$1000.00

Type of Vacation: ☒ Right-of-Way (Form A) ☐ Easement (Form B)
☐ Plat- no ROW

Site Address: 3030 Shell Mound Blvd, Fort Myers Beach, FL 33931

STRAP Number(s): 29-46-24-W1-0120C.0070

Petitioner: Fort Myers Beach Art Association, Inc. Phone: 860-331-7142

Authorized Agent: Stephen Eaton Phone: 860-331-7142

Petitioner/Agent Address: P.O. Box 2359, Fort Myers Beach, FL 33932

Email: stepheneaton1948@gmail.com Fax: _____

Please provide a statement of the reason(s) for seeking the vacation (Use additional sheets if necessary):

In order to upgrade the FMB Art Association Building, additional facilities will be
required to meet the current FMB Land Development Code Standards. In order
to accommodate these changes the utility easement will need to be vacated.

All petitions seeking to vacate platted rights-of-way and easements must comply with the requirements below. (LDC Section 10-219)

- A signed Petition, either Form A (F.S. Ch. 336) or Form B (F.S. Ch. 117) for each vacation request.
- A legal description of the area sought to be vacated and a recent survey prepared and executed by a registered surveyor showing the area sought to be vacated. (Please label as Exhibit A) The survey must show the location of all existing improvements including, but not limited to:
 - Drainage facilities.
 - All public and private utilities.
 - Surface water management facilities.
 - Pavement.
 - Buildings.
 - Any other physical features within 100 feet of the real property.
- A copy of the plat showing the area(s) to be vacated. (Please label as Exhibit B)
- Certificate(s) showing that all property taxes have been paid in full for all real property that abuts the right-of-way or easement sought to be vacated. (Please label as Exhibit C)
- Notarized signatures of fee simple owners of record of all real property that abuts the right-of-way or easement sought to be vacated. (Please see adjacent property affidavit)
- A list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to, or affected by, the requested vacation.
- A printed list of the names of all current real property owners, STRAP numbers, and mailing addresses of property that is within a 500-foot radius of the right-of-way or easement sought to be vacated, including two (2) sets of mailing labels for the real property owners on this list.

➤ Signed letter of No Objection from:

Town of Fort Myers Beach Public Works Department

Florida Power and Light

The local cable television company serving the Town

The local telephone company serving the Town

The local liquid propane gas company serving the Town

Lee County or other provider of sanitary sewer services

Lee County Sheriff's Office

Fort Myers Beach Fire Control District

Any other provider of private or public utilities whose facilities or infrastructure may be affected by the vacation, as determined by the director.

*** PLEASE NOTE: If any of the foregoing companies or agencies determines that the requested vacation may not be in the best interest of the public, the petitioner may offer an alternative or replacement right-of-way or easement. The affected company or agency shall not, however, be under any obligation to accept the offered alternative. Where a petitioner has offered to provide a replacement right-of-way or easement, town council shall not take action on the petition to vacate until the legal instrument(s) necessary to grant the alternative or replacement right-of-way or easement has been approved in form and content by the affected company or agency, properly executed by the granting or conveying property owner, and delivered to the town to be held in trust pending the town council's consideration of the requested vacation.

➤ A statement from the Lee County Community Development Director, or designee, whether vacation by Lee County is required.



PETITION TO VACATE (Form A - F.S. Ch. 336)

Petitioner(s), _____
requests the Town Council of the Town of Fort Myers Beach, Florida to grant this petition
to Vacate and states as follows:

1. Petitioner(s) Mailing Address: _____

2. In accordance with Florida Statute (F.S.) Chapter 336, Petitioner desires to vacate the public's interest in the right-of-way or portion of right-of-way legally described in the attached *Exhibit A*.
3. A sketch/site plan showing the area(s) the Petitioner desires to vacate is attached as *Exhibit B*.
4. Petitioner provided notice to all affected property owners concerning the intent of this
Petition.
5. In accordance with the attached letters of no objection provided by the various governmental and utility entities, there is no apparent impediment to granting Petitioner's request.

Wherefore, Petitioner respectfully requests that the Town Council adopt a resolution granting the Petition to Vacate.

Submitted by:

_____ Petitioner Signature	_____ Printed Name	_____ Date
_____ Petitioner Signature	_____ Printed Name	_____ Date
_____ Petitioner Signature	_____ Printed Name	_____ Date



PETITION TO VACATE (Form B_ F.S. Ch.177)

Petitioner(s), Fort Myers Beach Art Association, Inc.
requests the Town Council of the Town of Fort Myers Beach, Florida to grant this
petition to Vacate and states as follows:

1. Petitioner(s) Mailing Address: P.O. Box 2359 Fort Myers Beach, FL 33932

2. In accordance with Florida Statute (F.S.) Chapter 177, Petitioner desires to vacate the public's interest in the easement, plat or portion of a plat legally described in the attached *Exhibit A*.
3. A sketch/site plan showing the area the Petitioner desires to vacate is attached as *Exhibit B*.
4. Proof the Petitioner paid all applicable state and county taxes is attached as *Exhibit C*.
5. Petition is fee simple title holder to the underlying land sought to be vacated.
6. Petitioner provided notice to all affected property owners concerning the intent of this
Petition.
7. In accordance with the attached letters of no objection provided by the various governmental and utility entities, there is no apparent impediment to granting Petitioner's request.

Wherefore, Petitioner respectfully requests that the Town Council adopt a resolution granting the Petition to Vacate.

Submitted by:

Petitioner Signature

Stephen Eaton

Printed Name

2/27/24

Date

Petitioner Signature

Printed Name

Date

Petitioner Signature

Printed Name

Date



ADJACENT PROPERTY AFFIDAVIT

I, Fort Myers Beach Art Association, Inc. (name), of

P.O. Box 2359, Fort Myers Beach, FL 33932 (address)

swear or affirm under oath, that I am the fee simple owner of the above-mentioned property and I agree that the petition to vacate the platted right-of-way or platted easement located at:

3030 Shell Mound Blvd, Fort Myers Beach, FL 33931 (address) should be vacated

by the Town Council.

Stephen Eaton

Signature

Stephen Eaton

Typed or Printed Name

Treasurer

Title

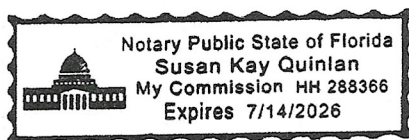
2/27/24

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 27 day of FEBRUARY, 2024 by Stephen Eaton, ✓ who is personally known to me OR who has produced as identification.

(Seal)



Susan Kay Quinlan
Notary Public Signature



(SAMPLE LETTER of NO OBJECTION)

PETITION TO VACATE

REQUEST FOR LETTER OF NO OBJECTION

Today's Date:

Contact Person
Company Name
Mailing Address
City, State, Zip

RE: Request for a Letter of No Objection on a proposed right-of-way or easement vacation at (property address here)

To Whom It May Concern:

We intend to submit a Petition to the Fort Myers Beach Town Council seeking to vacate the public interest in the right-of-way, road easement, utility or drainage easement at the location identified above in order to accomplish the following purpose:

(Provide rationale here)

We have included a sketch or drawing of the right-of-way, road easement, utility or drainage easement we desire to vacate. Please provide us with a letter of review and recommendation so we can proceed with our petition submittal. If you have any questions or concerns, please do not hesitate to contact us directly and thank you in advance for your consideration.

Signed,

The Petitioner

(include your return mailing address, email address and daytime phone number)

ZIMMER'S ADDITION TO SHELL MOUND PARK

A SUBDIVISION OF PART OF LOTS 45 & 47 CASE'S SUBDIVISION

(According to plat recorded in Plat Book 1 at page 58) *

SECTION 29 T. 46 S., R. 24 E.

ESTERO ISLAND, LEE COUNTY, FLORIDA.

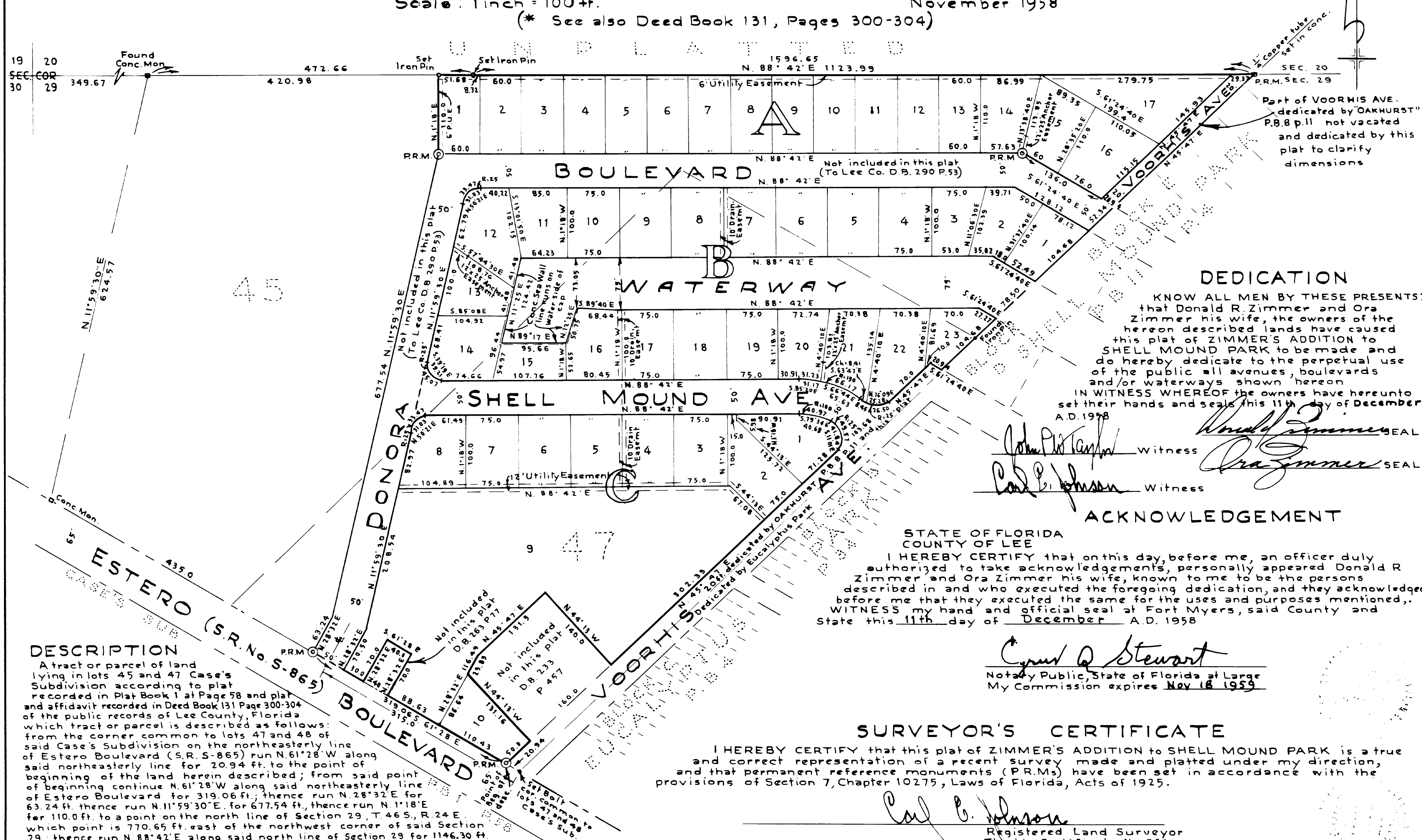
Scale: 1 inch = 100 ft.

November 1958

(* See also Deed Book 131, Pages 300-304)

NOTES

P.R.M.s are 4"x4"x24" Concrete Monuments or 4" x 4" x 60" Concrete Posts, except where otherwise noted. Bearings are calculated from assumed North. South bearing on Sec. Line between Sec. 29 & 30. Both chord and arc distances are shown on curved lines, with chord bearings.



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that Donald R. Zimmer and Ora Zimmer his wife, the owners of the hereon described lands have caused this plat of ZIMMER'S ADDITION to SHELL MOUND PARK to be made and do hereby dedicate to the perpetual use of the public all avenues, boulevards and/or waterways shown hereon. IN WITNESS WHEREOF the owners have hereunto set their hands and seals this 11th day of December A.D. 1958.

Donald R. Zimmer SEAL
Witness *Ora Zimmer* SEAL
Witness *Carl E. Johnson*

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF LEE
I HEREBY CERTIFY that on this day, before me, an officer duly authorized to take acknowledgements, personally appeared Donald R. Zimmer and Ora Zimmer his wife, known to me to be the persons described in and who executed the foregoing dedication, and they acknowledged before me that they executed the same for the uses and purposes mentioned. WITNESS my hand and official seal at Fort Myers, said County and State this 11th day of December A.D. 1958.

Cyril Q. Stewart
Notary Public, State of Florida at Large
My Commission expires Nov 18 1959

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK is a true and correct representation of a recent survey made and platted under my direction, and that permanent reference monuments (P.R.M.s) have been set in accordance with the provisions of Section 7, Chapter 10275, Laws of Florida, Acts of 1925.

Carl E. Johnson
Registered Land Surveyor
Florida Certificate No. 351

APPROVALS

This plat accepted this 17th day of December A.D. 1958 in open meeting of the Board of County Commissioners of Lee County, Florida.

D.J. Farabee Clerk
William C. Pitt Chairman
Tacey A. Brouse Co. Road Supt

I HEREBY CERTIFY that this plat of ZIMMER'S ADDITION to SHELL MOUND PARK has been examined by me and from my examination I find that said plat complies in form with the requirements of Chapter 10275 Laws of Florida, Acts of 1925. I FURTHER CERTIFY that said plat was filed for record at 3:30 P.M. this 23rd day of January A.D. 1959 and was duly recorded in Plat Book 11 at Page 54 of the public records of Lee County, Florida.

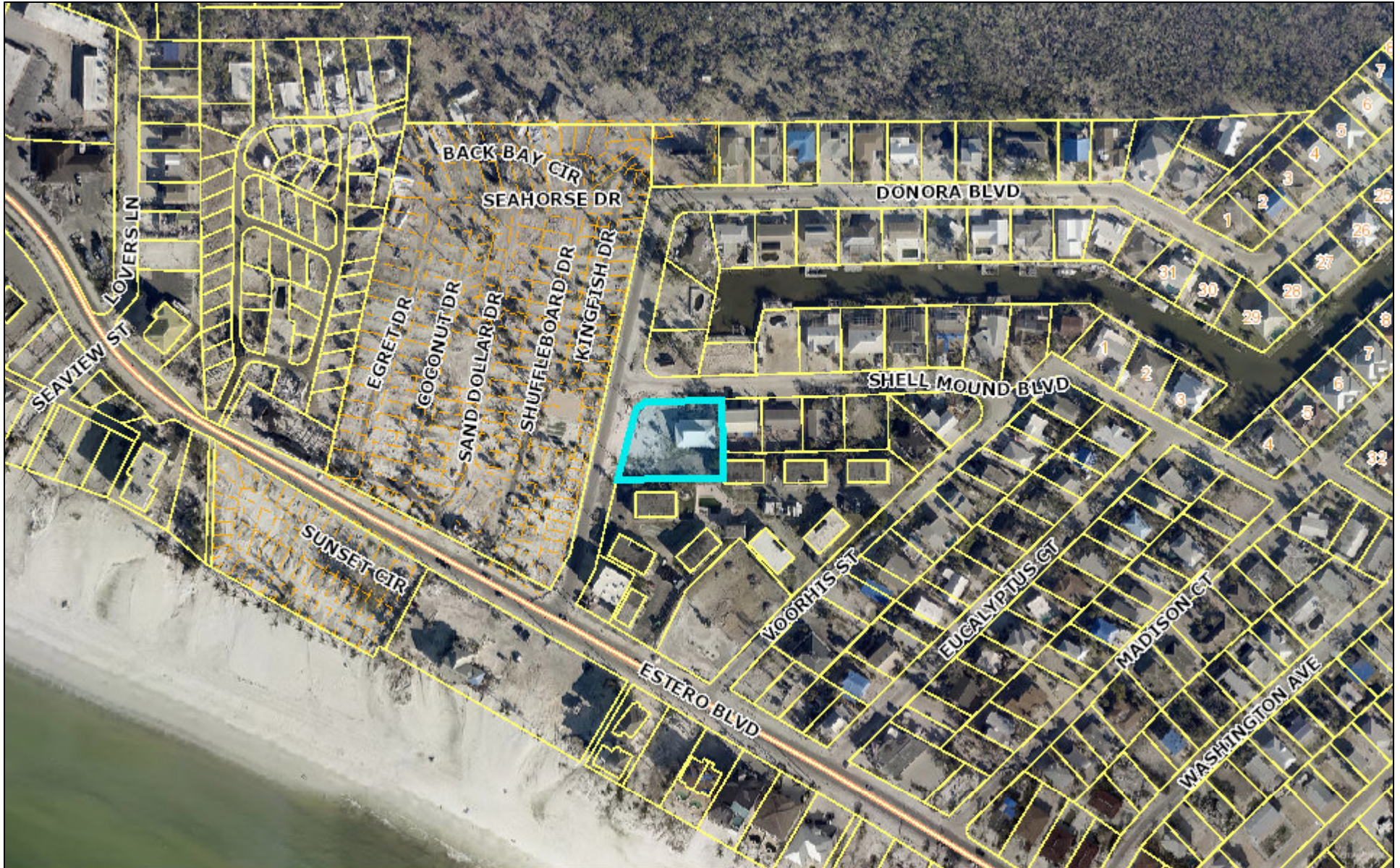
D.J. Farabee
Clerk of the Circuit Court in and for Lee County, Florida

DESCRIPTION

A tract or parcel of land lying in lots 45 and 47 Case's Subdivision according to plat recorded in Plat Book 1 at Page 58 and plat and affidavit recorded in Deed Book 131 Page 300-304 of the public records of Lee County, Florida which tract or parcel is described as follows: from the corner common to lots 47 and 48 of said Case's Subdivision on the northeasterly line of Estero Boulevard (S.R. S-865) run N. 61° 28' W. along said northeasterly line for 20.94 ft. to the point of beginning of the land herein described; from said point of beginning continue N. 61° 28' W. along said northeasterly line of Estero Boulevard for 319.06 ft.; thence run N. 28° 32' E. for 63.24 ft. thence run N. 11° 59' 30" E. for 677.54 ft. thence run N. 1° 18' E. for 110.0 ft. to a point on the north line of Section 29, T. 46 S., R. 24 E. which point is 770.65 ft. east of the northwest corner of said Section 29, thence run N. 88° 42' E. along said north line of Section 29 for 1146.30 ft. thence run S. 45° 47' W. for 1443.57 ft. along the northwesterly line of Voorthis Ave. as shown on the plat of Oakhurst recorded in Plat Book 8 at Page 11 of said public records; to the point of beginning. ALSO All of said Voorthis Ave. subject to the dedication by said plat of Oakhurst of that part not vacated by order of the Lee County Commissioners, recorded in Misc. Book 49 at Page 513 EXCEPTING Donora Boulevard as deeded to Lee County by deed recorded in Deed Book 290 at Page 53. EXCEPTING parcel deeded by deed recorded in Deed Book 263 at Page 77 EXCEPTING parcel deeded by deed recorded in Deed Book 233 at Page 457.

EXHIBIT 6-3

GeoView Map



February 28, 2024

Air Photos: 2023 Hi-Res (3 inch)



Hospital Locations



Library Locations

School Locations



School Locations



CCC_Parks

--- County Boundary

Major Roads Medium

I - 75

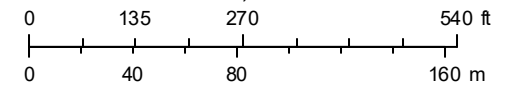
US 41

Other Highways

Other Roads



Parcels Near



1:2,908

EXHIBIT 6-7





Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency/ Town Council of the Town of Fort Myers Beach will be conducting a public hearing at the Town Hall Council Chambers located at 2731 Oak St, Fort Myers Beach, Florida, 33931.

TIME: 9 AM- LPA and 6 PM-Town Council
DATE: LPA September 3rd, 2024 (9AM), Town Council September 23d, 2024 (6PM)
CASE: VAC20240068
ADDRESS: 3030 Shell Mound Blvd
APPLICANT: Fort Myers Beach Art Association, Inc.
REQUEST: Requesting a vacation and relocation of a utility easement to allow for redevelopment of the property.

TOWN CONTACT: JUDITH FRANKEL jfrankel@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 **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/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
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Town of Fort Myers Beach
Community Development Services - Planning Division
2731 Oak St,
Fort Myers Beach, FL 33931

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You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency/ Town Council** will review the application materials and hear testimony to make a **recommendation/decision**. Complete records or transcripts of the proceedings are not provided by the Town.

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Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2731 Oak St,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

RESOLUTION 24-190

A RESOLUTION VACATING A 12-FOOT WIDE UTILITY EASEMENT LOCATED OVER REAL PROPERTY OWNED BY THE FORT MYERS BEACH ART ASSOCIATION, GENERALLY LOCATED AT 3030 SHELL MOUND BOULEVARD, FORT MYERS BEACH; ACCEPTING AND APPROVING A NEW UTILITY EASEMENT AS A REPLACEMENT EASEMENT TO BE LOCATED ON REAL PROPERTY OWNED BY FORT MYERS BEACH ART ASSOCIATION, SUBJECT TO TERMS AND CONDITIONS AS CONTAINED IN A UTILITY EASEMENT AGREEMENT; DIRECTING THE TOWN CLERK TO RECORD THIS RESOLUTION AND THE NEW UTILITY EASEMENT; AUTHORIZING THE MAYOR TO SIGN ALL NEEDED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the property owner, the Fort Myers Beach Art Association, has requested vacation of a 12-foot-wide utility easement located on its property at 3030 Shell Mound Boulevard, Fort Myers Beach. Exhibit A shows the location of the existing easement; and

WHEREAS, the Fort Myers Beach Art Association has offered to voluntarily have the vacated easement relocated to the southern property boundary as a new replacement utility easement to ensure continued utility access by the Town. Exhibit B shows the approximate location of the new replacement utility easement; and

WHEREAS, vacation and relocation of the existing utility easement on the Fort Myers Beach Art Association's property would allow for the redevelopment of the real property; and

WHEREAS, the existing utility easement was granted to Lee County in 1958 when the land was platted and the Town acquired the easement upon incorporation; and

WHEREAS, Section 2-539 of the Fort Myers Beach Code of Ordinances provides guidelines and criteria for review of requests to vacate any Town streets, alleys, easements, or subdivision plats; and

WHEREAS, the Town has no utilities under the existing easement and letters of no objection have been obtained from private utility companies; and

WHEREAS, a public hearing was held before the Local Planning Agency ("LPA") on September 3, 2024, and after providing the applicant, staff, and the public an opportunity to present testimony and evidence, the LPA voted 7 to 0 finding the request to be consistent with the Town of Fort Myers Beach Comprehensive Plan and recommending approval of the vacation request, subject to final review of a proposed new relocation and replacement utility easement by the Town Attorney; and

WHEREAS, notice to current property owners within 500 feet was provided more than 15 days prior to the hearing before the Town Council on October 28th, 2024 and the Town Clerk has received an Affidavit of Mailing as required by Section 2-538(b); and

WHEREAS, adoption of this Resolution is in the best interest of the Town.

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 vacation of the existing utility easement, as more particularly described in Exhibit A, finding that the criteria in Section 2-539 of the Fort Myers Beach Code of Ordinances is satisfied. More specifically, that:

1. There is no future likelihood that the easement will be needed by the Town or otherwise conflict with the Town's future utility infrastructure management; and
2. the applicant has provided a comparable replacement utility easement at no cost to the Town;

Section 3. The vacation of the existing utility easement is contingent on 1) delivery of a new 6-foot-wide replacement utility easement to the Town in the approximate area shown on Exhibit B, subject to terms and conditions and approval as to form and sufficiency by the Town Attorney; and 2) subordination of any existing mortgage or other encumbrance on the area where the new replacement utility easement is located.

Section 4. The Town Clerk is directed to record this Resolution with its exhibits, any needed subordinations or other documents, upon delivery of the new replacement utility easement in the Official Records of Lee County, Florida.

Section 5. The Mayor is authorized to sign any and all documents needed to implement the direction and approvals contained in this Resolution.

Section 6. This Resolution shall take effect upon the date of recording of the documents referenced herein.

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of October 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 SOLELY:

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of October 2024.

Attachments:

Exhibit A- Survey of Location Existing Easement

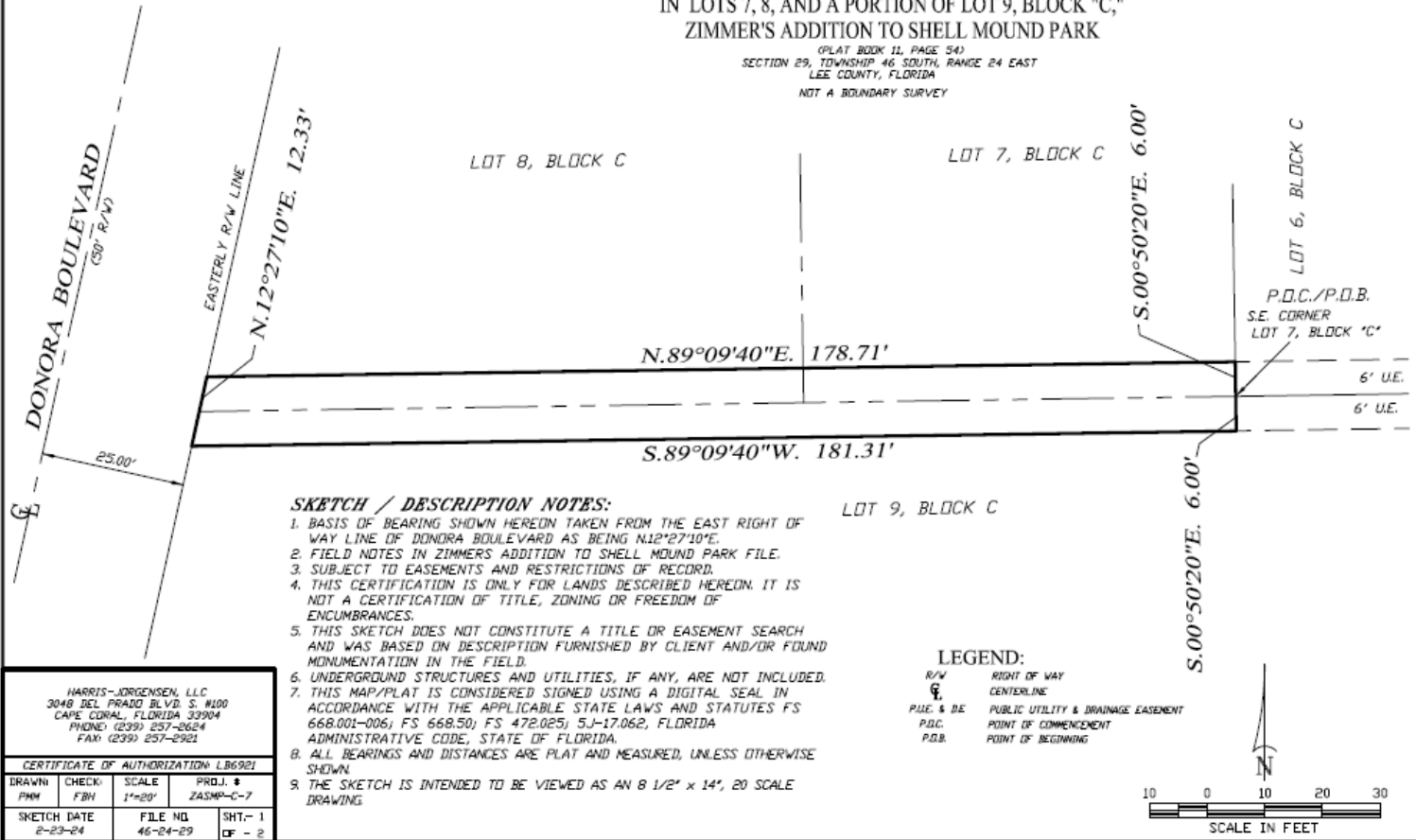
Exhibit B- Sketch of Area for Replacement Easement

Exhibit A

(SEE SHEET 2 OF 2 EXHIBIT F FOR DESCRIPTION TO ACCOMPANY THIS SKETCH)

SKETCH TO ACCOMPANY DESCRIPTION (PROPOSED)
VACATION OF A UTILITY EASEMENT
IN LOTS 7, 8, AND A PORTION OF LOT 9, BLOCK "C,"
ZIMMER'S ADDITION TO SHELL MOUND PARK

(PLAT BOOK 11, PAGE 54)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA
NOT A BOUNDARY SURVEY



SKETCH / DESCRIPTION NOTES:

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EAST RIGHT OF WAY LINE OF DONORA BOULEVARD AS BEING N12°27'10\"E.
2. FIELD NOTES IN ZIMMER'S ADDITION TO SHELL MOUND PARK FILE.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
5. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED ON DESCRIPTION FURNISHED BY CLIENT AND/OR FOUND MONUMENTATION IN THE FIELD.
6. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
7. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
8. ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.
9. THE SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2\" x 14\", 20 SCALE DRAWING.

LEGEND:

R/W RIGHT OF WAY
C CENTERLINE
P.U.E. & D.E. PUBLIC UTILITY & DRAINAGE EASEMENT
P.O.C. POINT OF COMMENCEMENT
P.O.B. POINT OF BEGINNING

10 0 10 20 30
SCALE IN FEET

HARRIS-JORGENSEN, LLC 3048 DEL PRADO BLVD. S. #100 CAPE CORAL, FLORIDA 33904 PHONE (239) 257-2664 FAX (239) 257-2921			
CERTIFICATE OF AUTHORIZATION LB6921			
DRAWN PHM	CHECK FBH	SCALE 1\"=20'	PROJ. # ZASMP-C-7
SKETCH DATE 2-23-24	FILE NO. 46-24-29	SHT.- 1 OF - 2	

SKETCH TO ACCOMPANY DESCRIPTION:
(PROPOSED)

6 FOOT UTILITY EASEMENT,
LYING IN A PORTION OF
LOT 7 & A PART OF LOT 9,
BLOCK C,
ZIMMER'S ADDITION TO
SHELL MOUND PARK,

(PLAT BOOK 11, PAGE 54 & D.R. BOOK 693, PAGES 410-412)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

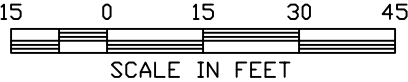
SEE EXHIBIT "A",
SHEET 2 OF 2 FOR DESCRIPTION

THIS IS NOT A BOUNDARY SURVEY

SKETCH / DESCRIPTION NOTES:

1. BASIS OF BEARING SHOWN HEREON TAKEN FROM THE EASTERLY RIGHT-OF-WAY LINE OF DONORA BOULEVARD, AS BEING N.89°09'40"E.
2. FIELD NOTES IN ZIMMER'S ADDITION TO SHELL MOUND PARK.
3. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
4. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
5. THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.
6. THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 1/2" x 14", 30 SCALE DRAWING.

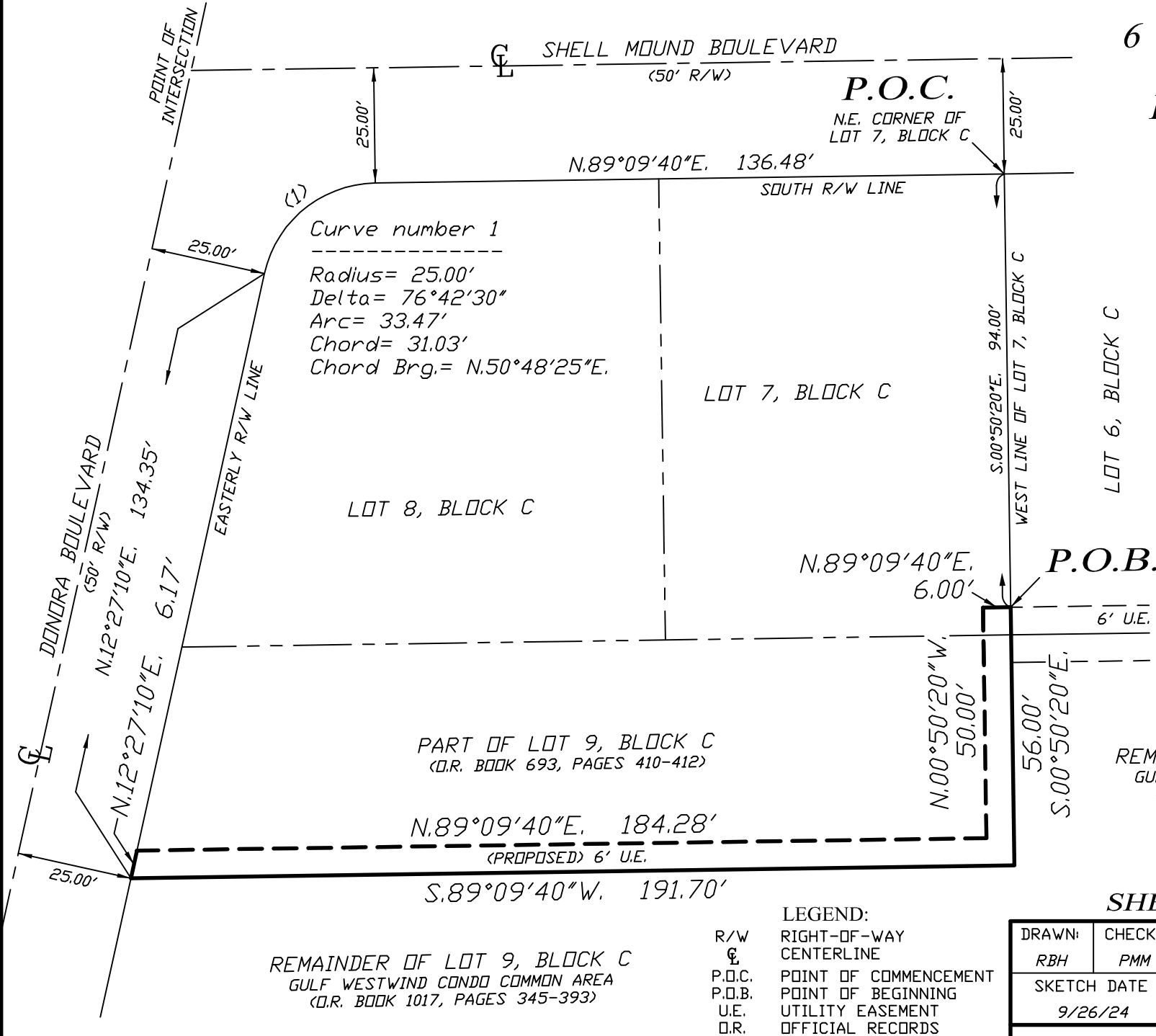
REMAINDER OF LOT 9, BLOCK C
GULF WESTWIND CONDO COMMON AREA
(D.R. BOOK 1017, PAGES 345-393)



SHEET 1 OF 2

DRAWN: RBH	CHECK: PMM	SCALE 1"=30'	PROJ. # ZASMP-C-7	HARRIS-JORGENSEN, LLC. 3048 DEL PRADO BLVD. S., SUITE 100 CAPE CORAL, FLORIDA 33904 PHONE: (239) 257-2624 FAX: (239) 257-2921
SKETCH DATE 9/26/24		FILE NO. 46-24-29	SHT.- 1 OF - 2	

FLORIDA CERTIFICATE OF AUTHORIZATION LB6921



LEGEND:

- R/W
⊕
P.O.C.
P.O.B.
U.E.
D.R.
- RIGHT-OF-WAY
CENTERLINE
POINT OF COMMENCEMENT
POINT OF BEGINNING
UTILITY EASEMENT
OFFICIAL RECORDS

REMAINDER OF LOT 9, BLOCK C
GULF WESTWIND CONDO COMMON AREA
(D.R. BOOK 1017, PAGES 345-393)

DESCRIPTION TO ACCOMPANY SKETCH

EXHIBIT "A"

(PROPOSED)

6 FOOT UTILITY EASEMENT, LYING IN A PORTION OF LOT 7 & A PART OF LOT 9, BLOCK C, ZIMMER'S ADDITION TO SHELL MOUND PARK,

(PLAT BOOK 11, PAGE 54 & D.R. BOOK 693, PAGES 410-412)
SECTION 29, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

DESCRIPTION:

A PLOT OR PARCEL OF LAND LYING IN A PORTION OF LOT 7, BLOCK C, ZIMMER'S ADDITION TO SHELL MOUND PARK, AS RECORDED IN PLAT BOOK 11, PAGE 54, AND A PART OF LOT 9, BLOCK C, ZIMMER'S ADDITION TO SHELL MOUND PARK, AS RECORDED IN OFFICIAL RECORDS BOOK 693, PAGE 410 PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID PLOT OR PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE AFORESAID LOT 7, BLOCK C; THENCE RUN S.00°50'20"E. ALONG THE EAST LINE OF SAID LOT 7, FOR 94.00 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE S.00°50'20"E., FOR 56.00 FEET; THENCE RUN S.89°09'40"W. TO A POINT ALONG THE EASTERLY RIGHT OF WAY LINE OF DONORA BOULEVARD (50.00 FEET WIDE), FOR 191.70 FEET; THENCE RUN N.12°27'10"E. ALONG SAID RIGHT OF WAY, FOR 6.17 FEET; THENCE RUN N.89°09'40"E., FOR 184.28 FEET; THENCE RUN N.00°50'20"W., FOR 50.00 FEET; THENCE RUN N.89°09'40"E., FOR 6.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING 1,446 SQUARE FEET OR 0.03 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE AFORESAID EASTERLY RIGHT OF WAY LINE OF DONORA BOULEVARD, AS BEING N.12°27'10"E.

Phillip M Mould, Digitally signed by Phillip M
LS6515, State of Mould, LS6515, State of
Florida Florida
Date: 2024.09.27 13:57:40
Florida -04'00'

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER, LS6515
SEPTEMBER 26, 2024

THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL
IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND
STATUTES FS 668.001-006; FS 668.50; FS 472.025; 5J-17.062,
FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.

SHEET 2 OF 2

ZASMP-C-7

1. **Request:**

Meeting Date: October 28, 2024

Second reading and Final Public Hearing on a proposed Ordinance 24-26 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED "USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT" IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The Town Council approves LDC amendments.

What the action accomplishes:

The changes to the CB zoning district will allow for additional uses on commercial properties.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The CB zoning district has limitations on allowed uses based on what was previously developed on a parcel. This amendment allows all of the uses that were previously permitted prior to the implementation of the CB zoning district and includes limitations to reduce potential impacts of new uses on adjacent residential properties.

Attachments:

1. Ordinance 24-26 TC
2. TC Memo
3. Exhibit A CB Zoning Section language
4. Exhibit B Zoning Table with updates
5. Exhibit C Map of CB Zoned Properties

Financial Impact:

Unknown

6. **Alternative Action**

Recommend changes and recommend approval.

7. **Management Recommendations:**

Find that the proposed language is appropriate and meets the intent of the comprehensive plan and approve.

8. **Recommended Approval:**

Sarah Propst, Community Development, Planning Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/27/2024
Approved - 9/27/2024
Approved - 9/28/2024
Approved - 9/29/2024
Final Approval - 9/30/2024

ORDINANCE NO. 24-26

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 1) TABLE 34-2 TITLED “USE SUB-GROUPS PERMITTED IN EACH ZONING DISTRICT” IN CHAPTER 34, ARTICLE III, DIVISION 2 TO AMEND THE ALLOWED SUB-GROUPS, FOR THE CB ZONING DISTRICT, FROM LIMITED TO OPEN FOR THE LODGING, OFFICE, AND RETAIL USE GROUPS; 2) THE LAND DEVELOPMENT CODE SUBDIVISION V. – CB ZONING DISTRICT FOUND IN CHAPTER 34, ARTICLE III, DIVISION 5. – REDEVELOPMENT ZONING DISTRICT TO PLACE LIMITATIONS ON NEW OUTDOOR DINING AND OUTDOOR ENTERTAINMENT USES; PROVIDING FOR SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS; CONFLICTS OF LAW; 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 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, the proposed changes to the Land Development Code are not more restrictive or burdensome to development; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on September 3, 2024, at time which 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, and the LPA voted 7-0, to recommend approval of this Ordinance; and

WHEREAS, on September 23, 2024, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons to adopt Ordinance 24-26 as provided herein and approved scheduling an adoption public hearing; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website on the 27th day of September, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News-Press on the 27th day of September, 2024, which is 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041; and

WHEREAS, on the 7th day of October, 2024, the Town Council held a second reading of the Ordinance; at which time the Town Council gave full and complete consideration to the recommendations of staff and the LPA, and the testimony of all interested persons; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's business owners, residents, and visitors to adopt the proposed change.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

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.

Section 2. Table 34-2 Use Sub-Groups Permitted in Each Zoning Districts, in Chapter 34, Article III, Division 2 and Subdivision V. – CB Zoning District, Sections 34-702 through 34-705 are hereby amended to read as provided in Exhibits A and B.

Section 3. 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 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember King and seconded by Mayor Allers 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 _____
Scott Safford, Council Member _____
Karen Woodson, Council Member _____

ADOPTED this 7th day of October 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, Town Attorney

The foregoing Ordinance was filed in the Office of the Town Clerk on the ____ day of _____, 2024.

Attached Exhibits

Exhibit A – Subdivision V. – CB Zoning District

Exhibit B – Table 34-2



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council
From: Sarah Propst, Community Development
Date: October 7, 2024
Re: CB Zoning District Language

Background

When the Commercial Boulevard (CB) zoning district was developed, it was designed to disallow expansion of uses and many changes of use without a planned development rezoning. In 2021 the LDC was updated to allow the return of uses that had previously been approved on parcels but did not allow uses that had not previously been on those parcels.

It appears that originally this zoning district allowed full residential, lodging, office, and retail uses. When the Town incorporated, the CB district was changed to only allow continual downgrading of the uses to become less intense. The proposed amendment would eliminate the need for planned development rezonings in the CB district to allow all of the uses that are within the residential, lodging, office, and retail use categories. The primary limitation will be the intensity of these uses. The CB zoning district allows a maximum Floor Area Ratio (FAR) of 1.0 and the underlying Future Land Use District, Boulevard limits the Floor Area Ratio (FAR) to a maximum of 1.5. This makes it less intense than the zoning districts of Downtown and Santini, which have an underlying Future Land Use District of Pedestrian Commercial, which has a maximum FAR of 2.5.

The Comprehensive Plan was previously a limiting factor regarding changes to the CB zoning district because of Boulevard Future Land Use District policies. Previous policy 4-B-5 stated that to obtain approval for new or expanded commercial activities the proposal had to be evaluated through the planned development rezoning process.

The new **Policy FLU-1-B-6** says: *“BOULEVARD”: a mixed-use district along portions of Estero Boulevard, including less intense commercial areas, traditionally comprised of historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanently. To obtain approval for new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan,*

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



and meet the design concepts of this plan and the Land Development Code. The non-residential Floor Area Ratios (FAR) in the Boulevard shall not exceed 1.5.

Density: The maximum density is up to six (6) dwelling units per acre, except those developments previously vested with 10 units under the “platted overlay” may continue. Permitted new density may be increased up to ten (10) units per acre provided that at least 10% of the development is for affordable or workforce housing as covenanted for a minimum of 30 years. Those developments previously vested with 10 units under the “platted overlay” may continue.

Previous Policy 4-C-3-iv. Further explained that commercial uses could seek rezoning through the planned development process and prove they are sensitive to adjacent uses.

New Policy FLU-1-C-3.iv. says: *In the “Boulevard” and “Mixed-Use” category, mixed-use development including commercial and residential uses are permissible. Proposals must be sensitive to nearby residential uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code.*

Upon final adoption of the Comprehensive Plan changes, the CB zoning district can be updated.

Proposed Solution

At the initial hearing staff heard concerns regarding the potential for increase size of development and impacts to adjacent properties. Building size and placement regulations are not proposed to change. These regulations will remain as follows:

Front setback (min): 5-10 feet

Side setbacks (min): 5 feet

Height: 30 feet above BFE and 3 stories

Rear setback (min): 20 feet or if from waterbody per 34-638(d)(3)

FAR: 1.0

Staff has included language that would allow detached single-family and two-family residences to have a building setback line of 5-18 feet, rather than 5-10 feet that is required for other uses.

Staff proposes, and the LPA recommended approval of, the attached strike-through underline and change to the zoning table. These changes include allowing additional uses but limiting new uses that could most impact nearby residential properties, including outdoor seating, outdoor entertainment, and live entertainment. These proposed changes are not more restrictive than the current allowed regulations and therefore do not run afoul of SB 250. These limitations would not impact any businesses that already have these uses.

Subdivision V. - CB Zoning District

Sec. 34-701. - Purpose.

The purpose of the CB (Commercial Boulevard) district is to provide standards for existing commercial uses and certain other uses along those portions of Estero Boulevard where the "boulevard" classification of the Fort Myers Beach Comprehensive Plan promotes a mixed-use development pattern.

Sec. 34-702. - Applicability.

- (a) The regulations of this code section allow for the continuation of existing uses, plus additional uses listed in Table 34-2 and further defined in Section 34-703.
- (b) The regulations of this code section allow for:
 - (1) Continuation of existing buildings and structures,
 - (2) Enlargement or expansion of existing structures, in compliance with all of the building placement, size, and design criteria of the CB zoning district regulations, and
 - (3) Replacement in compliance with the building placement, size, and design criteria of the CB zoning district regulations,

~~(a) *Continued use.* The regulations in this code section allow the continued use of existing buildings and structures for allowable uses as defined in [§ 34-703](#) below, on all properties zoned CB.~~

~~(b) *Enlarging or replacing buildings for existing commercial uses.* The regulations in this code section also allow the following activities:~~

~~(1) Physical enlargement of buildings or structures containing existing commercial uses, provided that the improvements do not constitute a "substantial improvement" as that term is defined in [§ 6-424](#) of this code, and~~

~~(2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in [§ 34-633](#) of this chapter.~~

~~(c) *Enlarging or replacing buildings for all other allowable uses.* The regulations in this code section also allow the physical enlargement of and replacement of buildings for all allowable uses, other than existing commercial uses (which are governed by subsection (b) of this section) or new or expanded commercial uses (which are governed by subsection (d) of this section).~~

~~(d) *New or expanded commercial uses.* In accordance with Policies 4-B-5 and 4-C-3-iv of the Fort Myers Beach Comprehensive Plan:~~

~~(1) New or expanded commercial uses in the "boulevard" category of the Fort Myers Beach Comprehensive Plan require rezoning as a commercial planned development (see [§ 34-951](#) of this chapter).~~

~~(2) Physical enlargements of existing commercial buildings, with an allowed use, as defined in Table 34-2, that constitute a "substantial improvement" as that term is defined in [§ 6-424](#) of this LDC also require rezoning as a commercial planned development.~~

~~(3) For purposes of this section only, the following types of re-use of existing floor area shall be deemed a continuation of an existing commercial use rather than a new or expanded commercial use.~~

~~a. Conversion of an existing space to office, retail, or restaurant use, when that use previously existed on that parcel;~~

~~b. An existing bar or cocktail lounge converted to another bar or cocktail lounge or to a restaurant, retail, or office use;~~

~~c. Existing areas of outdoor dining may be converted to another outdoor dining area;~~

~~d. Existing areas of outdoor display of merchandise may be converted to another outdoor display of merchandise area;~~

~~e. Conversion of existing space previously used as a financial institution with drive-through to small retail, with outdoor display. Outdoor display shall be located in the area previously utilized as a drive-through and shall not exceed 1,500 square feet under roof. Parking spaces may not be used for outdoor display.~~

~~(Ord. No. [21-07](#), § 2, 11-15-2021)~~

Sec. 34-703. - Allowable uUses.

(a) In the CB district, allowable uses are defined as any of the following:

(1) Those uses defined in Table 34-2 for the CB district, with additional regulations as defined in Sec. 34-703(b);

(2) Continuation of the commercial uses that were previously allowed on the site, prior to the permit request. Evidence of the previous use may include websites, pictures, pamphlets, permits, tax receipts or similar documentation; and were lawfully existing on March 3, 2003; and

~~(3) Those additional commercial uses of existing floor space as provided by [§ 34-702\(d\)\(3\)](#) of this chapter.~~

(b) Any landowner wishing to place other new or expanded commercial uses on property that is zoned CB must comply with the following:

(1) New outdoor entertainment is allowed with approval of a commercial special exception. Outdoor, for this section, includes any area that is not surrounded by permanent walls and windows;

(2) New live entertainment is not permitted without approval of a special exception;

(3) New outdoor seating areas must close at sunset unless approved by special exception. rezone the property to commercial planned development.

(c) Any landowner wishing to subdivide land that is zoned CB into residential homesites must comply with all of the setback, lot size, intensity, and density regulations for the RC zoning district as described in Table 34-3. Compliance with these regulations shall substitute for the building placement standards that are found in [§ 34-704](#) below, and for the intensity standard found in [§ 34-705\(c\)](#) of this chapter.

Sec. 34-704. - Building placement.

(a) *Build-to lines established.*

- (1) Build-to lines for structures other than detached single-family and two family residences (see [§ 34-662](#) of this chapter) for Estero Boulevard are established at five to ten feet from front property lines. Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ [34-991](#)—34-1010 of this chapter).
- (2) Detached single-family and two-family residential structures build-to lines from Estero Boulevard are established at five feet to 18 feet to allow additional setback for a driveway, if desired.
- (b) *Setback lines established.* Setback lines (see [§ 34-662](#) of this chapter) are established as follows:
 - (1) For principal buildings:
 - a. Minimum street setbacks for all streets other than Estero Boulevard are ten feet.
 - b. Minimum rear setbacks are 20 feet from rear property lines.
 - c. Minimum side setbacks are five feet from side property lines.
 - d. Minimum setbacks from waterbodies are set forth in [§ 34-638](#)(d)(3) of this chapter.
 - (2) For accessory structures, minimum setbacks are set forth in §§ [34-1171](#)—34-1176.

Sec. 34-705. - Building size.

- (a) *Building frontage.* Building frontage limits (see [§ 34-663](#) of this chapter) are established as follows:
 - (1) For Estero Boulevard, building frontages shall be at least 50 percent of the lot frontage. This percentage may be reduced to 35 percent for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.
 - (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (b) *Building height.* Building heights (see [§ 34-631](#) of this chapter) shall be limited to:
 - (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than ~~two three stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).~~
 - (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (c) *Floor area ratio (FAR).* Floor area ratios (see [§ 34-633](#) of this chapter) shall not exceed 1.0 for all structures other than detached single-family and two-family homes.

Sec. 34-706. - Circulation and parking.

- (a) *Parking lot locations.* Off-street parking lots shall be placed in side or rear yards (see Figure 34-5). Off-street parking lots are not permitted in front yards.
- (b) *Under-building parking.* Off-street parking may be provided under commercial or mixed-use buildings provided that all under-building parking spaces are screened in accordance with [§ 34-693](#)(l) of this chapter.

- (c) *Parking lot interconnections.* Wherever physically possible, parking lots for abutting properties fronting along Estero Boulevard shall be interconnected to eliminate or minimize driveways to Estero Boulevard.
 - (1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
 - (2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.
 - (3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.
- (d) *Driveway connections for properties fronting on Estero Boulevard.* Existing driveways and parking spaces shall be relocated from Estero Boulevard to other streets and new driveways shall connect only to other streets, except where these requirements would prohibit all reasonable access to a property. When a driveway onto Estero Boulevard is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to Estero Boulevard. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.

(Ord. No. [21-07](#), § 2, 11-15-2021)

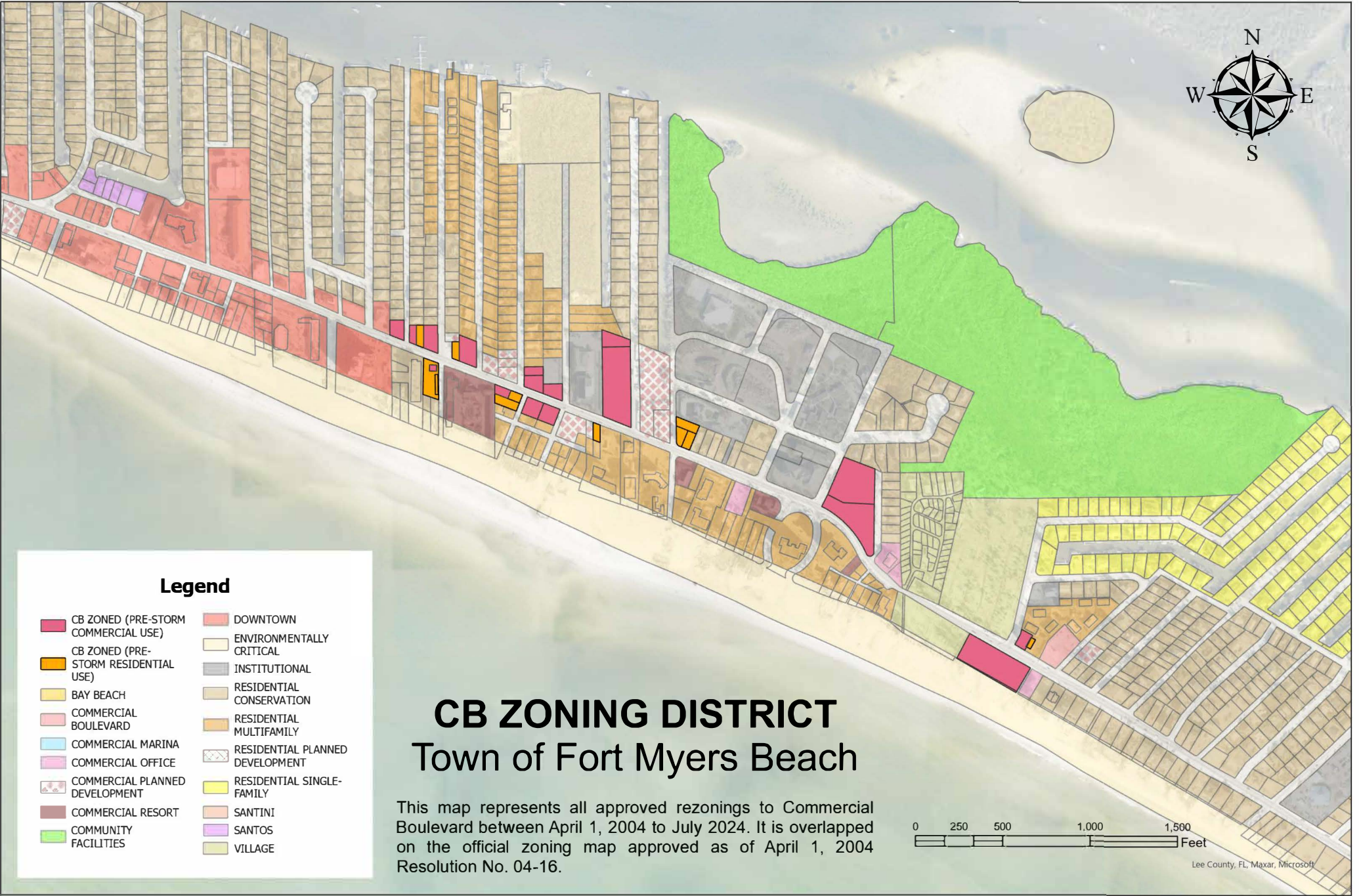
Sec. 34-707. - Commercial design standards.

The commercial design standards (§§ [34-991](#)—34-1010 of this chapter) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in [§ 6-424](#) of this LDC.

(Ord. No. [21-07](#), § 2, 11-15-2021)

Secs. 34-708—34-930. - Reserved.

Table 34-2 — Use Sub-Groups Permitted In Each Zoning District ¹						
	Residential	Lodging	Office	Retail	Marine	Civic
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
RS Residential Single-family	(R)	(R)	(R)	—	(R)	(R)
RC Residential Conservation	(L)	(L)	(R)	—	(R)	(R)
RM Residential Multifamily	(O)	(L)	(L)	(R)	(R)	(L)
CR Commercial Resort	(O)	(O)	(O)	(L)	(L)	(L)
CM Commercial Marina	—	—	(L)	(L)	(O)	(L)
CO Commercial Office	(O)	(L)	(O)	(L)	(L)	(O)
SANTOS	(L)	(L)	(O)	(L)	(L)	(L)
IN Institutional	(L)	(L)	(L)	(R)	(L)	(O)
CF Community Facilities	(R)	(R)	(L)	(R)	(L)	(O)
BB Bay Beach	— see § 34-651(b) —					
EC Environmentally Critical	— see § 34-652(d) & (e) —					
DOWNTOWN	(O)	(O)	(O)	(O)	(L)	(O)
SANTINI	(O)	(O)	(O)	(O)	(O)	(O)
VILLAGE	(L) ²	(L) ²	(L) ²	(L) ²	—	(L)
CB Commercial Boulevard	(O)	(O)	(O)	(O)	(L)	(O)
RPD Residential Planned Dev. ⁴	(R)(L)(O)	(R)(L)	(R)(L)	(R)(L)	(R)(L)	(R)(L)
CPD Commercial Planned Dev. ⁴	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)
Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open). Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions. Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses. Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.						



CB ZONING DISTRICT

Town of Fort Myers Beach

This map represents all approved rezonings to Commercial Boulevard between April 1, 2004 to July 2024. It is overlapped on the official zoning map approved as of April 1, 2004 Resolution No. 04-16.

Legend

 CB ZONED (PRE-STORM COMMERCIAL USE)	 COMMERCIAL PLANNED DEVELOPMENT	 RESIDENTIAL MULTIFAMILY
 CB ZONED (PRE-STORM RESIDENTIAL USE)	 COMMERCIAL RESORT	 RESIDENTIAL PLANNED DEVELOPMENT
 BAY BEACH	 COMMUNITY FACILITIES	 RESIDENTIAL SINGLE-FAMILY
 COMMERCIAL BOULEVARD	 DOWNTOWN	 SANTINI
 COMMERCIAL MARINA	 ENVIRONMENTALLY CRITICAL	 SANTOS
 COMMERCIAL OFFICE	 INSTITUTIONAL	 VILLAGE
	 RESIDENTIAL CONSERVATION	

0 250 500 1,000 1,500 Feet



Lee County, FL; Maxar, Microsoft

1. Request:

Meeting Date: October 28, 2024

Second Reading and Final Public Hearing on proposed Ordinance 24-30 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES"; AND 2) DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The interlocal agreement between the Town of Fort Myers Beach and Lee County, stating that the appellate review of appeals of property owners regarding unsafe structures shall be deferred to Lee County Board of Adjustment and Appeals, expired in 2017. The passage of this ordinance is necessary to ensure that the Town has an adequate appeal process in place for those property owners, whose properties have been deemed unsafe and noticed for demolition by the Town Building Official, and to ensure that their due process rights are not violated.

What the action accomplishes:

This ordinance reassigns the responsibility of appellate review of the Town Building Official's decisions from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

Nancy Stuparich, Town
Attorney

5. Background:

Subsequent to the Town's incorporation, the Town and Lee County entered into an Interlocal Agreement, pursuant to which Lee County's Board of Adjustment and Appeals agreed to provide appellate review of the Town's Building Official's decisions. The Town has recently become aware that the Interlocal Agreement between the Town and the Lee County Board of Adjustment and Appeals related to the Board's appellate review of the Town Building Official's decisions regarding unsafe structures under Division 3 "Unsafe Building Abatement Code" of Article I "Property Maintenance Codes" of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations" of the Town's Land Development Code expired in 2017. It would be in the Town's best interests to reassign the responsibility of appellate review of the Town Building Official's decisions from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates. The first reading of the proposed Ordinance was held on September 9, 2024. The Town Council approved the proposed reassignment of appellate review of the Town Building Official's decisions to the Town's special magistrates at the first reading. The second reading of the ordinance was held on September 23, 2024 and the public hearing was continued to a date certain of October 21, 2024.

Attachments:

1. Art. 1, Div 3 Fort Myers Beach, FL Code of Ordinances
2. Art 11, Div 2 - Fort Myers Beach, FL Code of Ordinances
3. 24-30, Business Impact Estimate - Unsafe Building Code Amendment Appeals 9-3-24 mr
4. Final 24-30, Unsafe Building Code Amendment Ordinance (2nd reading) 9-30-2024

Financial Impact:

None

6. Alternative Action**7. Management Recommendations:**

Approve this ordinance.

8. Recommended Approval:

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 9/24/2024
Approved - 9/30/2024
Approved - 10/15/2024
Final Approval - 10/15/2024

Sec. 6-36. - Adoption; amendments.

The 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, is hereby adopted by reference and made part of this article, with the exceptions and revisions set forth in section 6-37.

(Ord. No. 24-13, § 2, 6-3-2024)

Sec. 6-37. - Exceptions and revisions.

- a) *Section 105 of Chapter I, Administration* is hereby amended as follows:

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's Construction Board of Adjustment and Appeals found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

- b) *Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance* are hereby amended as follows:

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Lee County Board of Adjustment and Appeals; and that such appeal shall be in writing and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner as identified on the records of the Lee County Property Appraiser and posted on the property. Failure of the building official to serve any person or entity other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit indicating the date, time and manner in which service was made. In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 45, Page 220 of 276

c) *Chapter VI, Implementation* is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) *Chapter VII, Recovery of Cost of Repair or Demolition* is hereby amended as follows:

If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. If the resulting lien remains unpaid the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including, but not limited to, the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

(Ord. No. 24-13, § 2, 6-3-2024)

Secs. 6-38—6-40. - Reserved.

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. - Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

(Ord. No. 21-01, § 2(Exh. A), 3-15-2021)

Sec. 6-74. - Delegation of authority to Lee County's Boards of Adjustment and Appeals.

- (a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.
- (b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.

Secs. 6-75—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

- (a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

- (b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

- (a) Lee County's Boards of Adjustment and Appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.
- (b) Any decision of Lee County Boards of Adjustment and Appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.
- (c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

- (a) Every decision of Lee County's Boards of Adjustment and Appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.
- (b) Lee County's Boards of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.
- (c) If a decision of any of Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.
- (d) Any aggrieved person may obtain judicial review of the decision of Lee County's Boards of Adjustment and Appeals by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.



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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES" AND DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY'S CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS REGARDING UNSAFE BUILDINGS; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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:

¹ See Section 166.041(4)(c), Florida Statutes.

- 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 Fort Myers Beach 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):

The interlocal agreement between the Town of Fort Myers Beach and Lee County, stating that the review of appeals of property owners whose properties have been deemed unsafe and noticed for a demolition by the Town Building Official shall be deferred to Lee County Board of Adjustment and Appeals, expired in 2017. This ordinance reassigns that responsibility from Lee County Board of Adjustment and Appeals to the Town of Fort Myers Beach Special Magistrates. This ordinance serves the health, safety, morals, and welfare of the Town's residents and safeguards their due process rights by ensuring that the affected property owners have an opportunity to challenge the Town Building Official's determination.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None.

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: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach 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 Fort Myers Beach 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].*

Not applicable.

ORDINANCE NO. 24-30

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 “UNSAFE BUILDING ABATEMENT CODE” OF ARTICLE I “PROPERTY MAINTENANCE CODES”; AND 2) DIVISION 2 “LEE COUNTY’S BOARDS OF ADJUSTMENT AND APPEALS” OF ARTICLE II “BUILDING CODES” OF CHAPTER 6 “MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS” OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL’S DECISIONS; DIVESTING THE LEE COUNTY’S CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL’S DECISIONS REGARDING UNSAFE BUILDINGS; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN’S BUILDING OFFICIAL’S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND 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, on September 28, 2022, residences and businesses in the Town of Fort Myers Beach were destroyed by Hurricane Ian, resulting in the loss of lives, the displacement of lives and catastrophic financial losses; and

WHEREAS, although the Town, residents and businesses have engaged in recovery efforts to repair and rebuild structures in existence prior to Hurricane Ian, the Building Official has identified structures that have sustained significant damage and remain in an unsafe condition; and

WHEREAS, the Town’s “Unsafe Building Abatement Code” incorporates the 1985 Standard Unsafe Building Abatement Code to provide a procedure for the Building Official to follow if a structure is determined to be unsafe and requires demolition, with exceptions; and

WHEREAS, the Unsafe Building Abatement Code currently provides that any appeals of the Building Official decision would be reviewed by the Lee County's Construction Board of Adjustment and Appeals (the “Board”); and

WHEREAS, the Interlocal Agreement between the Town and the Lee County Board of County Commissioners related to the Board’s appellate review of the Town’s Building Official’s decisions has expired; and

WHEREAS, it is in the Town’s best interest to reassign the responsibility of appellate review of the Town’s Building Official’s decisions to the Town of Fort Myers Beach Special Magistrate; and

WHEREAS, on the 9th day of September, 2024, the Town Council held a first reading of the Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend the Unsafe Building Abatement Code as provided herein; and

WHEREAS, a Business Impact Estimate was prepared and posted on the City’s website as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published 10 days prior to the second reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the ____ day of _____, 2024, the Town Council held a second reading of the Ordinance; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interest of the health, safety and welfare of the public.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

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 Section 6-37 of Division 3 “Unsafe Building Abatement Code” of Article I “Property Maintenance Codes,” is hereby amended to read as follows:

DIVISION 3. - UNSAFE BUILDING ABATEMENT CODE

Sec. 6-37. - Exceptions and revisions.

a) Section 105 of Chapter I, Administration is hereby amended as follows:

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to the Town of Fort Myers Beach Special Magistrates ~~Lee County's Construction Board of Adjustment and Appeals~~ found in division 2 of article II of this chapter. Any reference to the board of adjustment and appeal as may be in other Chapters shall be amended as provided herein by reference.

b) Sections 302.1.1(4) and 302.1.2-302.1.4 in Chapter III, Inspection and Notice of Noncompliance are hereby amended as follows:

302.1.1(4) A statement advising that any person having any legal interest in the property may appeal the notice by the Building Official to the Town of Fort Myers Beach Special Magistrates ~~Lee County Board of Adjustment and Appeals~~; and that such appeal shall be in writing and shall be filed with the Building Official within 30 days from the date of the notice in accordance with Division 2 of Article II of Chapter 6 of the Fort Myers Beach Code of Ordinances and that failure to appeal in the time specified will constitute a waiver of all rights to an administrative hearing.

302.1.2 The notice and all attachments thereto shall be served upon the property owner as identified on the records of the Lee County Property Appraiser and posted on the property. Failure of the building official to serve any person or entity other than the owner of record shall not invalidate any proceedings hereunder nor shall it relieve any other person or entity served from any obligation imposed on that person or entity.

302.1.3 The notice shall be served either personally by hand delivery by Town staff or a process server or by certified mail, postage prepaid, return receipt requested, to the owner of record at the address shown for the owner on the Lee County Property Appraiser's website. Notice shall also be mailed to the address of the building or structure involved in the proceedings. The failure of any person or entity to receive notice, either actual or constructive, other than the owner of record, shall not invalidate any proceedings under this section. Service by certified or registered mail as herein described shall be effective on the date the notice was received as indicated on the return receipt.

302.1.4 Proof of service of the notice shall be by written affidavit indicating the date, time and manner in which service was made. In the event service is not perfected by certified mailing or hand delivery, the property owner shall be subject to constructive service using the methods as provided in Chapter 49, Florida Statutes.

c) *Chapter VI, Implementation* is hereby amended as follows:

601.2.2 Subsequent to posting the building, the building official may cause the building to be repaired to the extent required to render it safe or if the notice required demolition, to cause the building or structure to be demolished and all debris removed from the premise. The cost of repair or demolition, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection costs and expenses and the administrative fee as provided hereinafter, shall constitute a lien on the property and shall be collected in a manner provided by law.

d) *Chapter VII, Recovery of Cost of Repair or Demolition* is hereby amended as follows:

If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal, and all reasonable attorney's fees and costs, and costs of notices related thereto, and all collection

costs and expenses plus an administrative fee in an amount as adopted by the town council by resolution, against the real property upon which such cost and fee was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum until paid. If the resulting lien remains unpaid the town may:

- (1) File suit to foreclose on the lien property as provided by law in suits to foreclose mortgages; or
- (2) Follow any other lawful process or procedure available for enforcement or collection of the lien, including, but not limited to, the Uniform Method of Collection in accordance with any general law of the state relating to the enforcement or collection of municipal liens.

Section 3. That Division 2 “Lee County’s Boards of Adjustment and Appeals” of Article II “Building Codes,” of Chapter 6 “Maintenance Codes, Building Codes and Coastal Regulations,” of the Land Development Code of the Town of Fort Myers Beach, Florida, are hereby amended to read as follows:

DIVISION 2. - LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS
APPEALS OF DECISIONS BY THE TOWN'S BUILDING OFFICIAL

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

~~Sec. 6-73. - Boards established; jurisdiction.~~

~~Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.~~

~~Sec. 6-74. -- Delegation of authority to Lee County's Boards of Adjustment and Appeals.~~

~~(a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.~~

~~(b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.~~

~~Secs. 6-75—6-79. -- Reserved.~~

Secs. 6-73—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

(a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to the Town of Fort Myers Beach Special Magistrates ~~Lee County's appropriate Board of Adjustment and Appeals~~. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

(b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

(a) ~~Lee County's Boards of Adjustment and Appeals~~ A Town of Fort Myers Beach Special Magistrate, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

(b) Any decision of ~~Lee County Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.

(c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

(a) Every decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing, ~~and shall indicate the vote upon the decision.~~ Every decision of ~~Lee County's Boards of Adjustment and Appeals~~ shall be signed ~~and attested to by the chairman of the board.~~

(b) ~~Lee County's Boards of Adjustment and Appeals~~ The Town of Fort Myers Beach Special Magistrate shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of any of ~~the Town of Fort Myers Beach Special Magistrates~~ Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.

(d) Any aggrieved person may obtain judicial review of the decision of ~~Lee County's Boards of Adjustment and Appeals~~ the Town of Fort Myers Beach Special Magistrate by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the ~~board of adjustment and appeals'~~ Special Magistrate's decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.

Section 4. That the town council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, 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 5. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 6. If any section, subsection, sentence, clause, word, 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 shall become effective 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 on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of _____, 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, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

1. **Request:**

Meeting Date: October 28, 2024

First Reading of a proposed Ordinance 24-34 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. For approval and Second Reading on November 4, 2024.

Why the action is necessary:

The Town Council hears and decides approval or denial of development agreement requests.

What the action accomplishes:

The Town Council can deny or approve the adoption of development agreements.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Development Agreement

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

Seagate Fort Myers Beach, LLC, is requesting approval of a development agreement (DA) for the redevelopment of property previously known as the Red Coconut RV Park. This property is approximately 10.73 acres in size and 9.43 acres of land is zoned Village and 1.3 acres of the land is zoned EC. Only the 9.43 acres are subject to the proposed development agreement. The Red Coconut RV Park was previously developed with a density of 27 RVs or mobile homes per acre and included residential units, transient guest spaces, recreational amenities, and commercial uses, including restaurants and a nail salon, most recently.

Attachments:

1. Development Agreement with Attached Exhibits10.23.24
2. Staff Report TC
3. Exhibit A to Staff Report
4. Exhibit B to Staff Report - Resolution 24-73, Development Agreement with Deviations Procedures
5. Applicant's Report
6. Project Narrative
7. Schedule of Deviations
8. Completed Application

9. Business Impact Estimate 10-22-24 mr
10. Notice of Public Hearing Seagate Development Agreement Ordinance 10-20-2024 NS
11. Ord. 24-34 Red Coconut 10-24-24 Final

Financial Impact:

Unknown

6. Alternative Action

7. Management Recommendations:

Ask questions of the applicant and schedule a second hearing.

8. Recommended Approval:

Sarah Propst, Community Development, Planning Manager
Judith Frankel, Principal Planner
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/16/2024
Approved - 10/16/2024
Approved - 10/16/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

HOME RULE DEVELOPMENT AGREEMENT **(Draft 109-243-24)**

THIS DEVELOPMENT AGREEMENT (hereinafter, "Agreement" or "Development Agreement") is entered into this _____ day of _____, 20____, by and between **THE TOWN OF FORT MYERS BEACH, FLORIDA**, a municipality of the State of Florida (hereinafter "Town"), having its principal office at 2731 Oak Street, Fort Myers Beach, FL, and **SEAGATE FORT MYERS BEACH, LLC**, a Florida limited liability company (hereinafter "Developer"), whose address is 9921 Interstate Commerce Drive, Fort Myers, FL.

WHEREAS, Section 2-100 of the Town's Land Development Code, authorizes it to enter into a home rule development agreement pursuant to article VIII, § 1(f), of the Constitution of the State of Florida and F.S. chs. 163, 166 and 380, and specifically recognized by the State Legislature in F.S. § 163.3220(5); and

WHEREAS, the Developer has requested approval of this Development Agreement pursuant to Section 2-96 of the Town's Land Development Code and Resolution 24-73; and

WHEREAS, Seagate owns approximately 10.72 +/- acres of land located within the Town, said property, of which 9.43 acres are located landward of the 1978 Coastal Construction Control Line (hereinafter "CCCL"), being legally described in Exhibit "A" attached hereto (hereinafter, "the Property"); and

WHEREAS, the Town and the Developer desire to enter into this Agreement to provide for the approval and a comprehensive understanding of the development parameters consistent with the Town's Land Development Code and Comprehensive Plan as set forth herein; and

WHEREAS, a public hearing was held before the Town of Fort Myers Beach Local Planning Agency("LPA") on the 22nd 8th day of October, 2024, and the LPA reviewed the request and by a vote of ____ to ____ recommended _____ to the Town Council; and

WHEREAS, the Town conducted two public hearings on the 28th 1st day of October, 2024, and the 4th day of November, 2024, prior to entering into this Agreement, both of which were properly noticed on the Town's website and by mailing to affected property owners within a 500 foot radius of the boundaries of the real property at the addresses of such property owners found on the Lee County Property Appraiser's website prior to the first public hearings; and

WHEREAS, the Town Council has determined after consideration of the recommendation of the LPA, Town staff, and following two public hearings, which provided an opportunity for comment, testimony and evidence from the Developer, Town staff, and the public, the Town Council has determined that the Development Agreement is reasonable and not arbitrary and in the best interest of the Town and the residents of

the Town Fort Myers Beach.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, for the purposes set forth in Section 2-100 and 2-96 of the Town's Land Development Code, the benefits to accrue to each party, and for other good and valuable consideration, the receipt of which the parties hereby acknowledge, the Town and the Developer agree as follows:

1. Recitals. The foregoing recitations are true and correct and are incorporated herein by reference. All exhibits to this Agreement are deemed a part hereof.

2. Property Subject to this Agreement. The real property described in Exhibit "A" is subject to the terms and conditions of this Agreement ("Property").

3. Ownership. Developer represents that it is the legal and equitable owner, having an interest in the Property pursuant to Instrument No.: 2023000309279 recorded as Doc Type D, Pages 7 on September 20, 2023 in the Official Records of Lee County, Florida, and as such may lawfully enter into this Agreement. The Town is in receipt of a title opinion from a Florida attorney upon which it can rely for the purpose of confirmation of the Developer's ownership representation.

4. Proposed Development and Use of the Property. The proposed Uses and development of the Property shall be consistent with the following:

A. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd., as shown on Page 2 of the Conceptual Plans and Renderings, dated the 4th day of September, 2024 and attached as Exhibit B. Density from other properties owned by the Developer within the Town may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.

B. Vehicular Access. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and, 1 ingress/egress from Estero Boulevard. Additional separate delivery, and service, and solid waste pick up access points may will be provided collocated on from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.

C. Rental Restrictions. Rental of any permitted dwelling unit will be limited to a single renting entity during any one month period, with a minimum stay of thirty days one week and a total of three

rental periods per calendar year.

- D. Parking. Parking for the residential uses and commercial restaurant shall be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
- E. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses shall be open to the public, including but not and limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small scale convenience retail, a restaurants, and coffee shops.
- F. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club shall provide the following uses and amenities: pool and pool deck, event space for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.
- G. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):
- (1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and
 - (2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and
 - (3) The area west of the private beach club and not utilized for public and private vehicular access will be improved to include park like features; such as, bike racks, picnic tables, shade structures and/or landscaping. aAn enhanced beach access to include: a 10ft wide pedestrian-only beach access between Estero Blvd., and the beach (while also maintaining a beach access on the southern portion of the Property). The public beach access may not

be located with the existing private platted beach access; and

(4) 2943 Estero Blvd. to provide a public recreation park.

The dedication of the parks and access areas shall be by easement acceptable to the Town Attorney, together with evidence of title in a form acceptable to the Town Attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

- H. Height. ~~No building shall be more than 15 stories over 2 stories of structured parking in height.~~ The maximum height of the tallest residential multi-family tower shall not exceed a total of 15 stories over 2 stories of structured parking and 235 feet above base flood elevation. Additional height limitations must be in substantial compliance with Page 2 of the Conceptual Plans and Renderings, dated the 4th day of September, 2024 and attached as Exhibit B.
- I. Area. The combined square footage of all the ~~all~~-structures within this development, other than the detached single-family residences and the covered motor vehicle parking structures, shall not exceed 616,156.2 sf which is the equivalent of a FAR of 1.5.
- J. Mixed Use Structure Setbacks. 10 ft setbacks from all street right-of-ways ~~2s~~ and 10ft rear setbacks along the proposed Linear Park. The beach-facing property line for the beach club may be built to the 1978 CCCL.
- K. Single Family Lot Setbacks. 10 ft setbacks from the street right-of-way, 20 ft rear setback along the Matanzas Pass Preserve property line for the principal structure and 5 ft rear setback for accessory structures and 5 ft side setbacks.
- L. Other Permitted Uses. Other permitted uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided herein.
- M. Internal Traffic Circulation. Pedestrian travel is identified in the conceptual plan, a copy of which is attached as Exhibit B on Sheet 3 of the Conceptual Plans and Renderings dated the 4th of September 2024, which shows the proposed layout, streets, lots, green areas, bikeways, parks, public facilities, and other such amenities.
- N. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.

- O. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- P. Conflicts. Any conflict between the matters set forth in this paragraph and paragraph 9 and other paragraphs in this Agreement shall be resolved in favor of the terms and conditions in this Paragraph and paragraph 9. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction. Any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").

~~5. Consistency with Comprehensive Plan. The Town finds that the proposed development for the Property set forth above is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code as provided in this Agreement. Review and approval of this Agreement through the process outlined in Resolution 24-73 is commensurate and tantamount to approval through the Town's planned development rezoning process. Notwithstanding the foregoing, the deviations identified in paragraph 9 are approved.~~

56. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

A. Potable Water:

Potable water will be supplied by Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project shall be based on its availability at the time of submission of a Development Order.

B. Sanitary Sewer:

Wastewater services will be provided solely by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement shall

be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project shall be based on availability at the time of submission of a Development Order.

C. Solid Waste:

Developer shall coordinate solid waste services with Lee County, the Town, or a third party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project shall be based on availability at the time of submission of a building permit.

D. Drainage:

Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer shall provide plans related to storm water run-off into the Town's system to the Town.

E. Fire and Rescue

Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of development order approval.

F. Transportation

Developer agrees to assist with installation and maintenance of a transit shelter and shall coordinate the availability of bus service and associated infrastructure with Lee Tran and Lee County School District prior to issuance of development order.

G. Public Schools.

Developer shall provide a letter of capacity from Lee County School District prior to issuance of development order. Impact fees may be required.

H. Recreation

Developer will record an easement

acceptable to the Town Attorney dedicating access to the parks for public usage.

In the event new or additional facilities are needed to serve the project, the Developer shall bear the burden of the cost of such facilities to be constructed and provide a schedule to the Town to assure that the public facilities and services shall be available concurrent with the impact of the development project.

76. Impact Fees. Impact fees, ~~if-when~~ adopted by Town Ordinance for all new development and change in use, shall be calculated at time of issuance of a development order and payment shall be required prior to building permit approval. Offsite impacts will be evaluated by the Town at the time of development order application.

87. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
South Florida Water Management District Water Use Permit (dewatering)
South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit

The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer shall be responsible at its sole cost for obtaining any required approval and shall not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer shall not vest any development right in the Developer or the project to a continuation of this Agreement.

98. Developer Commitments and Obligations. For and in consideration of the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations and associated public benefits; which are deemed to be in the public interest:

- a. The Developer will not utilize the post disaster build-back provisions for 27 dwelling units an acre;
- b. Project density will be limited to 15 dwelling units per acre for a total density of 141 dwelling units consistent with the Village zoning district;

- c. All permitted density of the gulf side parcels (at least 21 units) (south of Estero Boulevard) will be transferred to the bay side parcels (north of Estero Boulevard) (these units are already included in the 141 units identified in paragraph 4(A));
- d. Development of the bay side parcels (north of Estero Boulevard) will be limited to single family and multi-family residential, approved commercial uses and public parks;
- e. Development of the gulf side parcels (south of Estero Boulevard) will be limited to a beach club that provides a private recreational facility and private membership organization significantly reducing the intensity of the previous development and potential disruption to the surrounding neighborhood than the permitted uses of the Village zoning district;
- f. Increase the view corridor to the Gulf from the required 50 feet to 240 feet;
- g. Establish an enhanced beach access with 10 foot pedestrian beach access point, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement;
- h. A private elevated pedestrian crossover above Estero Boulevard will be provided for future residents and guests to eliminate negative impacts to traffic flow;
- i. Establish a public park adjacent to Matanzas Pass Preserve, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming, infrastructure, and a maximum of 2 public parking spaces for this park;
- j. Establish a public park adjacent to the western property boundary and Estero Boulevard that incorporates the origination point for the linear park with multi-use path, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming and infrastructure for this park;
- k. Implement the Hidden Paths infrastructure within the bay side property through:
 - a. A linear park interconnecting Estero Boulevard and Donora Boulevard;

- b. An east/west pedestrian and bicycle access connecting Donora Boulevard to the western property boundary;
 - c. Portions of the linear park and pedestrian/bicycle access may occur within the same easement;
 - d. Pedestrian connectivity to Matanzas Pass Preserve through the proposed park;
 - e. Pedestrian connectivity to the Gulf through the proposed park;
 - f. Site specific wayfinding signage along Estero and Donora Boulevards adjacent to the project limits for the linear park, beach access and Matanzas Pass access areas;
 - g. 4 informational and education panels regarding Matanzas Pass resources will be designed with Town Staff and erected prior to Temporary Certificate of Occupancy.
- l. Maintain a sidewalk along the north side of Estero Boulevard and provide a sidewalk along the south side of Estero Boulevard;
- m. Provide a sidewalk along Donora Boulevard;
- n. Along Estero and Donora Boulevards enhanced streetscaping with shade trees will be provided to improve the visual aesthetic for vehicular and pedestrian traffic;
- o. Required landscaping for the development will incorporate Florida Friendly plantings that do not require irrigation;
- p. Vehicular access to the property from Estero Boulevard will be limited to a single access for the north side and a single access for the south side to maintain traffic flow on Estero Boulevard;
- q. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery, service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.~~Vehicular access to the property from Donora Boulevard will be limited to two access points for the multifamily residential units. Additional delivery and service points may be provided from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint.;~~
- r. One Public Art installation (i.e. sculpture; mural) viewable from Donora Boulevard and location identified during the Development Order process will be installed prior to Certificate of Occupancy.

910.
Agreement:

Deviations. The following deviations are granted pursuant to this

- a. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
- b. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
- c. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
- d. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- e. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- f. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
- g. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
- h. Deviation from LDC Section 34-631(b)(3): Eliminate the square

footage and screening requirements of mechanical structure appurtenances located above 11 stories.

140. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the P property that is the subject of this Agreement. The Town's Comprehensive Plan allows the proposed project to be more than 2 stories above flood elevation in height as a matter of right. The Town's Comprehensive Plan also allows the height to be increased as provided in Policy 4-C-4 in redevelopment zoning districts (i.e Village zoning district) and in the event the increase is approved as part of a planned development rezoning. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

121. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town shall not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

123. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town; and
- b. The proposed drainage plan for the proposed project shall have been approved by the South Florida Water Management District. If an interconnection is required to the Town's stormwater management system, approval by the Town will be necessary; and
- c. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town; and
- d. The traffic impact and parking plans for the proposed project shall have been approved by the town; and

- e. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
- f. The Town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements..

143. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. ~~Density from other properties may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.~~
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer shall not leave any improvements in an unsafe condition.

145. Notices. All notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Matt Price
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

with a copy to: Tim Byal
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

If to the Town: Town Manager

with a copy to: Town Attorney

156. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period shall be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.

176. Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement shall be exclusively in Lee County, Florida.

187. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees shall be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event shall the Town be liable for payment of the Developer's attorney fees.

198. Post Development Agreement Liability. The parties acknowledge that the Town shall not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

1920. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement shall not be affected or impaired, each remaining provision shall remain in full force and effect, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

240. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

221. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement shall run with the property and bind Seagate's successors and assigns to the covenants as set forth in

this Agreement and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer shall thereafter be relieved of all obligations hereunder.

232. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 25 below. The term of this Agreement shall begin upon its effective date and run for a period of ~~for~~ ten (10) years. In the event no building permits are issued to the Developer within ten (10) years of the effective date, the Agreement shall terminate. The term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence within the stated term of this Agreement. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement shall run with the property and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

243. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

254. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer and a third party shall not violate any law, or the terms of any agreement by which they are bound.
- B. The Town and Seagate have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
- C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

SEAGATE FORT MYERS BEACH, LLC, a
Florida limited liability company

Print Name: _____

Print Name _____

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as _____ of Seagate Fort Myers, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

Notary Public Signature

My Commission Expires:

Type/Print Notary Public Name

Commission No.: _____

**TOWN OF FORT MYERS
BEACH**

Dan Allers, Town 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

Exhibits:

- A. Legal Description and Sketch of the Property
- B. Conceptual Plans and Renderings dated the 4th day of September, 2024 (16 Pages)
- C. Public Easement Overlay dated the ____ day of September, 2024 (1 Page)
- D. Pattern Book dated the 4th day of September, 2024 (6 Pages)

Exhibit A

Legal Description and Sketch of the Property

DRAFT

NOTES:

- 1) BEARINGS SHOWN HEREON REFER TO STATE PLANE FLORIDA WEST 0902 WITH A BEARING OF S 0°28'13" W. ALONG THE WEST SECTION LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
- 2) THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.
- 3) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- 4) THIS PROPERTY IS LOCATED IN FLOOD ZONE AE & VE, HAVING A BASE FLOOD ELEVATION OF 11.0'-14.0' (NAVD 1988) PER F.I.R.M. 12071C 0508 G, MAP EFFECTIVE DATE 11/17/22.
- 5) DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
- 6) IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
- 7) LOT 45/47 LOT LINES FOR CASE SUBDIVISION SHOWN ARE GRAPHICAL REPRESENTATION AS PER RECORDED IN P.B.1 PG.58, AS AMENDED IN D.B.131 PG.300-304.
- 8) DNR COASTAL CONSTRUCTION SETBACK LINE SHOWN AS RECORDED IN PLAT BOOK 31 PAGES 1-18, DNR COASTAL CONSTRUCTION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 48 PAGES 15-34, M.H.W.L. & EROSION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 70 PAGES 25-39, RIGHT-OF-WAY ESTABLISHED FROM ESTERO BOULEVARD RIGHT-OF-WAY MAPS USING LOCAL CONTROL, CASE SUBDIVISION DIMENSIONS BASED ON DEED BOOK 131 PAGE 300.
- 9) FLOOD ZONE LOCATIONS ARE SCALED FROM THE CURRENT EXISTING MAPS PROVIDED BY FEMA AND ARE APPROXIMATE ONLY.

LEGEND

- ARV AIR RELEASE VALVE
B.C.C. BACK OF CURVE
C.R. CERTIFIED CORNER RECORD
CP CONCRETE PAD
C.W. CONCRETE WALL
C.P. CONCRETE POWER POLE
C.S.W. CONCRETE SIDEWALK
CLF CHAIN LINK FENCE
CB CATCH BASIN
(C) CALCULATED DIMENSION
C CENTERLINE
CO COORDINATE
C.O. COMMUNICATIONS BOX
C.S. CASE SUBDIVISION DEED BOOK 131 PAGE 300
C.C.S.L. COASTAL CONSTRUCTION SETBACK LINE
C.C.C.L. COASTAL CONSTRUCTION CONTROL LINE
D.B. DEED BOOK
D.N.R. DEPARTMENT OF NATURAL RESOURCES
(D) DEED DIMENSION
ECL EROSION CONTROL LINE
ELEC. ELECTRIC BOX
F.I.R.M. FLOOD INSURANCE RATE MAP
F.A.C. FLORIDA ADMINISTRATIVE CODE
F.H. FIRE HYDRANT AND WATER VALVE
F.I.R. FOUND IRON ROD (SIZE NOTED)
F.A.L.U.M. FOUND ALUMINUM CAP LB4919
F.C.M. FOUND CONCRETE MONUMENT 4"x4" (UNLESS OTHERWISE NOTED)
F.P.K. FOUND PARKER KALON NAIL & DISK
F.O. FIBER OPTIC BOX
FPL FLORIDA POWER & LIGHT
FO FIBER OPTIC BOX
GW GUIDE WIRE
INV. INVERT
INSTR. INSTRUMENT
LP LIGHT POLE
L.C.U.E. LEE COUNTY UTILITY EASEMENT
L.M.E. LAKE MAINTENANCE EASEMENT
(M) MEASURED DISTANCE
N.F. NOT FOUND
N.G.S. NATIONAL GEODETIC SURVEY
NAVD NORTH AMERICAN VERTICAL DATUM
O.R. OFFICIAL RECORDS BOOK
P.B. PLAT BOOK
P.G. PAGE
(P) PLAT DIMENSION
P.O.B. POINT OF BEGINNING
P.O.C. POINT OF COMMENCEMENT
P.R.M. PERMANENT REFERENCE MONUMENT
P.S.M. PROFESSIONAL SURVEYOR & MAPPER
P.S. PUMP STATION
P.U.E. PUBLIC UTILITY EASEMENT
RNG. RANGE
(R) ROTATED TO BEARING BASIS
R/W RIGHT OF WAY
S.I.R. SET 5/8" IRON ROD AND CAP LS7075
S.P.C. STATE PLAT COORDINATES
S.P.K. SET PARKER KALON NAIL/DISK LS7075
SMH STORM MANHOLE
T.S. TRAFFIC SIGNAL BOX
TEL. TELEPHONE
U.E. UTILITY EASEMENT
W.P. WOODEN POWER POLE
WV WATER VALVE
WM WATER METER
(10) NUMBER CORRESPONDING TO TITLE COMMITMENT NOTES

ACREAGE NOTE

- PARCEL 1, 2 & 3 ACREAGE NORTH OF C.C.S.L. - 9.430 ACRES
-PARCEL 1 - 0.334 ACRES
-PARCEL 2 - 8.906 ACRES
-PARCEL 3 - 0.188 ACRES
-PARCEL 2 & 3 ACREAGE SOUTH OF C.C.S.L. - 1.296 ACRES
-PARCEL 2 - 1.249 ACRES
-PARCEL 3 - 0.047 ACRES

CERTIFICATION:

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY RESPONSIBLE CHARGE ON 08/12/23. THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17, F.A.C. PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

Digitally signed by
Nicholas A. Slosser
Date: 2024.05.29
13:02:21 -04'00'

Unauthorized reproductions,
changes or distribution of
original digitally sealed
documents are not allowed.

NICHOLAS A. SLOSSER, STATE OF FLORIDA, (P.S.M. #7075)

BOUNDARY SURVEY

A PORTION OF
SECTION 29 & 30, TOWNSHIP 46 SOUTH RANGE 24 EAST
LEE COUNTY, FLORIDA

SLOSSER LAND SURVEYING LLC

LB#8522
PROFESSIONAL LAND SURVEYOR
13322 HAMPTON PARK CT
FORT MYERS FLORIDA, 33913 (239) 940-8815

PAGE 1 OF 3

HORIZONTAL CONTROL TABLE

MONUMENT DESCRIPTION	NORTHING	EASTING
BOOB-2-1955	N:753688.744	E:690191.218
E-10	N:707270.049	E:677221.287
E-19	N:765734.582	E:679749.899
FCM R-187A REST 1982	N:768271.456	E:675301.240
FCM R-187A REST 1982	N:767237.679	E:677395.488
FCM A-25A NOT FOUND	N:770294.773	E:670825.912
FCM A-26 NOT FOUND	N:769159.728	E:673959.529

PROPERTY DESCRIPTION

Parcel 1- Parcel in Lot 45 CASE'S SUBDIVISION, Section 29, Township 46 South, Range 24 East, Estero Island, Lee County, Florida. A lot or parcel of land lying in Lot 45, CASE'S SUBDIVISION, according to a map or plat thereof recorded in Deed Book 131, at Pages 300-304 of the Public Records of Lee County, Florida, which lot or parcel is described as follows:

From the Southwest corner of said Lot 45, which corner is located at the intersection of the West line of Section 29, Township 46 South, Range 24 East, and the Northeast line of Estero Boulevard (State Road No. S-805) run Southeast along said Northeast line for 39.94 feet to the Point of Beginning. From said Point of Beginning deflect 90°07'30" to the left and run Northeast for 73.0 feet; thence deflect 90°07'30" to the right and run Southeast parallel with said Northeast line for 188.54 feet; thence deflect 73°27'30" to the right and run Southeast for 76.15 feet to said Northeast line; thence run Northwest along said Northeast line for 210.08 feet to the Point of Beginning. Being a part of those lands conveyed by deed recorded in Deed Book 181 at Page 202 of said Public Records.

Parcel 2- The Northwest 34.13 feet of Lot 26, subject to a walkway easement over the Southeast 6 feet thereof; ALSO all of Lots 27 through 30 and all of Lot 31, except the west 10 feet thereof, together with a walkway easement over and across the Northwest 6 feet of the Southeast 40.87 feet of said Lot 26 (said lots extending from the right-of-way line of State Road 885 to the shoreline of the Gulf of Mexico) of CASE'S SUBDIVISION, according to the plat thereof recorded in Plat Book 1, at Page 58, as amended by plat and affidavit attached to Deed recorded in Deed Book 131, at Page 300, Public Records of Lee County, Florida.

ALSO, a parcel of land in Lots 45 and 47 of said CASE'S SUBDIVISION, described as follows: From the Northwest corner of Section 29, Township 46 South, Range 24 East, (also being the Northwest corner of said Lot 45) run East along the North line of said Section 29 and said Lot 45 for 350 feet to concrete monument and the Point of Beginning of the lands hereby described; from said Point of Beginning continue East along said North line for 344.22 feet to a concrete monument at a point 76.65 feet West of the Northwest corner of Lot 1, Block A, ZIMMER'S ADDITION TO SHELL MOUND PARK, as shown on a map or plat thereof recorded in Plat Book 11, at Page 54 of said Public Records; thence run Southeast on a straight line to the intersection of the West line and the North line of Donora Boulevard, as described in Deed recorded in Deed Book 290, at Page 53 of the Public Records, and as shown on said Plat of ZIMMER'S ADDITION, which point is also the Southwest corner of said Lot 1, Block A, of said ZIMMER'S ADDITION; thence run Southwest along said westerly line of Donora Boulevard for 677.54 feet; thence continue Southwest along said West line of said Donora Boulevard and on a line perpendicular to the Northeast line of Estero Boulevard, to the Northeast right-of-way line of Estero Boulevard; thence run Northwest along said Northeast line of Estero Boulevard for 435 feet to a concrete monument, which monument is 250 feet, as measured along said Estero Boulevard, Southeast from the West line of said Section 29, thence run Northeast, along the Easterly boundary of the lands conveyed by Deed recorded in Deed Book 181, at Page 202, of said Public Records, for 824.57 feet to Point of Beginning.

ALSO, Lots 1 and 2, Block A, of that certain subdivision known as ZIMMER'S ADDITION TO SHELL MOUND PARK, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit court of Lee County, Florida, in Plat Book 11, at Page 54, together with a tract or parcel of land described as follows:

Beginning at the Southwest corner of Lot 1, adjacent to Donora Boulevard, thence North 1°15' East along the westerly edge of Lot 1, Block A, ZIMMER'S ADDITION TO SHELL MOUND PARK, according to the map or plat thereof on file and recorded in Plat Book 11, at Page 54, Public Records of Lee County, Florida, a distance of 110 feet; thence West along the section line 76.65 feet to a concrete monument; thence Southeast to the Point of Beginning.

Parcel 3- Commencing at the Section corner common to Sections 19, 20, 29 and 30, Township 46 South, Range 24 East, Lee County, Florida; Thence South 00 degrees 28'13" West along the Section line common to Sections 29 and 30 for a distance of 742.72 feet to the Point of Beginning; Thence North 82 degrees 45'51" West for a distance of 89.16 feet to the Point of Beginning of Estero Sands a Condominium per Official Records Book 1450 Page 598; Thence North 03°31' East along the east line of said Estero Sands for a distance of 182.43 feet to a point on the Southerly right of way of Estero Blvd (SR 885); Thence South 57 degrees 28'50" East along said right of way for a distance of 25.32 feet to a point of intersection with the aforementioned section line and the Southerly right of way of Estero Blvd; Thence South 00 degrees 28'13" West along said section line for a distance of 199.81 feet to the Point of Beginning.

CERTIFIED TO:

Henderson Franklin Starnes & Holt, P.A.
Old Republic National Title Insurance Company
Seagate Fort Myers Beach, LLC
MIDFLORIDA Credit Union, Its SAAO, ATIMA

BEARING DEVIATION NOTE

-PARCEL 2 BLOCK A, LOTS 1&2 DEVIATION FROM DEED TO STATE PLANE - 00°29'01"

SURVEY DATUM

1. HORIZONTAL DATUM BASED FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NAD83/2011, AS REFERENCED ON SAID SURVEY.

TITLE COMMITMENT NOTES:

Lands shown hereon are based on File Number 30291.112 EPC, REV. 3, prepared on the 12th day of July, 2023 @11:00am, by Old Republic National Title Insurance Company reflecting the following:

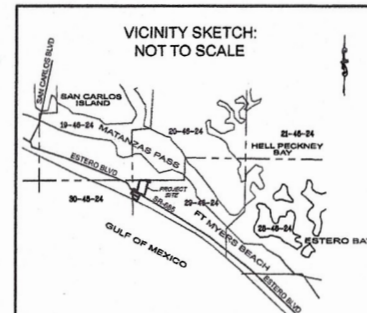
- Items 1 through 21 as shown on title opinion:
1. Non survey related item.
2. a-bke. Non survey related item.
3. Survey data has been shown to side in the verification of any encroachments encumbrances, violations, variations or adverse circumstances
4. All supplied easements have been shown on survey.
5. Intentionally Omitted.
6. Non survey related item.
7. Subject to lot lines, boundaries and road right of ways contained on the Plat of Case Subdivision, as recorded in Deed Book 131, Page 300, affected by the Final Judgment in Case No. 71-1392 recorded in O.R. Book 808, Page 373, later affirmed by the Second District Court of Appeal, said Final Judgment being re-recorded in O.R. Book 1131, Page 315, Public Records of Lee County, Florida.
8. Subject to dedications, restrictions, reservations, easements, and road right of ways contained on the Plat of Zimmer's Addition to Shell Mound Park, as recorded in Plat Book 11, Page 54, Public Records of Lee County, Florida. (as to Parcel 2) Easements have been plotted on said survey.
9. Subject to Walkway Easement over the Southeast 6 feet of the Northwest 34.13 feet of Lot 26 as described in that certain deed recorded in Deed Book 308, Page 607, Public Records of Lee County, Florida. (as to Parcel 2-Lot 26) Easement have been plotted on said survey.
10. Subject to terms and conditions of that Walkway Easement over the Northwest 6 feet of the Southeast 40.87 feet of Lot 26, contained in that certain deed recorded in Deed Book 308, Page 607, Public Records of Lee County, Florida. (as to Parcel 2-Lot 26) Easement have been plotted on said survey. Does not lie in subject Parcel 2.
11. Subject to Utility Easement given to Lee County, Political subdivision recorded in O.R. Book 1158, Page 1265-1268, Public Records of Lee County, Florida. (as to Parcel 2-Lot 2 Block A) Easements have been plotted on said survey.
12. Subject to Easement in favor of Florida Power and Light Company over the Northeast 10 feet of Lots 30 and 31 of Case's Subdivision, contained in instrument recorded in O.R. Book 2099, Page 1769, Public Records of Lee County, Florida. (as to Parcel 2), Easements have been plotted on said survey.
13. Subject Grant of Easement by and between Comcast of the South, Inc., and RED Coconut RV Park, recorded in Instrument Number 2011000260909, Public Records of Lee County, Florida. (as to Parcel 2), Easements have been plotted on said survey.
- 12-13. Non survey related item.
14. Riparian and littoral rights not determined with this survey.
15. Any artificially filled lands have not been determined for this survey.
16. Any portion of the Land created by accretion, avulsion, reliction or artificial means have not been determined for this survey.
17. Any public use lands have not been determined for this survey.
18. Any lands waterward of the mean high water line have not been determined for this survey.
19. Erosion Control Line identified in Plat Book 70, Page 25 Public Records of Lee County, Florida, has been plotted on said survey.
20. Subject Lee County Coastal Construction Control Line recorded in Plat Book 31-A Page 1; O.R. Book 2224, Page 1010 and Plat Book 48, Page 15, Public Records of Lee County, Florida. Has been plotted on said survey.
21. Non survey related item.

LINE TABLE

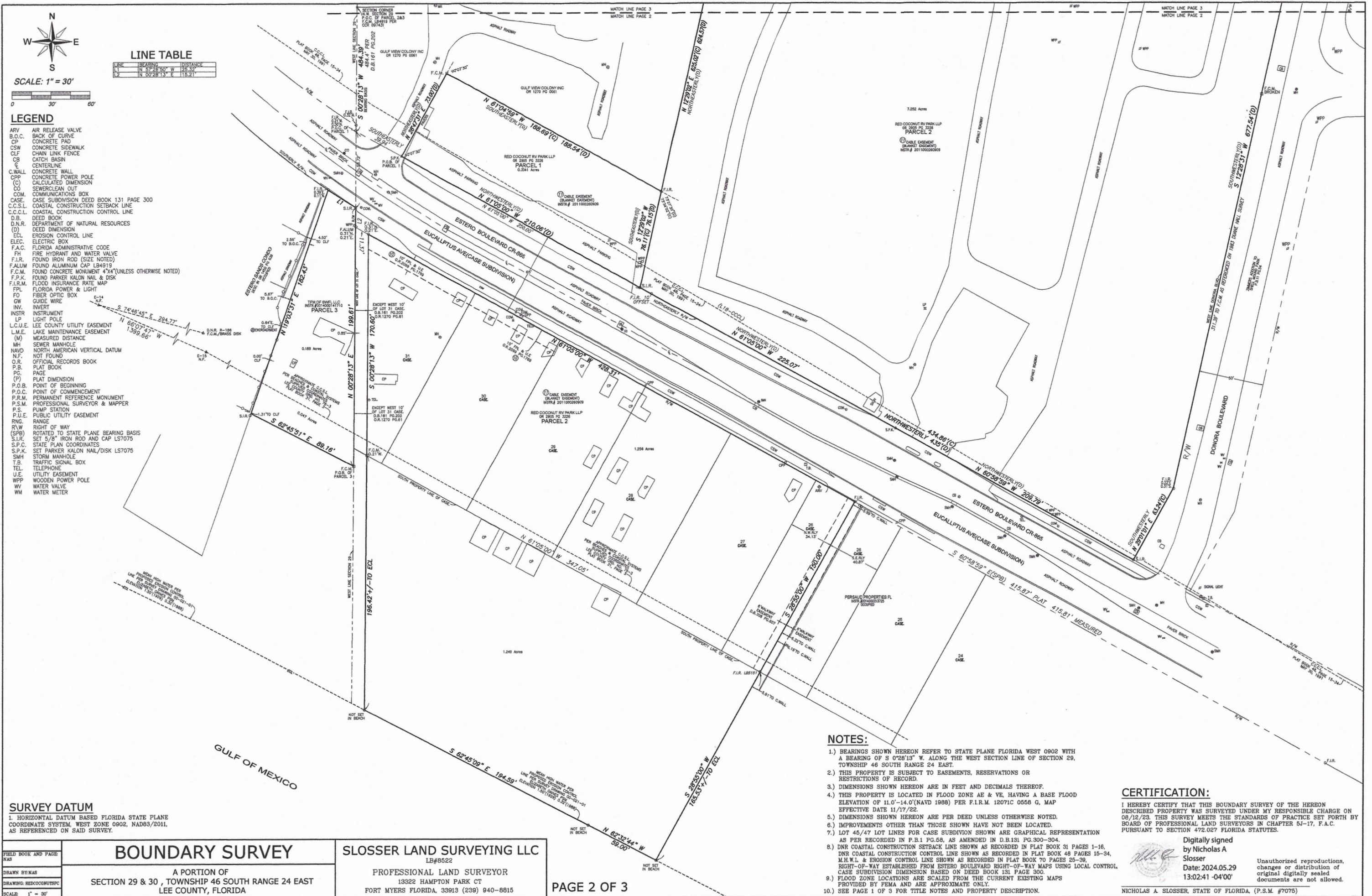
LINE	BEARING	DISTANCE
1(P)	N 82°45'51" W	89.16
1(R)	N 01°18' W	110.00
2(R)	N 00°48'59" W	110.00
3(R)	N 89°11'01" E	120.00
3(P)	N 89°11'01" E	120.00
4(R)	N 00°48'59" W	110.00
4(C)	N 01°18' W	110.00
4(P)	N 01°18' W	110.00
5(P)	N 19°03'31" E	182.43
6	S 00°28'13" W	199.81
7	N 28°55'00" E	150.00
8	S 29°01'01" W	83.24
9	S 55°12'35" E	609.40
10	S 77°05'14" W	853.58
11	S 61°43'49" E	937.38
12	S 67°18'08" E	418.71
13	S 74°40'01" E	1061.70
14	S 67°48'12" E	863.58
15	N 47°59'46" W	27.80
16	S 57°28'50" E	25.32
17	S 81°53'45" E	1023.60
18	N 59°19'38" W	981.41
19	S 00°28'13" W	15.21
20	S 57°28'50" E	25.32
21(D)	SOUTHEASTERLY	76.15
22	S 12°29'02" W	76.11(C)

VICINITY SKETCH:

NOT TO SCALE



Page 254 of 676



SURVEY DATUM

1. HORIZONTAL DATUM BASED FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE 0902, NAD83/2011, AS REFERENCED ON SAID SURVEY.

BOUNDARY SURVEY	
A PORTION OF SECTION 29 & 30, TOWNSHIP 46 SOUTH RANGE 24 EAST LEE COUNTY, FLORIDA	

SLOSSER LAND SURVEYING LLC LB#8522 PROFESSIONAL LAND SURVEYOR 13322 HAMPTON PARK CT FORT MYERS FLORIDA, 33913 (239) 940-8815

PAGE 2 OF 3

NOTES:

1. BEARINGS SHOWN HEREON REFER TO STATE PLANE FLORIDA WEST 0902 WITH A BEARING OF S 0°28'13" W. ALONG THE WEST SECTION LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
2. THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.
3. DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
4. THIS PROPERTY IS LOCATED IN FLOOD ZONE AE & VE, HAVING A BASE FLOOD ELEVATION OF 11.0'-14.0'(NAVD 1988) PER F.I.R.M. 12071C 0558 G, MAP EFFECTIVE DATE 11/17/22.
5. DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
6. IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
7. LOT 45/47 LOT LINES FOR CASE SUBDIVISION SHOWN ARE GRAPHICAL REPRESENTATION AS PER RECORDED IN P.B.1 PG.56, AS AMENDED IN D.B.131 PG.300-304.
8. DNR COASTAL CONSTRUCTION SETBACK LINE SHOWN AS RECORDED IN PLAT BOOK 31 PAGES 1-18, DNR COASTAL CONSTRUCTION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 48 PAGES 15-34, M.H.W.L. & EROSION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 70 PAGES 25-39, RIGHT-OF-WAY ESTABLISHED FROM ESTERO BOULEVARD RIGHT-OF-WAY MAPS USING LOCAL CONTROL CASE SUBDIVISION DIMENSION BASED ON DEED BOOK 131 PAGE 300.
9. FLOOD ZONE LOCATIONS ARE SCALED FROM THE CURRENT EXISTING MAPS PROVIDED BY FEMA AND ARE APPROXIMATE ONLY.
10. SEE PAGE 1 OF 3 FOR TITLE NOTES AND PROPERTY DESCRIPTION.

CERTIFICATION:

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY RESPONSIBLE CHARGE ON 06/12/23. THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 6J-17, F.A.C. PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

Digitally signed by Nicholas A Slosser Date: 2024.05.29 13:02:41 -04'00'	Unauthorized reproductions, changes or distribution of original digitally sealed documents are not allowed.
--	--

NICHOLAS A. SLOSSER, STATE OF FLORIDA. (P.S.M. #7076)

NORTH LINE SECTION 29

TOTAL
7.9861 Acres

ESTERO BOULEVARD CR-685
EUCALYPTUS AVE(CASE SUBDIVISION)

1.2557 Acres

PER APPROXIMATE C.C.S.L.
LEE BEACHES & COASTAL SYSTEMS
SUPPLIES COORDINATES
PLAT BOOK ORD. NO. 76-3
MARCH 31, 1978 PAGE 3

1.2490 Acres

MEAN HIGH WATER PER
PROPOSED EROSION CONTROL
LINE PER SURVEY DRAWING
ELIZABETH GAINES FSW
ELEVATION 1.50' (1929) 0.32' (1988)

PER APPROXIMATE C.C.S.L.
LEE COUNTY & COASTAL SYSTEMS
PLAT BOOK ORD. NO. 78-3
MARCH 1978 PAGE 3

0.1875 Acres

0.0465 Acres

GULF OF MEXICO

Exhibit B

**Conceptual Plans and Renderings
September 4, 2024**

DRAFT



SOLOMON CORDWELL BUENZ

3001 Estero Blvd, Fort Myers Beach, FL

STEARNS WEAVER MILLER





USE LEGEND & SUMMARY

- 1 North Building A**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 69 Units
- 2 South Building B**
 - 15 Story Residential Bldg
 - On 2 Story Parking Podium and Mech. Penthouse
 - 68 Units

Amenities included in both building

 - Lobby, Fitness & Spa Facilities, Conference Room, Social Lounges, Outdoor Pools, Spas and Cabanas, Pet Facilities, Resident Storage.
 - No consumption on premises
- 3 Bay Homes**
 - 4 Units
 - Single Family Homes
- 4 Beach Club**
 - 29,000 SF
 - Access from Estero Blvd & Private Overpass
 - Consumption on premises
 - 2 Stories over Parking Spaces and Valet Operation
 - Additional Parking Provided in Bldg A Parking Podium
- 5 Sunset Restaurant & Terrace (Public)**
 - 7,500 SF Restaurant / 2,500 SF Dining Terrace
 - Consumption on Premises
 - 1 Story over 1st Parking Podium Level
 - Required Parking within Bldg A Parking Podium
- 6 Pedestrian Overpass (Private)**
 - Estero Blvd. Feature Portal
 - Allows safe private access over Estero Blvd.
- 7 Linear Park & Feature Fountain**
 - Terraced landscaping to buffer podium height
 - Improves public experience and safety
- 8 Public Beach Access**
 - 90' to 120' View Corridors
 - Built & maintained by developer
- 9 Public Parks**
 - Matanzas Pass Preserve Access
 - Linear Park
 - 2943 Estero Boulevard Public Recreation Park

USE LEGEND

1 Public Beach Access

- 90' to 120' View Corridors
- Built & maintained by developer
- Public beach access

2 Public Parks and Trails

- South outparcel location

3 Linear Park and Feature Fountain

- Terraced landscaping to buffer podium height
- Improves public experience and safety

4 Public Restaurant and Sunset Terrace

- 7,500 SF Restaurant / 2,500 SF Dining Terrace
- Consumption on Premises
- 1 Story over 1st Parking Podium Level
- Required Parking within Bldg A Parking Podium

5 New Sidewalk and Landscaping

- Improved Landscaping along Donora Blvd
- Linkage to Public Parks/Trails

6 School Bus Stop

- New School Bus Stop on Estero

ACCESS LEGEND

- ▶ Pedestrian Access Point
- ◀▶ Public Pedestrian Circulation





3001 ESTERO BOULEVARD
15 Stories Over Parking

OCEAN HARBOR
15 Stories Over Parking

CAPER BEACH CLUB
11 Stories Over Parking

ESTERO SANDS
4 Levels Over Parking

3001 ESTERO BLVD
2 Levels Over Parking





NEW BEACH CLUB AND PUBLIC BEACH PARK FRAME THE OPEN VIEW TOWARD THE GULF

VIEW 1



WALKING ALONG ESTERO BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING OF THE BEACH CLUB TO THE WEST AND THE NEW PUBLIC PARK AND FEATURE FOUNTAINS TO THE EAST

VIEW 2



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO THE MANTANZAS PARK PRESERVE

VIEW 3



AERIAL VIEW LOOKING NORTHWEST ALONG ESTERO BLVD

VIEW 4



THE ENTRY TO THE SUNSET RESTAURANT ALONG WITH THE TERRACED PARK AND WATER FEATURES CREATE AN ACTIVE URBAN STREETScape ALONG ESTERO BLVD

VIEW 5



**SUNSET VIEW FROM THE RESTAURANT LOOKING ACROSS THE LANDSCAPED TERRACES
STEPPING DOWN TO ESTERO BLVD**

VIEW 7



THE SCULPTURAL PEDESTRIAN BRIDGE ALLOWS SAFE ACCESS OVER ESTERO BLVD FOR RESIDENTS TO THE BEACH CLUB

VIEW 8



THE SCULPTED BEACH CLUB POOL WITH A VISTA OVERLOOKING THE GULF

VIEW 9



THE SUNSET TERRACE AT THE BEACH CLUB WITH ACCESS DOWN TO THE BEACH AND VIEWS OF THE GULF.

VIEW 10



THE WALK ALONG DONORA BLVD IS FRAMED BY THE TRADITIONAL ARCHITECTURE AND LANDSCAPING TO THE WEST, CONTINUING NORTH TOWARDS THE MATANZAS PARK PRESERVE

VIEW 11



THE NEW PUBLIC PARK EAST OF ESTERO PROVIDE PEDESTRIAN AND BICYCLE ACCESS TO ESTERO BLVD

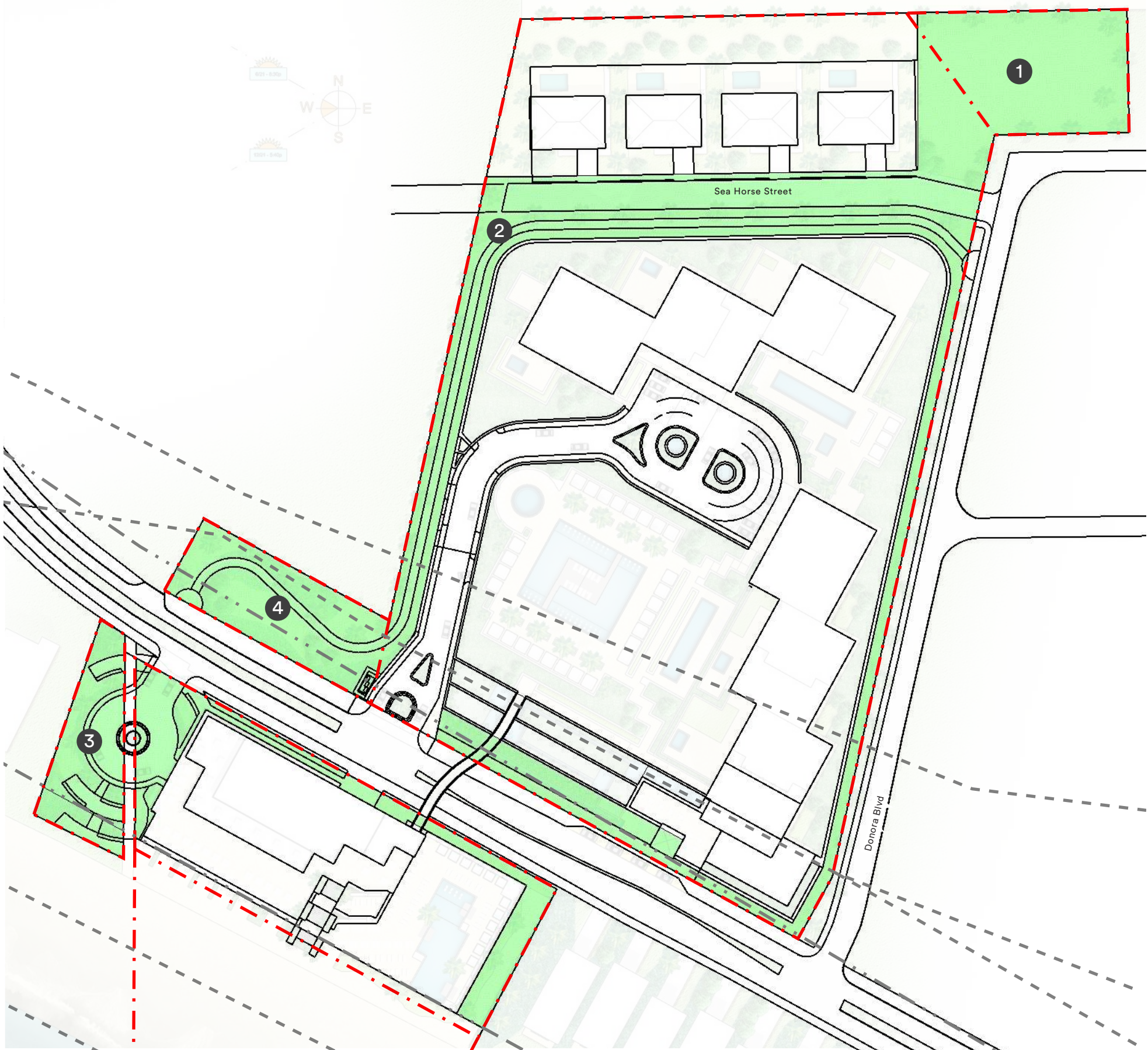
VIEW 12

Exhibit C

**Public Easement Overlay
September 4, 2024**

DRAFT

Exhibit C



Public Easement Area

Green shaded area represents the approximate area that will be included in the dedicated easement to the Town of Fort Myers Beach for public access and the following parks:

- 1 211 Donora Blvd. to provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County
- 2 A linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path.
- 3 A Beach Access to include a 10ft wide pedestrian-only beach access between Estero Blvd and the beach.
- 4 2943 Estero Blvd. to provide a public recreation park.

Exhibit D

**Pattern Book
September 4, 2024**

DRAFT



SOLOMON CORDWELL BUENZ

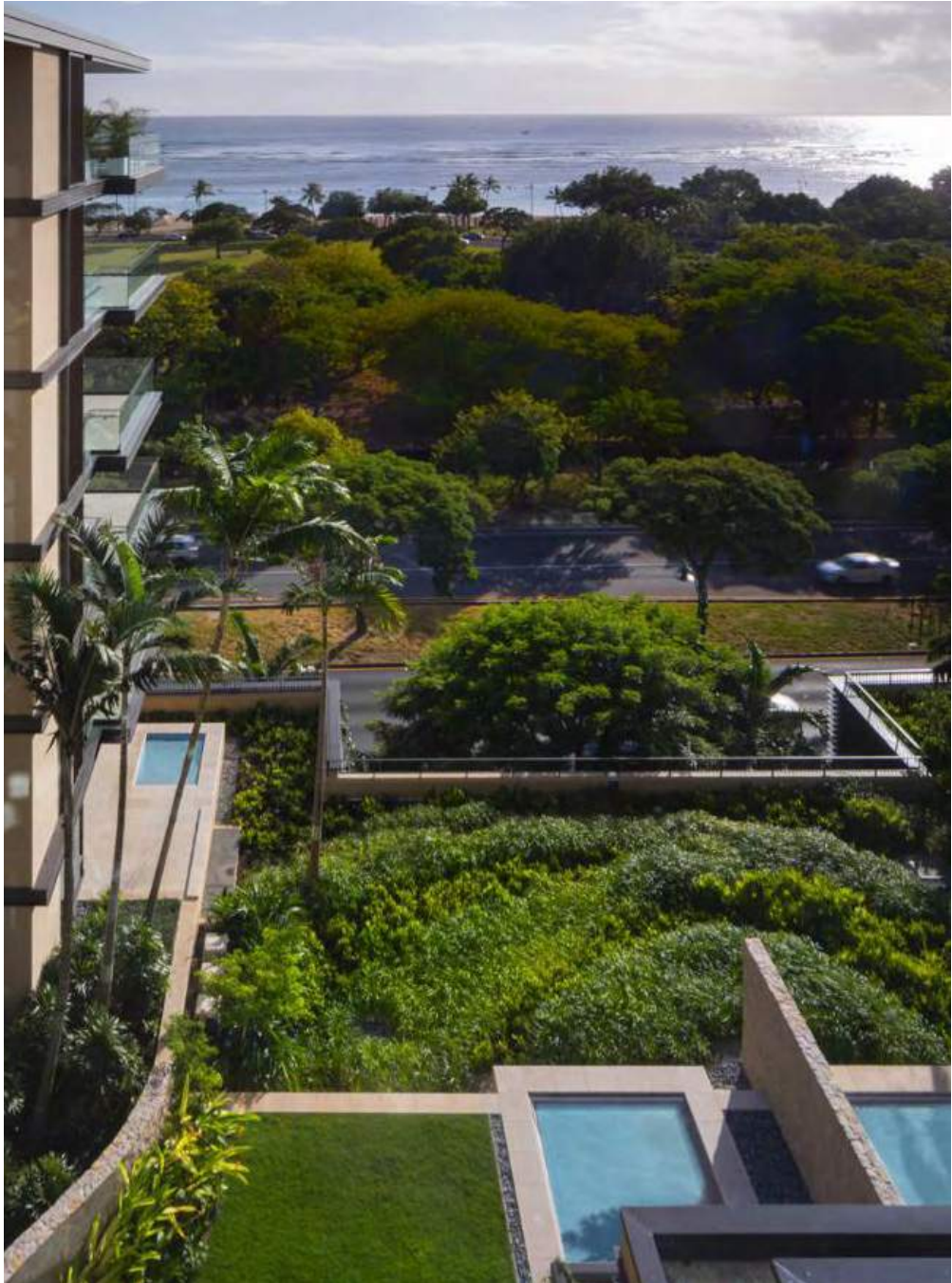
3001 Estero Blvd, Fort Myers Beach, FL

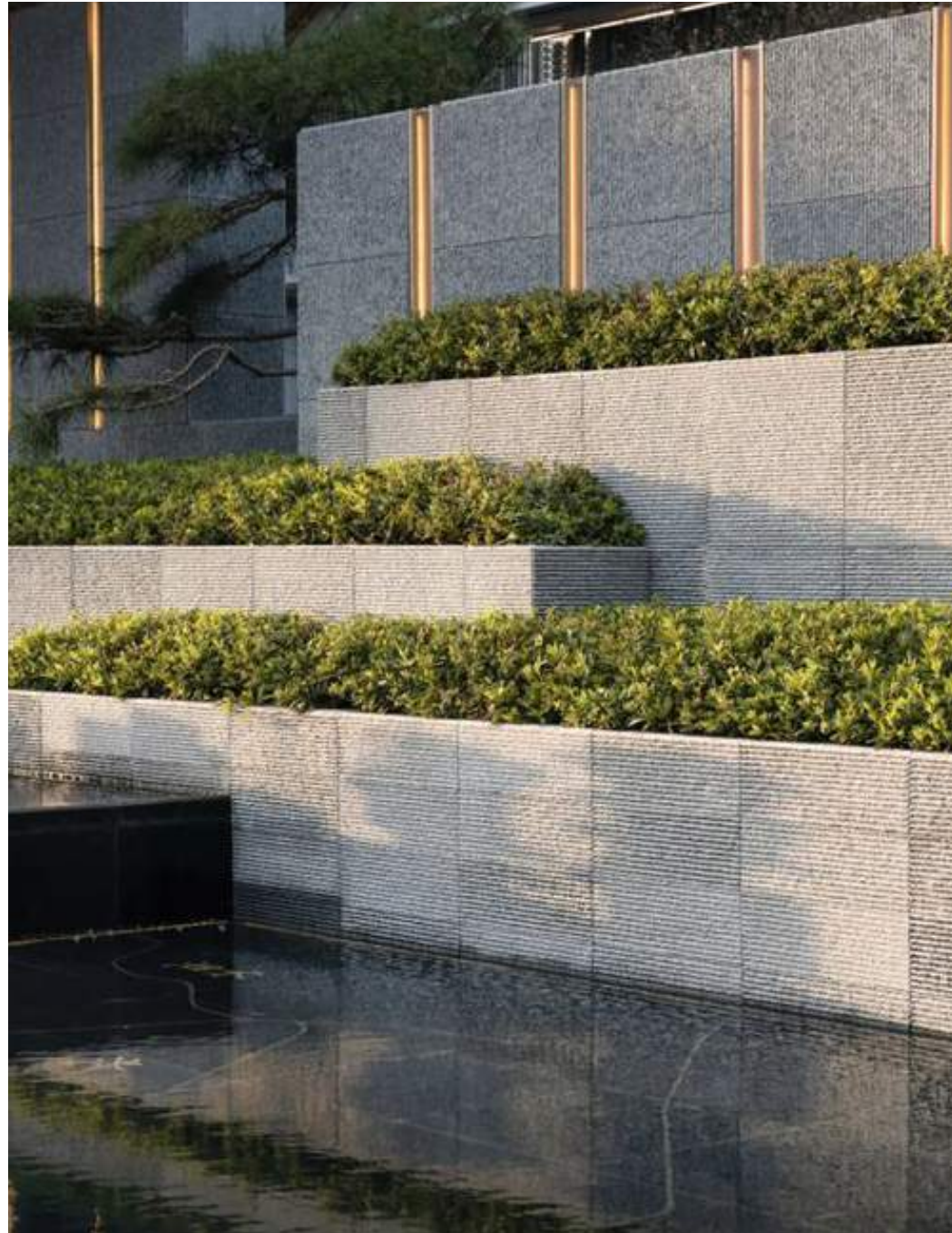
STEARNS WEAVER MILLER















Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT STAFF
REPORT

TYPE OF CASE: Development Agreement

CASE NUMBER: DA 20240170

CASE NAME: 3001, 2943 and 2932 Estero Blvd and 211 Donora Blvd; Development Order to allow a 141 dwelling unit mixed-use development

LPA

HEARING DATE: October 22, 2024, at 9 AM

TOWN COUNCIL

HEARING DATE: October 28, 2024, at 9 AM

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Tina Ekblad, AICP, MPA, Sage Entitlements, LLC/ Seagate Fort Myers Beach, LLC

Request: Development Agreement for a mixed-use development with 141 living units, approximately 10,000 square feet of commercial space and approximately a 29,000 square foot beach club.

Subject property: See attached Master Concept Plan

Physical Address: 3001, 2943 and 2932 Estero Blvd and 211 Donora Blvd

STRAP #: 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, and 29-46-24-W1-0120A.0010,

FLU: Mixed Residential, Boulevard, and Low Density

Zoning: Village

Adjacent zoning and land uses:

North: County Facility, Matanzas Pass Preserve

South:	EC, Beach
East:	Low Density, Single-family homes/ Institutional, FMB Art Association/ Residential Multifamily, Apartment Complex/ Commercial Boulevard, Fire Station, Portion of Junkanoo Building
West:	Village, Vacant/ Commercial Resort, Estero Sands Condominium Building/ EC, Beach

II. BACKGROUND AND ANALYSIS

Background:

Seagate Fort Myers Beach, LLC, is proposing a development agreement (DA) for the property previously known as the Red Coconut RV Park. This property contains 9.43 acres of land zoned Village. The property also contains 1.3 acres of land zoned as EC, however this portion of the property is not subject to the DA. The Red Coconut RV Park was developed with a density of 27 RVs or mobile homes per acre and included residential units, transient guest spaces, recreational amenities, and commercial uses, including restaurants and a nail salon, most recently.

Analysis:

The Comprehensive Plan and the Land Development Code anticipated the redevelopment of the Village Zoning District and provided a pre-approved redevelopment plan for the area. Based on the language in the code it seems clear that the development does not have to match, precisely, the pre-approved plans, however, the policies and land development code sections (attached as Exhibit A) all repeat similar but slightly different recommended criteria for redevelopment of the property. The criteria included in these sections and policies include: walkable streets, highly connected streets and alleys, streets connecting Donora and Shell Mound through to Lovers Lane, shade trees, traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear, variety of housing types, detached homes and cottages abutting existing single family homes, low rise apartments interior to the property, reduced density to 15 units per acre, substantial open space and view corridors, public access points to Matanzas Pass Preserve, mixed commercial and residential uses.

The Land Development Code provides several benefits for development that is compliant with the pre-approved development option which are expected to meet the criteria listed in the code. These benefits include: 1) Uses in the “Open” subgroup of table 34-1 which includes restaurants, retail stores, personal services, and bar or cocktail lounge; and 2) Residential density of up to 15 dwelling units per acre. The proposed development is reliant on both of these benefits.

Policy 3-A-6 directs the Town to “evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design

principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

The proposed DA meets many of the items referenced in Policy 3-A-6 and LDC Section 34-692(3). The applicant has requested several deviations, from the LDC, which are allowed through this process. The DA includes a complete list of proposed uses, eight (8) requests to deviate from the code requirements, and a list of public benefits.

List of Uses

1. Residential Density. A maximum of 141 residential units to be developed as 4 single and 137 multi-family units on the North side of Estero Blvd.
2. Vehicular Access. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Blvd, 1 ingress/egress from Estero Boulevard. Additional delivery and service points may be provided from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.
3. Rental Restrictions. Rental of any permitted dwelling unit will be limited to a single renting entity during any one-month period, with a minimum stay of one week.
4. Parking. Parking for the residential uses and commercial restaurant shall be provided consistent with the regulations at the time of building permit. An additional 75 membership spaces will be provided to support the beach club.
5. Commercial Area. Up to 10,000 square feet of commercial uses as identified in the Village Zoning Category. The commercial uses shall be open to the public, including but not limited to commercial personal services, such as hair and nail salons, a laundry service, daycares, a small-scale convenience retail, restaurants, and coffee shops.
6. Beach Club. A beach club not to exceed 29,000 square feet of enclosed air-conditioned space with private recreational amenities and a private membership organization. At least 25% of the memberships in the beach club will be available to non-residents of the Property. The beach club shall provide the following uses and amenities: pool and pool deck, event space

for members and their guests only (including conference center, wedding venue, and meeting space and similar uses), umbrellas, chairs, cabanas, and a restaurant with consumption on premises (indoor and outdoor) and terrace.

7. Parks and Access Areas. All parks and access areas will be maintained by the Developer or an association of property owners. A minimum of three (3) parks and access areas upon which the Town will be provided an easement for public use and located as follows (and substantially as shown in Exhibit C):

- (1) Matanzas Pass Preserve Park. To provide public recreation and access to Matanzas Pass Preserve to be coordinated with Lee County and the Town; and

- (2) a linear park providing pedestrian and cyclist access from Donora Blvd. to Estero Blvd. through the property a minimum of 20ft wide at all points with a minimum of 8ft wide multi-use path. The Developer will coordinate with the Town regarding directional and safety signage; and

- (3) an enhanced beach access to include a 10ft wide pedestrian-only beach access between Estero Blvd. and the beach (while also maintaining a beach access on the southern portion of the Property); and

- (4) 2943 Estero Blvd. to provide a public recreation park.

Deviations from the Code

The attached document entitled *Schedule of Deviations* includes the applicant's complete justification for the deviations.

1. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as "Exhibit B"; and
2. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as "Exhibit B"; and
3. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the "build to line" and "building frontage" along Estero and Donora

Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and

4. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed-use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
5. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
6. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
7. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as "Exhibit B" And Pattern Book attached hereto as "Exhibit D"; and
8. Deviation from LDC Section 34-631(b)(3): Eliminate the square footage and screening requirements of mechanical structure appurtenances located above 11 stories.

Applicant Proposed Public Benefits

A full description of the applicant proposed public benefits can be found in the Applicant's Report, pages 23-26.

1. Public Park with enhanced Beach Access & View Corridors to the Gulf of Mexico
2. Linear Park
3. Two Bay Side Public Parks
4. Density Transfer to Bay Side Parcels
5. Pedestrian Overpass, Limited Vehicular Driveways & Bus Pull-Off
6. Public Memberships Available to Beach Club

Public Benefit items not listed in the Applicant's Report but found in the DA include:

1. Provision of new sidewalk along Donora Blvd with enhanced landscaping and shade trees;
2. One public art installation viewable from Donora Blvd;

3. Maintenance of sidewalk along the north side of Estero Blvd;
4. Informational education panels at the park adjoining Matanzas Pass Preserve and wayfinding and safety signs along the linear park;
5. Coordination with Lee County to design the pull-off points on Estero Blvd to allow school buses to utilize the pull off;
6. Florida friendly plantings that do not require irrigation; and
7. Limiting the access along Donora for two entrances plus service entrances.

General Description of Development

The DA proposes a development consisting of 141 dwelling units. Four (4) dwelling units are proposed as single family detached residences and the remainder will be multifamily dwelling units. The applicant has request the ability to administratively transfer density from other properties for up to eight (8) additional single family units at the rear of the property, for a total of 149 units.

The development would consist of a two (2) story pedestal for parking, with nine (9) up to 15 story towers over the parking pedestal. The maximum requested height for the development is 235 feet over base flood elevation. The portion of the development abutting the north side of Estero Blvd would be a two (2) story restaurant. The portion of the development abutting the south side of Estero Blvd would be a three (3) story beach club building with pool and pool amenities also along Estero Blvd.

The development would provide 10-foot setbacks from Donora Blvd and Estero Blvd. The main building on the north side of Estero Blvd would provide a 10-foot setback from the linear park. The beach club building would be permitted to develop up to the 1978 Coastal Construction Control Line (CCCL). The single-family residences would provide a 10-foot street setback, 20-foot rear setback, and 5-foot side setbacks. Accessory structures would provide a 5-foot setback.

Neighborhood Compatibility:

These parcels are separated from adjacent single family and multi-family residential units by Donora Boulevard. The development proposes single-family dwellings along the north side of the property, closest to the existing single-family dwellings. The proposed multi-family development will be a good deal taller than all surrounding uses in this neighborhood. However, the proposed use is residential in nature, and the applicant has agreed to limit rental of residential units to a maximum of one rental per month. The proposed uses do not appear to create conflict with the adjacent uses, although the structures may be imposing in comparison to the existing neighborhood.

Findings and Conclusions:

The applicant has provided a DA meeting the minimum statutory requirements of the Code of Ordinances. The DA has been processed in accordance with the procedures in

the Administrative Code (attached as Exhibit B).

III. RECOMMENDATION

The development agreement in your agenda packet is the product of preliminary negotiations between the applicant and Town staff, in compliance with the processes and procedures of the administrative code section (Resolution 24-73 is attached as Exhibit B).

Due to Hurricane Milton, the LPA hearing was held on October 22nd. The LPA recommended denial of the Development Agreement, stating that the proposed public benefits were inadequate for requested height. The LPA did recommend several changes, which the applicant updated in their newly amended Development Agreement, attached to this agenda item.

IV. CONDITIONS OF APPROVAL

Conditions of approval are contained within the DA.

Staff Report Exhibits:

A – Comprehensive Plan and LDC discussion of Red Coconut

B – Resolution 24-73 Procedures for development agreements with deviations

Comprehensive Plan Objectives and Policies pertaining to Red Coconut

POLICY 3-A-5 Provide in the new Land Development Code a pre-approved option for the future redevelopment of the Red Coconut/Gulfview Colony properties consistent with the town’s vision of traditional neighborhoods — neighborhoods that recreate a small-town feel; which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the beach; and which offer a variety of housing types and opportunity for mixed uses.

POLICY 3-A-6 In accordance with Policies 4-E-1 and 4-F-2 of the Future Land Use Element, evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

POLICY 4-C-4 **BUILDING HEIGHTS:** The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback

situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

OBJECTIVE 4-F REDEVELOPMENT — Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for landowners to

Exhibit A – Comp Plan and LDC discussion of Red Coconut

replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, and by providing building code relief for historic buildings.

POLICY 4-F-2 SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for three specific areas:

iii. Gulfview Colony/Red Coconut – This area is shown as “Mixed Residential” and “Boulevard” on the Future Land Use Map. If landowners wish to redevelop part or all of this property, the following concepts are encouraged, and shall form the basis for a preapproved redevelopment option in the Land Development Code:

- a. traditional neighborhood design emphasizing porches on the front; primary entrances visible from the street; and cars to the rear (except for on-street parking);
- b. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
- c. low-rise townhouses or apartments allowed toward the center;
- d. walkable narrow streets with shade trees that double as view corridor to the Preserve and Gulf;
- e. substantial open space with views to be maintained from Estero Boulevard to the Gulf;
- f. mixed commercial and residential uses along the Bay side of Estero Boulevard;
- g. quiet internal street connections to the north and south;
- h. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre;
- i. provision for a publicly acquired access point to the Matanzas Pass Preserve. This redevelopment plan is described in Community Design Policies 3-A-5 and 3-A-6.

Different redevelopment concepts that are consistent with this comprehensive plan may also be proposed for any of these areas through the planned development rezoning process.

Land Development Code Sections referring to Red Coconut redevelopment

Sec. 34-691. - Purpose.

The purpose of the Village district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

...(2) As an alternative, the Village district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. - District map and applicability.

The area indicated on Figure 34-18 is the outer boundary of the Village district.

...(3) Transformation of existing mobile home and recreational vehicle parks. Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the Village district.

a. The following concepts are expected in this redevelopment process:

1. Traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
2. Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
3. Low-rise townhouses or apartments allowed elsewhere on the site;
4. Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
5. Open space that allows views to be maintained from Estero Boulevard to the Gulf;
6. Mixed commercial and residential uses along the bay side of Estero Boulevard;
7. Quiet internal street connections to the north and south;
8. Significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
9. A site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.

b. At the option of landowners in the Village district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 below, and generally in accordance with either of the conceptual site plans found in the community design element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 below shall have no effect.

RESOLUTION NUMBER 24-73

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA; MAKING FINDINGS; APPROVING AN ADMINISTRATIVE CODE SETTING FORTH PROCEDURES FOR THE APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS; 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 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, Sec. 2-96, “Applications for Development Agreements”, of the Town’s Land Development Code provides in pertinent part that:

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application.

WHEREAS, after discussion during public meetings before the members of the Fort Myers Beach Land Planning Agency and the Fort Myers Beach Town Counsel, and after allowing input from the public, an administrative code providing for the procedures to be followed for the application for, and the approval of, development agreements with deviations has been decided upon; and

WHEREAS, the Town Council has determined it is in the best interest of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution.

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 adopts the attached Exhibit “A” as the Town of Fort Myers Beach Administrative Code Providing Procedures for Development Agreements with Deviations.

Section 3. This Resolution shall be effective immediately after the adoption by Resolution of the schedule of fees and charges which shall be imposed for the filing and processing of each application for a Development Agreement with Deviations.

The foregoing Resolution 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 roll call vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King	Aye
Scott Safford	Aye
Karen Woodson	Aye

ADOPTED this 1st day of April 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Apr 12, 2024 14:28 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Apr 23, 2024 13:30 EDT)
Amy Baker, Town Clerk

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

Nancy Stuparich
Nancy Stuparich (Apr 25, 2024 21:28 EDT)
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of April 2024.

**TOWN OF FORT MYERS BEACH
ADMINISTRATIVE CODE PROVIDING
PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS**

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Development Agreement with Deviations with a property owner. A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions ("deviations") from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provided for in such Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Development Agreement with Deviations shall be subject to the procedures set forth herein.

1. Development Agreement with Deviations Application Procedures.

The following information/exhibits shall be required with the application for a Development Agreement with Deviations (hereinafter "Development Agreement"):

1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").

1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.

1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be located. If the Land is located on the water, any view corridors or public access location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended (“deviations”).

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not arbitrary and in the best interest of the town.

3. *Development Agreement with Deviations Review Procedures.*

The following regulations shall be followed during the review of a Development Agreement with Deviations.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the development agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased, and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 It shall not be required for the town manager, or designee to make a recommendation as to whether the town council should approve or not approve a Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval or denial of the Development Agreement to the town council. Thereafter a public hearing shall be held by the town council as to the Development Agreement.

3.3.3. Notice of each of the public hearings shall be noticed on the town's website, and said notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing. Said advertisement and notice of each of the two public hearings may be combined in one notice, but must include:

3.3.3.1. Location of the Land subject to the Development Agreement.

3.3.3.2. Proposed development's project land use, building intensities, estimated population and building heights.

3.3.3.3. Location where a copy of the proposed Development Agreement may be reviewed.

3.3.3.4. Date, time and place of the public hearing(s).,

3.3.3.5. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the town council public hearing, the town clerk shall immediately dispatch, postage prepaid by regular, first class, U.S. mail and in writing, a copy of the determination of the town council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. Amendment to Development Agreement.

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the town council. Noticing of the LPA and town council hearings shall be in the same manner as for the original hearings for Development Agreements.



3001 Estero Boulevard
Applicant's Report
September 20, 2024

I. APPLICATION SUMMARY

Applicant/Owner: Seagate Fort Myers Beach, LLC

Request: Adoption of a Home Rule Development Agreement for a Site Plan with Deviations to redevelop 9.43 acres of a 10.72 acre Property spanning from Matanzas Pass Preserve to the Gulf of Mexico.

Subject Property: See attached Legal Description and Sketch (Exhibit A to Development Agreement)

Physical Address: 3001 Estero Boulevard

STRAP #s: 29-46-24-W1-00145.10000, 30-46-24-W2-00001.0000, 29-46-24-W1-00145.5000, 29-46-24-W1-0120A.0010

FLU: Boulevard & Mixed Residential

Zoning: Village

Adjacent zoning and land uses

North: Matanzas Pass Preserve

South: Environmentally Critical/Recreation Beach

East: Boulevard & Mixed Residential
Single and Multi-family Residential, Former Arts Complex, Former FMB
Fire Department Station

West: Boulevard & Mixed Residential/Village
Vacant, Former Gulfview Mobile Home Park

II. BACKGROUND & ANALYSIS

a. Framework

On April 1, 2024 the Town Council approved Ordinance 24-72, outlining procedures for Development Agreements (“DA”) with Deviations. These procedures establish:

“A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions (“deviations”) from the Town’s Land Development Code, and, if appropriate under the provisions of the Town’s Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provide for in such a Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan.”

As part of the DA process, a specific finding is required to be provided that the “proposed project permitted or proposed is consistent with the Town’s comprehensive plan and land development code or that if deviations are necessary for the zoning district or land use plan designations on the subject land, such Development Agreement specifically lists such deviations in detail.” Additionally, a statement is to be provided in the DA “explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control...”

Seagate Fort Myers Beach has submitted a DA to establish a conceptual site plan for the redevelopment of the Property and request deviations to promote the clustering of density, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico. The DA identifies the anticipated uses, density, intensity, duration of the agreement, proposed public benefits, and the requested deviations. As exhibits to the DA, the applicant has provided:

- Exhibit A - Legal Description and Sketch for the portion of the Property landward of the 1978 CCCL line;
- Exhibit B - Conceptual Plans and Renderings;
- Exhibit C – Public Easement Areas;
- Exhibit D – Pattern Book.

With the exhibits, the DA establishes the conceptual parameters which will guide the review of the detailed plans and calculations to be submitted for the required Town of Fort Myers Beach Development Order (“DO”), South Florida Water Management District Environmental Resource Permit (“ERP”), and other permits. Construction is not permitted to begin until all permits are secured. Due to the number of subsequent permits necessary and coordination with outside agencies, the Applicant has proposed a 10-year timeline for the DA. This duration will provide enough time to obtain all necessary permit approvals, continue coordination with Lee County and

the Town to address dedication of required easements, park programming and public access, and unforeseen circumstances.

b. Property

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities, owned/operated by the Myers Family since 1984 and accepted its first visitors in 1925.¹ The park's opening was approximately 12 years after construction of the first beach hotel and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.² Due to the development pre-dating the incorporation of the Town of Fort Myers Beach ("Town") by over 73 years and a density of 27 RV/mobile homes per acre, the Property is located within a redevelopment area identified by the Comprehensive Plan³ and Land Development Code ("LDC").⁴ The intent of the redevelopment area is for the Town to "take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area."⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F-2 identify that redevelopment within the designated area is *encouraged* to incorporate specific design concepts into a pre-approved redevelopment option. (emphasis added) The Village district implements these policies by "...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern."⁵ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The DA process permits deviations to be requested from these design criteria.

c. Comprehensive Plan

The Town's comprehensive plan was adopted in 1999 and since that time, has not been fully evaluated for consistency with State building codes, coastal building regulations and the Federal floodplain requirements. Per the Future Land Use map, the Property is within three future land use ("FLU") designations, Boulevard, Mixed Residential and Recreation.

Boulevard – described by Policy 4-B-5 as a "...mixed use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages and mixed housing types." This designation occurs along the approximately 90-foot-deep portion of the Property fronting on the north side of Estero Boulevard and all of the parcels along the south side of Estero Boulevard. Consistent with this location, the proposed site plan locates the private recreational amenity, 2 publicly accessible

¹ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

² FMB Comprehensive Plan, Commercial Design Element, Page 3-3

³ FMB Comprehensive Plan, Policy 4-F-2

⁴ FMB LDC Section 34-691 et.al.

⁵ FMB LDC Sec 34-691

parks, terraced planters and water feature, and the 10,000 square foot restaurant within this FLU category.

Mixed Residential – described by Policy 4-B-4 as “...old subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks.” The portion of the Property between Matanzas Pass and the Boulevard FLU is considered Mixed Residential. Consistent with this location, the proposed site plan locates the multi-family and single-family residential units within this FLU category.

Recreation – the portion of the Property seaward of the 1978 Coastal Construction Control Line is within the Recreational FLU. Consistent with Policy 4-B-8, this portion of the Property is not proposed for development, is not included in the calculations related to density or intensity and is not included in the Legal Description attached to the Development Agreement.

The proposed uses and location are consistent with the underlying FLU categories for the Property.

Beyond the FLU categories, the comprehensive plan considers the “appropriate future uses in the event of a change in ownership or pans or a natural disaster” for the Property.⁶ Specifically, Policies 3-A-6, and 4-F-2 outline the *anticipated* redevelopment for the Gulfview Colony/Red Coconut. (emphasis added) Future Land Use Policy 4-F-2.iii identifies the design “concepts [that] are encouraged” to be included in the pre-approved redevelopment options Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.”

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent

⁶ FMB Comprehensive Plan, Community Design Element, Page 3-8

of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also considers requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure. The additional height enables the Gulf side parcel density to be transferred to the bay side portion of the Property and cluster most of the available density in a mixed-use structure on the bay side of Estero Boulevard. This density transfer also limits the intensity of the redevelopment of the gulf side parcels. As a result, the conceptual plans incorporate multiple public parks, 2 new view corridors to the Gulf, a new pedestrian beach access, and access and views to Mantanzas Pass Preserve are maintained to promote appropriate public benefits to support the requested height increase.

The proposed project is consistent with the Town’s comprehensive plan, provides many of the design concepts encouraged and anticipated by Policies 3-A-5, 3-A-6, and 4-F-2, and establishes appropriate public benefits for the requested height increase consistent with Policy 4-C-4.

d. Village Zoning District

The Property is within a redevelopment zoning district known as the Village which implements Policies 3-A-5, 3-A-6, and 4-F-2 of the Town’s Comprehensive Plan. The purpose of the Village district is “to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate.” The Village district “provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern.”⁷ “A vision for this area...is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”⁸ The LDC outlines concepts expected to be provided across all properties in the Village district. The Property is only a portion of the Village district and provides 7 of the 9 criteria envisioned when the Village zoning district was established in 2003 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;

⁷ FMB LDC Section 34-691

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-8

- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

The remaining 2 criteria, a traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

As demonstrated by Exhibit B Conceptual Plans, Exhibit C Public Easement Areas, and Renderings, and Exhibit D Pattern Book the enhanced design features and public parks/gathering spaces incorporated into the overall concept is consistent with the “pre-approved redevelopment option” and with the approval of the DA can submit a DO application to implement the proposed redevelopment consistent with LDC Section 34-693.

e. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, stakeholder input was gathered by the Applicant. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result

of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the Beach Club.

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

i. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. Within the beach club, there is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. A minimum of 25% of the membership will be reserved for public access, providing an opportunity for residents of the Town to utilize the facilities. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the Beach Club with the multi-family residential units. Vehicular access to the beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the beach club.

ii. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require ongoing coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and a perpetual easement will be recorded for public access and use. As a result, the Town will have a new public park with beach access without requiring an investment in tax funds for the purchase, development, or maintenance of the park.

iii. Mixed Use Structure

The portion of the bay side parcels between Estero Boulevard and the east/west Donora Boulevard extension is proposed to be redeveloped with a mixed-use structure with 137

residential units, a 10,000 square foot commercial restaurant, 2 stories of structured parking, and a tiered landscaping and water feature incorporated into the building podium.

The Village district permits any dwelling unit to be rented for periods of one day or longer. While rentals are anticipated to occur within this development, the Applicant has agreed to limit rentals to a week or longer through restrictive covenants.

The primary access to the structure is an internal street from Estero Boulevard leading to a turn around and a valet drop off area; which routes into the Property screening the proposed street and vehicle drop off by the proposed structure eliminating visibility from adjacent roadways. Additionally, the turnaround and stacking area at the end of the internal street exceeds Town standards to ensure no impacts to adjacent public roadways. The portion of the structure fronting Estero Boulevard is proposed for terraced landscaping and water feature and a commercial restaurant which are designed to be 3 stories (including structured parking) consistent with the Village district for mixed used structures. Additional height in feet and stories as permitted by LDC Section 34-631 will be requested at the time of final design to address the height of the commercial space and required base flood elevation. Providing these features within the height limitations of the Village district shields the structured parking provided to support the development. The architectural elements of the commercial restaurant wrap the corner of Estero and Donora Boulevards to ensure appropriate screening along Donora Boulevard. The Applicant has requested a deviation to increase the setback for the mixed-use structure to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero and Donora Boulevards. The Applicant has also agreed to provide public art along the Donora Boulevard building facade.

As the setback from Estero increases the structure height also increases. Behind the 3-story façade for the commercial restaurant and terraced landscaping with water feature are the proposed multi-family residential towers which vary in height from a maximum of 17 stories (including 2 stories of structured parking) and 235 feet. To support the residential towers, lobbies, fitness facilities, social spaces, and meeting rooms with outdoor amenities are proposed. The architectural treatments and elevations for the residential towers will be provided consistent with the proposed pattern book at the time of Development Order application.

To maintain traffic flow down Estero Boulevard, vehicular pull off points are integrated into the design for the proposed restaurant. This feature will permit patrons to valet their vehicles when dining at the commercial restaurant. Due to the hours of operation of the restaurant and the volume of patrons anticipated at night, the Applicant has agreed to work with Lee County to design the pull off points to permit school buses to utilize this area for morning pick up and afternoon drop off. This joint use of the pull off design will support the nearby existing residential neighborhoods and improve the safety of school age children riding the bus.

iv. Linear Park & New Sidewalk along Donora Boulevard

Adjacent to the western property boundary and new east/west extension of Donora Boulevard is a public 20 foot wide Linear Park to include an 8-foot-wide multi-use path. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. Paralleling the western property boundary before turning east to parallel the new proposed east/west local street and connecting with the existing north/south Donora Boulevard the linear park provides a landscaped multi-use path. This design enhances interconnectivity through the Property for existing and future residents to promote movement without a vehicle. The park's location also provides an opportunity for expansion to the west when the rest of the properties within the Village zoning district are redeveloped, further enhancing mobility without a vehicle.

Currently there is no public sidewalk along the western side of Donora Boulevard. The proposed conceptual plan increases the setback of the mixed-use structure which will enable enhanced landscaping with shade trees and a sidewalk along Donora Boulevard. These improvements are specifically outlined in the Development Agreement and shade trees are required to improve the pedestrian environment for existing and future residents along Donora Boulevard. Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

v. Single family Residential Units

Between the north property boundary and the proposed east/west extension of Donora Boulevard, 4 single family residential units are proposed. These units will front the proposed east/west extension of Donora Boulevard and are set back from the property boundaries by at least 15 feet. Side setbacks are established at 5 feet. Accessory setbacks to the rear property boundary are requested to be 5 feet to permit pools, patios, and screened enclosures.

vi. Bay side Public Parks

The conceptual site plan includes two public parks on the bay side portion of the Property. Along the western property boundary and fronting Estero Boulevard, a public park is proposed. Within this park is the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian

crossing point that can be monitored and improved to address demand. Additionally, this location is central to the entire Village District and the future facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to the west within the Village District.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction, and the activation of the Estero Boulevard street frontage consistent with the Village district. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- On-going coordination with Lee County to promote a pedestrian interconnection to Matanzas Pass Preserve;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

f. Requested Deviations

i. *Traditional Neighborhood Design*

- 1) **Request to deviate from 34-692(3)a.1 that expects traditional neighborhood design with interconnected streets, porches, or balconies at the front of dwellings, primary entrances visible from the street and cars directed toward the rear to allow:**

A single primary entry and internal street from Estero Boulevard for the bay side parcels (see also Deviation #2)

An internal east/west street extension from Donora Boulevard (see also Deviation #2)

Porches or balconies on all facades of the multi-family portion of the mixed-use structure & terraced landscaping with water feature for the façade fronting Estero Boulevard for the mixed-use structure

Outdoor seating and terraces for the beach club and public restaurant portion of the mixed-use structure

Private pedestrian entry above ground level along Estero Boulevard for the beach club & mixed-use structure

A single primary entry along the side façade and drop off only along the front façade for the beach club

Vehicular access from controlled access points to ground level parking for the mixed-use structure and private recreation facility

Justification for Deviation #1: Traditional Neighborhood is not a defined term in the Town's LDC or Comprehensive Plan. The Community Design Element does offer some context with the following language, visual renderings, and multiple site plans for the Red Coconut and Gulfview Colony area:

"A vision for this area...is as a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas and shopping without using Estero Boulevard. ...Neighborhood design is not dominated by garages and features porches on the front, walkable narrow streets with shade trees that double as view corridors to the preserve and beach and quiet internal street connections to the north and south"

The design elements described are not expressly required but were anticipated as part of the vision described in the Community Design Element. Unfortunately, these design elements have not been updated throughout the years to adapt to the changing circumstances related to the floodplain and federal construction regulations. Since the adoption of the comprehensive plan in 1999, the Town's floodplain maps have been amended three times.⁹ The current maps were adopted November 17, 2022, and establish the Property is subject to a VE-14 flood zone for the entire gulf side and a portion of the bay side. The Coastal A zone and LiMWA (Limit of Wave Action) occurs on the bay side portion of the Property. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side portion of the Property. These conditions require **all** structures to be elevated above the base flood zone of approximately 14 feet, significantly limiting the opportunity for ground level enclosed space, and require construction to utilize breakaway walls. Due to these design requirements, structures within these floodplain zones cannot provide the desired porches and primary entries on the ground floor.

The proposed site plan does activate the street front without ground level commercial space or porches and balconies and primary entries visible from the street. The proposed public parks fronting the gulf and bay side of Estero Boulevard and adjacent to the western property boundaries will provide public recreational opportunities as well as gathering space for existing and future residents. Within these parks are the origination points for the linear park with an 8-foot-wide multi-use path on the bay side parcels and the 10-foot-wide public beach access within the proposed park on the Gulf side. The parks and pedestrian connections are centrally located to the Village district establishing a single point to cross Estero Boulevard consistent with Policy 7-E-4. On the eastern side of the boulevard entry along Estero Boulevard is the proposed terraced

⁹ 2008, 2019, 2022

landscaping with integrated water feature and enhanced architecture for the area below the proposed restaurant, which shields the building podium.¹⁰ The enhanced architecture associated with the restaurant wraps the corner of Estero and Donora Boulevards. With the requested deviation to increase the building setback to promote enhanced streetscaping, these features will shield the structured parking and supporting building infrastructure. Together, the parks fronting the Gulf and bay side of Estero Boulevard with the increased setbacks, enhanced architectural features and streetscaping, pedestrian interconnectivity will be improved along Estero Boulevard with the gathering spaces of the public parks to establish ground level interaction and activate the street front for a lively pedestrian environment.

The terraced landscaping with integrated water feature and enhanced architecture of the proposed restaurant will be a maximum of 3 stories and comply with the height limitations and exceptions¹¹ for the bay side parcels of the Village district. The remainder of the Estero Boulevard frontage is proposed to be a public park. On the Gulf side of Estero Boulevard, architectural treatments consistent with the proposed pattern book and enhanced landscaping are also proposed with two view corridors to the Gulf.

Above the building podium and setback from the commercial restaurant are the multi-family residential towers which tier in height and are further setback from the building podium. The units are oriented within the towers to promote balconies on all the building facades. The design proposed for the mixed use structure, beach club, and public parks implement the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-2, 1-B-3, 2-B-1, 4-A-1, 4-A-2 and 4-F-2 by providing ground level gathering space through the proposed parks, an enhanced pedestrian environment with the landscaped terraces with water feature, streetscaping, architectural treatments at the ground level and interaction with the street front from the proposed terraces above the required base flood elevation.

The primary vehicular entry to the mixed-use structure is proposed via Estero Boulevard with a single access point to an internal street with stacking distances that exceed the LDC requirements. The street begins in a north/south orientation and turns east/west to provide a circular turnaround and drop off between the two proposed towers. This design orientation for the internal street ensures that vehicles are directed toward the rear and are shielded from the adjacent public roadways. An east/west through street from Donora Boulevard is proposed to provide access to the proposed single family residential units consistent with the intent of the Village district¹² with the opportunity for a future expansion to Lovers Lane. The property owner does not own the land between the western property boundary and Lovers Lane to provide the street extension discussed in the Village district.

¹⁰ The elements that form the base of the structure and serve to raise the habitable space above the base flood elevation.

¹¹ FMB LDC Section 34-631

¹² FM BLDC Section 34-693(c)(2)

The primary vehicular entry to the beach club is also proposed via Estero Boulevard with a single access point to the side of the beach club. Limiting the primary access and secondary streets within the proposed development eliminates curb cuts on Estero and Donora Boulevards and maintains traffic flow consistent with Policy 7-H-10 and guidance received from Lee County Department of Transportation.

While the secondary streets for vehicular access to the mixed-use structure and beach club do not interconnect to adjacent streets, the proposed design does promote pedestrian and/or bicycle activity throughout the Property to adjacent streets via a linear park and new sidewalks. The proposed layout of the linear park originates at Estero Boulevard, within the proposed public park to provide a specific point on Estero Boulevard for pedestrians to cross and access the beach consistent with Policy 7-E-4. From the proposed public park on the bay side of Estero Boulevard, the linear park travels north along the western property boundary, turning east to parallel the proposed new local street, and ultimately connecting to Donora Boulevard. A new sidewalk with shade trees is proposed along Donora Blvd. This linear park with the new and repaired sidewalks on Estero and Donora Boulevards will be open to the public and contributes to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The linear park is also located in a manner that can provide a future interconnection to Lovers Lane. The proposed design for the linear park promotes interconnectivity with existing public infrastructure for existing and future residents consistent with Policies 1-A-2, 4-A-1, 7-B-3, and 7-E-4 and further activates the Estero Boulevard street frontage as desired by the Village district.

The proposed development promotes design features that adapt to the federal design requirements of the VE and Coastal A zone while maintaining the intent of the Village district and comprehensive plan to the maximum extent possible. The public health, safety and welfare will be improved through the elevation of the structure, incorporation of architectural techniques, and public recreation that activates Estero Boulevard for all pass by traffic, a safe linear park that connects to other residential neighborhoods and the maintenance of traffic flow along Estero Boulevard. Other infrastructure improvements are also proposed to enhance pedestrian and bicycle connectivity and view corridors to the Gulf and Matanzas Pass Preserve, consistent with the vision of the Village district.

ii. Street Layout

- 2) Request to deviate from 34-693(c)(1) and (2) that provides options for secondary streets in the Village zoning district and requires an extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public to allow:**

A single primary entry and internal street from Estero Boulevard to the mixed-use structure with turn around.

An internal east/west local street extension from Donora Boulevard to the western property boundary.

Justification for Deviation #2: The Village district includes a desired street layout in LDC Figure 34-18 demonstrating the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “*generally* in accordance with Figure 34-18.” (emphasis added) The existing north/south portion of Donora Boulevard is one of the secondary streets identified in Figure 34-18, the proposed site plan incorporates a sidewalk along the street to provide improved pedestrian circulation from the adjacent residential neighborhoods.

Due to the pedestrian/bicycle opportunities provided by the proposed site design, vehicle access is purposefully directed to the multi-family or single-family residences and not interconnected. Increasing the internal street connections consistent with Figure 34-18 would increase the number of locations a pedestrian or cyclist would have to cross a street also utilized by vehicles. To reduce the number of conflict points and improve safety, a linear park with an 8-foot-wide multi-use path is incorporated into the site plan separating pedestrian and bicycle traffic through the Property from vehicles. A single internal street is proposed for the multi-family structure from Estero Boulevard with a turn around and stacking distances that exceed the LDC requirements to address the anticipated traffic, drop off for valet, and shield this activity from Estero Boulevard. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero Boulevard is a unique opportunity to implement this policy with the proposed redevelopment. The intent of this policy is reflected in the conceptual site plan by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10 and guidance received from Lee County Department of Transportation.

Two additional access points to the mixed-use structure are provided on the north/south portion of Donora Boulevard, an existing local street, to provide secondary ingress/egress to the structured parking for residents. A new local east/west street is proposed to extend Donora Boulevard through the Property and provide access to the proposed single family residential consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). Consistent with the intent of the Village district and Policy 3-A-6 this design maintains a future opportunity for the through street to extend to Lovers Lane¹³ and promote an interconnected network for existing and future residents

¹³ FMB LDC Section 34-693(c)(2)

to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. The Property owner does not own the land between the western property boundary and Lovers Lane to provide the full street extension discussed in the Village district. It is anticipated that future redevelopment in the Village district will promote the full extension of the desired local street.

Pedestrian and/or bicycle activity throughout the property and to adjacent streets is promoted through linear park and a new sidewalk with shade trees along Donora Boulevard. The linear park interconnects the public park fronting on Estero Boulevard, travels north along the western property boundary, turns east adjacent to the new internal road, and ultimately connects to Donora Boulevard consistent with Policies 3-A-5, 3-A-6, 4-A-1, and 7-D-5. This linear park will be open to the public and contribute to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The location of the linear park adjacent to the proposed new local street also provides the opportunity for a future connection to Lovers Lane, further promoting interconnectivity throughout the Town.

The public health, safety and welfare will be improved through the proposed design by eliminating curb cuts and maintaining the traffic flow on Estero Boulevard. The provided enhancements for pedestrian and bicycle connectivity appropriately address the opportunity for future development on properties not controlled by the applicant. The design of these enhancements reduces the potential conflict points with vehicular traffic and provides a separate safe linear park of pedestrian and bicycle traffic through the site with the opportunity for future expansion to the west. Together the internal streets and linear park improve circulation for vehicles and pedestrians as desired by the Village district.¹⁴

iii. Building Placement

- 3) Request to deviate from 34-693(e), (f), (g) that establishes build-to-lines from all streets at 0, rear setbacks at 20 feet, and a building frontage percent to 50% along Estero Boulevard to allow:**

Elimination of the build-to-lines and building frontage % for all structures;

Establish a 10-foot front setback for structures adjacent to a roadway;

Decrease the rear setback to 10 feet for the mixed-use structure;

Decrease the rear setback to 5 feet for accessory structures associated with the single-family residential units;

Increase the street corner setback beyond 20 feet for the mixed-use structures.

Justification for Deviation #3: The Property fronts Estero and Donora Boulevards and as described in Deviation #1, the Property is within a VE-14 and Coastal A zone requiring the

¹⁴ LDC Section 34-693(c)

elevation of structures within this area to approximately 14 feet above base flood elevation. The bay side parcels are also subject to the 1991 Coastal Construction Control Line which significantly limits the square footage that can be enclosed below base flood elevation and requires breakaway construction practices. With a required elevation of 14 feet, the requested increased setback will enable the area between the property boundary and proposed structure to be utilized for streetscaping and improvement or installation¹⁵ of a public sidewalk. The streetscaping with enhanced architectural elements will screen the building podium providing parking, plumbing, electrical and foundational elements for the mixed-use building and private beach club.

Building frontage is measured as the length of a building façade that faces a street¹⁶, and in the Village district this length is measured at the build to line. The requested front setback is greater than the build-to-line; therefore, by the definition included in the LDC, the building frontage would be 0. Additionally, the proposed mixed use building design includes a public park along Estero Boulevard, which significantly reduces the length of the building façade along Estero Boulevard and provides a significant public benefit. Similarly, the beach club provides two 120-foot view corridors along Estero Boulevard; significantly reducing the length of building façade provided to increase the public benefits offered.

To ensure the structural elements of the building podium are appropriately screened from the adjacent streets, the proposed design includes a setback greater than 10 feet from a right-of-way and 20 feet from corner of street intersections. The increased setback provides additional land area for plantings between the structure and the repaired or new sidewalk to shade the adjacent pedestrian environment and improve the view of pass by traffic as compared to the required construction practices for the 14-foot base flood elevation. In addition to the increased setback, the mixed-use structure utilizes landscaped terraces with a water feature and a public restaurant with terrace to address the pedestrian environment along Estero Boulevard. Additional streetscaping, a new sidewalk and public art are provided along Donora Boulevard. When combined with the public park on the remainder of the Estero Boulevard frontage, these features provide an enhanced pedestrian environment and gathering space as well as an activated street front, implementing the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-3, and 4-A-1.

The rear setback for the mixed-use structure is proposed to be reduced due to the location of the linear park and new local street providing access to the proposed single family. The building podium will be closer to the linear park than the residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard and the new local street to ensure the right-of-way and linear park maintain open air and light. The proposed design is consistent with the Village district's intent and Policies 4-A-1 and 4-A-2.

The public health, safety and welfare will be improved through the proposed design by incorporating required construction techniques to address the floodplain elevation while enhancing

¹⁵ The existing sidewalk along Estero Boulevard will be repaired and a new sidewalk will be installed along Donora Boulevard.

¹⁶ FMB LDC Section 34-693(c)

the ground level environment for pass by pedestrian and vehicular traffic consistent with Policies 1-A-1, 1-A-2, 1-A-3, 1-B-3, 2-B-1, 3-A-5, and 4-A-1. The request appropriately adapts the design to implement the intent of the Village district. Additionally, the provided enhancements will interconnect with the proposed linear park and public beach access to further improve circulation for pedestrians as desired by the Village district¹⁷ and Policies 2-A-1, 3-A-5, and 3-A-6.

iv. Building Height

4) Request to deviate from Section 34-693(h) that limits building height to 30 feet above base flood elevation and no taller than three stories for mixed use buildings without enclosed space on the first story on the bay side of Estero Boulevard to allow:

A maximum building height of 17 stories¹⁸ and 235 feet for the tallest portion of the mixed-use building on the bay side of Estero Boulevard consistent with Policy 4-C-4.

Justification for Deviation #4: The Village district was established to reduce density from the previous 27 RV/mobile homes per acre to 15 dwelling units per acre. The average residential density in other locations within the Town is 6 dwelling units per acre. To address the permitted density, desire for open views, public gathering spaces and pedestrian/bicycle interconnectivity, an integral component of the proposed design is the transfer of the permitted density from the Gulf side properties to the bay side properties. This density transfer will keep the height of the development on the Gulf side consistent with the permitted 3 stories in height¹⁹ of the Village district while improving connectivity and visibility to the Gulf compared to the conditions of the previous development. The proposed development plan also limits the intensity of the Gulf side properties to a private recreational amenity and membership organization.

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units of the mixed-use building need to be elevated above approximately 14 feet. Enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. These State and Federal regulations' design requirements promote unenclosed space for the area below base flood, in conflict with the Village district's screening requirements. To address the current design requirements for below base flood and maintain openness of the site design for view corridors and public gathering space, the proposed design reduces the development footprint and requests additional height to cluster the multi-family units into 2 residential towers with multiple tiers at

¹⁷ LDC Section 34-693(c)

¹⁸ To be 15 stories of multi-family units and 2 stories of structured parking.

¹⁹ LDC Section 34-693(h)(2) establishes a height of 40 feet above base flood elevation and LDC 34-631 establishes an additional 5 feet in height for certain architectural enhancements. The future design of the beach club will comply with these exceptions for 45 feet in height.

varying heights from 17 to 13 stories (including the structured parking) or a maximum height of 235 feet above base flood elevation (including the structured parking).

The comprehensive plan also considers requests for additional height in Policy 4-C-4, which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” The Village zoning district implements the redevelopment described as “Red Coconut/Gulf View Colony” in the Comprehensive Plan. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay.

Consistent with architectural practices for increased height, as the residential towers increase in height above the podium, the setback from Estero Boulevard increases. Additionally, the towers are setback from the building podium increasing the separation from the property boundary and Donora Boulevard. The placement of the north/south tower closest to Donora Boulevard aligns with the existing multi-family and the former art campus and Fort Myers Beach Fire District Station that previously existed on the eastern side of Donora Boulevard. The adjacent development is within the VE-14 flood zone and Coastal A zone with a LiMWA and an AE zone with a base flood elevation of 11 to 12 feet. As a result, redevelopment of the fire station and art campus must be elevated 11 to 14 feet. The orientation of the towers with the architectural elements and streetscaping ensures the future building will be compatible with the adjacent single, multi-family and community facilities along Donora Boulevard.

At the ground level, the proposed structure will be elevated and future development on adjacent properties will also be required to elevate consistent with base flood elevation. The building podium of the proposed structure is proposed to be shielded through architectural elements and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. At the intersection of Estero and Donora Boulevard, the commercial restaurant provides a dining terrace and coastal architecture that wraps from Estero to Donora Boulevard consistent with Policy 4-A-3. This design ensures that the Donora Boulevard frontage adjacent to Estero Boulevard is activated and provides a step back from the requested increased height. Traveling further north on Donora Boulevard the north/south residential towers increase in height and the street level is proposed to be enhanced through architectural treatments, an increased planting area for streetscaping and a public art installation. Finally, a new sidewalk will be constructed to provide pedestrian interconnections from the existing residential neighborhoods, the proposed linear park, and Estero Boulevard. The remaining building façade along Estero Boulevard is proposed to be terraced landscaping with water feature to shield the structure and supporting infrastructure while enhancing the pedestrian environment and promoting a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. The landscaped terraces, water feature, and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height²⁰

²⁰ FMB LDC Section 34-693(h)

and architectural exceptions.²¹ Designing the uses and structure in this manner ensures the requested height does not crowd the Town's roadway network promoting openness and light and the ground level environment contributes to the pedestrian realm.

Promoting a mixed-use structure in the central portion of the Property for 137 of the permitted 141 residential units with increased height enables a reduced building footprint to utilize other portions of the property for improvements that benefit existing and future Town residents. The public parks, linear park, and view corridors are provided to promote public gathering, recreation, views and access to the Gulf and the bay. On the Gulf side, two 120-foot view corridors will maintain a permanent view of the Gulf of Mexico. The western view corridor is a new public park with 10-foot pedestrian access to the sandy beach. On the north side of Estero Boulevard from the Gulf front park, a public park is proposed with the origination point for a proposed linear park. Aligning the Gulf front and bay side parks in this manner promotes a centrally located park to the entire Village district and a single pedestrian crossing of Estero Boulevard. A linear park parallels the western property boundary and the new east/west extension of Donora Boulevard to enhance interconnectivity through the Property for existing and future residents without a vehicle. An opportunity to expand the linear park to the west is available when the remainder of the property within the Village zoning district is redeveloped, furthering enhancing mobility without a vehicle.

The linear park terminates at the intersection of the north/south and east/west portions of Donora Boulevard. In this general location, adjacent to Matanzas Pass Preserve is the final public park. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

The programmatic development of the parks has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development, or maintenance of the park.

The public health, safety and welfare will be improved through the proposed design through the shielding, ground level interactions and activated street frontage that will be provided by the public parks, terraced landscaping with water feature and enhanced architectural elements consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.

v. Increased FAR & Ground Level Parking Requirements

5) Request to deviate from Section 34-693(i) that restricts Floor Area Ratio ("FAR") to 1.2 and 34-633 includes all stories of covered parking in the measurement of FAR to allow:

²¹ FMB LDC Section 34-631(b)

Elimination of covered parking and parking decks from the calculation of FAR and permit a FAR of 1.5 (616,156.2 square feet) consistent with Policy 4-C-2.

- 6) Request to deviate from Section 34-693(l) that requires off-street parking under a commercial or mixed-use building to be separated from primary streets by usable commercial space at least 200 feet deep, meet all commercial design standards, and have a driveway that connects to a secondary street to allow:**

Parking under the beach club and mixed-use building with no commercial space on the ground level and access from Estero Boulevard or an internal street.

Justification for Deviations # 5 and 6: The Village district establishes a maximum FAR of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that even in 1999 "the current floodplain and coastal setback regulations severely restrict what can be done here."²² Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. The proposed development along the Gulf side of Estero Boulevard is within a VE-14 floodzone which is an area subject to high velocity wave action. The remaining portion of the property, on the bay side is within a Coastal A Zone, which is an area subject to breaking waves ranging from 1.5 to 3 feet²³. The building requirements for the flood zones and CCCL significantly limit the permitted enclosed space to a dimension that is not feasible for commercial uses below base flood elevation. Additionally, a portion of the property on the bay side is also within the 1991 CCCL; which the Town's comprehensive plan acknowledges includes structural regulations administered by the Department of Environmental Protection²⁴ limiting enclosed space and requiring breakaway walls which are not feasible for commercial uses below base flood elevation²⁵. Without the ability to utilize the area below base flood elevation for residential or commercial space, a deviation is requested to eliminate the area of the parking structure from the calculation of FAR and a second

²² FMB Comprehensive Plan, Community Design Element, Page 3-6

²³ *Ibid.*

²⁴ FMB Comprehensive Plan, Future Land Use Element, Page 4-9

²⁵ FMB Comprehensive Plan, Future Land Use Element, Page 4-10

deviation is requested to eliminate the requirement for commercial usable space between the ground level parking and Estero or Donora Boulevards.

Another deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5 within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and 137 multi-family units will be constructed within an integrated structure that is classified as a mixed-use building per Policy 4-B-12. The beach club will provide private recreational amenities and a membership organization; which is also a mixed-use building per Policy 4-B-12 as the Town's LDC establishes membership organizations as a commercial use. Mixed use structures must comply with the FAR calculations consistent with past interpretations of Town policy. The combined total area of the proposed structures exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single-family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity. The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking.

The public health, safety and welfare will be improved through the mix of uses proposed with the building orientation and layout. The uses provided in the proposed structures are classified as mixed use through the provision of residential and commercial uses. The request does not promote an increase in commercial intensity or intrusion into a residential neighborhood and reflects appropriate limited commercial uses consistent with the anticipated redevelopment in the surrounding area.

7) Request to deviate from Section 34-693(m) that requires commercial and mixed-use buildings visible from Estero Boulevard to abide by the commercial design standards outlined in 34-991-34-1010 to allow:

Conceptual approval of the architectural renderings and the proposed pattern book to permit review of designed elevations as part of the Development Order process.

Justification for Deviation #7: As part of the Development Agreement, Exhibit B is Conceptual Plans and Renderings and Exhibit D is a pattern book to demonstrate the anticipated features of the proposed development. These exhibits provide a conceptual site plan, renderings of the proposed multi-family and beach club structures, perspective viewsheds and expected architectural elements demonstrating the anticipated architectural form and features of the proposed structures. However, detailed architectural elevations and floor plans have not been prepared to evaluate against the commercial design standards outlined in the LDC.

LDC Section 34-992(d)2 permits compliance with architectural standards to be established with the submittal of a development order application. The Conceptual Plans and Renderings with the Pattern Book are provided as exhibits to the DA to demonstrate the anticipated elements of the future building architecture and floor plans. Providing a framework for review and approval of the detailed architectural plans with the development order applications.

The public health, safety and welfare will be maintained through the deviation request. The provided renderings and pattern book establish an architectural theme that reflects a coastal contemporary style. Through the conditions provided in the Development Agreement, this same architectural theme will need to be provided with the Development Order application. At that time Town Staff can review the detailed architectural elevations and floor plans to ensure consistency with Exhibit B Conceptual Plans and Renderings and Exhibit D Pattern Book.

8) Request to deviate from Section 34-631(b)(3) that permits mechanical structural appurtenances to extend above the height limit provided they do not exceed 250 square feet and screening is provided to allow:

No square footage limitation or screening for the portions of the residential tower above 11 stories.

Justification for Deviation #8: The mechanical equipment to support the 137 multi-family residential units will be integrated into the mixed-use structure and located on the roof. Due to the ranging height of the residential towers, the Applicant requests elimination of the limitations regarding square footage and screening for the portions above 11 stories. From the ground level, the mechanical equipment will not be visible and therefore these additional limitations are not necessary to protect the public health, safety and welfare.

g. Public Benefits

The proposed development incorporates several public benefits to provide public recreational opportunities and promote interconnectivity without a vehicle.

i. Public Park with Beach Access & View Corridors to the Gulf of Mexico

Two approximately 120-foot view corridors (50% of the parcel's frontage) are proposed south of Estero Boulevard adjacent to the west and east property boundaries maintaining permanent views of the Gulf of Mexico. The west view corridor is provided with a new public park that incorporates a 10-foot public access to the sandy beach. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development or maintenance of the park.

ii. Linear Park

North of Estero Boulevard, adjacent to the western property boundary and paralleling the southern extent of the new east/west extension of Donora Boulevard, a public 20 foot wide Linear Park is proposed consistent with Policies 3-A-5, 3-A-6, 4-A-1, 7-D-5. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. The linear park provides a landscaped 8-foot-wide multi-use path through the Property to enhance interconnectivity for existing and future residents from the existing nearby residential neighborhoods to Estero Boulevard without a vehicle. The location of the park has been oriented to ensure a future expansion to the west can be provided when the remainder of the property within the Village zoning district is redeveloped, further enhancing mobility without a vehicle consistent with Policy 4-A-2. Additional connectivity will be provided through the repair, maintenance, and installation of sidewalks on either side of Estero Boulevard consistent with Policies 1-A-2, 4-A-1, 7-B-3, and 7-E-4.

Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

iii. Two Bay Side Public Parks

Two public parks on the bay side properties are proposed. The first is along the western property boundary and fronting Estero Boulevard, providing the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian crossing across Estero Boulevard consistent with Policy 7-E-4. Additionally, this location is central to the entire Village District, ensuring the park facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to occur west within the Village District and the existing surrounding neighborhoods.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction, and the activation of the Estero Boulevard street frontage consistent with the Village district.

The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

iv. *Density Transfer to Bay Side Parcels*

The proposed site plan transfers the residential density of the Gulf side parcels to the bay side parcels to reduce the development footprint and promote increased public recreation opportunities, views of the Gulf from Estero Boulevard, and maintains the view of Matanzas Pass down Donora Boulevard.

Without the transfer of the permitted residential units from the Gulf side to bay side parcels, the Village district only requires a 50-foot view corridor to the beach. The remainder of the approximately 425 feet of beach frontage could be developed with a 4-story structure. The proposed redevelopment increases the available view corridors to approximately 240 feet (50%) of the parcel's frontage on Estero Boulevard. Additionally, the proposed development incorporates a beach club into the uses for the Gulf side parcels for residents and members only. This development is much less intensive than a commercial resort or restaurant which are permitted uses consistent with the Village district. Therefore, the carrying capacity of the Gulf side parcels and adjacent public beach will not be exceeded or strained by the proposed development due to the limited uses proposed as a beach club and the transfer of the residential density.

v. *Pedestrian Overpass, Limited Vehicular Driveways & Bus Pull-Off*

To maintain efficient traffic flow along Estero Boulevard, the proposed development includes only one vehicular access point to the Gulf and bay side parcels, a private pedestrian overpass for residents and guests, and a joint pull-off point for buses and restaurant patrons. The proposed vehicular access points will limit the necessary curb cuts for the proposed development to one for each side of Estero Boulevard consistent with Policies 1-A-1, 1-A-2, and 7-H-10. The pedestrian overpass will interconnect the multi-family residential portion of the structure and beach club appropriately lifting the pedestrian activity associated with the development off Estero Boulevard improving traffic flow and safety for pedestrians consistent with Policies 4-A-1, 4-A-

2, 7-E-4. Sidewalks currently exist along the bay side frontage of Estero Boulevard which will be repaired if needed and maintained through the proposed site plan. A new sidewalk is included in the site plan for Estero Boulevard frontage along the beach side properties and along Donora Boulevard consistent with Policies 4-A-1, 7-B-3, 7-E-4. Vehicular pull-off points are integrated into the design along Estero Boulevard for the proposed restaurant to ensure vehicular stacking does not occur within the public right-of-way consistent with Policies 1-A-2 and 7-E-2. The Applicant also agreed to coordinate with the Lee County School District to ensure the pull-off points' design is adequate to accommodate a school bus and provide a safe location for pick-up and drop-off of school children.

vi. *Public Memberships Available to Beach Club*

At the public's request during the informational meetings and one-on-one interviews, the Applicant has agreed to offer long-term memberships to members of the public. Unlike other resort properties these memberships will not be day passes but rather seasonal and/or annual memberships to the Beach Club to utilize the offered amenities. The Development Agreement commits a minimum of 25% of all memberships offered will be available to the public. To accommodate these public memberships an additional 75 parking spaces will be provided between the ground level car park of the beach club and the mixed-use structure on the bayside Property.

III. CONCLUSIONS

The proposed redevelopment of the Property considers the floodplain and coastal setback regulations while adapting and implementing the vision statements of the Town's Comprehensive Plan. Utilizing the redevelopment option of the Village district significantly reduces the density available from a build back of the former 27 RV units per acre to 15 dwelling units per acre. The permitted density and most of the commercial intensity is transferred from the Gulf side properties to the bayside properties with a request to increase the building height that enables a reduction of the proposed building footprint to accommodate public parks, a linear park, a view corridor and future access to Matanzas Pass Preserve, and additional view corridors to the Gulf. Together, the proposed public benefits promote large open spaces for public gathering, pedestrian and bicycle interconnections and retain psychological connections and views to the Bay and Gulf consistent with the comprehensive plan.

The architectural enhancements and tiered height of the proposed structures ensure the development appropriately frames the adjacent streets, is oriented toward pedestrians, and shields the structured parking provided consistent with the vision outlined in the comprehensive plan for the Town as well as the redevelopment district. Increased setbacks are requested to permit the maintenance of existing sidewalks, the installation of new sidewalks and appropriate area for streetscaping to provide shade for pedestrians and enhance the landscaping associated with the proposed development. A commitment to public art display on Donora Boulevard and shared use of vehicular pull off for the Lee County School District further enhances the pedestrian environment and opportunities for movement without a vehicle on the existing streets.

The requested uses are located in a manner that is consistent with the underlying, split FLU for the Property. The design of the proposed structures and the placement on the property is compatible with the adjacent existing and future development. The requested design flexibility through the site plan with deviations provides ample public benefits to the existing and future residents of the Town as anticipated by the comprehensive plan, LDC, and DA process.



3001 Estero Boulevard
Development Agreement Application
Project Narrative
Revised September 20, 2024

The Town of Fort Myers Beach (“Town”) is a unique coastal community located in Lee County, Florida. As a barrier island, there have been many changes over the years including the establishment of the Matanzas Pass Bridge, development and redevelopment of small businesses, residential construction from small beach cottages to high rise multi-family and revisions to the Florida Building Code and Federal Flood Zone Maps. The Town formally incorporated on December 31, 1995.¹¹ On September 28, 2022, Hurricane Ian, one of the most powerful storms in US history, made landfall near Cayo Casta bringing severe flooding and damage to the Town of Fort Myers Beach. Over a year and 9 months later, much of the Town continues to recover and rebuild.

The recovery and rebuilding of multi-family and commercial properties within the Town includes design features that reflect past development while incorporating new structures consistent with current building code, floodplain, and coastal setback regulations. The proposed redevelopment of the former Red Coconut RV Park is no exception. Purchased by Seagate Fort Myers Beach, LLC in September of 2023, Parcels 29-46-24-W1-00145.1000, 30-46-24-W2- 00001.0000, 29-46-24-W1-00145.5000, and 29-46-24-W1-0120A.0010 continue to be under unified ownership and are proposed for redevelopment as a multi-family community.



Figure 1. Aerial of Subject Property

¹ Fort Myers Beac (“FMB”) Comprehensive Plan, Community Design Element, Page 3-1

At 10.72 acres from the Matanzas Pass Preserve to the Gulf of Mexico, the Property is within the Civic Center planning area, Boulevard and Mixed Residential future land use (“FLU”) categories, the Village zoning district (“Village district”), and has a pre-approved redevelopment option.²² The proposed redevelopment of the Property seeks to collate all these visions into a cohesive development plan that also adapts to changing floodplain regulations and provides the following public benefits to the existing and future residents of the Town.

1. Transfers the residential density and majority of commercial intensity to bay side parcels;
2. 2 view corridors to the Gulf of Mexico from Estero Boulevard;
3. 1 view corridor to Matanzas Pass Preserve;
4. Enhancements to existing private beach access;
5. Incorporating new public beach access with a gulf side public park;
6. A new public park adjacent to Matanzas Pass Preserve;
7. A new public park adjacent to the bay side of Estero Boulevard;
8. A new public linear park interconnecting Estero and Donora Boulevards through the Property;
9. Establishing the first portion of an east/west local street from Donora Boulevard to Lovers Lane;
10. Enhancing the street frontage of Estero Boulevard;
11. Co-locate mass transit improvements with vehicular pull offs on Estero Boulevard;
12. Incorporate a public art installation along Donora Boulevard;

The primary element of the proposed redevelopment is the transfer of density and a majority of the commercial intensity from the beach side parcels and clustering this density and intensity into a mixed-use structure centrally located on the bay side parcels. The redevelopment maintains the previous residential and commercial uses of the Property to promote a mixed-use development with single-family and multi-family residential, a commercial restaurant and private beach club. Utilizing a request for additional height to reduce the development footprint, the design also establishes 3 public parks, and a linear park, through the Property. Two of the three public parks and the linear park are located on the bay side parcels providing interconnectivity with existing adjacent neighborhoods. On the beach side, adjacent to the private beach club facility, a new public beach access is provided with a beach front park promoting an enhanced view corridor to the Gulf. The proposed design also includes single family residences adjacent to the Matanzas Pass Preserve enabling the transition of density and height from the adjacent existing preserve and maintaining the housing type of the adjacent residential area to the east.

The redevelopment of the Property will be accomplished through the requested Development Agreement and Site Plan with Deviations (“DA”) process. A conceptual package is provided including a site plan, public benefits, renderings, and a pattern book to demonstrate the requested development and guide the review of future detailed permit applications. Deviations are requested to provide flexibility related to the site design to promote the clustering of density and intensity, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico

² FMB Land Development Code (LDC) Section 64-693

while ensuring compliance, to the maximum extent possible, with the Town's Land Development Code ("LDC"). *The current application does not request any flexibility from the existing permitted residential density or permitted uses.* A formal Development Order ("DO") application will be submitted consistent with the LDC after the DA process is complete. Additional permits are required for stormwater management, utilities, and vehicular access.

I. Property Background

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities and owned/operated by the Myers Family since 1984. The Red Coconut RV Park accepted its first visitors in 1925.³ Approximately 12 years after the first beach hotel was constructed and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.⁴ Due to the development pre-dating the incorporation of the Town by over 73 years, the Property is located within a redevelopment area identified by the Comprehensive Plan⁵ and LDC.⁶ The intent of the redevelopment area is for the Town to "take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area."⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F- 2 identify that *the redevelopment of the Red Coconut is encouraged to incorporate specific design concepts into a pre-approved redevelopment option.* (emphasis added) The Village district implements these policies by "...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern."⁸ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The Development Agreement process permits deviations to be requested from the design criteria as outlined in the LDC.

The proposed redevelopment maintains the previous primary residential use of the property that occurred with the former RV park and incorporates the previous standalone commercial square footage into the proposed mixed-use structure fronting the bay side of Estero Boulevard. The private beach club provides private recreational amenities to the residents and guests of the residential units and will be a membership organization for those choosing to purchase seasonal or annual access. A commitment has been made to retain 25% of the memberships for the public to utilize. These uses are consistent with land use types outlined in Policy 4-B-12 and commercial intensity described in Policy 4-C-2.

³ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

⁴ FMB Comprehensive Plan, Commercial Design Element, Page 3-3

⁵ FMB Comprehensive Plan, Policy 4-F-2

⁶ FMB LDC Section 34-691 et.al.

⁷ FMB Comprehensive Plan, Objective 4-F

⁸ FMB LDC Sec 34-691

This DA application request seeks to maintain the permitted density and uses outlined by the comprehensive plan and Village district while seeking relief from various design standards to comply with current building codes and floodplain and coastal building setback regulations prior to the submittal of the DO application for the redevelopment of the Property.

II. Future Land Use

The community vision conducted in 1997 and included in the comprehensive plan in 1999 establishes 7 planning areas within the Town in addition to the FLU categories. These planning areas still exist 27 years later to guide the character of development; however, they have not been updated for consistency with changes in State building codes, coastal building regulations and Federal floodplain requirements. The property is within the Civic Center planning area, which extends approximately from Pearl Street to Donora Boulevard on both sides of Estero Boulevard.⁹ Prior to Hurricane Ian this area included a mix of commercial, residential and public services; however the floodplain and coastal setback regulations significantly restricts development and redevelopment.¹¹⁰⁰ The vision statements for the Civic Center establish this area as the “Heart of the Island,” with a system of interconnected pedestrian and bicycle paths, and acknowledge redevelopment of the Property is anticipated.¹¹¹¹

The 10.72-acre Property is within 3 FLU designations, Boulevard and Mixed Residential with a small area of Recreation. Consistent with Policy 4-B-8, the portion of the property within the Recreation FLU is not proposed for development and is not included in the calculation of density or intensity. Leaving this 1.296-acre portion of the Property in its natural state is consistent with the vision of the beach as described in the Comprehensive Plan.¹² A legal description and survey is incorporated into the Development Agreement as Exhibit A identifying the 9.43 acres to be redeveloped and within the Boulevard and Mixed Residential FLU designations.

Policy 4-B-5 outlines the Boulevard FLU category as a, “... mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types.” The proposed site plan locates the public restaurant and private beach club within this FLU consistent with Policy 4-B-5. The Policy also requires commercial activities to contribute to the public realm and design concepts of the Plan and Land Development Code. Policy 4-B-4 outlines the Mixed Residential FLU category as “old subdivisions with mixed housing types on smaller lots, *newer high-rise buildings*, and mobile home and RV parks.” (emphasis added) Commercial activities are limited to lower impact uses but still must contribute to the public realm and design concepts of the Plan and Land Development Code.” The multi-family and single-family units are located within the central and rear portion of the Property consistent with the Mixed Residential FLU described in Policy 4-B-4. The proposed uses and location are consistent with the underlying FLU categories for the Property.

⁹ FMB Comprehensive Plan, Community Design Element, Page 3-6

¹⁰ *Ibid.*

¹¹ FMB Comprehensive Plan, Community Design Element, Page 3-7 & 3-8

¹² FMB Comprehensive Plan, Envisioning Tomorrow’s Fort Myers Beach, Page 2-1

a. Redevelopment Policies

The comprehensive plan considers the “appropriate future uses in the event of a change in ownership or plans or a natural disaster” for the Property.¹³ Specifically, Policies 3-A- 5, 3-A-6, and 4-F-2 outline the anticipated redevelopment for the Gulfview Colony/Red Coconut. Future Land Use Policy 4-F-2 identifies the design characteristics *anticipated* to be included in the “pre-approved redevelopment option” for the Gulfview Colony/Red Coconut. (emphasis added) FLU Policy 4-F-2.iii identifies the design “concepts [that] are encouraged to be included in the pre-approved redevelopment options. Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” (emphasis added) The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retains the psychological connection an views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.” The proposed redevelopment provides these design characteristics except where changes to the State building code, coastal construction regulations or Federal floodplain requirements prohibit compliance as outlined in the remainder of this narrative.

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also gives consideration to requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf of Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure on the bay side of Estero Boulevard. The additional height enables the density of the Gulf side parcel to be shifted to the bay side portion of the Property and cluster a majority of the available density in a mixed-use structure. This density transfer also limits the intensity of the redevelopment on

¹³ FMB Comprehensive Plan, Community Design Element, Page 3-8

the gulf side parcels. As a result, the conceptual plan seeks multiple public parks, two new view corridors to the Gulf, a new pedestrian beach access, and access and views to Matanzas Pass Preserve to promote appropriate public benefits to support the requested increase in height.

b. Commercial Expansion

The Boulevard and Mixed Residential FLU categories both reference that commercial activities need to contribute to the public realm. The Town's comprehensive plan seeks to ensure that commercial activities do not intrude into residential communities¹⁴ to reduce community spaces available to residents.¹⁵ The most difficult conflicts associated with potential commercial development are identified in the comprehensive plan as occurring along Estero Boulevard from the Key Estero Shops to Donora Boulevard.¹⁶ As a result, several design-oriented policies are established supporting Objective 4-A. All of which seek to promote the enjoyment of Fort Myers Beach from outside a car through the creation of a pedestrian-oriented public realm, easy walking access to the Beach, and limit intrusive commercial activities through new development.

The proposed redevelopment is consistent with the visioning policies incorporated into the Comprehensive Plan. As generally described above and in detail within the remainder of this narrative, the public benefits and necessary design elements have been provided to the extent possible within the Property. The request is only a portion of the identified redevelopment area, approximately 4.5 acres west of the Property are also within the Village district and included in the vision outlined by the comprehensive plan. The commercial restaurant is a use that previously existed on the Property and the private memberships will be sold for a longer time period than the previous nightly turnover of the RV park. Therefore, the request does not represent a commercial intensification of the Property. Furthermore, the proposed design shifts the permitted density and intensity off the Gulf side parcels, provides an opportunity for circulation without a vehicle, and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

III. Village Zoning District

The Property's Village zoning designation implements Policies 3-A-5 and 3-A-6 of the Town's Comprehensive Plan "to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate".¹⁷ Specifically the Village district "provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern".¹⁸

¹⁴ FMB Comprehensive Plan, Future Land Use Element 4-28

¹⁵ FMB Comprehensive Plan, Future Land Use Element 4-26

¹⁶ *Ibid*

¹⁷ FMB LDC Section 34-661

¹⁸ FMB LDC Section 34-691

The overall vision for the area “is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”¹⁹ The LDC outlines the following concepts that are expected to be provided across all the properties within the Village district. (emphasis added) The proposed development incorporates 7 of the 9 design criteria and remaining two which cannot be provided due to changes made to the floodplain mapping and regulations from 2008 onward which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. As a result, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

The intent of the design features has been incorporated into the overall concept as demonstrated by the conceptual site plan, renderings and pattern book ensuring the proposed development is consistent with the “pre-approved redevelopment option” and can submit a DO application to implement the proposed redevelopment. The requested DA seeks needed flexibility to address design and construction requirements associated with the Property’s floodplain elevation and provide enhanced public benefits to existing and future residents.

IV. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, the Applicant gathered stakeholder input. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the beach club.

¹⁹ FMB Comprehensive Plan, Community Design Element, Page 3-8

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

a. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. A commitment has been made to reserve 25% of the memberships for the public, providing the opportunity for the residents of Fort Myers Beach to have access to these facilities. Within the beach club, is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the private beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the beach club with the multi-family residential units. Vehicular access to the private beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the private beach club.

b. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide pedestrian access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the DA to require on-going coordination with the Town to ensure the final design is consistent with the Town's vision. The DA also commits that the Applicant will maintain ownership and maintenance of the park and a perpetual easement will be recorded for public access and use. As a result, the Town will have a new public park with beach access without requiring an investment in tax funds for the purchase, development or maintenance of the park.

c. Mixed Use Structure

The portion of the bay side parcels between Estero Boulevard and the east/west Donora Boulevard extension is proposed to be redeveloped with a mixed-use structure with 137 residential units, a 10,000 square foot commercial restaurant, 2 stories of structured parking, and a tiered landscaping and water feature incorporated into the building podium.

The Village district permits any dwelling unit to be rented for periods of one day or longer. While rentals are anticipated to occur within this development, the Applicant has agreed to limit rentals to a week or longer through restrictive covenants.

The primary access to the structure is an internal street from Estero Boulevard leading to a turn around and valet drop off, which routes into the Property enabling the structure to screen the proposed street and vehicle drop off from adjacent public roadways. Additionally, the turnaround and stacking area at the end of the internal street exceeds Town standards to ensure no impacts to adjacent public roadways. The portion of the structure fronting Estero Boulevard is proposed for terraced landscaping and water feature and a commercial restaurant which are designed to be 3 stories (including structured parking) consistent with the Village district for mixed used structures. Additional height in feet and stories as permitted by LDC Section 34-631 will be requested at the time of final design to address the height of the commercial space and required base flood elevation. Providing these features within the height limitations of the Village district shields the structured parking provided to support the development from the public rights-of-way. The architectural elements of the commercial restaurant wrap the corner of Estero and Donora Boulevards to ensure appropriate screening along Donora Boulevard. The Applicant has requested a deviation to increase the setback for the mixed-use structure to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero and Donora Boulevards. The Applicant has also agreed to provide public art along the Donora Boulevard building façade to further enhance the pedestrian environment.

As the setback from Estero Boulevard increases the structure height also increases. Behind the 3-story façade for the commercial restaurant and terraced landscaping with water feature are the proposed multi-family residential towers which incorporate a height variation with the maximum tower being 17 stories (including 2 stories of structured parking) and 235 feet. To support the residential towers, lobbies, fitness facilities, social spaces, and meeting rooms with outdoor amenities are proposed. The architectural treatments and elevations for the residential towers will be provided consistent with the proposed pattern book at the time of DO application.

To maintain traffic flow down Estero Boulevard, vehicular pull off points are integrated into the design for the proposed restaurant. This feature will permit patrons to valet their vehicles when dining at the commercial restaurant. Due to the hours of operation of the restaurant and the volume of patrons anticipated at night, the Applicant has agreed to work with Lee County to design the pull off points to permit school buses to utilize this area for morning pick up and afternoon drop off. This joint use of the pull off design will support the nearby existing residential neighborhoods and improve the safety of school age children riding the bus.

d. Linear Park & New Sidewalk along Donora Boulevard

Adjacent to the western property boundary and new east/west extension of Donora Boulevard is a public 20 foot wide Linear Park which includes an 8-foot-wide multi-use path. Originating at Estero Boulevard, the linear park begins internal to a proposed public park along Estero Boulevard and the western bay side property boundary. Paralleling the western property boundary before turning east to parallel the new proposed east/west local street and connecting with the existing north/south Donora

Boulevard the linear park provides a landscaped multi-use path. This design enhances interconnectivity through the Property for existing and future residents to promote movement without a vehicle. The park's location also provides an opportunity for expansion to the west when the rest of the properties within the Village zoning district are redeveloped, further enhancing mobility without a vehicle.

Currently there is no public sidewalk along the western side of Donora Boulevard. The proposed conceptual plan increases the setback of the mixed-use structure which will enable enhanced landscaping with shade trees, a sidewalk and the installation of a public art piece along Donora Boulevard. These improvements are specifically outlined in the Development Agreement and required to improve the pedestrian environment for existing and future residents along Donora Boulevard. Beyond the multi-use path, other programmatic elements of the linear park have not been finalized. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

e. Single family Residential Units

Between the north property boundary and the proposed east/west extension of Donora Boulevard, 4 single family residential units are proposed. These units will front the proposed east/west extension of Donora Boulevard and are set back from the property boundaries by at least 15 feet. Side setbacks are established at 5 feet. Accessory setbacks to the rear property boundary are requested to be 5 feet to permit pools, patios and screened enclosures.

f. Bay Side Public Parks

The conceptual site plan includes two public parks on the bay side portion of the Property. Along the western property boundary and fronting Estero Boulevard, a public park is proposed. Within this park is the origination point for the proposed linear park. The location of this park aligns with the public park and beach access on the Gulf side park promoting a single pedestrian crossing point that can be monitored and improved to address demand. Additionally, this location is central to the entire Village District and the future facilities and multi-use path can be utilized by the residents/patrons of the future redevelopment anticipated to the west within the Village District.

A second public park is proposed at the north/south terminus of Donora Boulevard adjacent to Matanzas Pass Preserve. This park's location maintains the previous view corridor available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

Programmatic elements of the parks have not been finalized; however, it is anticipated that future improvements would promote public gathering, interaction and the activation of the Estero Boulevard frontage consistent with the Village district. The Development Agreement incorporates several commitments from the Applicant related to the public parks:

- On-going coordination with the Town of Fort Myers Beach to ensure final park design is consistent with the Town's vision;
- On-going coordination with Lee County to promote a pedestrian interconnection to Matanzas Pass Preserve;
- Recording a perpetual access easement for public access and use of all parks;
- Developer maintenance of all public parks;
- Developer design and provision of site-specific wayfinding signage to all parks and public access points;
- Informational signs related to Matanzas Pass will be developed with Town Staff and constructed.

V. Consistency with Village Zoning District

The Village zoning district seeks to promote "... a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard."²⁰ The LDC outlines the following concepts that are expected to be provided across all the properties within the Village district. However, the proposed redevelopment is only a portion of the property within the district, due to changing conditions with the zoning district and required design related to floodplain management the proposed redevelopment provides 7 of the 9 criteria envisions when the Village zoning district was established in 203 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single family homes;
- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

Deviations are permitted from the zoning regulations of the property through the Development Agreement and are requested for the remaining 2 design criteria. A traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and

²⁰ FMB Comprehensive Plan, Community Design Element, Page 3-8

improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The exhibits to the Development Agreement include conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the commercial design standards to accompany future permit applications.

The intent of the design features has been incorporated into the overall concept as demonstrated by the conceptual site plan, renderings and pattern book ensuring the proposed development is consistent with the “pre-approved redevelopment option” and can submit a DO application to implement the proposed redevelopment. The requested DA seeks needed flexibilities to address design and construction requirements associated with the Property’s floodplain elevation and provide enhanced public benefits to existing and future residents.

a. Traditional Neighborhood Design

As established in 2003, the desired Traditional Neighborhood Design of the Village district should incorporate interconnected streets, dwellings with front porches and balconies, primary entrances on the street frontage and rear vehicular access. To the maximum extent possible, the proposed design provides these features while adapting to the existing floodplain elevation, location of the coastal construction control line, and current building code.

The Property is located within a VE and Coastal A floodzone, which requires residential structures to be elevated, significantly limits enclosed space on the first story, and requires breakaway wall construction practices. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. Due to these required design practices, the proposed mixed-use building utilizes the ground floor and first floor for structured parking and to establish the podium for the multi-family and commercial uses. Similarly, the private beach club utilizes the ground-floor for parking and raises the usable space above the base flood elevation. Architectural enhancements consistent with building code and floodplain requirements are proposed to appropriately screen the parking from adjacent streets and properties. Fronting Estero Boulevard, the podium of the mixed-use building will be shielded by landscaped terraces with a water feature and a public restaurant with terrace. These features comply with the height limitations and exceptions²¹ for the bay side parcels.

²¹ FMB LDC Section 34-631



Figure 2. View South down Estero Boulevard

The proposed structure is also setback further from Estero Boulevard than the required 0 to 10 foot build to line to provide adequate spacing for a public sidewalk and streetscaping to include shade trees along Estero Boulevard consistent with Policies 1-A-1, 3-A-6, 4-A-1, 4-A-2 and 4-F-2. Together these features and design elements will shield the building podium and promote outdoor gathering and interaction with Estero Boulevard consistent with Policies 4-A-1, 4-A-2 and 4-F-2. When combined with the public park along the remaining frontage of Estero Boulevard, the overall site design ensures the street front is activated with pedestrian activity and interaction between the proposed uses and public right-of-way promoting an inviting and active neighborhood that supports public gathering, pedestrian interconnectivity, and synergy between the private development and public benefits as desired by Policies 3-A-5, 3-A-6, 4-A-1, 4-A-2, and 4-F-2, and the Village district.

b. Housing abutting existing single-family homes

Platted lots for single family homes from the Zimmer's Addition to Shell Mound Park as recorded in 1959 exist along the east/west portion of Donora Boulevard and Shell Mound Boulevard. Consistent with this historical plat, north of Shell Mound Boulevard, the proposed site design locates the proposed single family structures abutting Matanzas Pass Preserve with a proposed public park. These uses are consistent with the existing platted single family in the nearby area and it is anticipated that the public park will be utilized by existing and future residents of the surrounding area and the proposed development.

The remaining properties south of Shell Mound Boulevard to Estero Boulevard, along Donora Boulevard, had a mix of uses including the Fort Myers Beach Fire Station, multi-family and the Fort Myers Beach Art Association. The existing land use of these properties would permit the rebuilding of the previous public facilities and multi-family units. As a result, the proposed design

locates the proposed 10,000 square foot restaurant at the intersection of Donora and Estero Boulevards, within the Boulevard FLU and consistent with the height requirements of the Village district with permitted exceptions. The underlying FLU permits this location for commercial development and the Property had approximately 10,000 square feet of commercial uses previously fronting Estero Boulevard. The surrounding civic, public and multi-family uses that are anticipated to be redeveloped are compatible with the proposed commercial consistent with Policies 4-A-3, 4-B-12, 4-C-2 and 4-C-3.

The multi-family portion of the mixed-use structure is placed central to the bay side parcels and aligns with the existing multi-family and former art campus along Donora Boulevard. As with the Estero Boulevard frontage, the Donora Boulevard façade incorporates architectural features to appropriately screen and shield the building podium and underlying parking. Above the building podium, the structure is a series of towers with a tiered height of 11 to 17 stories (including 2 stories of parking) up to a maximum of 235 feet above base flood elevation. Moving north along Donora Boulevard the height of the towers increases as the setback from Estero increases. However, the entire tower is oriented south of Shell Mound Boulevard and near the former Fort Myers Beach Art Association and multi-family structures. The portion of the structure paralleling the proposed Donora extension has a lower height and an increased setback from Donora Boulevard due to the proximity of the single family occurring north of Shell Mound Boulevard. The design of the structure ensures the future building will be compatible with the adjacent development. See the analysis of Building Placement and Height provided on Page 19 for additional information.

The proposed development includes a new east/west local road that functions as an extension of the existing east/west portion of Donora Boulevard consistent with LDC Section 34-693(c)(2). The new street terminates at the western property boundary. As a result, to implement the mobility²² and Hidden Paths²³ concepts of the comprehensive plan, the applicant is proposing to provide a public access easement along this roadway and the adjacent linear park to promote public use and ensure a future interconnection to Lovers Lane for vehicles, pedestrians and cyclists can be obtained consistent with Policy 2-A-1. Once implemented through to Lovers Lane local traffic will be able to utilize this cross connection instead of Estero Boulevard as desired by Policies 2-A-1, 3-A-5, 3-A-6, 4-A-1, 4-A-2, and 4-F-2. The proposed site plan appropriately locates the desired uses on the bay side parcels in a manner consistent and compatible with the surrounding uses as desired by Policies 3-A-5, 3-A-6, 4-A-3, 4-B-12, 4-C-3, and the Village district.

c. Apartments allowed elsewhere on the site

The Village district permits a maximum density of 15 dwelling units per acre. Rather than promote a development pattern of low-rise buildings that utilizes the entire 9.43 acres with little public benefits, the proposed site plan transfers the permitted residential density from the Gulf side

²² FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, page 2-1

²³ FMB Comprehensive Plan, Community Design Element, page 3-14

parcels to the bay side and limits the overall footprint of the development to provide approximately 3 public parks and a linear park through the Property.

The proposed multi-family structure is placed central to the bay side parcels and aligns with the existing multi-family and art campus along Donora Boulevard south of Shell Mound Boulevard. The Donora Boulevard façade incorporates architectural features to appropriately screen and shield the building podium and underlying parking. The Applicant has also committed to one public art installation along Donora Boulevard as part of the Development Agreement. Above the building podium, the structure is a series of towers with a tiered height ranging from 17 to 11 stories (including 2 stories of structured parking). Moving north along Donora Boulevard the height increases as the setback from Estero increases. The portion of the structure paralleling the proposed local east/west road has a lower height and increased setback from Donora Boulevard due to the proximity of the single family occurring north of Shell Mound Boulevard. The design of the structure ensures that the future building will be compatible with the adjacent development. See the analysis of Building Placement and Height provided on Page 19 for additional information.

Single family units are proposed adjacent to the Matanzas Pass Preserve and north of the proposed local road extension. In the surrounding area are single family lots platted by the historical Zimmer's Addition to Shell Mound Park as recorded in 1959. The placement of the single family and treatment of the multi-family towers is compatible with the surrounding structures and consistent with Policies 3-A-5, 3-A-6, 4-F-2 and the Village district.

d. Shaded Streets with View Corridors to the Preserve and Gulf

Maintaining a psychological connection to the Matanzas Pass Preserve and the Gulf of Mexico is an element of the anticipated redevelopment of the Gulfview Colony/Red Coconut²⁴. The proposed site plan establishes a public park at the terminus of the north/south portion of Donora Boulevard to ensure views of Matanzas Pass Preserve will be available to the public passing along from Estero Boulevard in perpetuity. The park also provides the opportunity for a connection to be provided to the Preserve in the future contributing to the vision of the natural environment and public recreation as outlined in the comprehensive plan.²⁵ The proposed design incorporates a public sidewalk with enhanced landscaping and shade trees along the western side of Donora Boulevard promoting public accessibility to the proposed park.

Additionally, the Village district requires that the pre-approved redevelopment option for the Property provide a 50-foot-wide view corridor²⁶ from Estero Boulevard to the Gulf of Mexico. The proposed site design enhances this requirement by providing two approximately 120' view corridors on either side of the private beach club ensuring views of the Gulf of Mexico are available to the public passing along Estero Boulevard.

²⁴ FMB Comprehensive Plan, Community Design Element, page 3-8

²⁵ FMB Comprehensive Plan, Envisioning Tomorrow's Fort Myers Beach, page 2-1

²⁶ FMB LDC Section 34-693(d)

The proposed site plan preserves and enhances previously provided view corridors and access points as desired by Policies 3-A-5, 3-A-6, 4-F-2 and the Village district.

e. Open Space with Views to the Gulf

Maintaining and expanding views of the Gulf of Mexico are a design theme of the Town's comprehensive plan. North of the Civic Complex (which includes the Property) is the Times Square planning area which seeks to promote infill development that opens new view corridors to the Gulf of Mexico²⁷. This design concept is brought into the Civic Complex through the Village district requirement for a 50-foot view corridor to be provided between Estero Boulevard and the Gulf of Mexico.²⁸ The proposed site plan exceeds this requirement by providing two, 120 foot view corridors.

The first corridor is approximately 120 feet and includes 10-foot-wide public pedestrian access to the beach. A platted private beach access point continues to exist within the westernmost area of the Gulf side parcels and the proposed view corridor. The proposed design expands this existing private access by incorporating passive park areas along the western property boundary from Estero Boulevard to the Gulf. Incorporating a public park and beach access within the approximately 120' view corridor is consistent with Policies 4-A-4 and 4-A-6.



Figure 3. Gulf View Corridor with Beach Access

On the easternmost area of the Gulf side parcels, the proposed design includes an open pool patio with seating. This area will also provide an approximately 120' view corridor ensuring pedestrians and motorists passing the Property along Estero Boulevard have a view of the Gulf on either side of the proposed private beach club.

²⁷ FMB Comprehensive Plan, Community Design Element, page 3-4

²⁸ FMB LDC Section 34-693(d)

The combined approximately 240 feet of view corridors exceeds the requirements of the Village District by 190 feet and are consistent with Policies 3-A-5, 3-A-6 and 4-F-2.

f. Commercial and Residential uses on the Bay Side

The Property is a portion of the Village district and approximately 4.5 acres to the west of the Property are also within the Village district with the opportunity to provide additional commercial and residential uses. The proposed redevelopment transfers the permitted residential density from the Gulf side parcels to the bay side. This residential density is proposed as single-family lots adjacent to Matanzas Pass Preserve and as a multi-family in a mixed-use structure that includes an approximately 10,000 square foot restaurant with outdoor terrace. The Gulf side parcels are proposed for public beach access and private recreational amenities.

Located at the intersection of Donora and Estero Boulevards, the proposed restaurant is within the Boulevard FLU, which permits commercial development and is a relocation of the previous commercial square footage that fronted Estero Boulevard. The proposed commercial is consistent with Policies 4-A-3, 4-C-2 and 4-C-3 regarding the location of commercial as related to existing platted residential community to the north. The proposed multi-family and single-family residential units are mostly within the Mixed Residential FLU which promotes a mix of housing types as newer high-rise buildings. Due to the mix of uses, the structure is considered mixed use, and the proposed design meets the intent of Policies 3-A-5, 3-A-6, 4-B-4, 4-B-5, 4-B-12, 4-F-2, and the Village district.

g. Significantly Reduced Density

Prior to Hurricane Ian, the Property was developed with an RV park at a documented density of 27 RV/mobile homes per acre.²⁹ Through the implementation of the Village district, that density is reduced to 15 dwelling units per acre.³⁰ The property has 9.430 acres within the Village district providing for a maximum density of 141.45 dwelling units. The requested density for the multi-family and single-family units is consistent with Policies 3-A-5, 3-A-6, 4-F-2, and the Village district.

h. Accommodating a Public Access Point to Matanzas Pass Preserve

As previously described, the proposed site plan maintains the view from Estero Boulevard to Matanzas Pass Preserve by establishing a public park at the north/south terminus of Donora Boulevard. This park is not programmed for services through the requested DA to enable continued coordination with the Town regarding appropriate uses, access, and maintenance. The applicant anticipates that a future connection with the larger Matanzas Pass Preserve will be provided through the proposed park. The proposed site plan compliments the existing trails and boardwalks in the Preserve³¹ and is consistent with Policies 3-A-5 and 3-A-6 and the Village District while also providing the opportunity for future connections to Matanzas Pass Preserve.

²⁹ FMB Comprehensive Plan, Comprehensive Plan Policy 4-F-2

³⁰ *Ibid.*

³¹ FMB Comprehensive Plan, Community Design Element, page 3-7

VI. Design Flexibility

The Village district includes several other design elements for the pre-approved redevelopment option. The proposed conceptual design seeks flexibility from these elements to promote a design with increased public benefits for the current and future residents of the Town. Additional information and details for the requested design flexibility is provided in the Schedule of Deviations narrative.

a. Street layout

The Village district includes a desired street layout in LDC Figure 34-18 demonstrating the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “**generally in accordance** with Figure 34-18.” (emphasis added) The Development Agreement procedures permit flexibility to be requested from the existing ordinances as deviations to be approved with a site plan and considered with the agreement.

A deviation is requested to permit an alternative street layout while continuing to provide appropriate circulation for resident vehicles and pedestrians of the existing residential neighborhood and proposed development. The required extension of “a through street from Donora Boulevard to Lovers Lane” is provided within the limits of the Property and provides access to the proposed single-family units consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). The new proposed local street providing an extension of the east/west portion of Donora Boulevard also implements the first portion of the vision described in Policy 3-A-6 to begin the establishment of an interconnected network for existing and future residents to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. After the remaining properties within the Village district are redeveloped this vision will be a reality.

Instead of the block layout promoted by Figure 34-18 which would increase the access points to Estero Boulevard to 3. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero is a unique opportunity to implement this policy with the proposed redevelopment. The proposed development reflects this policy by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10 and guidance received from Lee County Department of Transportation. Pull off points are integrated into the design for the proposed restaurant to ensure stacking does not occur on Estero Boulevard consistent with Policies 1-A-2 and 7-E-2. The Applicant has agreed to coordinate with Lee Tran and the Lee County School District to co-locate facilities with these vehicular pull offs to promote safe school pick and drop off. Limiting vehicular access and providing pull off spaces in this manner will maintain an efficient flow of vehicular traffic down Estero

Boulevard. A private pedestrian overpass between the Gulf and bay side parcels is proposed for residents of the future development to further eliminate conflicts with vehicular travel on Estero Boulevard consistent with Policy 1-A-2 and 7-H-1.

To promote interconnectivity for pedestrians and cyclists of the existing residential community and the proposed development, an internal linear park is proposed consistent with Policies 3-A-5, 3-A-6, 4-A-1, 7-D-5. The linear park originates at Estero Boulevard within the proposed public park along the western bay side property boundary. The linear park extends along the western property boundary before turning east to parallel the new proposed local street and connect with the existing north/south Donora Boulevard. Paralleling the proposed internal roads ensures the final design exceeds the vision of Policy 3-A-6 for sidewalks and street trees to provide a landscaped 8-foot-wide multi-use path. The origination point, with its central location in the Village district along Estero Boulevard provides the opportunity for the adjacent 4.5-acre parcel to utilize this feature for future patrons consistent with Policy 4-A-2. This design promotes interconnectivity for existing and future residents while also directing pedestrians to a specific point along Estero Boulevard to cross and access the beach consistent with Policy 7-E-4. The proposed public beach access on the Gulf side parcels aligns with the origination point of the linear park on the bay side parcels consistent with Policy 4-A-4. Further promoting connectivity, the sidewalks on either side of Estero Boulevard will be repaired, maintained, or installed to continue to provide safe access down Estero Boulevard consistent with Policies 1-A-2, 4-A-1, 7-B-3 and 7-E-4.



Figure 4. Proposed Vehicular and Pedestrian Access Points

The proposed design does utilize the existing north/south Donora Boulevard to provide the north/south interconnection described by Policy 3-A-6 for vehicles. This is due to the design prioritizing pedestrian and bicycle transportation through the site as desired by the comprehensive plan at large.

The Town's comprehensive plan opens with a descriptive vision of the future in *Envisioning Tomorrow's Fort Myers Beach*, the identified priorities for this vision and the broader comprehensive plan are the natural environment, mobility, and redevelopment objectives for each planning area. The mobility vision includes "a carefully planned and interconnected system of pedestrian and bicycle paths...to reach all the recreational destinations on Estero Island and move easily from one to another."³² The Community Design Element and Transportation Element both describe a system of "Hidden Paths" which seeks to improve mobility throughout the island³³, particularly on the bay side of Estero Boulevard³⁴, and provide an alternative to single vehicle trips between important centers of activity.³⁵ The Future Land Use Element includes Objective 4-A and its supporting policies which identify all people within the Town should be free to "move around" without their cars³⁶, even during peak season and prioritizes development designs that promote a pedestrian oriented realm³⁷ to achieve this vision. Finally, the Transportation Element identifies the Town's "opportunity to increase pedestrian and bicycle activity" due to the physical layout of the community which "encourages walking and biking, with all homes...a short distance from the beach and active commercial areas."³⁸ Policy 7-E-4 directs the Town to "work toward a major expansion of sidewalks and bikeways" in support of this overall vision.

With this broader vision in mind, the proposed redevelopment provides a linear park paralleling the 2 proposed internal streets. This 20-foot-wide linear park provides an 8-foot-wide shared multi-use path to provide interconnected circulation for pedestrians and cyclists in a manner that supports the existing neighborhood, the proposed development, and future redevelopment that may occur consistent with the Town's Comprehensive Plan and the Village district.

b. Building Placement & Height

Most of the Town's redevelopment zoning districts utilize requirements typical of a form-based code for the desired location of buildings and are related to a height restriction of 3 to 4 stories and 20 to 30 feet. As with all the redevelopment districts, the Village district establishes taller structures on the Gulf side parcels than the bay side parcels. Presumably, this was to accommodate the vision in the comprehensive plan for views of the Gulf to occur as the public travels down Estero Boulevard. Unfortunately, with a density of 15 units per acre, these height limitations promote development

³² FMB Comprehensive Plan, *Envisioning Tomorrow's Fort Myers Beach*, Page 2-1

³³ FMB Comprehensive Plan, Future Land Use Objective 2-A, Transportation Objective 7-D, Policy 7-D-5

³⁴ FMB Comprehensive Plan, Transportation Policy 7-D-5

³⁵ FMB Comprehensive Plan, Transportation Element, Page 7-10

³⁶ FMB Comprehensive Plan, Future Land Use Policy 4-A-1

³⁷ FMB Comprehensive Plan, Future Land Use Policy 4-A-2

³⁸ FMB Comprehensive Plan, Transportation Element, Page 7-15

horizontally across the entire property for residential with no supporting amenities, view corridors or public recreation. As an alternative, to accommodate the permitted density, the proposed site design reduces the development footprint through increased height on the bay side while providing the public benefits of accessible recreation, view corridors and pedestrian and bicycle interconnectivity. A deviation is requested to establish a maximum height of 235 feet above base flood elevation. Policy 4-C-4 permits “...different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf Colony and Villa Santini Plaza).”

The height of the multi-family portion of the structure above the building podium increases via a series of towers as the structure increases in setback/separation from Estero and Donora Boulevard. The proposed design is two residential towers, each tower has height variations above the two-story podium from 17 stories to 11 stories (including structured parking) with the roof top of the lower stories serving as outdoor terraces/plazas. The tallest portion of the residential towers will not exceed 235 feet above base flood elevation. The restaurant portion of the structure is 1 and 2 stories in height above the podium with a large outdoor terrace. Finally, the private beach club is 2 and 3 stories in height above ground floor parking.



Figure 5. Proposed Multi-family Residential Height

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units need to be elevated above approximately 14 feet, enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. The design requirements of these State and Federal regulations promote unenclosed space below base flood elevation, which is utilized in the proposed design for vehicular parking and establish the building podium. The structural elements of the parking and supporting building infrastructure are shielded through architectural treatments (consistent with federal requirements governing the floodplain) and enhanced landscaping. To provide shielding of the building podium, the building façade along Estero Boulevard is proposed to be terraced to incorporate enhanced landscaping and a water feature to shield the structure and supporting infrastructure while providing a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. Also along the Estero Boulevard frontage is the public restaurant with ample dining terrace. The landscaped terraces, water feature and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height³⁹ and architectural exceptions.⁴⁰ The remaining frontage of Estero Boulevard west of the proposed entry road, will be a public park with the origination point of the linear park promoting additional public gathering and recreation. Together these features work together to will activate the street frontage of Estero Boulevard consistent with Policies 1-A-1, 1-B-1, 1-B-2, 4-A-1, 4-A-2, and the Village district, while ensuring the open portions of the structure for parking are not visible from the public right-of-way.



Figure 6. View of Landscaped Terrace and Estero Boulevard

³⁹ LDC Section 34-693(h)

⁴⁰ LDC Section 34-631(b)

Similarly, along Donora Boulevard, the structural elements of the parking and supporting building infrastructure are shielded through architectural treatments (consistent with federal requirements governing the floodplain) and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. The side façade and terrace of the public restaurant fronts a portion of Donora Boulevard at the intersection with Estero Boulevard consistent with Policy 4-A-3. The façade, outdoor terrace and enhanced landscaping continue the activation of the street frontage from Estero and up Donora Boulevard, ultimately leading to the proposed public park and Matanzas Pass Preserve consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.



Figure 7. View down Donora Boulevard

Above the building podium are the proposed residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard. When coupled with the proposed tiered height, this design ensures the proposed building façade does not crowd the existing public street and surrounding existing and future development consistent with Policies 4-A-1 and 4-A-2.

With the additional height request, the proposed development also seeks to eliminate the requirement for building frontage and provide an increased building setback. The proposed public parks and gathering spaces provided along Estero Boulevard reduce the required frontage for the structure below the minimums of the Village district. Additionally, the proposed design seeks to increase the building setbacks to provide enhanced landscaping and contribute to the required pedestrian-oriented realm while appropriately addressing the construction requirements of the Property's flood zone, coastal construction requirements, and proposed height. The structural elements with enhanced landscaping described above work together in the increased setback along Estero and Donora Boulevards to appropriately frame the street frontage while providing shaded

pedestrian and bicycle circulation adjacent to these existing roadways consistent with Policies 1- A-1, 1-A-3, 1-B-2, 1-B-3, 2-B-1, 4-A-1 and 4-A-2.

The Town's Comprehensive Plan provides the Red Coconut/Gulf View Colony a different height per Policy 4-C-4, the Village district implements the height restrictions for the pre-development option. This DA is requested to provide flexibility related to the site design and multi-family towers, including additional height, to accommodate the permitted density and proposed public benefits. The proposed development has transferred the permitted residential density from the Gulf side parcels to the bay side. The footprint of the development on the bay side parcels has been reduced to provide for 2 public parks and a linear park. One of the public parks on the bay side includes a view corridor to Matanzas Pass Preserve. The development proposed for the Gulf side parcels incorporates two approximately 120-foot view corridors and another public park with beach access. Consistent with Policy 4-C-4 the provision of enhanced view corridors along with the public parks, interconnectivity for pedestrians and bicyclists, and initial establishment of a hidden path are public benefits that are provided to existing and future residents of the Town for the requested additional height.

c. Floor Area Ratio

The Village district establishes a maximum floor area ratio ("FAR") of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that even in 1999 "the current floodplain and coastal setback regulations severely restrict what can be done here."⁴¹ Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. Currently, the ground floor can no longer be enclosed to provide viable commercial space within the V zone or Coastal A zone. With this area unable to be used for commercial or residential space, a deviation has been requested to eliminate the area of the parking structure from the calculation of FAR.

A second deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5

⁴¹ FMB Comprehensive Plan, Community Design Element, Page 3-6

within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and the 137 multi-family units will be constructed within an integrated structure that is classified as a mixed-use building per Policy 4-B-12. The private beach club will provide private recreational amenities and a membership organization. The Town's LDC establishes membership organizations as a commercial use. Consistent with past interpretations of Town policy, mixed use structures must comply with the FAR calculations. The combined total area of the residential units exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single-family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity.

The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking. The proposed design to incorporate the commercial use into the frontage of multi-family structure locates this use within the Boulevard FLU consistent with Policy 4-B-5, enables appropriate vehicular access for structured parking and complies with the bay side height limitation of 3 stories and 30 feet in height⁴² and architectural exceptions.⁴³

VII. Conclusions

Upon adoption, the Town's Comprehensive Plan sought to promote an appropriate balance between neighborhood needs, economic vitality, tourist development and mobility⁴⁴. As well as encourage private investment in economic life, physical form and natural amenities of the town, while directing infill and redevelopment toward the Town's vision.⁴⁵ In the context of this vision, the comprehensive plan acknowledges the location of the property in the Civic Complex and the severe restrictions regarding development due to the floodplain and coastal setback regulations from 1999.⁴⁶ In the intervening 25 years these regulations have only become more restrictive.

The proposed redevelopment of the Property considers the floodplain and coastal setback regulations while adapting and implementing the vision statements from 25 years ago. Utilizing the redevelopment option of the Village district significantly reduces the density available from a build back of the former 27 RV units per acer to 15 dwelling units per acre. The permitted density is transferred from the Gulf side properties to the bayside properties with a request to increase the building height that enables a reduction of the proposed building footprint to accommodate 3 public parks, a linear park, a view corridor and future access to Matanzas Pass Preserve, and an additional view corridor to the Gulf. Together, the proposed public benefits promote large open spaces for

⁴² LDC Section 34-693(h)

⁴³ LDC Section 34-631(b)

⁴⁴ FMB Comprehensive Plan, Community Design Element, Page 3-1

⁴⁵ FMB Comprehensive Plan, Community Design Element, Page 3-2

⁴⁶ FMB Comprehensive Plan, Community Design Element, Page 3-6

public gathering, pedestrian and bicycle interconnections and retain psychological connections and views to the Bay and Gulf consistent with the comprehensive plan. The architectural enhancements and tiered height of the proposed structures ensure the development appropriately frames the adjacent streets, is oriented toward pedestrians, and shields the structured parking provided consistent with the vision outlined in the comprehensive plan for the Town as well as the redevelopment district. Increased setbacks are requested to permit the maintenance of existing sidewalks, the installation of new sidewalks and appropriate area for streetscaping to provide shade for pedestrians and enhance the landscaping associated with the proposed development.

The requested uses are located in a manner that is consistent with the underlying, split FLU for the Property. The design of the proposed structures and the placement on the property is compatible with the adjacent existing and future development. The requested design flexibility through the site plan with deviations provides ample public benefits to the existing and future residents of the Town as anticipated by the comprehensive plan, LDC, and DA process.



3001 Estero Boulevard
Development Agreement Application
Schedule of Deviations
Revised September 20, 2024

The requested Development Agreement and Site Plan with Deviations (“DA”) seeks to maintain the permitted density of 15 dwelling units per acre and uses of the Village zoning district (“Village district”) while seeking relief from various design standards to comply with current building codes and floodplain and coastal building setback regulations. Deviations are requested to provide flexibility related to the site design and multi-family structure while ensuring compliance, to the maximum extent possible, with the Town’s Land Development Code (“LDC”). A formal Development Order (“DO”) application will be submitted consistent with the LDC after the DA process is complete. ***The proposed development does not request any flexibility from the existing permitted residential density or permitted uses.*** A overall narrative and comprehensive plan consistency is provided as part of the application materials supporting the DA.

The proposed development transfers the permitted residential density from the gulf side of Estero Boulevard to the bay side while increasing public recreational opportunities throughout the Property. To accommodate the transfer of the permitted density and minimize the building footprint to increase publicly accessible spaces, a number of deviations from the Village district and other sections of the LDC are requested. Ultimately, the objective of the proposed development is to increase benefits available to the Town’s existing and future residents by clustering of the development, limiting the intensity of permitted uses on the gulf side parcels, prioritizing pedestrian and bicycle connectivity over vehicles, and increasing public recreation. The proposed design includes:

- Transfer of the residential density and majority of commercial intensity to the bay side parcels;
- 2 views corridors to the Gulf of Mexico from Estero Boulevard;
- 1 view corridor to Matanzas Pass Preserve
- Enhancements to existing private beach access;
- Incorporating a new public beach access with gulf side public park;
- A public park adjacent to Matanzas Pass Preserve;
- A public park adjacent to the bay side of Estero Boulevard;
- A linear park interconnecting Estero and Donora Boulevards through the Property;
- Establishing the first portion of an east/west local street from Donora Boulevard to Lovers Lane;
- Enhancing the street frontage of Estero Boulevard;
- Parking in excess of LDC requirements for the multi-family structure and single family units.

Many of the deviations are integrated to achieve the proposed design and cannot be considered

individually. The provided justifications are offered for context, however these requests should be considered with a review of supporting project narrative and conceptual plans.

1. **Sec 34-692(3)a.1.** expects traditional neighborhood design with interconnected streets, porches or balconies at the front of dwellings, primary entrances are visible from the street, cars are directed toward the rear to allow:
 - A single primary entry and internal street from Estero Boulevard for the bay side parcels (See also Deviation # 2).
 - An internal east/west street from Donora Boulevard (See also Deviation #2).
 - Porches or balconies on all facades of the multi-family portion of the mixed-use structure & terraced landscaping with water feature for the faced fronting Estero Boulevard for the mixed-use structure.
 - Outdoor seating and terraces for the private beach club and public restaurant portion of the mixed-use structure.
 - Private pedestrian entry above ground level along Estero Boulevard for the private beach club and mixed-use structure.
 - A single primary entry along the side façade and a drop off along the front facade for the private beach club on the Gulf side of Estero.
 - Vehicular access from controlled access points to ground level parking for the mixed-use structure and private beach club structures.

Justification for Deviation #1: Traditional Neighborhood is not a defined term in the Town's LDC or Comprehensive Plan. The Community Design Element does offer some context with the following language, visual renderings, and multiple site plans for the Red Coconut and Gulfview Colony area:

"A vision for this area...is as a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas and shopping without using Estero Boulevard. ...Neighborhood design is not dominated by garages and features porches on the front, walkable narrow streets with shade trees that double as view corridors to the preserve and beach and quiet internal street connections to the north and south"

The design elements described are not expressly required but were anticipated as part of the vision described in the Community Design Element. Unfortunately, these design elements have not been updated throughout the years to adapt to the changing circumstances related to the floodplain and federal construction regulations. Since the adoption of the comprehensive plan in 1999, the Town's floodplain maps have been amended three times.¹ The current maps were adopted November 17, 2022 and establish the Property is subject to a VE-14 flood zone for the entire gulf side and a portion of the bay side. The Coastal A zone and LiMWA (Limit of Wave Action) occurs on the bay side portion of the property. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side portion of the property. These features require all structures to be elevated above the base flood zone of approximately 14 feet, significantly limiting the opportunity for ground level enclosed space, and require

¹ 2008, 2019, and 2022

construction to utilize breakaway walls. Due to these design requirements, structures within this area cannot provide the desired porches and primary entries on the ground floor.

The proposed site plan does activate the street front without ground level commercial space or porches and balconies and primary entries visible from the street. The proposed public parks fronting the gulf and bay side of Estero Boulevard and adjacent to the western property boundaries will provide public recreational opportunities as well as gathering space for existing and future residents. Within these parks are the origination points for the linear park with 8-foot-wide multi-use path on the bay side parcels and the 10-foot-wide public beach access on the Gulf side. The parks and pedestrian connections are centrally located to the Village District establishing a single point to cross Estero Boulevard consistent with Policy 7-E-4. On the eastern side of the boulevard entry along Estero Boulevard is the proposed terraced landscaping with integrated water feature and enhanced architecture for the area below the proposed restaurant, which shields the building podium.² The enhanced architecture associated with the restaurant wraps the corner of Estero and Donora Boulevards. With the requested deviation to increase the building setback to promote enhanced streetscaping, these features will shield the structured parking and supporting building infrastructure. Together, the parks fronting the gulf and bay side of Estero Boulevard with the increased setbacks, enhanced architectural features and streetscaping, pedestrian interconnectivity will be enhanced along Estero Boulevard with the gathering spaces of the public parks to establish ground level interaction with Estero Boulevard and activate the street front for a lively pedestrian environment.

The terraced landscaping with integrated water feature and enhanced architecture of the proposed restaurant will be a maximum of 3 stories and comply with the height limitations and exceptions¹¹ for the bay side parcels of the Village district. The remainder of the Estero Boulevard frontage is proposed to be a public park. On the Gulf side of Estero Boulevard, architectural treatments consistent with the proposed pattern book and enhanced landscaping are also proposed with two view corridors to the Gulf.

Above the building podium and setback from the commercial restaurant are the multi-family residential towers which tier in height and are further setback from the building podium. The units are oriented within the towers to promote balconies on all the building facades. The design proposed for the mixed use structure, beach club, and public parks implement the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-2, 1-B-3, 2-B-1, 4-A-1, 4-A-2 and 4-F-2 by providing ground level gathering space through the proposed parks, an enhanced pedestrian environment with the landscaped terraces with water feature, streetscaping, architectural treatments at the ground level and interaction with the street front from the proposed terraces above the required base flood elevation.

² The elements that form the base of the structure and serve to raise the habitable space above the base flood elevation.



Figure 1. The view south on Estero Boulevard

The primary vehicular entry to the mixed-use structure is proposed via Estero Boulevard with a single access point to an internal street with stacking distances that exceed the LDC requirements. The street begins in a north/south orientation and turns east/west to provide a circular turnaround and drop off between the two proposed towers. This design orientation for the internal street ensures that vehicles are directed toward the rear and are shielded from the adjacent public roadways. An east/west through street from Donora Boulevard is proposed to provide access to the proposed single family residential units consistent with the intent of the Village district³ with the opportunity for a future expansion to Lovers Lane. The property owner does not own the land between the western property boundary and Lovers Lane to provide the street extension discussed in the Village district.

The primary vehicular entry to the beach club is also proposed via Estero Boulevard with a single access point to the side of the beach club. Limiting the primary access and secondary streets within the proposed development eliminates curb cuts on Estero and Donora Boulevards and maintains traffic flow consistent with Policy 7-H-10 and guidance received from Lee County Department of Transportation.

While the secondary streets for vehicular access to the mixed-use structure and beach club do not interconnect to adjacent streets, the proposed design does promote pedestrian and/or bicycle activity throughout the Property to adjacent streets via a linear park and new sidewalks. The proposed layout of the linear park originates at Estero Boulevard, within the proposed public park to provide a specific point on Estero Boulevard for pedestrians to cross and access the beach consistent with Policy 7-E-4. From the proposed public park on the bay side of Estero Boulevard, the linear park travels north along the western property boundary, turning east to parallel the proposed new local street, and ultimately connecting to Donora Boulevard. A new sidewalk with shade trees is proposed along Donora Blvd. This linear park with the new and repaired sidewalks on Estero and Donora Boulevards will be open to the

³ FMB LDC Section 34-693(c)(2)

public and contributes to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The linear park is also located in a manner that can provide a future interconnection to Lovers Lane. The proposed design for the linear park promotes interconnectivity with existing public infrastructure for existing and future residents consistent with Policies 1-A-2, 4-A-1, 7-B-3 and 7-E-4 and further activates the Estero Boulevard street frontage as desired by the Village district.

The proposed development promotes design features that adapt to the federal design requirements of the VE and Coastal A zone while maintaining the intent of the Village district and comprehensive plan to the maximum extent possible. The public health, safety and welfare will be improved through the elevation of the structure, incorporation of architectural techniques, and public recreation that activates Ester Boulevard for all pass by traffic, a safe linear park that connects to other residential neighborhoods and maintenance of traffic flow along Estero Boulevard. Other infrastructure improvements are also proposed to enhance pedestrian and bicycle connectivity and view corridors to the Gulf and Matanzas Pass Preserve, consistent with the vision of the Village district.

2. **Sec 34-693(c)(1) and (2)** provides options for secondary streets in the Village zoning district and requires an extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public to allow:

- A single primary entry and internal street from Estero Boulevard to the mixed use structure with turn around.
- An internal east/west local street extending Donora Boulevard to the western property boundary.

Justification for Deviation #2: The Village district includes a desired street layout in LDC Figure 34-18 demonstrates the anticipated secondary street layout with the potential for 2 additional access points to Estero Boulevard within the Property and the required east/west extension of Donora Boulevard to Lovers Lane. In addition to the existing north/south portion of Donora Boulevard, Figure 34-18 establishes a minimum of 3 secondary streets within the Property. However, LDC Section 34-693(c) establishes that secondary streets are to be “*generally* in accordance with Figure 34-18.” (emphasis added) The existing north/south portion of Donora Boulevard is one of the secondary streets identified in Figure 34-18, the proposed site plan incorporates a sidewalk along the street to provide improved pedestrian circulation from the adjacent residential neighborhoods.

Due to the pedestrian/bicycle opportunities provided by the proposed site design, vehicle access is purposefully directed to the multi-family or single-family residences and not interconnected. Increasing the internal street connections consistent with Figure 34-18 would increase the number of locations a pedestrian or cyclist would have to cross a street also utilized by vehicles. To reduce the number of conflict points and improve safety, a linear park with an 8-foot-wide multi-use path is incorporated into the site plan separating pedestrian and bicycle traffic through the Property from vehicles. A single internal street is proposed for the multi-family structure from Estero Boulevard with a turn around and stacking distances that exceed the LDC requirements to address the

anticipated traffic, drop off for valet, and to shield this activity from Estero Boulevard. Policy 7-H-10 specifically identifies that there are “an excessive number of streets and driveways having direct access to Estero Boulevard, reducing its ability to handle peak season traffic. The town shall take advantage of any suitable opportunities to consolidate street connections into fewer access points on Estero Boulevard.” The Property’s approximately 600+ foot frontage on Estero Boulevard is a unique opportunity to implement this policy with the proposed redevelopment. The intent of this policy is reflected in the conceptual site plan by limiting the number of vehicular access points from Estero Boulevard to one for the Gulf and one for the bay side parcels consistent with Policies 1-A-1, 7-H-10, and guidance received from Lee County Department of Transportation.

Two additional access points to the mixed-use structure are provided on the north/south portion of Donora Boulevard, an existing local street, to address secondary ingress/egress to the structured parking for residents. A new local east/west street is proposed to extend Donora Boulevard through the Property and provide access to the proposed single family residential consistent with Policy 3-A-5 and LDC Section 34-693(c)(2). Consistent with the intent of the Village district and Policy 3-A-6 this design maintains a future opportunity for the through street to extend to Lovers Lane⁴ and promote an interconnected network for existing and future residents to travel to the redeveloped Elementary School and Bay Oaks without utilizing Estero Boulevard. The Property owner does not own the land between the western property boundary and Lovers Lane to provide the full street extension discussed in the Village district. It is anticipated that future redevelopment in the Village district will promote the full extension of the desired local street.

Pedestrian and/or bicycle activity throughout the property and to adjacent streets is promoted through a linear park and new sidewalk with shade trees along Donora Boulevard. The linear park interconnects the public park fronting on Estero Boulevard, travels north along the western property boundary, turns east adjacent to the new internal road, and ultimately connects to Donora Boulevard consistent with Policies 3-A-5, 3-A-6, 4-A-1 and 7-D-5. This linear park will be open to the public and contribute to the Hidden Paths desired by Objective 2-A and its supporting policies without requiring public expenditure for implementation. The location of the linear park adjacent to the proposed new local street also provides the opportunity for a future connection to Lovers Lane, further promoting interconnectivity throughout the Town.

The public health, safety and welfare will be improved through the proposed design by eliminating curb cuts and maintaining the traffic flow on Estero Boulevard. The provided enhancements for pedestrian and bicycle connectivity appropriately address the opportunity for future development on properties not controlled by the applicant. Together the internal streets and linear park improve circulation for vehicles and pedestrians as desired by the Village district.⁵

⁴ FMB LDC Section 34-693(c)(2)

⁵ FMB LDC Section 34-693(c)

3. **Sec 34-693(e), (f), (g)** establish build-to-lines from all streets at 0, rear setbacks at 20 feet and a building frontage percentage of 35 to 50% along Estero Boulevard to allow:

- **Elimination of the build-to-lines and building frontage % for all structures;**
- **Establish a 10 foot front setback for structures adjacent to a roadway;**
- **Decrease the rear setback to 10 feet for the mixed-use structure;**
- **Decrease the rear setback to 5 feet for accessory structures associates with the single-family residential units;**
- **Increase the street corner setback beyond 20 feet for the mixed use structures.**

Justification for Deviation #3: The Property fronts Estero and Donora Boulevards and as described in Deviation #1, the Property is within a VE-14 and Coastal A zone requiring the elevation of structures within this area to approximately 14 feet above base flood elevation. The bay side parcels are also subject to the 1991 Coastal Construction Control Line which significantly limits the square footage that can be enclosed below base flood elevation and requires breakaway construction practices. With a required elevation of 14 feet, the requested increased setback will enable the area between the Property boundary and proposed structure to be utilized for streetscaping and improvement or installation⁶ of a public sidewalk. The streetscaping with enhanced architectural elements will screen the building podium providing parking, plumbing, electrical and foundational elements for the mixed-use building and private beach club.

Building frontage is measured as the length of a building façade that faces a street⁷, and in the Village district this length is measured at the build to line. The requested front setback is greater than the build-to-line; therefore, by the definition included in the LDC, the building frontage would be 0. Additionally, the proposed design includes a public park along Estero Boulevard; which significantly reduces the length of the building façade along Estero Boulevard and provides a significant public benefit. Similarly, the beach club provides two 120-foot view corridors along Estero Boulevard; significantly reducing the length of building façade provided to increase the public benefits offered.

To ensure the structural elements of the building podium are appropriately screened from the adjacent streets, the proposed design includes a setback greater than 10 feet from a right-of-way and 20 feet from corner of street intersections. The increased setback provides additional land area for a planting area between the structure and the repaired or new sidewalk to provide shade the adjacent pedestrian environment and improve the view of passby traffic as compared to the required construction practices for the 14-foot base flood elevation. In addition to the increased setback, the mixed-use structure utilizes landscaped terraces with a water feature and a public restaurant with terrace to address the pedestrian environment along Estero Boulevard. Additional streetscaping and a new sidewalk is provided along Donora Boulevard. When combined with the public park on the remainder of the Estero Boulevard frontage, these features provide an enhanced pedestrian environment and gathering space as

⁶ The existing sidewalk along Estero Boulevard will be repaired and a new sidewalk will be installed along Donora Boulevard.

⁷ FMB LDC Section 34-693(c)

well as an activated street front, implementing the intent of the Village district and Policies 1-A-1, 1-A-2, 1-B-3 and 4-A-1.

The rear setback for the mixed-use structure is proposed to be reduced due to the location of the linear park and new local street providing access to the proposed single family. The building podium will be closer to the linear park than the residential towers which are internally setback from the edge of the building podium increasing the setback from Donora Boulevard and the new local street to ensure the right-of-way and linear park maintain open air and light. The proposed design is consistent with the intent of the Village district and Policies 4-A-1 and 4-A-2.

The public health, safety and welfare will be improved through the proposed design by incorporating required construction techniques to address the floodplain elevation while enhancing the ground level environment for pass by pedestrian and vehicular traffic consistent with Policies 1-A-1, 1-A-2, 1-A-3, 1-B-3, 2-B-1, 3-A-5, and 4-A-1. The request appropriately adapts the design to implement the intent of the Village district. Additionally, the provided enhancements will interconnect with the proposed linear park and public beach access to further improve circulation for pedestrians as desired by the Village district¹⁷ and Policies 2-A-1, 3-A-5, and 3-A-6.

4. **Sec. 34-693(h)** limits building height to 30 feet above base flood elevation and no taller than three stories for mixed use buildings without enclosed space on the first story on the bay side of Estero Boulevard to allow:

A maximum building height of 17 stories (including 2 stories of parking) and 235 feet for the mixed use building on the bay side of Estero Boulevard consistent with Policy 4-C-4.

Justification for Deviation #4: The Village district was established to reduce density from the previous 27 RV/mobile homes per acre to 15 dwelling units per acre. The average residential density in other locations within the Town is 6 dwelling units per acre. To address the permitted density, desire for open views, public gathering spaces and pedestrian/bicycle interconnectivity, an integral component of the proposed design is the transfer of the permitted density from the Gulf side properties to the bay side properties. This density transfer will keep the height of the development on the Gulf side consistent with the permitted 3 stories in height and 30 feet (without exceptions) of the Village district while improving connectivity and visibility to the Gulf compared to the conditions of the previous development. The proposed development plan also limits the intensity of the Gulf side properties to a private recreational amenity and membership organization.



Figure 2. Proposed Multi-family Residential Height

Due to the Property's location within a VE-14 flood zone and Coastal A zone with LiMWA (Limit of Wave Action) the usable square footage and residential units of the mixed-use building need to be elevated above approximately 14 feet. Enclosed space on the first story is significantly limited and construction is required to utilize breakaway walls. Additionally, the 1991 Coastal Construction Control Line occurs on the bay side of Estero Boulevard, also limiting enclosed space on the first story and requiring breakaway wall construction practices. The design requirements of these State and Federal regulations promote unenclosed space for the area below base flood, in conflict with the screening requirements of the Village district. In addressing the current design requirements for below base flood, and to maintain the openness of the site design for view corridors and public gathering space, the proposed design reduces the development footprint and requests additional height to cluster the multi-family units into 2 residential towers with multiple tiers at varying heights from 17 to 13 stories (including the structured parking) or a maximum height of 235 feet above base flood elevation (including the structure parking).

The comprehensive plan also gives consideration to requests for additional height in Policy 4-C-4, which specifically indicates "different heights may be applied to officially designated

redevelopment areas such as ... Red Coconut/Gulf View Colony.” The Village zoning district implements the redevelopment described as “Red Coconut/Gulf View Colony” in the Comprehensive Plan. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay.



Figure 3. View South down Estero Boulevard

Consistent with architectural practices for increased height, as the residential towers increase in height above the podium, the setback from Estero Boulevard increases. Additionally, the towers are setback from the building podium increasing the separation from the property boundary and Donora Boulevard. The placement of the north/south tower closest to Donora Boulevard aligns with the existing multi-family and the former art campus and Fort Myers Beach Fire District Station that previously existed on the eastern side of Donora Boulevard. The adjacent development is within the VE-14 flood zone and Coastal A zone with a LiMWA and an AE zone with a base flood elevation of 11 to 12. As a result, redevelopment of the fire station and art campus will need to be elevated 11 to 14 feet. The orientation of the towers with the architectural elements and streetscaping ensures the future building will be compatible with the adjacent single, multi-family and community facilities along Donora Boulevard.

At the ground level, the proposed structure will be elevated and future development on adjacent properties will also be required to elevate consistent with base flood elevation. The building podium of the proposed structure is proposed to be shielded through architectural elements and enhanced landscaping consistent with Policies 1-B-2, 2-B-1, 3-A-5, 4-A-1, 4-A-2. At the intersection of Estero and Donora Boulevard, the commercial restaurant provides a dining terrace and coastal architecture that wraps from Estero to Donora Boulevard consistent with Policy 4-A-3. This design ensures that the Donora Boulevard frontage adjacent to Estero Boulevard is activated and provides a step back from the requested increased height. Traveling further north on Donora Boulevard the north/south residential towers increase in height and the street level is proposed to be enhanced through

architectural treatments, an increased planting area for streetscaping and a public art installation. Finally, a new sidewalk will be constructed to provide pedestrian interconnections from the existing residential neighborhoods, the proposed linear park and Estero Boulevard. The remaining building façade along Estero Boulevard is proposed to be terraced landscaping with water feature to shield the structure and supporting infrastructure while enhancing the pedestrian environment and promoting a special landscape feature along Estero Boulevard consistent with Policies 1-A-1, 1-B-3, 4-A-1. The landscaped terraces, water feature, and restaurant are consistent with the bay side height limitation of 3 stories and 30 feet in height²⁰ and architectural exceptions.²¹ Designing the uses and structure in this manner ensures the requested height does not crowd the Town's roadway network promoting openness and light and the ground level environment contributes to the pedestrian realm.

Promoting a mixed-use structure in the central portion of the Property for 137 of the permitted 141 residential units with increased height enables a reduced building footprint to utilize other portions of the property for improvements that benefit existing and future Town residents. The public parks, linear park, and view corridors are provided to promote public gathering, recreation, views and access to the Gulf and the bay. On the Gulf side, two 120-foot view corridors will maintain a permanent view of the Gulf of Mexico. The western view corridor is a new public park with a 10 foot public pedestrian access to the sandy beach. On the north side of Estero Boulevard from the Gulf front park, a public park is proposed with the origination point for a proposed linear park. Aligning the Gulf front and bay side parks in this manner promotes a centrally located park to the entire Village district and a single pedestrian crossing of Estero Boulevard. A linear park parallels the western property boundary and the new east/west extension of Donora Boulevard to enhance interconnectivity through the Property for existing and future residents without a vehicle. An opportunity to expand the linear park to the west is available when the remainder of the property within the Village zoning district redevelops, furthering enhancing mobility without a vehicle.



Figure 4. View down Donora Boulevard

The linear park terminates at the intersection of the north/south and east/west portions of Donora

Boulevard. In this general location, adjacent to Matanzas Pass Preserve is the final public park. The location of this park maintains the previous view corridor that was available down Donora Boulevard. Additionally, the existing residential lots to the east can utilize this area as a neighborhood park.

The programmatic development of the parks has not been finalized. The applicant has included language in the Development Agreement to require on-going coordination with the Town of Fort Myers Beach to ensure the final design is consistent with the Town's vision. The Development Agreement also commits that the Applicant will maintain ownership and maintenance of the park and an easement will be recorded for public access and use. As a result of this structure, the Town will have a new public park with beach access without requiring an investment in tax funds for purchase, development or maintenance of the park.

The public health, safety and welfare will be improved through the proposed design through the shielding, ground level interactions and activated street frontage that will be provided by the public parks, terraced landscaping with water feature and enhanced architectural elements consistent with Policies 1-B-2, 2-B-1, 4-A-1, and 4-A-2.

5. **Sec. 34-693(i)** restricts Floor Area Ratio (FAR) to 1.2 and 34-633 includes all stories of covered parking in the measurement of FAR to allow:

Elimination of covered parking and parking decks from the calculation of FAR and permit a FAR of 1.5 (626,156.2 square feet) consistent with Policy 4-C-2.

6. **Sec. 34-693(l)** requires off-street parking under a commercial or mixed-use building to be separated from primary streets by usable commercial space at least 20 feet deep, meet all commercial design standards and have a driveway that connects to a secondary street to allow:

Parking under a commercial or mixed-use building with no commercial space on the ground level and permit access from Estero Boulevard or an internal street.

Justification for Deviations # 5 and 6: The Village district establishes a maximum FAR of 1.2 for commercial uses and the Town's comprehensive plan establishes a maximum FAR of 1.5 in Policy 4-C-2. This same policy establishes "the land development code shall specify maximum commercial intensities using floor-area ratios (the total area of the building divided by the area of the site in the category allowing the commercial uses)." LDC Section 34-633(1) specifies "gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking..."

When considered together, the Comprehensive Plan and LDC establish FAR as a measure of commercial intensity that includes parking structures and unenclosed space on the ground floor. At the time LDC Section 34-633 was adopted in 2003, commercial retail space could be provided in certain locations within the Town on the ground floor level to shield parking and provide an active street front. The vision statements for the Civic Center, which includes the Property, acknowledge that

even in 1999 “the current floodplain and coastal setback regulations severely restrict what can be done here.”⁸ Since 1999, there have been multiple changes to the floodplain mapping and building code requirements which continue to increase development restrictions. The proposed development along the gulf side of Estero Boulevard is within a VE-14 floodzone which is an area subject to high velocity wave action. The remaining portion of the property, on the bay side is within a Coastal A Zone; which is an area subject to breaking waves ranging from 1.5 to 3 feet⁹. The building requirements for the flood zones and CCCL significantly limit the permitted enclosed space to a dimension that is not feasible for commercial uses below base flood elevation. Additionally, a portion of the property on the bay side is also within the 1991 CCL; which the Town’s comprehensive plan acknowledges includes structural regulations administered by the Department of Environmental Protection¹⁰ also limiting enclosed space and requiring breakaway walls which are not feasible for commercial uses below base flood elevation¹¹. Without the ability to utilize the area below base flood elevation for residential or commercial space, a deviation is requested to eliminate the area of the parking structure from the calculation of FAR and a second deviation is requested to eliminate commercial usable space between the parking and Estero or Donora Boulevards.

Another deviation is requested to increase the allowable FAR on the property to 1.5 (616,156.2 square feet) and accommodate the proposed uses. Policy 4-C-2 permits FAR requests up to 1.5 within the Boulevard and Mixed Residential FLU categories. The public restaurant at approximately 10,000 square feet and the 137 multi-family units will be constructed within an integrated structure that classified as a mixed-use building per Policy 4-B-12. The Town’s land development code establishes membership organizations as a commercial use. Consistent with past interpretations of Town policy, mixed use structures must comply with the FAR calculations. The combined total area of the structures exceeds the permitted 1.2 FAR even when the parking structure is eliminated from the FAR calculation. It should be noted that the single family units are a residential product therefore per Policy 4-B-12 do not need to be included in the calculation of FAR for commercial intensity. The requested deviations are consistent with the maximum FAR outlined in Policy 4-C-2 and the current coastal regulations. The additional FAR is being utilized to support multi-family units and a membership organization and does not represent an increase in commercial intensity or intrusion into a residential neighborhood. Consistent with Policy 4-C-3, the Property previously had approximately 10,000 square feet of commercial uses with setback variances and no formal parking.

The public health, safety and welfare will be improved through the mix of uses proposed with the building orientation and layout. The uses provided within the proposed structures are appropriately classified as mixed use through the provision of residential and commercial uses. The request does not promote an increase in commercial intensity or intrusion into a residential neighborhood and reflects appropriate limited commercial uses consistent with the anticipated

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-6

⁹ *Ibid.*

¹⁰ FMB Comprehensive Plan, Future Land Use Element, Page 4-9

¹¹ FMB Comprehensive Plan, Future Land Use Element, Page 4-10

redevelopment in the surrounding area.

7. **Sec. 34-693(m)** requires commercial and mixed-use buildings that are visible from Estero Boulevard to abide by the commercial design standards outlined in 34-991-34-1010 to allow:

Conceptual approval of the architectural renderings and the proposed pattern book to permit review of designed elevations as part of the Development Order process.

Justification for Deviation #7: As part of the Development Agreement, Exhibit B is Conceptual Plans and Renderings and Exhibit D is a pattern book to demonstrate the anticipated features of the proposed development. These exhibits provide a conceptual site plan, renderings of the proposed multi-family and beach club structures, perspective viewsheds and expected architectural elements demonstrating the anticipated architectural form and features of the proposed structures. However, detailed architectural elevations and floor plans have not been prepared to evaluate against the commercial design standards outlined in the LDC.

LDC Section 34-992(d)2 permits compliance with architectural standards to be established with the submittal of a development order application. The Conceptual Plans and Renderings with the Pattern Book are provided as exhibits to the DA to demonstrate the anticipated elements of the future building architecture and floor plans. Providing a framework for review and approval of the detailed architectural plans with the development order applications.

The public health, safety and welfare will be maintained through the deviation request. The provided renderings and pattern book establish an architectural theme that reflects a coastal contemporary style. Through the conditions provided in the Development Agreement, this same architectural theme will need to be provided with the Development Order application. At that time Town Staff can review the detailed architectural elevations and floor plans to ensure consistency with Exhibit B Conceptual Plans and Renderings and Exhibit D Pattern Book.

8. **Sec. 34-631(b)(3)** requires mechanical structural appurtenances that extend above the height limit provided they do not exceed 250 square feet and screening is provided to allow:

No square footage limitation or screening for the portions of the residential tower above 11 stories.

Justification for Deviation #8: The mechanical equipment to support the 137 multi-family residential units will be integrated into the mixed-use structure and located on the roof. Due to the ranging height of the residential towers, the Applicant requests elimination of the limitations regarding square footage and screening for the portions above 11 stories. From the ground level, the mechanical equipment will not be visible and therefore these additional limitations are not necessary to protect the public health, safety and welfare.

APPLICATION FOR DEVELOPMENT AGREEMENT with DEVIATIONS

[LDC Section 2-94]

Project Name: 3001 Estero Boulevard

Current Zoning: Village

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1. **Name of Applicant:** Seagate Fort Myers Beach, LLC
Address: 9921 Interstate Commerce Drive
City, State, Zip: Fort Myers, FL 33913
Phone Number: _____
E-mail Address: mprice@seagatedevelopmentgroup.com
 2. **Relationship of Applicant to owner (check one) and provide [Affidavit of Authorization](#) form:**
☐ Applicant is the sole owner of the property.
☒ Applicant has been authorized by the owner(s) to represent them for this action.
 3. **Authorized Agent: (If different than applicant) Name of the person who is to receive all County-initiated correspondence regarding this application.**
 - a. **Company Name:** Stearns Weaver Miller, PA
Contact Person: Tina M. Ekblad, MPA, AICP
Address: 106 E. College Avenue, Suite 700
City, State, Zip: Tallahassee, FL 32301
Phone Number: 850-354-7624 Email: tekblad@stearnsweaver.com
 - b. **[Additional Agent\(s\)](#):** Provide the names of other agents that the County may contact concerning this application.
 4. **Property owner(s): If multiple owners (corporation, partnership, trust, association), provide a list with owner interest.**
Name: Seagate Fort Myers Beach, LLC
Address: 9921 Interstate Commerce Drive
City, State, Zip: Fort Myers, FL 33913
Phone Number: _____ E-mail: mprice@seagatedevelopmentgroup.com
 5. **Disclosure of Interest**
☒ Attach [Disclosure of Interest](#) Form.
 6. **STRAP Number(s)**
29-46-24-W1-00145.100; 0120A.0010; 00145.5000 30-46-24-W2-00001.0000
 7. **Street Address of Property:** 3001 Estero Boulevard, Fort Myers Beach, FL
 8. **Legal Description (must submit one):**
☒ Legal description (metes and bounds) and sealed sketch of the legal description.
OR
☐ Legal description (NO metes and bounds) if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records of Lee County under Instruments or Plat Books.
([Click here](#) to see an example of a legal description with no metes and bounds.)
 9. **Future Land Use:** Boulevard and Mixed Residential
 10. **Zoning District:** Village

10. **Written Narrative:** Provide a written narrative statement explaining exactly what is proposed.
11. **Deviations:** If any relief is requested from the provisions of the Land Development Code (LDC), provide a **written explanation** of the specific relief requested (a schedule of deviations). Explain what conditions currently exist which warrant this request for relief from the regulations (a written justification for each of the requested deviations). Include specific references to any section (number{s} and name{s}) of the LDC from which relief is sought including why the requested relief is necessary and how it will affect the project. All deviation requests must be specifically keyed to the location on the Master Concept Plan. LDC 34-932(b)
12. **Master Concept Plan (MCP):** Provide a MCP and detailed drawings of any deviations or changes being proposed at a size of 24"x36" consistent with LDC 34-212(4)

SUBMITTAL REQUIREMENT CHECKLIST

Clearly label your attachments as noted in bold below.

☒	Completed application
☐	Filing Fee
☒	Affidavit of Authorization Form
☐	Additional Agents
☐	Multiple Owners List
☒	Disclosure of Interest Form
☒	Legal description (must submit one)
☒	Legal description (metes and bounds) and sealed sketch of legal description
	OR
☐	Legal description (NO metes and bounds) if the property is located within a subdivision platted per F.S. Chapter 177, and is recorded in the Official Records of Lee County under Instruments or Plat Books. (Click here to see an example of a legal description with no metes and bounds.)
☒	Narrative of Request
☒	Schedule of Deviations (if applicable)
☒	MCP and detailed drawings of any proposed deviations (if applicable) (24"x36")

Note: All information submitted with the application becomes a part of the public record and will be a permanent part of the file. Department staff will review this application for compliance with requirements of the Land Development Code. The applicant will be notified of any deficiencies.

Acceptance of an application in no way guarantees its approval. If the Town Manager determines that the requested amendment is beyond the scope of Land Development Code and that a public hearing is necessary, then all fees paid toward the administrative application may be applied toward an application for public hearing.



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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. _____ AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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;

¹ See Section 166.041(4)(c), Florida Statutes.

- ☐ 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 Fort Myers Beach 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):

This ordinance approves a home rule development agreement between the Town and the developer, Seagate Fort Myers Beach, LLC. This ordinance furthers the health, safety, welfare, and morals of the residents of the Town by allowing developers to rebuild the Town following catastrophic losses after Hurricanes Irma, Ian, Helene, and Milton. A rebuilding and redevelopment of the Town would benefit the local tourism and promote the growth of the Town.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None.

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: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach 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 Fort Myers Beach 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].

Not applicable.



NOTICE OF PUBLIC HEARING/DEVELOPMENT AGREEMENT (Seagate Fort Myers Beach, LLC)

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold two public hearings regarding an ordinance for the redevelopment of real property formerly known as the Red Coconut RV Park, as follows:

Monday, October 28, 2024

9:00 AM

Town Hall Council Chambers

2731 Oak Street, Fort Myers Beach, FL 33931

Monday, November 4, 2024

9:00 AM

Town Hall Chambers

2731 Oak Street, Fort Myers Beach, FL 33931

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NO. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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 any of these public hearings, 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, Monday through Friday. Reasonable accommodation 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

ORDINANCE NO. 24-34

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 3001 ESTERO BOULEVARD, 2943 ESTERO BOULEVARD, 2932 ESTERO BOULEVARD, 211 DONORA BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 29-46-24-W1-00145.1000, 29-46-24-W1-00145.5000, 30-46-24-W2-00001.0000, 29-46-24-W1-0120A.0010 AND OWNED BY SEAGATE FORT MYERS BEACH LLC, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-73 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY PREVIOUSLY KNOWN AS THE RED COCONUT RV PARK; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; 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, Seagate Fort Myers Beach, LLC (the "Developer") wishes to develop certain parcels of land in the Town of Fort Myers Beach, as more explicitly described in the Home Rule Development Agreement, attached hereto as Exhibit "A" (the "Development Agreement"); and

WHEREAS, the Developer presented the Development Agreement to the Town's Local Planning Agency ("LPA") at the October 22, 2024 meeting and the LPA voted to recommend denial of the Development Agreement; and

WHEREAS, the Town Council held its first reading and public hearing on the Development Agreement at its October 28, 2024 Town Council meeting, during which the Town Council determined that the Development Agreement and the accompanying application [satisfied or did not satisfy] the guidelines and criteria set forth in Sections 2-100 and 2-96 of the Town's Code of Ordinances and the procedures for approval of development agreements in Exhibit A to Resolution Number 24-73; and

WHEREAS, on November 4, 2024, the Town Council held the second and final reading and public hearing on the Development Agreement; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the ____ day of _____, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the _____ on the ____ day of _____, 2024, which is 10 days prior to the final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town’s residents.

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

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

Section 2. The Town Council hereby formally approves the Development Agreement attached hereto as Exhibit “A” and authorizes the Developer to proceed with the development as further outlined therein.

Section 3. The Town Clerk is directed to record a copy of the Development Agreement in the Official Records of Lee County, Florida.

Section 4. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of _____, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Town 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

1. **Request:**

Meeting Date: October 28, 2024

Second Reading and Final Public Hearing of proposed Ordinance 24-17 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN'S AGENCY, BOARDS, COMMITTEES OR COMMISSIONS AND ADDING A VOTING REGISTRATION REQUIREMENT FOR MEMBERS OF THE LOCAL PLANNING AGENCY AND AUDIT COMMITTEE; ELIMINATING DUPLICATIVE AND UNENFORCEABLE LANGUAGE; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this ordinance is necessary to ensure only involved members of the community with a vested interest in the Town's operations can be appointed to the Town's boards, agencies, commissions, and committees; to streamline the Town Code by removing duplicative language; and to add a clause regarding the mandatory annual financial disclosure for the members of the Town's local planning agency as required by the Florida Commission on Ethics.

What the action accomplishes:

The ordinance expands the list of preferred qualifications for the members of the Town's boards, agencies, commissions and committees to include individuals who receive mail with a Fort Myers Beach postal code, restricts the appointment of individuals to the Town's Local Planning Agency and Audit Committee to registered voters in the Town's territorial boundaries, eliminates duplicative language from the Code, and adds a reference to the mandatory annual financial disclosure required by Florida Commission on Ethics.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On June 17, 2024, the Town held a first reading of Ordinance 24-17. Following a discussion, the Town Council gave the Town Attorney a direction to research the requirements for the members of various committees and to revise Ordinance 24-17 to add a grandfather provision to the Ordinance to allow members who did not satisfy the new eligibility requirements to continue their service. This change necessitated a revision to the title of the proposed ordinance and a second first reading, which was held and approved for second reading on the August 7, 2024, Town Council meeting.

The Town Council directed staff to schedule a second reading on August 19, 2024, which was

rescheduled to September 9, 2024, due to the advertising requirements under Chapter 166, Florida Statutes.

The title of the ordinance was read a second time on September 9, 2024, and at that meeting, the Town Council decided to expand the eligibility criteria, which resulted in the need for another first reading due to the change in the title. The first reading of the September 9, 2024, revision occurred on October 21, 2024, following several continued hearings. At the October 21, 2024, a minor change was made to the text for clarification and the ordinance was presented to the Town Council at its October 28, 2024, public hearing for adoption. The proposed change to Section 2-94 was to clarify that individuals with a Fort Myers Beach postal zip code were also eligible to serve.

In addition to eligibility criteria, the proposed ordinance also adds a provision to Section 34-113 of the Town's Land Development Code, obligating the members of the Town's local planning agency to comply with mandatory annual financial disclosure pursuant to the requirements set forth by the Florida Commission on Ethics.

Attachments:

1. Ord. 24-17, Committee Member Requirements (rev. 10-23-24 mrns)
2. Fort Myers Beach, FL Code of Ordinances Sec. 2-94
3. Fort Myers Beach, FL Code of Ordinances Sec. 2-96
4. Fort Myers Beach, FL Code of Ordinances Sec. 34-113
5. Business Impact Estimate 10-7-2024

Financial Impact:

None

6. Alternative Action

Continue or deny proposed ordinance.

7. Management Recommendations:

Approve the ordinance.

8. Recommended Approval:

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/22/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

ORDINANCE NO. 24-17

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” AND SECTION 2-96 “REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS” OF DIVISION 2 “PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES” OF CHAPTER 2 “ADMINISTRATION” AND SECTION 34-113 “COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS” OF DIVISION 3 “LOCAL PLANNING AGENCY” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING PROPERTY OWNERSHIP AS A QUALIFICATION REQUIREMENT FOR THE MEMBERS OF THE TOWN’S AGENCY, BOARDS, COMMITTEES OR COMMISSIONS, AND ADDING A VOTING REGISTRATION REQUIREMENT FOR MEMBERS OF THE LOCAL PLANNING AGENCY AND AUDIT COMMITTEE; ELIMINATING DUPLICATIVE AND UNENFORCEABLE LANGUAGE; ADDING A PROVISION TO SECTION 34-113, REGARDING THE MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND 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, on June 6, 2024, the Town Council held a discussion regarding the proposed changes to the Code of Ordinances of the Town of Fort Myers Beach, specifically as it pertains to the required criteria, qualifying individuals for service on the Town’s agencies, boards, committees or commissions; and

WHEREAS, on June 17, 2024, the Town Council held a first reading of Ordinance 24-17 and gave direction to the Town Attorney to revise Ordinance 24-17 to add a grandfather provision; and

WHEREAS, the revisions proposed by the Town Council resulted in a substantial change to the title of Ordinance 24-17, necessitating a second first reading of the Ordinance; and

WHEREAS, on August 7, 2024, the Town Council held a second first reading of this Ordinance and gave full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons. The Town Council directed staff to schedule a second reading on August 19, 2024, which was rescheduled to September 9, 2024, due to the advertising requirements under Chapter 166, Florida Statutes; and

WHEREAS, on the 9th day of September, 2024, the Town Council held a second reading of this Ordinance and, after giving full and complete consideration to the request of the proposed ordinance, the recommendation of staff, the documents in the record, and the testimony of all interested persons, the Town Council requested a continuance of the second reading to September 23, 2024 (which was thereafter continued again to October 7, 2024), and directed the Town Attorney to make additional changes to the Ordinance, removing the grandfather provision, including a requirement that all members of the Town's Audit Committee and Local Planning Agency must be registered voters within the Town's jurisdiction, and leaving property ownership as the only required criteria, qualifying an individual for service on all other Town's boards, agencies, commissions or committees; and

WHEREAS, changes to the advertised title necessitated another first reading of the proposed ordinance to amend Sections 2-94 and 2-96 as directed by the Town Council, at the October 7, 2024 Town Council meeting, which was continued to October 21, 2024 as a result of the state of emergency declared in the State of Florida due to Hurricanes Helene and Milton; and

WHEREAS, on October 21, 2024, the Town Council held the first reading of this Ordinance and, upon discussion, decided to add language to Section 2-94 to clarify that the list of preferred qualifications for the members of the Town's boards, agencies, commissions or committees included individuals who have a Fort Myers Beach postal code; and

WHEREAS, the Town further desires to amend Section 34-113 of the Town's Land Development Code to add a provision regarding the filing of mandatory annual financial disclosure by the members of the Town's local planning agency, as required by Florida Commission on Ethics; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the 30th day of September, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News Press on the ____ day of ____, which is 10 days prior to the final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, the Town Council determined that adoption of the ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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.

Section 2. Section 2-94 “Qualifications and appointments of members” and Section 2-96 “Removal of agency, board, committee or commission members” of Division 2 “Procedures for the Establishment of Boards, Committees and Commissions” of Article IV “Boards, Commissions, Committees and Other Agencies” of Chapter 2 “Administration” of the Code of Ordinances of the Town of Fort Myers Beach, Florida, as well as Section 34-113 “Composition, appointment and compensation of members” of Division 3 “Local Planning Agency” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities” of the Town’s Land Development Code, are hereby amended to read as follows:

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town’s jurisdiction, ~~or a property owner within the town’s jurisdiction,~~ individuals with specialized experience or knowledge, individuals who have shown interest in the subject matter, or individuals who have a Fort Myers Beach postal code. ~~Although no~~ No specific experience requirements shall be necessary as a prerequisite to appointment. ~~consideration shall be given to applicants who have experience or who have shown interest in the subject matter. If any member is no longer a qualified elector or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.~~

(1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.

(2) *Audit committee.* All members of the audit committee shall be registered voters within the territorial boundaries of the Town of Fort Myers Beach town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All

members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.

(3) ~~a.~~ *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.

~~b.~~ (4) *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

~~c.~~ (5) *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) ~~(6)~~ *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

~~(5)~~ (7) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall

advise the town council on these matters or any other topics as assigned by the town council.

(8) Local Planning Agency. Notwithstanding the criteria set forth herein, the criteria for the members of the Local Planning Agency of Fort Myers Beach as outlined in section 34-113 shall prevail.

Sec. 2-96. – Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer possesses the required qualifying criteria, ~~a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction~~, or is convicted of a felony, ~~an offense involving moral turpitude~~, while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission for cause.

Sec. 34-113. - Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be ~~residents of, or owners of real property located within, the territorial limits of~~ registered voters within the territorial boundaries of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential

density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

(d) All appointed members of the local planning agency must file an annual financial disclosure as required by the Florida Commission on Ethics.

Section 3. That the Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach, Florida, 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 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, word, 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 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the town council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of _____, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Town 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

Sec. 2-94. - Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. If any member is no longer a qualified elector, or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.

- (1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.
- (2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F.S. § 218.391, or any other topics as assigned by the town council.
- (3)
 - a. *Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.
 - b. *Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town

council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.

c. *Cultural and environmental learning center advisory board.* The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.

(4) *Marine and environmental resource and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.

(5) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the business owners, residents, and visitors to the town. The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

(Ord. No. 18-06, § 2, 5-7-2018; Ord. No. 22-10, § 2, 6-6-2022)

Sec. 2-96. - Removal of agency, board, committee or commission members.

Unless otherwise precluded by state statutes, ordinance, or resolution, any member of an agency, board, committee or commission shall serve at the pleasure of town council and may be removed by town council with or without cause. In the event that any member is no longer a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction, or is convicted of a felony, an offense involving moral turpitude while in office or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee or commission.

(Ord. No. 18-06, § 4, 5-7-2018)

Sec. 34-113. - Composition, appointment and compensation of members.

- (a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.
- (b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.
- (c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).



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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" AND SECTION 2-96 "REMOVAL OF AGENCY, BOARD, COMMITTEE OR COMMISSION MEMBERS" OF DIVISION 2 "PROCEDURES FOR THE ESTABLISHMENT OF BOARDS, COMMITTEES AND COMMISSIONS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES" OF CHAPTER 2 "ADMINISTRATION" AND SECTION 34-113 "COMPOSITION, APPOINTMENT AND COMPENSATION OF MEMBERS" OF DIVISION 3 "LOCAL PLANNING AGENCY" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH, FLORIDA, REMOVING VOTER REGISTRATION AS A QUALIFICATION CRITERIA FOR THE MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES OR COMMISSIONS; MAKING VOTER REGISTRATION A REQUIRED CRITERIA, QUALIFYING AN INDIVIDUAL FOR SERVICE ON THE TOWN'S AUDIT COMMITTEE OR LOCAL PLANNING AGENCY; ELIMINATING DUPLICATIVE LANGUAGE; ADDING A PROVISION TO SECTION 34-113, REGARDING MANDATORY ANNUAL FINANCIAL DISCLOSURE FORM AS REQUIRED BY THE FLORIDA COMMISSION ON ETHICS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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;

¹ See Section 166.041(4)(c), Florida Statutes.

- ☐ 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 Fort Myers Beach 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):

The proposed ordinance amends the existing language of Sections 2-94 and 2-96 of Division 2 of Article IV of Chapter 2 and Section 34-113 of Division 3 of Article II of Chapter 34 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, restricting the appointment of individuals to the Town's boards, agencies, committees and commissions, exclusively to property owners within the Town's territorial boundaries, and leaving voter registration as the sole qualification criteria for service on the Town's audit committee or local planning agency, deleting duplicative language from the Code, and adding a reference to the mandatory annual financial disclosure required by the Florida Commission on Ethics to Section 34-113. The proposed ordinance promotes the health, safety, welfare, and morals of the residents of the Town by restricting appointment of the members of the Town's boards, agencies, commissions or committees solely to those individuals who have a vested interest in the Town's operations.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None.

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: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach 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 Fort Myers Beach 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].

Not applicable.

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 2 AND 5 OF THE TOWN'S POLICIES AND PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this proposed Resolution is necessary to ensure the Town Council's Policies and Procedures manual is updated pursuant to the recent changes in the Florida law regarding mandatory financial disclosure forms required from the local government officials every year, and revised for uniformity and consistency with the newly amended Town Code.

What the action accomplishes:

The proposed resolution updates the language of the Town Council's Policies and Procedures Manual by (1) replacing the reference to Form 6 with a reference to Form 1, in compliance with the recent change in the Florida law regarding the required annual financial disclosure forms from the members of the local government, and (2) ensuring uniformity and consistency with the recent changes to the Town's Code of Ordinances after adoption of Ordinance 24-17.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

nancy stuparich, Town Attorney

5. **Background:**

On October 28, 2024, the Town Council adopted changes to the Town Code regarding qualifying criteria for service on the Town's boards, agency, committees or commissions. One change contained in this Resolution is to remove residency as a qualifying criteria to create consistency between the Town Council's Rules of Procedures and the newly adopted ordinance.

The second change contained in this Resolution to the Town Council's Rules and Procedures is to update the reference to disclosure forms (Form 6 now Form 1) in view of a recent decision by the Southern District of the United States District Court.

Attachments:

1. Resolution 24-178, Amending Sections 2 and 5 of the Town's Procedures ns
2. Resolution 23-182 Town Council Manual

Financial Impact:

None

6. **Alternative Action**

Amend the Manual at a future date.

7. **Management Recommendations:**

Pass the Resolution.

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/22/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

RESOLUTION NUMBER 24-178

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING RESOLUTION 23-182 TO AMEND SECTIONS 2 AND 5 OF THE TOWN'S POLICIES AND PROCEDURES MANUAL TO MAKE IT CONSISTENT WITH ELIGIBILITY REQUIREMENTS FOR MEMBERS OF THE TOWN'S AGENCIES, BOARDS, COMMITTEES AND COMMISSIONS AND TO UPDATE REFERENCE TO REQUIRED FINANCIAL DISCLOSURE FORMS; 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, on January 22, 2024, the Town Council amended its Policies and Procedures Manual by approval of Resolution 23-182; and

WHEREAS, on October 28, 2024, the Town Council adopted Ordinance 2024-16 changing the eligibility requirements for service on certain Town boards, agency, committees and commission; and

WHEREAS, on June 10, 2024, a federal court granted a preliminary injunction that changed the form filing requirement for financial disclosures from Form 6 to Form 1 for mayors and city/village/town governing board members, which was effective immediately; and

WHEREAS, the Town Council desires to now amend and update Sections 2 and 5 of its Town's Council Policies and Procedures Manual, previously approved by Resolution 23-182, for consistency with the provisions of Ordinance 2024-26 and the recent federal court decision; and

WHEREAS, adoption of this Resolution promotes public participation and consistency, and is in the best interest of the Town and its residents.

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. Revisions to sections 2 and 5 of the Town Council’s Policies and Procedures Manual, as amended in Exhibit “A,” are approved.

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

THE FOREGOING RESOLUTION was adopted by the Town Council upon 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	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____
John R. King, Council Member	_____

ADOPTED this ____ day of _____ 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 of _____ 2024.

EXHIBIT “A”

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.
- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6 1) on the Florida Commission on Ethics website every year.
- Complete and file Form 1 ~~6F~~ – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

Council Selection of Advisory Board, Agency, and Committee Members:

~~Residency: As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town's jurisdiction.~~

Advertising: All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

Openings: In the event of an opening for an advisory board or committee, Town staff will list the opening on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

3 get 5 votes apiece 3 are elected

3 get 4 votes apiece 3 are elected

4 get 3 votes apiece 4 go on a second ballot

3 get 2 votes apiece 3 are eliminated

2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled. A variation on this method of voting is that after the first ballot, if there is a tie which prevents all the seats from being filled, the runoff would consist of all the un-selected

candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

Effective Date of Appointment and Follow Up:

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

Ad Hoc Committees:

Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council's discretion to address specialized and or short-term Town issues.

The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum, and statutory ethical requirements. It is the Town's responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - Notice
 - Location Requirements, such as ADA compliance
 - Agendas
 - Quorum
- Sunshine Requirements
- Public Records Requirements
- Statutory Ethical Requirements

RESOLUTION NUMBER 23-182

**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.**

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 Council has adopted a Policies and Procedures Manual to standardize the way the Town Council conducts its meetings, acts on items before it and adopts, amends, and implements legislative and policy decisions; and

WHEREAS, the Town Council desires to amend and update the Town Council Policies and Procedures Manual previously approved by Resolution 23-30.

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 amended Town Council Policies and Procedures Manual, attached as Exhibit "A" is approved.

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 motion by Council Member Woodson 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 King, Council Member	Aye
Vacant, Council Member	N/A
Karen Woodson, Council Member	Aye

ADOPTED this 22nd day of January 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers
Dan Allers (Mar 6, 2024 08:29 EST)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Mar 6, 2024 15:53 EST)
Amy Baker, Town Clerk

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

Nancy March
Nancy March (Mar 5, 2024 09:52 EST)
Vose Law Firm LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of February 2024.

EXHIBIT “A”

Town of Fort Myers Beach Town Council Policies and Procedures Manual Table of Contents

1. Introduction.....	3
2. Town Council Mission and Job Description.....	3
Mission:	3
Functions, Powers and Duties:.....	3
Council Member Requirements:	4
3. How Town Council Will Operate	4
Code of Conduct:	4
Code of Ethics:.....	5
Assignment of a Town Council Representative:.....	7
Sunshine Issues:	7
Email and Texting Policy:	8
Public Records:	8
4. Training Materials and First Meeting	9
Training Materials:.....	9
Training Recommendations:	9
Election of Officers:.....	10
Outside Committee Representation:	10
5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees	11
Council Selection of Advisory Board, Agency, and Committee Members:	11
Ad Hoc Committees:.....	13
6. Meeting Preparation and Planning	14
Meeting Schedule:	14
Source of Items:	14
Timetable and Preparation Process:.....	14
Continued Hearings and Legislative Issues:	15
Attendance Policy:	15
Participation by Videoconference:.....	15
7. Meeting Procedures	16
Generally, the Order of Agenda Items:	16
Conduct of Council Meetings:	16
Rules of Civility:.....	17
Minutes:	18

EXHIBIT “A”

Council Members Items and Reports:.....	19
Agenda Management:	19
Action List:	19
How Voting Order is Established for Roll Call Votes:.....	19
Voting Conflicts:.....	19
Guidelines for Legislative Hearing Procedures:	20
Guidelines for Quasi-Judicial Land Use Hearing:	21
8. Reimbursement Procedures	22
Travel Expenses:.....	22
Business Expenses:	22
Educational Reimbursement:	22
9. Council Communications Policy and Processing Procedures	22
Council Communications Policy:	22
Mail Processing Procedures:.....	23
Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:	23
10. Non-Discrimination and Harassment.....	23
Policies:.....	23
11. Interview/Selection Process for Legal Services	24
12. Interview/Selection Process for Town Manager.....	27
13.Appointment to Vacant Council Seats	30

EXHIBIT “A”

1. Introduction

This Town Council Policies and Procedures Manual is for the purpose of helping the Council Members in the discharge of their duties. They are intended to be guidelines, not “rules” on how to conduct business. Town Council may vary from these policies and procedures on a case-by-case basis by a majority vote unless in conflict with Florida law, the Town Charter, the Land Development Code, Code of Ordinances, Comprehensive Plan or other Town guiding documents. As the Town Council continues to discover situations that are unique to Fort Myers Beach, it will want to update and amend this manual. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of Council will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of Council also may develop common expectations on proper conduct of Council meetings, dealings with the public, and the roles of Town staff and committees.

This manual should be used in conjunction with the Town Charter, Comprehensive Land Use Plan (Comp Plan), Land Development Code (LDC), Code of Ordinances, and the annual budget as necessary. In the event of a conflict between this document and Florida statutes, Town Charter or other Town guiding documents, such other document shall prevail over the language in the Policies and Procedures manual.

2. Town Council Mission and Job Description

Mission:

To legislate and police the powers of the Town, including establishing boards, commissions and committees; to perform all duties and obligations imposed on the municipality by law; to insure by strategic planning and clear policies that the unique and natural characteristics of the island are preserved; to supervise the Town Manager and Town Attorney; to perform all actions for the welfare of the residents, owners, businesspersons, and guests of the Island in adherence to the Town Charter, State and Federal Law.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as needed to make changes.
- Review and interpret the Land Development Code and conduct public hearings as needed to make changes.
- Conduct hearings regarding land use matters.
- Introduce and approve Charter Amendments for adoption by referendum.
- Appoint a Town Manager.
- Appoint a Town Attorney.
- Introduce and enact ordinances.

EXHIBIT “A”

- Introduce and adopt resolutions.
- Review and adopt the Operations and Capital Improvement budgets.
- Review and approve budget amendments.
- Create Special Assessment Districts as may be needed.
- Establish advisory committees as needed.
- Review and approve inter-local agreements.
- Review and approve contracts with the Town above the threshold limit allowed to Town Manager.
- Elect a Mayor and Vice Mayor.
- Perform any other duties that are lawfully defined by the Charter and Florida statutes.

Council Member Requirements:

- Electronically file a Statement of Financial Interests and Ethics Training (Form 6) on the Florida Commission on Ethics website every year.
- Complete and file Form 6F – Final Statement of Financial Interest, within 60 days of leaving office.
- Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.

3. How Town Council Will Operate

Code of Conduct:

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Town Council pledges to adhere to the following CODE OF CONDUCT:

1. Regularly attend all scheduled meetings of the Town Council as well as special or called meetings relevant to the office.
2. Regularly attend all scheduled meetings of outside committees of which they are a member.
3. Prepare for each meeting.
4. Create a positive environment in meetings of Town Council.
5. Maintain an attitude of courtesy and consideration toward colleagues, residents, and staff during all discussions and deliberations.
6. Allow residents, colleagues, and staff sufficient opportunity to present their views within the prescribed rules for conduct of meetings of Town Council.

EXHIBIT “A”

7. Avoid the use of abusive, threatening, or intimidating language or gestures directed at colleagues, residents, or staff.
8. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
9. Respect all local, state, and federal laws, rules, and other regulations.
10. Electronically submit completed financial disclosure forms via the Florida Commission on Ethics website by the specified deadline.
11. Publicly acknowledge the adopted position when asked about a decision of Town Council.
12. Read the Town Comprehensive Plan and follow its directives in all decision-making processes for the Town.
13. Follow the procedural and substantive requirements of the LDC.

Code of Ethics:

Members should ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the residents served by the Town Council and by promoting public confidence in the integrity, independence, ability and impartiality of Town Council.

1. Members shall not convey the impression that they can influence the outcome of a decision of Town Council and shall not attempt to use their office to direct or influence staff recommendations, the Town Manager or Town Attorney without the concurrence of the Town Council.
2. Members shall discharge their duties and responsibilities without favor, bias or prejudice toward any person or group. Members should not allow personal or business relationships to impact upon their conduct or decisions in connection with Town Council business and shall not lend their influence towards the advancement of personal interests, towards the advancement of the interests of friends or business associates or other conflict of interest situations.
3. Members shall avoid creating the appearance of impropriety by refraining from engaging in private discussions with an applicant – or their representatives about specific upcoming Town Council quasi-judicial agenda items unless the ex parte communication is disclosed as required. If a member receives a private written, telephonic or electronic communication about an agenda item, the member will promptly forward the information to the Town Manager and the Town Clerk, or to the member’s Town e-mail account so that it may be shared with all other members and filed with the Town official records to comply with the Public Records Law requirement. Any private written, telephonic, or electronic communication about an agenda item, must be submitted to the Town Clerk prior to the commencement of the Town Council meeting at which the agenda item is discussed or it cannot be mentioned or read by any member unless otherwise allowed by majority vote of the Town Council.

EXHIBIT “A”

4. No member shall communicate, receive, send, or solicit any private written, telephonic, or electronic communication during a Town Council meeting if disruptive to the orderly conduct of the meeting, unless it pertains to an emergency situation (example: audio or video feed of Council meeting not working properly).
5. Members shall refrain from any private discussion of Town Council business, or matters that could come before the Town Council, with other members per the requirements of Florida’s Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
6. Consistent with Florida law, Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during Town Council proceedings. Florida law prohibits the spouse or minor child of that member from soliciting or accepting these as well, and the Member shall be vigilant in ensuring compliance from those family members. Members should contact the Town Attorney or the Florida Commission on Ethics if they have any questions about compliance with Florida law as to gifts.
7. A member whose personal employment or business relationship with a person or entity that is subject to a recommendation of Town Council shall seek the advice and counsel of the Town Attorney, if such relationship could conceivably influence the members’ impartiality during Town Council discussion of the subject. The provisions of Chapter 112, Florida Statutes and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determinations.
8. Members shall remain vigilant against deviations from Town Council policies and procedures.

As a legislative and quasi-judicial body, Town Council must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, the Town Charter, Town code and LDC, and apply to legislative and quasi-judicial actions. The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be unreasonable, arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, the Town Code and LDC that provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

EXHIBIT “A”

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others. Key overarching principles to keep in mind are that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the Town Council provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Assignment of a Town Council Representative:

Town Council may choose to assign a member to lead a project or assess an issue. The Town Council Representative, or often called a “Point Person” may be assigned to do fact-finding and/or research, recommend a course of action and report back to Town Council for direction. Final decisions are made by a majority of Town Council.

Sunshine Issues:

Members of Town Council and all Town advisory committees, boards and agencies are subject to the Sunshine Law (F.S. 286.011). This means that any gathering of, or communication between, two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action taken by communication through a spouse or other go-between.

Town Council members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or civic groups regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met. These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor’s backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

EXHIBIT “A”

Email and Texting Policy:

Email and texting are convenient ways to communicate with staff, Town Council, residents, and others. However, it presents unique legal and ethical challenges. All email and texts regarding Town business must be properly retained as a public record. Furthermore, any email or text regarding an issue that will come before Council in a quasi-judicial hearing must be properly disclosed as an ex-parte communication as appropriate. Council members must be vigilant to not accidentally violate Sunshine Law requirements. Emailing or texting anyone stating a position on an issue that will come before Town Council is particularly risky. Email and text actions to avoid include:

1. Sending an email to another Council member with anything that could be construed as a position.
2. Copying another Council member on a response to an email sent by a resident, staff member or other person.
3. If another Town Council member’s email is inadvertently forwarded to you, respond to the sender recognizing its accidental nature, the fact that it is a Sunshine issue and retain a copy of your response.
4. Sending an email “Reply All” when more than one Council member is also on the email that was received.

Florida has a very broad public records law. Most written communications to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email and text communications and email address and mobile phone number may be subject to public disclosure. (This statement must be included in the closing of any email regarding Town business).

Public Records:

It is the policy of the State of Florida that municipal records shall be open for personal inspection by any person (s. 119.01, F.S.). To that end, the Legislature has enacted the Public Records Law (Ch. 119, F.S.), which contains requirements that public records, as defined in s. 119.011, F.S., be made available for public inspection, they be kept in usable condition, they be kept in safe places, they be kept in convenient places, and copying of records be provided at reasonable costs. A public record is “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”

Council members’ responsibility is to ensure their own public records are properly handled and preserved, and to see that the law is adhered to by all employees of the Town. The Town Clerk has been assigned the responsibility of being the custodian of public records. Council members must further understand that their public record must be retained even after leaving office.

Any use of personal electronic equipment or email accounts for government business is allowed, but for a council member’s own protection, it is suggested that a copy of any documents produced is sent to their Town email account for proper retention. Materials prepared for Town Council meetings, hearings, minutes, and workshop will already be managed by the custodian of public

EXHIBIT “A”

records and do not need to be retained by the Council member. If there are any questions on retention of a particular document, consult with the custodian of public records and/or the Town Attorney before destroying.

4. Training Materials and First Meeting

Training Materials:

The Town Clerk will provide each new member of the Town Council with copies of:

- Town Charter.
- Comprehensive Plan.
- Land Development Code.
- Code of Ordinances.
- Florida Code of Ethics.
- Florida Sunshine and Public Records Laws.
- Emergency Operations Plan.
- Town Council Policies and Procedures Manual.
- Local Planning Agency Policies and Procedures Manual.
- Town Personnel Manual.
- Town Purchasing and Procurement Manual.
- Other materials as determined by the Town Attorney, Town Manager and Town Council members.

As part of a Council member’s orientation, they will be provided a tour of the Town facilities with introductions with all staff members. ~~Pursuant to state law, all Council members must complete 4 hours of ethics training each calendar year, which addresses, at a minimum, s. 8, Art. II of the State Constitution, the Code of Ethics for Public Officers and Employees, and the public records and public meetings laws of the State of Florida.~~

Training Recommendations:

- Successful completion of all courses required by the National Incident Management System (NIMS).
- Florida League of Cities, Inc., Institute of Elected Municipal Officials (IEMO) Basic Course.
- Making Good Planning Decisions.
- Hands-on Emergency Operations Training.
- Other courses as determined by the Town Attorney, Town Manager and Town Council members.

EXHIBIT “A”

Election of Officers:

At the first meeting after the second Tuesday in November, the Council’s Mayor and Vice Mayor will be chosen. Each Council member may nominate a person for each of these positions. A second is not required. The voting procedure will be agreed upon in advance.

Outside Committee Representation:

Charlotte Harbor National Estuary Program – www.chnep.org

Meetings: The Policy Committee meets the third Monday every other month at 9:30 am*.
Mission: The CHNEP is a partnership that protects the estuaries and watersheds from Venice to Bonita Springs to Winter Haven. This partnership gives citizens, elected officials, resource managers, and commercial and recreational resource users in the 4,700-square mile study area a voice to address diverse resource management concerns including fish and wildlife habitat loss, water quality and water flow. The watershed in the study area includes all or parts of Lee, Charlotte, Sarasota, Manatee, Polk, Hardee and DeSoto counties.

Coastal Advisory Committee – <https://www.leegov.com/naturalresources/marine/beachmgmnt/CAC>

Meetings: Last Monday of each month at 9:30 am.*
Mission: The Council’s charge is to advise the Board of County Commissioners, staff and the various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods in helping to conserve the Beaches of Lee County.

Horizon Council – <https://www.leecountybusiness.com/horizon-council/>

Meetings: First Friday of each month*
Mission: The Horizon Council is the advisory board to the county commission on economic development issues. This unique public-private partnership is made up of 62 members from government, education, business, and community organizations. Established in 1991, the mission of the Horizon Council is to:

- Work toward improving the business environment in Lee County; and
- Retain and encourage the expansion of existing businesses; and
- Attract new and diversified employment to the area

Human Services Council – <https://www.leegov.com/dhs>

Meetings: Third Tuesday of each month*
Mission: The Council will ensure the efficient delivery of community health and human services through:

- Communication
- Coordination
- Strategic Planning
- Innovation
- Integration and collaboration
- Measurable Outcomes

EXHIBIT “A”

Metropolitan Planning Organization – <https://leempo.com/>

Meetings: Third Friday of each month at 9 am*

Mission: The MPO is responsible for conducting a continuing, cooperative, and comprehensive transportation planning process for all of Lee County. It must plan for the movement of both people and goods within the county by all modes of travel – including highways, public transportation, bicycles, and foot. It also plans for the connections (such as airports, seaports, or bus, railroad, and pipeline terminals) linking these modes or tying us to the rest of the world.

The MPO sets priorities among surface transportation improvement projects within Lee County for state or federal funding. To be eligible for federal funds, federal law requires that the MPO endorse a transportation improvement program identifying the projects to be done over the next few years.

Southwest Florida Regional Planning Council – www.swfrpc.org

Meetings: Third Thursday of each month at 9 am*

Mission: The Southwest Florida Regional Planning Council is a locally formed regional planning agency serving six counties: Charlotte, Collier, Glades, Hendry, Lee, and Sarasota. Its mission is to protect and improve the region’s physical, economic, and social environment. The agency is directed by a thirty-four-member Council composed of local elected officials and gubernatorial appointees. The activities of the Southwest Florida RPC can be classified into three major areas: long range planning, tactical planning, and transportation planning.

Estero Bay Agency on Bay Management – <https://www.esterobayabm.org/contact>

Meetings: Second Monday of each month at 9:30 am*

Mission: Its directive is to make comments and recommendations regarding the management of Estero Bay and its watershed. The ABM collects and maintains data and it reviews and comments to regulatory agencies on issues affecting the watershed

*Meeting times are subject to change.

5. Town Advisory Committees, Boards and Agencies Standing Advisory Committees

Council Selection of Advisory Board, Agency, and Committee Members:

Residency: ~~Except as required by Town Charter, Town Ordinance or Florida statute, residency on Fort Myers Beach will not be a requirement for nomination or election to a committee, commission, or board of the Town.~~ As provided by Sec 2-94 of the Town Code, committee members shall be a registered voter or a property owner in the Town’s jurisdiction.

Advertising: All advisory committees are listed on the Town website. Information included will be the committee mission, current projects, when the committee meets and current members on the committee and whether submission of an annual Form 1 (Financial Disclosure) is required by the Florida Commission on Ethics.

EXHIBIT “A”

Openings: In the event of an opening for an advisory board or committee, Town staff will list the opening on the website with a date when applications must be submitted to the Town Clerk for consideration by Town Council. Whenever possible, committee selection will be scheduled 30 days after proper notification. Advertising in local newspapers can be considered if approved by the Town Manager. Committee candidates will be encouraged to appear for interviews during the selection process.

Preliminary matters: The Council should decide how to go about voting prior to any voting taking place and decide the number of members on a committee ahead of time.

Voting:

1. Each Council member makes selections, marking no more than the total number of seats available (or writes the names down), and initials his ballot.
2. Those receiving the most votes are selected to seats available.
3. If there is a tie for any number of seats still left open, there will be a runoff consisting only of the persons who are tied.

Examples of voting procedure:

First Ballot:

Seats available – 9

Candidates – 15

Votes on First Ballot: Results of First Ballot

3 get 5 votes apiece 3 are elected

3 get 4 votes apiece 3 are elected

4 get 3 votes apiece 4 go on a second ballot

3 get 2 votes apiece 3 are eliminated

2 get 0 votes apiece 2 are eliminated

There would be a second ballot containing only the names of the four candidates who got three votes. Council would vote for three candidates. This process would be repeated in case of a tie until all seats are filled. A variation on this method of voting is that after the first ballot, if there is a tie which prevents all the seats from being filled, the runoff would consist of all the un-selected candidates, not just the ones involved in the tie.

4. The ballots are given to the Town Clerk, who conducts the tallying and announces the results.
5. Once all selections are made, Council adopts a motion containing the new members' names.

EXHIBIT “A”

Effective Date of Appointment and Follow Up:

Newly appointed advisory board, agency and committee members who are required to file a Financial Disclosure Statement, will be notified of the disclosure requirements no later than the date of appointment. The Town Manager or designee is responsible for such notification. These appointments should be made effective as of some future date, so that there is sufficient time to provide the required notification. For convenience, the notice could be accompanied by a copy of the required disclosure forms, which are available on-line from the Florida Commission on Ethics (<http://www.ethics.state.fl.us/>)

Ad Hoc Committees:

Town Council has the authority to form ad hoc committees requesting participation by volunteers. Ad hoc Committees can be used at Town Council’s discretion to address specialized and or short-term Town issues.

The mission, specific objectives, expected products, membership and timelines of an ad hoc committee should be clearly stated and agreed to by Town Council. One Town Council member will be an ex-officio member of each ad hoc committee. Where possible, an attempt will be made to have a balanced committee membership. Minutes or verbal reports will keep Town Council informed on a regular basis. A final report will document findings and recommendations and will be presented at a Town Council meeting or workshop.

Ad hoc committees are subject to the public records laws, sunshine laws, quorum, and statutory ethical requirements. It is the Town’s responsibility to ensure that each committee member is educated on these issues.

Outline of Committee Orientation Material:

- Meeting Requirements
 - Notice
 - Location Requirements, such as ADA compliance
 - Agendas
 - Quorum
- Sunshine Requirements
- Public Records Requirements
- Statutory Ethical Requirements

EXHIBIT “A”

6. Meeting Preparation and Planning

Meeting Schedule:

Regular meetings of Town Council may be found on the website calendar. Management and Planning meetings (M&Ps) are work sessions and are scheduled to discuss financial and other issues before the Town. The need for workshops special meetings, continuances, or rescheduled meetings will be determined by consensus of the Town Council members or the Town Manager and Town Attorney.

Source of Items:

Items for Town Council agendas are generated by requests and/or legislation (ordinances or resolutions) from members of Town Council prepared by the Town Attorney, requests and actions from the Local Planning Agency, continuations from previous council meetings, in addition to anything Council members, the Town Manager or Town Attorney may wish to have included. Some of these inquiries are routine and can be handled by staff because Town Council policy and procedures have been previously approved which apply.

When an item arises that requires Town Council action either to make a decision or to direct staff or the Town Attorney how to proceed it will appear on the agenda identified as a Council member's request or as an item under the Town Manager's section of the agenda which is the “catch all” for miscellaneous items, or Town Attorney's section, as appropriate. For an item to appear on an agenda, at least two Council members must agree and shall direct the Town Manager to do so, provided time schedules allow. (Note the agenda preparation timetable below).

Whenever possible, any material written and distributed by Council members as part of the agenda should be included in Council members' packets – allowing ample time for review. This preserves the integrity of the seated Council, conforms to the Florida Public Records law, and lessens the opportunity for misunderstandings and miscommunication. No significant Town staff or Town Attorney time will be spent on an agenda item requested by an individual Council member without advance approval by a majority of the Council. Written requests to be placed on a Council agenda from the public should be submitted directly to the Town Manager. Agenda Management for future meetings is reviewed at each Management & Planning Session.

Timetable and Preparation Process:

A draft agenda will be sent to Town Council for review and comment within 24 hours. The Town Council chair may modify the order of the agenda subject to the approval of the Town Council. Absent an emergency or pressing need, by close of business on the Wednesday prior to the next regular Council meeting, a packet including the finalized agenda and supporting material will be placed in the Council members' mailboxes and placed on the Town website.

The Council members' packets include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.). A sincere effort is made to see that Council packets are complete; if something is not available, a written

EXHIBIT “A”

explanation will be provided. Generally, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall and on the Town website. Meetings may be announced in local newspapers. Hearing notices will be advertised as required by law and may be provided as a service to local newspapers. Occasionally an item comes up late and may be placed on an amended agenda, or as an “add on” (added too late to be included on the published agenda). Such additions should be an exception and require a majority vote prior to the approval of the final agenda at the beginning of the meeting.

Continued Hearings and Legislative Issues:

It is the goal of the Town Council to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any Town Council member who missed the initial hearing should attempt to review the DVD prior to participating in the continued hearing or legislative discussion and resolution. If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the Town Council shall consult with the Town Manager and the Town Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director’s discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Attendance Policy:

The Charter states “A member of Council may forfeit the office, if the member: (d) Misses three consecutive regularly scheduled council meetings without an excused absence.” This statement recognizes that because of the significant meeting preparation required by staff, applicants, and other supporting personnel, it is important that a quorum of the Town Council members be present for all noticed meetings. The Town Manager should be notified of a planned Council member’s absence as soon as known. The Town Manager or designee will notify the Town Attorney and Mayor. It is important that the Town Council know that it will have a quorum of its members prior to notification of a meeting/hearing. Work session attendance is equally important since that is often when information is shared, and issues resolved before putting the item on an agenda of a regular meeting for a vote.

Participation by Videoconference:

A Council member may participate in a Town Council meeting via videoconference if one of the following conditions is met:

1. Permission is granted from the Council for an “extraordinary circumstance”, including but not limited to a medical situation, unexpected travel delay, transportation issue, etc. or.
2. An emergency order or executive order authorizes the use of communications media technology, as provided in s. 120.54(5)(b)2, F.S.

EXHIBIT “A”

A quorum of Town Council members must be met without the missing Council member(s) in attendance unless this requirement is suspended by emergency order or executive order.

7. Meeting Procedures

Generally, the Order of Agenda Items:

1. Call to Order
2. Invocation
3. Pledge of Allegiance
4. Approval of Final Agenda
5. Public Comment (Any issue can be discussed, but if an agenda item is addressed, the speaker cannot comment at the time such agenda item comes up. For testimony to be considered for a public hearing, it must be made during the hearing).
6. Local Achievements and Recognitions
7. Advisory Committee Items / Reports / Appointments
8. Approval of Minutes
9. Consent Agenda
10. Items Removed from Consent Agenda
11. Public Hearings of proposed ordinances (At conclusion of hearing, requires motion and roll call vote)
12. Administrative Agenda
 - a. Introduction of proposed ordinances (Requires a motion and a majority vote for scheduling the hearing).
 - b. Resolutions (Requires a motion and vote for passage)
 - c. Unfinished business (Items from previous agendas scheduled by Town Manager – should be listed separately on the agenda)
13. Final Public Comment (not limited to agenda items)
14. Town Manager’s Items and Reports
15. Town Attorney’s Items and Reports
11. Council Members Items and Reports
17. Adjournment (Requires a motion and vote – no second is required. It is a privileged motion allowing no discussion before vote)

Conduct of Council Meetings:

- The Mayor will conduct Council meetings, and in the Mayor’s absence the Vice Mayor will do so.
- The Town Clerk shall deliver a nondenominational invocation.
- Robert’s Rules of Order shall be the reference for parliamentary procedure governing the conduct of Town Council meetings when not in conflict with the Town Charter, Town Ordinances, Florida Statutes or these Policies and Procedures. It is not intended that

EXHIBIT “A”

Council meetings be unnecessarily formalistic, but rather that parliamentary procedure will be invoked only when necessary to facilitate the business of the meeting.

- All participants and audiences at Town Council meetings are expected to exhibit common courtesy and proper decorum. No personal attacks will be tolerated. The Chair may request that someone who is being disruptive be removed from chambers after providing the individual with notice that the continuation of the disruption will result in removal.
- Individuals wishing to speak during the Public Comment times are requested to (1) fill out an index card (available in the meeting room) indicating their name and the topic they will address and (2) give that card to the Clerk prior to the start of the meeting. When recognized by the Chair, the speakers will advance to the podium and state their name for the public record.
- Public Comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by vote of the Council. The Public Comment times are intended as opportunities for interested parties to present their viewpoints to the Council members. They are not intended as question-and-answer sessions or as dialog with the Council. Response to questions and/or clarifications requested during public comment may, with the approval of Town Council, be answered immediately if there is a straight-forward, short answer, directed to the appropriate person for response at a later time or placed on an agenda for a future Council meeting.
- After a proper motion and second, discussion by the Council members shall be limited to agenda items with expression of ideas, facts, and conclusions. No member will speak twice on the item until all others who want to speak have spoken.
- The discussion by Council members is intended as an opportunity for Council members to share their viewpoints with each other. Since this opportunity does not exist outside of Council meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Town Manager or Town Attorney, which could be obtained outside of the Council meeting. While there is no time limit or censorship on comments, Council members should take into consideration the total time available in the meeting for the published agenda and the time allocated for the specific item in the agenda.

Any Council member may present resolutions related to celebrations or in support of causes for the benefit of the Town, which must be previously reviewed for form and sufficiency by the Town Attorney and subject to a vote by the Town Council.

Rules of Civility:

The Town of Fort Myers Beach Town Council recognizes that public discourse is essential to the democratic system of government. It also embraces civility in public deliberations. Rules for Council discussion and public participation while conducting meetings and workshops are as follows:

1. Speakers are permitted to deliver his or her comments without interruption, absent inappropriate language, conduct or personal attacks.
2. Speakers and debates should focus on issues, not on persons or personalities.
3. Persons are encouraged to participate in the governmental process.

EXHIBIT “A”

4. To allow time to hear all points of view, speakers are allotted 3 minutes.
5. Sidebar discussions while others are speaking are discouraged in Council Chambers. These discussions are to be removed from the chambers so as not to be disruptive to those conducting and following Council business.
6. Only the speaker recognized by the Chairperson has the floor. Speakers should identify themselves for the record. Speakers should utilize the microphone so that their comments can be recorded.
7. We seek to understand one another's points of view.
8. Anger, rudeness, ridicule, impatience, and lack of respect for others are not acceptable behavior. Demonstrations in support or opposition to a speaker or idea such as clapping, cheering, booing, or hissing or intimidating body language are not permitted in Council Chambers or workshop facilities.
9. We should all take initiative to make things better. Our goal is to foster an environment which encourages a fair discussion and exchange of ideas without fear of personal attacks.
10. No use of profanity will be tolerated.
11. Any email or other digital or internet platform used to communicate with the Town Council, individual members of the Town Council, Town Manager, Town Attorney, or Town staff that contain personal attacks, offensive language or slurs; that are belligerent, sarcastic, accusatory or unsigned shall be deemed by the Town Council as non-compliant with these “Rules of Civility.” Such communications place absolutely no obligation upon Town Council Members, the Town Manager, the Town Attorney or Town staff to respond.

Minutes:

Notes will be taken of all meetings and work sessions. The notes are then transcribed into summary minutes that become the written record of subjects discussed, conclusions reached, actions taken, and assignments given. The minutes include the names of all those participating in the meeting including Council members, staff, the Town Attorney, applicants, their attorneys and witnesses, and people who offer public comments. The minutes also serve as a record of motions and votes on all Council decisions.

Once completed, the minutes are provided to Council members for approval at their next meeting. The approval of the minutes is intended for Council members to accurately document the proceedings of the Town Council. Before moving approval, the minutes should be amended, if necessary, to portray more accurately what occurred at a Council meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what was done. Once approved by Council, the original is filed in a secure file and a copy is placed on the Town's web page.

EXHIBIT “A”

Video and/or audio recordings when made are available at the request of the public or anyone who wishes to listen to the meeting or a portion of the meeting. The original video and audio recordings are stored in a secured area for safekeeping. Any request for production of a verbatim transcript, in whole or in part, of any meeting, workshop or other function of the Town Council or any Town committee thereof by a member of the public shall be paid for by the member of the public. Any need for a verbatim transcript requested by Town staff shall require prior consent of payment by the Town Council, except when such requests are required by a court of competent jurisdiction or quasi-judicial officer in the proper exercise of its powers. Video and audio recordings are only the legal record in the absence of approved minutes.

Council Members Items and Reports:

Items and Reports time is set aside for Council Members to report on activities of interest to fellow members, staff, and the public. Council Members are encouraged to send as much information as possible prior to the meeting. Unless an issue is time sensitive, the item will be placed on a future agenda if a vote is required.

Agenda Management:

The Town Manager is responsible for compiling and distributing a schedule of future meetings and work sessions.

Action List:

The Town Manager is responsible for compiling and distributing a list of action items that includes a short status and expected date of completion.

How Voting Order is Established for Roll Call Votes:

The voting order for calling the roll-on Town Council votes shall be conducted at the direction of the Town Clerk. Votes on ordinances require a roll call vote; any Council member may call for a roll call vote on any motion before the Council.

Voting Conflicts:

Florida Statute has very specific rules regarding voting conflicts. If a Town Council member has a voting conflict, he/she must publicly disclose that conflict at the latest at the beginning of the discussion of the subject at the meeting. A Town Council member is permitted to participate in the discussion but cannot vote on the subject. The specific rules are set out in s. 112.3143(3)(a), F.S. as amended, quoted below:

“(3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or

EXHIBIT “A”

business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.”

NOTE: s. 112.3143(b) F.S. defines “relative” as follows: “any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. Also, Section 112.3143(4) prohibits participation by an appointed (as opposed to an elected) official in the event of a voting conflict of interest.

Guidelines for Legislative Hearing Procedures:

1. The Chair opens the hearing.
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable and a copy of the business impact estimate when applicable, which shall be maintained by Town staff with the hearing’s resulting ordinance or resolution as required.
3. The Chair or Town Attorney reads the ordinance or resolution title.
4. Staff and/or the Town Attorney present(s) a brief overview of the ordinance or resolution.
5. Public input is taken.
6. Public input is closed.
7. Town Council members ask questions, if any, of staff/Town Attorney
8. Town Council members discuss ordinance or resolution, including changes, deletions, etc.
9. A motion is made and seconded to either approve the ordinance or resolution as is, or with modifications, or to take some other action.
10. The motion is discussed and voted upon, with roll call voting as appropriate. Upon consideration and passage of all appropriate motions, the Chair declares the hearing on the ordinance or resolution to be concluded, continued, tabled, or other action in conformity with the motion.
11. If an ordinance is approved, the Town Council shall schedule a second reading of the ordinance for adoption.

Notes: There is no ex parte disclosure for legislative hearings.
Members of the public are not sworn in.

The above is intended as a guide and the Council may conduct the legislative hearing utilizing another procedure, so long as due process requirements are met.

EXHIBIT “A”

Guidelines for Quasi-Judicial Land Use Hearing:

1. The Chair opens the hearing.
2. Staff present an Affidavit of Publication or copy of the legal advertisement from the newspaper of record when applicable, which shall be kept by Town staff with the hearing’s resulting resolution or Order.
3. The Chair asks if any Council member has a conflict of interest or has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. See section 34-52 of the Land Development Code.
4. All witnesses are sworn in. This includes Town staff, applicant and applicant’s representatives, and anyone who wishes to make public sworn testimony on this case. All persons are requested to state their name for the record when they address the Council and if presenting testimony as an expert, shall state their qualifications and area of expertise. Town Council shall vote to accept or reject the testimony as expert testimony. No statement of qualifications or additional vote is needed if the individual has been previously accepted as an expert in a particular area and this is stated in the record.
5. The applicant presents its case, including any testimony by its experts or others in support of the applicant’s request. Town Council may ask clarification questions of the applicant and others giving testimony in support of the applicant’s request. *
6. Town staff presents its report and recommendation. Town Council may ask for clarification or questions of staff. *
7. Local Planning Agency representative, if available, presents LPA recommendation. Town Council may ask clarification questions of the LPA representative.
8. Public sworn testimony is opened. At its conclusion, the Chair closes the public sworn testimony portion of the hearing.
9. Applicant presents rebuttal, if any. Town Council may ask detailed informational questions of applicant. **
10. Staff presents rebuttal, if any. Town Council may ask detailed informational questions of staff. **
11. The testimony portion of the hearing is closed, and Council discussion starts.
12. Council votes on a resolution or Order, or takes other action if approval by ordinance is required.
13. Thereafter the hearing is closed or continued, or other action is taken in conformity with the successful motion, and the time of closure is verbally noted for the record.

*Council has determined that these Council questions are to clarify the applicant’s and staff’s presentations of information and are intended to be short Qs and As.

**Council has determined that these Council questions are to discuss detailed, substantive matters involving the application.

EXHIBIT “A”

NOTE: The above is intended as a guide and the Council may conduct the quasi-judicial hearing utilizing another procedure, so long as due process requirements are met.

If new evidence is submitted prior to or at a Town Council hearing for a quasi-judicial matter after the final LPA hearing, Town Council can choose to:

1. Send the matter back to the LPA for review and recommendation.
2. To continue the hearing to provide sufficient time for the staff and Town Attorney to make recommendations; or
3. To complete the hearing if agreeable to the staff and Town Attorney.

8. Reimbursement Procedures

Travel Expenses:

It is the desire of the Town of Fort Myers Beach that Town Council members be reimbursed for certain expenses incurred while traveling on Town business. Appropriate allowances, forms and procedures are documented in the Town Personnel Manual.

Business Expenses:

From time to time, it may be necessary for members of Town Council to entertain various Federal, State and County officials while transacting official Town business. Such business expenses would normally include lunches and/or dinners. A Direct Expense Voucher may be submitted for reimbursement and must be signed by the person requesting reimbursement, and the Town Manager. Invoices must be attached as supporting documentary evidence.

Educational Reimbursement:

The Educational Reimbursement Program is used to encourage Town Council members to improve their knowledge and skills needed for the Town’s effectiveness. Reimbursement conditions, forms and procedures are documented in the Town Personnel Manual.

9. Council Communications Policy and Processing Procedures

Council Communications Policy:

Any communication by individual Council members to the media, other governmental agencies, or in public forums should, as clearly as possible, distinguish between personal opinions and actions or direction taken by Town Council. This policy in no way means to censor viewpoints or restrict individual rights but is solely suggested to preserve the integrity of the Council, staff, and the Town.

EXHIBIT “A”

Mail Processing Procedures:

Mail for the Town should be addressed to the current address. All mail is opened stamped and distributed (it is all public record). Council mail is given to the Administrative Assistant to log and process. Any Council mail that needs a prompt or detailed answer is pulled, copied, and a draft response is prepared for review, usually by the Mayor. The original is distributed, along with other mail, with a note stating a draft response is being prepared. When the response is finalized, it is copied and distributed to all Council members for reading at their leisure.

Communications with Potential Applicants for Zoning and Communications with Vendors or Service Providers:

Section 34-52 of the LDC specifies regulations regarding communications with public officials in non-quasi-judicial matters and ex parte communications with public officials in quasi-judicial matters.

10. Non-Discrimination and Harassment

Policies:

These policies are documented in the Town Personnel Manual

EXHIBIT “A”

11. Interview/Selection Process for Legal Services

The Town Council shall competitively procure Legal Services (Town Attorney) candidates in accordance with the Town’s adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Legal Services candidates. The Town Council may direct the Town Manager or designee to review the proposals submitted by the applicants for Legal Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR LEGAL SERVICES

Individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP#: _____. Interview date: _____

	9:00-9:30 (Public Gathering)	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1		Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2		Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant 1: _____

Applicant 2: _____

Applicant 3: _____

Applicant 4: _____

Applicant 5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5

EXHIBIT “A”

2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant’s combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period of legal services, if necessary, is discussed including assignment of representation for ongoing municipal litigation cases.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

EXHIBIT “A”

TOWN COUNCIL RANKING SHEET FOR LEGAL SERVICES

RFP# _____

DATE: _____

Councilor Name:

Councilor Signature:

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

EXHIBIT “A”

12. Interview/Selection Process for Town Manager

The Town Council shall competitively procure Town Manager candidates in accordance with the Town’s adopted procurement policies and procedures. The following applicant form, and ranking sheet shall be used in the selection of Manager candidates. The Town Council may direct the acting current Town Manager or designee to review the proposals submitted by the applicants for Town Manger Services and provide the Town Council with a list of five (5) candidates, with two (alternates) for interviews as provided for herein. If there are less than five (5) qualified candidates (i.e., meet the criteria in the RFP/RFQ) all candidates shall be interviewed.

INTERVIEW PROCESS FOR TOWN MANAGER

Councilors rank top 5 candidates from applications. Top 5 overall are invited and scheduled for individual 30-minute blocks for private interviews by each Councilor with each applicant.

RFP# _____ Interview date: _____

	9:00-9:30 Public Gathering	9:30 – 10:00	10:00- 10:30	10:30- 11:00	11:00- 11:30	11:30- 12:00	12:00- 1:00
Councilor 1		Applicant 1	Applicant 2	Applicant 3	Applicant 4	Applicant 5	Lunch
Councilor 2		Applicant 2	Applicant 3	Applicant 4	Applicant 5	Applicant 1	Lunch
Councilor 3		Applicant 3	Applicant 4	Applicant 5	Applicant 1	Applicant 2	Lunch
Councilor 4		Applicant 4	Applicant 5	Applicant 1	Applicant 2	Applicant 3	Lunch
Councilor 5		Applicant 5	Applicant 1	Applicant 2	Applicant 3	Applicant 4	Lunch

Applicant

1: _____

Applicant

2: _____

Applicant

3: _____

Applicant

4: _____

Applicant

5: _____

NOTE: Chart for town councilor and applicant names shall be in alphabetical order for impartiality.

AFTERNOON SCHEDULE: Each applicant has 15-minute question and answer session in town hall chambers with all five Town Councilors present (5-minute transition between applicants in schedule). Applicants will address Council in alphabetical order.

EXHIBIT “A”

TIME	Applicant Name
1:00 – 1:15	Applicant 1
1:20 – 1:35	Applicant 2
1:40 – 1:55	Applicant 3
2:00 – 2:15	Applicant 4
2:20 – 2:35	Applicant 5
2:40 – 3:00	Break
3:00	Town Councilors have open discussion. Each Councilmember uses RANKING SHEET to list order of selection, with 1 being the top choice. The Town Clerk will tally the votes and announce each applicant’s combined ranking score with the lowest score being the candidate selected. In case of a tie, Town Council will have a head-to-head discussion of only the tied candidates and use another RANKING SHEET to list their order for only the tied candidates. Ranking scores are tallied and announced by Town Clerk. Contract negotiator from Town Council is selected. Transition period, if necessary, is discussed.
FIRST AVAILABLE COUNCIL MEETING AFTER INTERVIEW PROCESS	When contract negotiations are complete, contract is presented to Town Council for approval. Transition period, if necessary, is approved.
IF SELECTED APPLICANT DOES NOT COME TO AGREEMENT WITH TOWN ON CONTRACT	Town Council shall vote to negotiate with second ranked candidate or resolicit for applications and repeat interview process if necessary. Town Council shall vote at the first Town Council meeting following opening of applications to rank the applicants using the RANKING SHEET.

EXHIBIT “A”

TOWN COUNCIL RANKING SHEET FOR TOWN MANAGER

RFP# _____

DATE: _____

Councilor Name: _____

Councilor Signature: _____

Ranking (#1 is top choice)

1. _____
2. _____
3. _____
4. _____
5. _____

EXHIBIT “A”

13.Appointment to Vacant Council Seats

In the event of a vacancy on the Town Council pursuant to Sec. 4-06 of the Town Charter, the Town Council shall:

- 1.Declare and announce at a public meeting the reason the vacancy has been created;
- 2.Direct the Town Manager or designee to notify the public as soon as reasonable by the most appropriate means, including but not limited to posting on the Town’s website, a press release, social media, advertisement, that a vacancy on the Town Council has occurred with instructions on how to apply to serve as a Town Council member and notice that a Form 6 must be filed with the Florida Commission on Ethics pursuant to Florida law.
- 3.Thereafter the Town Council shall appoint an individual, who is qualified as provided in Section 4.01(c) of the Town Charter, to serve as a Town Council member prior to the expiration of the term of the vacant seat.

1. **Request:**

Meeting Date: October 28, 2024

Second reading and Final Public Hearing on proposed Ordinance 24-31 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 4.02 "MAYOR," 4.03 "VICE MAYOR," 5.01 "ELECTIONS," AND 5.03 "TERMS OF OFFICE" OF FORT MYERS BEACH TOWN CHARTER, TO CODIFY CHANGES TO THE DATE OF TOWN ELECTIONS FROM MARCH TO NOVEMBER AND TO ESTABLISH FOUR (4) YEAR TERMS OF OFFICE FOR TOWN COUNCIL MEMBERS, AS APPROVED BY THE VOTERS AT THE MARCH 2020 MUNICIPAL ELECTION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

The passage of this ordinance is necessary to codify the proposed amendments to the Town Charter related to the date of general election of members of the Town Council from March to November and the term of office, as approved by a majority of voters during the March 2020 Fort Myers Beach municipal election.

What the action accomplishes:

The ordinance amends the Town Charter, changing the date of the general Town election from March to November, and establishing four (4) year terms of office for Town Council members, as approved by the voters during the March 2020 Town election.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On August 5, 2019, the Town Council adopted Ordinance 19-08, to amend the Town's Charter so that the Town's regular election coincides with Federal and State election dates and establishing four (4) year terms of office for Town Council members, and directed the Town's Supervisor of Elections to place the proposed amendments on the ballot for approval by the electorate.

On March 17, 2020, a municipal election was held in the Town of Fort Myers Beach and the voters were presented with two proposed Charter amendments: to amend the Town election date from March to November, and to establish four-year terms of office for Town Council members. The proposed amendment to the Town Charter as it pertains to the election date was approved by a vote of 1,877 to 372, and the proposed amendment to the terms of office was approved by a vote of 1,348 to 891, as certified by the Lee County Supervisor of Elections to the Town on April 3, 2020.

Although the proposed Charter amendments were approved, the changes were never codified or incorporated into the Town Charter. Adoption of this Ordinance will ensure that the voter-approved changes are codified in the Town Charter.

Attachments:

1. Ord. 24-31 Second reading Charter Amendments (rev.10-23-24 ns) FINAL
2. 2020 Municipal Election Certification
3. Ord. 24-31 - Business Impact Estimate (rev. 9-27-24 mr)
4. 19-08, Ordinance Amending Election Dates and TermsFINAL

Financial Impact:

None

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 - 10/22/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

ORDINANCE NO. 24-31

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 4.02 “MAYOR,” 4.03 “VICE MAYOR,” 5.01 “ELECTIONS,” AND 5.03 “TERMS OF OFFICE” OF FORT MYERS BEACH TOWN CHARTER, TO CODIFY CHANGES TO THE DATE OF TOWN ELECTIONS FROM MARCH TO NOVEMBER AND TO ESTABLISH FOUR (4) YEAR TERMS OF OFFICE FOR TOWN COUNCIL MEMBERS, AS APPROVED BY THE VOTERS AT THE MARCH 2020 MUNICIPAL ELECTION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER’S ERRORS, CONFLICTS OF LAW, AND 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, on August 5, 2019, the Town Council adopted Ordinance 19-08, to amend the Town’s Charter so that the Town’s regular election coincides with Federal and State election dates and to establish four (4) year terms of office for Town Council members, and also directed the Supervisor of Elections to place the proposed amendments on the ballot for consideration by the electorate; and

WHEREAS, on March 17, 2020, a municipal election was held in the Town of Fort Myers Beach in conjunction with the presidential preference primary election; and

WHEREAS, the proposed amendment to the Town Charter as it pertains to the election date was approved by a vote of 1,877 to 372, and the proposed amendment to the terms of office was approved by a vote of 1,348 to 891, as certified by the Lee County Supervisor of Elections to the Town on April 3, 2020; and

WHEREAS, the Town desires to amend Sections 4.02, 4.03, 5.01, and 5.03 of the Town Charter as approved by the Town’s voters during the 2020 municipal election and as provided in Ordinance 2019-08; and

WHEREAS, on the 21st day of October, 2024, the Town Council held a first reading of Ordinance 24-31; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town’s website on the 18th day of October, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News Press on the 18th day of October, 2024, which is 10 days prior to the final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 28th day of October 2024, the Town Council held a second and final reading of Ordinance 24-31; and

WHEREAS, the Town Council determined that adoption of the Ordinance as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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.

Section 2. Sections 4.02 "Mayor," 4.03 "Vice mayor," 5.01 "Elections," and 5.03 "Terms of office" of the Town of Fort Myers Beach Charter, as provided in Ordinance 19-08 and approved by the Town's voters during March 2020 municipal election, are hereby amended to read as follows:

Sec. 5.01. – Elections.

The regular election of the members of the council shall be held on the first ~~second~~ Tuesday after the first Monday in November ~~March, except in presidential preference primary years when it shall be held on the third Tuesday in March~~ or as otherwise provided by general law. The time period that candidates must qualify shall be from noon of the 50th day prior to the election to noon of the 46th day, or as adjusted by a holiday or leap year.

Sec. 5.03. – Terms of office.

The terms for all council seats, #1, #2, #3, #4, and #5, shall be for 3, 4 years, ~~except during the transition period,~~ seats #1 and #2 shall initially be for a term from November, 2000 to March, 2004 March, 2019 to November, 2023, and seats #3, #4, & #5 shall be for a term from November 2001 to March 2005 March, 2020 to November, 2024. No member of the council shall serve for more than two consecutive full terms. After 1 year out of office, a candidate may re-qualify for any vacant seat.

Sec. 4.02. – Mayor.

At the first meeting after the ~~second Tuesday in March~~ first Tuesday after the first Monday in November, the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as chairperson during meetings of the

council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

Sec. 4.03. – Vice mayor.

At the first meeting after the ~~second Tuesday in March~~ first Tuesday after the first Monday in November, the council, by majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

Section 3. That the Town Council intends that the provisions of this Ordinance be made a part of the Town of Fort Myers Beach Charter, 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 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, word, 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 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of _____, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Town 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.



TOMMY DOYLE, SUPERVISOR OF ELECTIONS

LEE COUNTY ELECTIONS

CONSTITUTIONAL COMPLEX
P.O. BOX 2545
FORT MYERS, FLORIDA 33902
(239) LEE-VOTE
(239) 533-8683
FAX: (239) 533-6310
www.lee.vote

April 1, 2020

Michelle Mayher, Town Clerk
Town of Fort Myers Beach
2525 Estero Blvd
Fort Myers Beach, FL 33931

Dear Michelle Maher:

Enclosed, please find the Certification for the Municipal Election of the Town of Fort Myers Beach. This concludes the election of March 17, 2020.

Sincerely,

Tammy Lipa
Administration Support Specialist

APR 03 2020

Received by:



Certificate of Official Returns, March 17, 2020. Town of Fort Myers Beach Regular Election – Council Seats

****Official Results******CERTIFICATE OF COUNTY CANVASSING BOARD****LEE COUNTY**

MUNICIPAL ELECTION HELD IN CONJUNCTION WITH THE

PRESIDENTIAL PREFERENCE PRIMARY ELECTION

TOWN OF FORT MYERS BEACH REGULAR ELECTION

March 17, 2020State of Florida, County of Lee
Town of Fort Myers Beach

We, the undersigned, TARA P. PALUCK, County Judge, BRIAN HAMMAN, County Commissioner, and, TOMMY DOYLE, Supervisor of Elections, constituting the Board of County Canvassers in and for said Town, do hereby certify that we met on the Twenty-seventh day of March, A.D., 2020, and proceeded publicly to canvass the votes given for the office and persons herein specified at the **Town of Fort Myers Beach, Regular Election** held on the Seventeenth day of March, A.D., 2020, as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

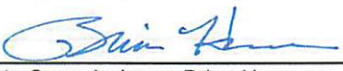
For the Town Fort Myers Beach, Town Council Seats (Vote for 3), the whole number of votes cast was

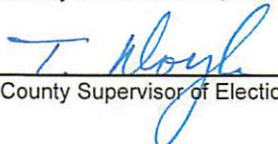
5930 of which:

Dan Allers (NON)	received	<u>1,272</u>	votes
Jim Atterholt (NON)	received	<u>1,443</u>	votes
Robert "Bob" Burandt (NON)	received	<u>395</u>	votes
Bruce Butcher (NON)	received	<u>893</u>	votes
Forrest "Butch" Critser (NON)	received	<u>501</u>	votes
David R. Drumm (NON)	received	<u>330</u>	votes
William "Bill" Veach (NON)	received	<u>1,096</u>	votes

Signed this Twenty-seventh day of March, A.D., 2020:


Lee County Judge, Tara P. Paluck


Lee County Commissioner, Brian Hamman


Lee County Supervisor of Elections, Tommy Doyle

APR 03 2020

Received by: _____

****Official Results****

CERTIFICATE OF COUNTY CANVASSING BOARD
LEE COUNTY
 MUNICIPAL ELECTION HELD IN CONJUNCTION WITH THE
 PRESIDENTIAL PREFERENCE PRIMARY ELECTION
 TOWN OF FORT MYERS BEACH REGULAR ELECTION
 March 17, 2020

State of Florida, County of Lee
 Town of Fort Myers Beach

We, the undersigned, TARA P. PALUCK, County Judge, BRIAN HAMMAN, County Commissioner, and, TOMMY DOYLE, Supervisor of Elections, constituting the Board of County Canvassers in and for said Town, do hereby certify that we met on the Twenty-seventh day of March, A.D., 2020, and proceeded publicly to canvass the votes given for the Proposed Amendments to the Charter of the Town of Fort Myers Beach at the **Town of Fort Myers Beach Regular Election** held on the Seventeenth day of March, A.D., 2020, as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

Charter Amendment One
Election Date

The Town Charter currently provides that the regular election of members of the Town Council shall be held on the second Tuesday in March. It is proposed that the Charter be amended to revise such provisions by moving the regular election of members of the Town Council to the first Tuesday after the first Monday in November, so as to coincide with federal and state election dates.

Shall the above-described Charter amendment be adopted?

Yes

1,877

votes

No

372

votes

Charter Amendment Two
Terms of Office

The Town Charter currently provides for 3 year terms with a maximum of 2 consecutive terms (total of 6 years) for each Councilmember. It is proposed that the Charter be amended to increase the term of office to 4 years with a maximum of 2 consecutive terms (total of 8 years) to ensure that regular Town Council elections coincide with federal and state election dates as set forth in proposed Charter amendment number one.

Shall the above-described Charter amendment be adopted?

Yes

1,348

votes

No

891

votes

Signed this Twenty-seventh day of March, A.D., 2020:



Lee County Judge, Tara P. Paluck



Lee County Commissioner, Brian Hamman



Lee County Supervisor of Elections, Tommy Doyle

APR 03 2020

Received by: _____



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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTIONS 4.02 "MAYOR," 4.03 "VICE MAYOR," 5.01 "ELECTIONS," AND 5.03 "TERMS OF OFFICE" OF FORT MYERS BEACH TOWN CHARTER, TO UPDATE THE DATE OF TOWN ELECTIONS FROM MARCH TO NOVEMBER AND TO ESTABLISH FOUR (4) YEAR TERMS OF OFFICE FOR TOWN COUNCILMEMBERS, AS APPROVED BY THE VOTERS AT THE MARCH 2020 MUNICIPAL ELECTION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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;

¹ See Section 166.041(4)(c), Florida Statutes.

- 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 Fort Myers Beach 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):

Ordinance 24-31 amends the Town Charter, changing the date of the Town election from March to November, and establishing four-year office terms for the members of the Town Council, as approved by the voters during the 2020 municipal election. Both changes were approved by the Town voters, but the changes were never codified or incorporated into the Town Charter. This Ordinance promotes public health, safety, morals, and welfare of the Town's residents by ensuring that the changes approved by the Town's voters are incorporated into and made a part of the Town Charter.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None.

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: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach 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 Fort Myers Beach 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].

Not applicable.

ORDINANCE NO. 19-08

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH CALLING AN ELECTION ON AMENDMENTS TO THE TOWN CHARTER TO BE HELD ON TUESDAY, MARCH 17, 2020; PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL A PROPOSED AMENDMENT TO THE TOWN CHARTER, SUCH CHARTER AMENDMENT CONCERNING THE DATE OF TOWN ELECTIONS AND TERMS OF OFFICE SO THAT THE TOWN'S REGULAR ELECTION COINCIDES WITH FEDERAL AND STATE ELECTION DATES AND ESTABLISHING FOUR (4) YEAR TERMS OF OFFICE FOR TOWN COUNCILMEMBERS; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CHARTER; AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 166.031, Florida Statutes, and following the Town of Fort Myers Beach Council's review the Town of Fort Myers Beach ("Town") has caused the final drafting and preparation of proposed amendments to the Town Charter for submission to the electors of the Town; and

WHEREAS, the Town Council desires to submit the proposed Charter amendments to the electors of the Town;

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

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

Section 2. An election is called for Tuesday, March 17, 2020, to present to the electors of the Town each of the ballot questions provided in Section 5 of this Ordinance.

Section 3. Balloting shall be conducted between the hours of 7:00 a.m. and 7:00 p.m. at the regular polling places for Town elections or as otherwise provided by the Lee County Supervisor of Elections in accordance with applicable law. All qualified electors residing within the Town who are timely registered shall be entitled to vote. Early voting may be provided as authorized by law.

Section 4. That notice of the election shall be published in accordance with Section 100.342, *Florida Statutes*, in a newspaper of general circulation within the Town at least thirty (30) days prior to the election, the first publication to be in the fifth week prior to the election, and the second publication to be in the third week prior to the election, and shall be in substantially the following form:

NOTICE OF ELECTION

PUBLIC NOTICE IS GIVEN THAT PURSUANT TO AN ENABLING ORDINANCE DULY ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA (THE "TOWN"), AN ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE TOWN ON TUESDAY, MARCH 17, 2020, BETWEEN THE HOURS OF 7:00 AM AND 7:00 PM, AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSITION SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE TOWN.

There is one (1) proposed amendment to the Town Charter, which proposal is commonly referred to by the following ballot titles:

1. Election Date and Terms of Office

Polling place information, as well as the full text of the proposed Town Charter amendments and the enabling ordinance for this election are available at the Office of the Town Clerk, located at:

2525 Estero Boulevard, Fort Myers Beach, FL 33931
Contact: Michelle Mayher, Town Clerk

The Town Clerk may combine this Notice of Election with other Notices of Election for any other Charter amendments.

Section 5. The form of ballot for each of the proposed Charter amendments shall be as follows:

Section 5. The form of ballot for each of the proposed Charter amendments shall be as follows:

1. ELECTION DATE

The Town Charter currently provides that the regular election of members of the Town Council shall be held on the second Tuesday in March. It is proposed that the Charter be amended to revise such provisions by moving the regular election of members of the Town Council to the first Tuesday after the first Monday in November, so as to coincide with federal and state election dates.

Shall the above-described Charter amendment be adopted?

Yes ☐

No ☐

2. TERMS OF OFFICE.

The Town Charter currently provides that each term of office for Town Councilmembers is three (3) years, with a term limit of two (2) consecutive terms (e.g., a total of six (6) consecutive years in office). It is proposed that the Charter be amended to revise such provisions by increasing the term of office to four (4) years (a one (1) year increase), with a term limit of two (2) consecutive terms (e.g., a total of eight (8) consecutive years in office). Extending the term of office by one (1) year will ensure that all regular Town Council elections coincide with federal and state election dates as set forth in proposed Charter amendment number one above.

Shall the above-described Charter amendment be adopted?

Yes ☐

No ☐

The order of presentation of the above listed ballot items on the ballot may be revised pursuant to Section 8, below. The ballot questions and corresponding Notice of Election may be revised by Council Resolution.

Section 6. The Town Charter is further amended by adding those provisions indicated by underline and deleting those provisions indicated by strikethrough, to read as set forth in Exhibit “A”, a copy of which is attached and incorporated herein by this reference.

Section 7. That the County registration books shall remain open at the office of the Lee County Supervisor of Elections until the date which is provided by law as the date that the registration books shall close in accordance with the provisions of the general election laws.

Section 8. The Town Clerk, with any necessary assistance and services from the Lee County Supervisor of Elections, is authorized to take all appropriate actions necessary to carry into effect and accomplish the provisions of this Ordinance.

Section 9. That the election returns shall be canvassed by the Lee County Canvassing Board as required by law.

Section 10. Copies of this Ordinance are on file in the office of the Town Clerk located at 2525 Estero Boulevard, Fort Myers Beach, Florida 33931, and are available for public inspection during regular business hours.

Section 11. That if a majority of the qualified electors voting on the proposed Charter amendment vote for its adoption, it shall be considered adopted and effective upon certification of the election results. Further, to the extent the Town Attorney determines that certain of the Charter amendments provided by Section 5 above are not dependent upon voter approval under that portion of Section 166.021, *Florida Statutes*, which enables certain charter and special act

provisions which presently exist as they existed prior to the initiation of municipal Home Rule Powers in 1973 to be amended by ordinance without a requirement for referendum approval, those limited Charter amendments identified in writing by the Town Attorney shall be effective without regard to the vote of the electors and shall be included in the revised Charter.

Section 12. The Town Clerk shall file the revised Charter with the Florida Department of State.

Section 13. The Charter amendment, if adopted by the electors shall be applied prospectively only unless otherwise stated by the Charter text.

Section 14. That in the event that the provisions of this Ordinance conflict with any other Town Ordinance, the provisions of this Ordinance – if stricter - shall prevail to the extent of any such conflict.

Section 15. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 16. Subject to the requirements of Section 11 above, it is the intention of the Town Council and it is ordained that the provisions of this Ordinance shall become and made a part of the Charter of the Town of Fort Myers Beach; that the sections of this Charter may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

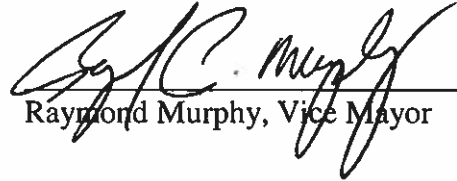
Section 17. That this Ordinance shall become effective immediately upon adoption.

The foregoing Ordinance was adopted by the Town Council upon a motion by Vice Mayor Murphy and seconded by Councilmember Butcher and upon being put to a roll call vote, the result was as follows:

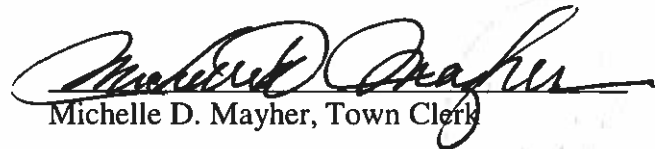
Anita Cereceda, Mayor	excused
Ray Murphy, Vice Mayor	aye
Joanne Shamp, Councilmember	aye
Rexann Hosafros, Councilmember	nay
Bruce Butcher, Councilmember	aye

ADOPTED this 5th day of August, 2019 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Raymond Murphy, Vice Mayor

ATTEST:


Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:

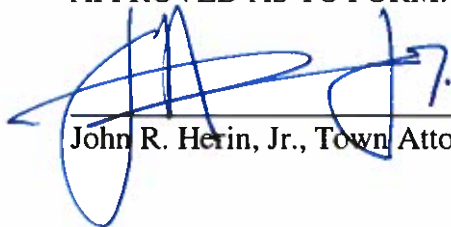

John R. Herin, Jr., Town Attorney

EXHIBIT "A"

The "Town of Fort Myers Beach Charter" adopted as Chapter 95-494, Laws of Florida is amended as follows:¹

Sec. 5.01. - Elections.

The regular election of the members of the council shall be held on the first ~~second~~ Tuesday ~~after the first Monday in November~~ March, ~~except in presidential preference primary years when it shall be held on the third Tuesday in March~~ or as otherwise provided by general law. The time period that candidates must qualify shall be from noon of the 50th day prior to the election to noon of the 46th day, or as adjusted by a holiday or leap year.

Section 5.03 - Terms of office.

The terms for all council seats, #1, #2, #3, #4, and #5, shall be for 3 4 years, ~~except during the transition period~~, seats #1 and #2 shall initially be for a term from ~~November, 2000 to March, 2004~~ March, 2019 to November, 2023, and seats #3, #4, & #5 shall be for a term from March, 2020 to November, 2024. No member of the council shall serve for more than two consecutive full terms. After 1 year out of office, a candidate may re-qualify for any vacant seat.

Section 4.02 Mayor -- At the first meeting after the ~~second Tuesday in March~~ first Tuesday after the first Monday in November, the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as chairperson during meetings of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

Section 4.03 Vice mayor -- At the first meeting after the ~~second Tuesday in March~~ first Tuesday after the first Monday in November, the council, by a majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

^{1/} 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 ~~striketrough~~.

1. **Request:**

Meeting Date: October 28, 2024

Second Reading and Final Public Hearing on proposed Ordinance 24-32 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2 OF ORDINANCE 2005-04 TO REFLECT THE CHANGES TO THE TOWN CHARTER APPROVED BY THE TOWN VOTERS AT THE MUNICIPAL ELECTION ON MARCH 17, 2020; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Why the action is necessary:

Although adoption of the Ordinance 24-31 will provide for codification of the approved Charter amendments, that Ordinance will only address the approved changes to the pertinent sections of the Town Charter, and not to the Ordinance 2005-04.

What the action accomplishes:

This proposed Ordinance changes and supersedes the terms of the Ordinance 2005-04, ensuring consistency between Ordinance 2005-04 and the amended Town Charter, as approved by the Town voters during March 2020 municipal election.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Nancy Stuparich, Town
Attorney

5. **Background:**

On February 28, 2005, the Town Council passed Ordinance 05-04, interpreting the language in Sections 4.02 "Mayor" and 4.03 "Vice mayor" of the Town Charter as requiring the month of the election of the Town Mayor and Vice mayor to be in November rather than in March in non-election years.

Thereafter, on August 5, 2019, the Town Council adopted Ordinance 19-08, to amend the Town Charter so that the Town's regular election coincides with Federal and State election dates, and directed the Supervisor of Elections to place the proposed amendments on the ballot for approval by the electorate. On March 17, 2020, the Town of Fort Myers Beach held a municipal election, and the proposed Charter amendment was approved by a vote of 1,877 to 372, as certified by the Lee County Supervisor of Elections to the Town on April 3, 2020. Although the proposed Charter amendments were approved, they were never codified in the Town Charter, necessitating the adoption of an Ordinance 24-31, which would codify the approved Charter changes. A first reading of the ordinance title occurred at the October 21, 2024 Town Council meeting and the Town Council approved the ordinance for second reading and adoption on October 28, 2024 with no changes.

Attachments:

1. Ord. 24-32 - Second Reading Amendment to Section 2(A) of Ordinance 05-04 (1) ns FINAL
2. ORDINANCE 2005-04
3. Ord. 24-32 - Business Impact Estimate 9-30-24 mr ns

Financial Impact:

n/a

6. **Alternative Action**

Continue or deny ordinance;

7. **Management Recommendations:**

Approve the Ordinance;

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/22/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

ORDINANCE NO. 24-32

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2 (A) OF ORDINANCE 2005-04 FOR CONSISTENCY WITH THE CHANGES TO THE TOWN CHARTER APPROVED BY THE TOWN VOTERS AT THE MUNICIPAL ELECTION ON MARCH 17, 2020; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND 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, Ordinance 2005-04 was adopted on February 28, 2005, clarifying and interpreting the language in Sections 4.02 "Mayor" and 4.03 "Vice mayor" of the Town Charter and changing the month of the election of the Town Mayor and Vice mayor from November to March in non-election years; and

WHEREAS, on August 5, 2019, the Town Council adopted Ordinance 19-08, to amend the Town Charter so that the Town's regular election coincides with Federal and State election dates in November, and directed the Supervisor of Elections to place the proposed amendments on the ballot for approval by the electorate; and

WHEREAS, on March 17, 2020, the Town of Fort Myers Beach held a municipal election, and the proposed Charter amendment was approved by a vote of 1,877 to 372, as certified by the Lee County Supervisor of Elections to the Town on April 3, 2020; and

WHEREAS, Ordinance 2005-04 was not thereafter amended for consistency with the change in the time for municipal elections, necessitating the adoption of this Ordinance; and

WHEREAS, on the 21st day of October, 2024, the Town Council held a first reading of Ordinance 24-32 and approved Ordinance 24-32 with no changes for second reading; and

WHEREAS, a Business Impact Estimate was prepared and posted on the Town's website on the 18th day of October, 2024, as required by Section 166.041(4), Florida Statutes; and

WHEREAS, an advertisement of the public hearing for adoption of the Ordinance was published in the News Press on the 18th day of October, 2024, which is 10 days prior to the final reading of the proposed Ordinance as required by Section 166.041, Florida Statutes; and

WHEREAS, on the 28th day of October 2024, the Town Council held a second and final reading of Ordinance 24-32; and

WHEREAS, the Town Council determined that adoption of Ordinance 24-32 as provided herein is in the best interests of the health, safety, welfare, and morals of the Town's residents.

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

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.

Section 2. Section 2 of Ordinance 05-04, is hereby amended to read as follows:

SECTION 2. For clarification and as a matter of policy Section 4.02 Mayor and Section 4.03 Vice mayor shall be interpreted to include:

Section 4.02 Mayor.—At the first regularly scheduled meeting following the town's regular election, the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as a chairperson during meetings of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

Section 4.03 Vice mayor.—At the first regularly scheduled meeting following the town's regular election, the council, by a majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

- A. In non-election years the election of mayor and vice-mayor shall be at the first regularly scheduled meeting in ~~November~~ **March November**.
- B. Should the vice mayor become interim mayor, then, the council, by a majority vote, shall elect from its membership an interim vice mayor who shall serve as mayor during the absence or disability of the interim mayor.

Section 3. That the Town Council intends that the provisions of this Ordinance be made a part of the Town of Fort Myers Beach Charter, 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 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, word, 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 6. This Ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results were as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Scott Safford, Council Member	_____

ADOPTED this ____ day of _____, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Town 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2024.

ORDINANCE No. 05-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE ORDINANCE CLARIFYING PROVISIONS OF THE CHARTER OF THE TOWN OF FORT MYERS BEACH, PROVIDING AUTHORITY; FOR CLARIFICATION AND AS A MATTER OF POLICY SECTION 4.02 MAYOR AND SECTION 4.03 VICE MAYOR; SEVERABILITY; EFFECT OF ORDINANCE AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. Authority. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. For clarification and as a matter of policy Section 4.02 Mayor and Section 4.03 Vice mayor shall be interpreted to include:

Section 4.02 Mayor.--At the first regularly scheduled meeting following the town's regular election, the council, by majority vote, shall elect from its membership a mayor. The mayor shall serve as chairperson during meetings of the council and shall serve as the head of municipal government for the purpose of execution of legal documents as required by ordinance. The mayor shall also serve as the ceremonial head of the town.

Section 4.03 Vice mayor.--At the first regularly scheduled meeting following the town's regular election, the council, by a majority vote, shall elect from among its membership a vice mayor who shall serve as mayor during the absence or disability of the mayor and, if a vacancy occurs, shall become interim mayor pursuant to section 4.08 of this charter.

- A. In non-election years the election of mayor and vice-mayor shall be at the first regularly scheduled meeting in ~~November~~ March.
- B. Should the vice mayor become interim mayor, then, the council, by a majority vote, shall elect from among its membership an interim vice mayor who shall serve as mayor during the absence or disability of the interim mayor.

SECTION 3. Severability. If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law,

although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION 4. Effect of Ordinance. The provisions of this Ordinance shall be deemed cumulative and supplemental and shall have no legal effect except as expressly provided.

SECTION 5. Effective Date. This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Rynearson and seconded by Council Member Van Duzer and, upon being put to a vote, the result was as follows:

Howard Rynearson	<u>Aye</u>
Don Massucco	<u>Nay</u>
Bill Thomas	<u>Aye</u>
W. H. "Bill" Van Duzer	<u>Aye</u>
Garr Reynolds	<u>Nay</u>

DULY PASSED AND ENACTED this 28th day of February, 2005.

ATTEST:

TOWN OF FORT MYERS BEACH

By:

Marsha Segal-George
Marsha Segal-George, Town Clerk

By:

Bill Thomas
Bill Thomas, Mayor

Approved as to form by:

Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney



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 Fort Myers Beach website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 2 (A) OF ORDINANCE 2005-04 FOR CONSISTENCY WITH THE CHANGES TO THE TOWN CHARTER APPROVED BY THE TOWN VOTERS AT THE MUNICIPAL ELECTION ON MARCH 17, 2020; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER'S ERRORS, CONFLICTS OF LAW, AND 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 Fort Myers Beach is of the view that a business impact estimate is not required by state law¹ for the proposed ordinance, but the Fort Myers Beach 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.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Fort Myers Beach 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):

Ordinance 24-32 amends Section 2 of Ordinance 2005-04, changing the terms that conflict with the Town Charter, pertaining to the month of the election of the Town Mayor and Vice Mayor in non-election years. The proposed Charter amendment was approved at the municipal election in March 2020, but the changes were never incorporated into the Town Charter, necessitating adoption of an Ordinance 24-31, memorializing the proposed approved changes in the Town Charter. However, Ordinance 24-31 does not address the conflicting provisions of Ordinance 2005-04, which is why adoption of this proposed Ordinance is necessary to ensure consistency between Ordinance 2005-04 and the amended language of the Town Charter, as approved by the Town voters at the March 2020 municipal election. This Ordinance promotes public health, safety, morals, and welfare of the Town's residents by ensuring that the terms of Ordinance 2005-04 are consistent with the Charter amendments, as approved by the voters in 2020.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Fort Myers Beach, 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 Fort Myers Beach regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None.

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: Fort Myers Beach staff solicited comments from businesses in the Fort Myers Beach 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 Fort Myers Beach 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].

Not applicable.

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING DURING THE AMERICAN SAND SCULPTING CHAMPIONSHIPS FROM 3:00 PM WEDNESDAY, NOVEMBER 20, 2024 TO 8 PM SUNDAY, NOVEMBER 24, 2024: 1) OPEN CONTAINERS OF ALCOHOL IN PUBLIC AREAS AS PROVIDED IN ORDINANCE 16-03 SECTION 22-(G); 2) WAIVING THE STANDARD VEHICLE PERMIT FEE FOR VEHICLES ON THE SAND; 3) WAIVING THE FEE FOR THE USE OF BAYSIDE VETERANS PARK; 4) DIRECTING NON-ENFORCEMENT OF THE NOISE ORDINANCE; 5) WAIVING PARKING FEES ALONG OLD SAN CARLOS FROM FIRST TO THIRD STREET (APPROXIMATELY 21 SPACES); AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Ordinance 16-03 Sec 22-(G)

What the action accomplishes:

If approved, waives the fees, open container, and noise ordinance regulations requested by the event applicant.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Tracie Raski, Permitting
Coordinator, Frankie Kropacek,
Operations & Compliance
Director

5. **Background:**

A partnership between the Ft. Myers Beach Chamber of Commerce, the Diamond Head Beach Resort and The Sand Lovers, LLC are producing the 34th annual American Sand Sculpting Championship. This is a tremendous opportunity for the Town of Ft Myers Beach to once again host a major national competition that has over three decades of history steeped in tradition. This event draws top Master and Advanced Amateur Sculptors from around the World to compete at the highest level.

The event is scheduled to open to the public on Thursday, November 21st at 10am through Sunday, November 24th at 5pm. The main event location for this 4-day event will take place mid island, on the sandy beach behind the Diamond Head beach Resort at 2000 Estero Blvd. There will also be a vendor village located on Old Sand Carlos (first to third street), including the Bayside Veterans Memorial Park (hosting live music). This will be a fun filled event that will include World Master Sand Sculptors, Advanced Amateur Sand Sculptors, opportunity for Amateur sculptors to learn the craft, live music, and various arts and crafts vendors. We are also planning to have Sandsculpting demonstrations, sculpting lessons, quick sand showcases and other educational presentations.

The competition will run throughout the weekend as master works of sand art are crafted from piles of plain sand. Attendees will be able to get in on the fun by stopping by the Lee County Voting Booth on Saturday and Sunday and submitting their vote for People's Choice. The amateur competition will be held on Saturday morning and the final competition awards will be judged and given out on Sunday, November 24th at approximately 4pm.

Set up for the event will begin with the fence delivery to the Diamond Head location on November 14th The Old San Carlos location will not require early set up. We will be partnering with various local charities including the Friends of Lover's Key, Keep Lee County Beautiful and others.

Most of the parking will be located on Estero Island in numerous public and private parking lots. There are approximately 900 parking spots in the downtown Ft. Myers Beach area, all within easy walking distance of Bayside Park. Additional spaces and lots may be available through the Town's special event parking permit process (see attached). Many participating Stay and Play partners will be providing their guests with shuttle service to and from the event. Many of the private lots will also be providing their guests with shuttle service to and from the Diamondhead event location. Lee Tran will be operating both the Lee Tran Trolley and the Lee Tram (hop on, hop off free tram service). Parking will also be located off island on San Carlos Island at the Salty Sams marina with boat shuttle service being provided by boat across the bay.

We will be requesting approval of open containers of alcohol in public areas, as provided in Ordinance 16-03 Sec 22-(G)d and understand that we may need to go before Town Council for approval. We are requesting to have the standard vehicle permit fee for the vehicles on the sand to be waived as it has for all past American Sand Sculpting Championships. We are requesting to have the fee for the usage of the Bayfront Park waived and have the parking fees along Old San Carlos (from 1st to third street) (approximately 21 spaces) waived from Wednesday evening, November 20th at approximately 3pm until Sunday evening, November 24th at approximately 8pm.

Attachments:

1. Resolution 24-217, Special Event 34th Annual Sandsculpting Event FINAL
2. ASSC - 2024 - permit part 1
3. ASSC - 2024 - Old San Carlos Vendor village - part 2
4. ASSC - 2024 - Insurance certs

Financial Impact:

Request to have the standard vehicle permit fee for the vehicles on the sand to be waived as it has for all past American Sand Sculpting Championships, to have the fee for the usage of the Bayside Veterans Park waived, and have the parking fees along Old San Carlos (from First to Third Street) (approximately 21 spaces) waived from Wednesday evening, November 20th at approximately 3pm until Sunday evening, November 24th at approximately 8pm.

6. Alternative Action

Deny some or all of the requests from the applicant.

7. Management Recommendations:

8. Recommended Approval:

Amy Baker, Town Clerk
Tracie Raski, Permitting Coordinator
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/16/2024
Approved - 10/17/2024
Approved - 10/17/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

RESOLUTION NO. 24-217

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING DURING THE AMERICAN SAND SCULPTING CHAMPIONSHIPS FROM 3:00 PM WEDNESDAY, NOVEMBER 20, 2024 TO 8 PM SUNDAY, NOVEMBER 24, 2024: 1) OPEN CONTAINERS OF ALCOHOL IN PUBLIC AREAS AS PROVIDED IN ORDINANCE 16-03 SECTION 22-(G); 2) WAIVING THE STANDARD VEHICLE PERMIT FEE FOR VEHICLES ON THE SAND; 3) WAIVING THE FEE FOR THE USE OF BAYSIDE VETERANS PARK; 4) DIRECTING NON-ENFORCEMENT OF THE NOISE ORDINANCE; 5) WAIVING PARKING FEES ALONG OLD SAN CARLOS FROM FIRST TO THIRD STREET (APPROXIMATELY 21 SPACES); 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 received a special event application from a partnership of the Fort Myers Beach Chamber of Commerce, the DiamondHead Beach Resort and The Sand Lovers, LLC (“Applicant”) for producing the 34th Annual American Sand Sculpting Championship from 3:00 PM Wednesday, November 20, 2024 to 8:00 PM Sunday, November 24, 2024; and

WHEREAS, Chapter 22 entitled “Special Events” of the Town of Fort Myers Beach Code of Ordinances requires certain types of special events and waivers of open container, fees, and enforcement of the Town’s noise ordinance to be approved by the Fort Myers Beach Town Council prior to the event; and

WHEREAS, the Applicant has requested within their special event application the following requests:

1. Open containers of alcohol in public areas as provide in Ordinance 16-03 Section 22-(G)
2. Waiving the standard vehicle permit fee for vehicles on the sand
3. Waiving the fee for the use of Bayside Veterans Park
4. Directing non-enforcement of the noise ordinance
5. Waiving parking fees along Old San Carlos Boulevard from First to Third Street (approximately 21 spaces); and

WHEREAS, adoption of this Resolution is in the best interest of the Town of Fort Myers Beach:

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

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

Section 2. The Town Council of the Town of Fort Myers Beach hereby approves the requests included within the special event application submitted to the Town by the Applicant. A copy of the Special Event Application is attached to this Resolution as Exhibit A.

Section 3. This resolution will take effect immediately.

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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 28th day of October 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 SOLELY:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on the ____ day of October 2024.



Town of Fort Myers Beach Special Event Application Checklist

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

- ☒ 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. You need to submit application to FMB Fire and LSCO.
- ☒ All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.
- ☒ 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.
- ☒ Detailed description of entire event including set up and breakdown
- ☒ Letters of permission if using someone else's property for event.
- ☒ Site plan – marked off with placement of objects (chairs, tables, tents, etc.)
- ☒ Parking Plan – if applicable
- ☒ Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder
- ☒ A copy of the 500 foot notification letter for any amplification along with the mailing list

You must initial & sign you have read and understand all requirements above.

FMB Chamber
2024 Sand Sculpting



Town of Fort Myers Beach

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

Name of event 34th Annual American Sand Sculpting Championship
Attach separate sheet of paper with detailed description of event

Date(s) and times of event November 21 - 24, 2024

Address of event 2000 Estero Blvd. FMB, FL 33931

Expected # of participants/attendees 6,000 over 4 days

Sponsoring Organization FMB Chamber of Commerce, Diamondhead

Organization address Beach Resort & The Sand Lovers LLC
100 Lovers Lane, Ste. 3e, FMB, FL 33931

Contact Person/Phone# Jacki Liszak / 954-415-2233

E-mail jacki@fmbchamber.com

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

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

How many Spaces? 0 How many hours 0

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

Letters of Permission to use Property Yes

Letters of Permission to use Parking N/A Parking Plan attached & noted in event description.

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

Jacki Liszak

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.

January 30, 2023

Applicant to Complete:

Company managing trash removal: Diamondhead Beach Resort + waste mgmt.

No. of dumpsters: 0 Type of dumpsters: On site compactor @ Diamondhead
On site dumpster + cans @ Wahoo + Nellies.

Who is responsible for clean-up and payment: N/A on payment.

Extra boxes/bags from waste mgmt. will be onsite at both locations. Volunteers will manage garbage pick up each day on both sites.

City right-of-way Parking Use: _____ Number of spaces: _____ Plan attached

** See parking plan attached.

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ Date: _____

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: _____

Approval: _____ Date: _____

January 30, 2023

Page 472 of 676

Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street • Fort Myers Beach, Florida 33931

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 – For Fire Department Handbook and additional application.

LEE COUNTY SHERIFF'S DEPT Tel (239) 477-1830 Fax (239) 432-0268
15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: no officers needed for parking control.

Deputies (how many?) _____

Traffic Control: _____

Fees: _____

Special Arrangements: _____

Print Name _____

Approval Signature _____

Date _____

January 30, 2023



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:

☒ Small Outdoor/Indoor Event	☐ Large Outdoor/Indoor Event	☐ Firework Display
Date of Application: September 2024		Date of Event:
Location: 2 LOCATIONS AND OLD SAN CARLOS BLVD Diamondhead Beach Resort - 2000 Estero Bl. FMB, FL 33931		
Event Start Date/Time: Nov. 21, 2024, 10am		Event End Date/Time: Nov. 24, 2024 5pm
Setup Date: Nov. 20, 2024	Setup Time: 8am	Inspection Time:
Event Sponsor: FMB Chamber of Commerce & Diamondhead Beach Resort & Lovers Ue The Sand		
Sponsor Contact: Jacki Liszak	Sponsor Phone #: 954-415-2233	Sponsor Email: jacki@fmbchamber.com
Anticipated Number of Attendees: 6,000 over 4 days	Anticipated Number of Event Workers: Approx. 25/day	
Will there be carnival or mechanical rides: NO	Number of Stages: 1	
Total Number of Vendors: 35-40 @ D.H. 20-30 @ D.S.C.	Total Number of Hot Food Vendors: 0	
Number of Tents larger than 20 x 20: 1 - 20 x 40	Number of 10 x 10 Tents: 35-40 @ D.H. 20-30 @ D.S.C.	

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 fire code.
3. All vendors should review FMBFD guidelines, on our website at www.FMBFirefl.gov
4. Failure to comply with requirements of the FMBFD may result in additional fees and/or shutdown of the vendor(s).

Jacki Liszak	
Submitting Party Name (Print)	Submitting Party Name (Sign)
Date:	

Town of Ft. Myers Beach Special Event Application

**34th Annual American Sand Sculpting Championships
November 21-24, 2024**

Describe Event, Times, dates, activities and general overview:

A partnership between the Ft. Myers Beach Chamber of Commerce, the DiamondHead Beach Resort and The Sand Lovers, LLC are producing the 34th annual American Sand Sculpting Championship. This is a tremendous opportunity for the Town of Ft Myers Beach to once again host a major national competition that has over three decades of history steeped in tradition. This event draws top Master and Advanced Amateur Sculptors from around the World to compete at the highest level.

The event is scheduled to open to the public on Thursday, November 21st at 10am through Sunday, November 24th at 5pm. The main event location for this 4-day event will take place mid island, on the sandy beach behind the DiamondHead beach Resort at 2000 Estero Blvd. There will also be a vendor village located on Old San Carlos (first to third street), including the Bayside Veterans Memorial Park (hosting live music). This will be a fun filled event that will include World Master Sand Sculptors, Advanced Amateur Sand Sculptors, opportunity for Amateur sculptors to learn the craft, live music, and various arts and crafts vendors. We are also planning to have Sandsculpting demonstrations, sculpting lessons, quick sand showcases and other educational presentations

The competition will run throughout the weekend as master works of sand art are crafted from piles of plain sand. Attendees will be able to get in on the fun by stopping by the Lee County Voting Booth on Saturday and Sunday and submitting their vote for People's Choice. The amateur competition will be held on Saturday morning and the final competition awards will be judged and given out on Sunday, November 24th at approximately 4pm.

Set up for the event will begin with the fence delivery to the DiamondHead location on November 14th. The Old San Carlos location will not require early set up.

We will be partnering with various local charities including the Friends of Lover's Key, Keep Lee County Beautiful and others.

Most of the parking will be located on Estero Island in numerous public and private parking lots. There are approximately 900 parking spots in the downtown Ft. Myers Beach area, all within easy walking distance of Bayside Park. Additional spaces and lots may be available through the Town's special event parking permit process (see attached). Many participating Stay and Play partners will be providing their guests with shuttle service to and from the event. Many of the private lots will also be providing their guests with shuttle service to and from the Diamondhead event location. Lee Tran will be operating both the Lee Tran Trolley and the Lee Tram (hop on, hop off free tram service). Parking will also be located off island on San Carlos Island at the Salty Sams marina with boat shuttle service being provided by boat across the bay.

We will be requesting approval of open containers of alcohol in public areas, as provided in Ordinance 16-03 Sec 22-(6)d and understand that we may need to go before Town Council for approval. We are requesting to have the standard vehicle permit fee for the vehicles on the sand to be waived as it has for all past American Sand Sculpting Championships. We are requesting to have the fee for the usage of the Bayfront Park waived and have the parking fees along Old San Carlos (from 1st to third street) (approximately 21 spaces) waived from Wednesday evening, November 20th at approximately 3pm until Sunday evening, November 24th at approximately 8pm.

Organizer: FMB Chamber of Commerce, DiamondHead Beach Resort, The Sand Lovers, LLC
Contact person: Jacki Liszak
Contact Phone: 239-454-7500 Mobile: 954-415-2233
Contact email: jacki@fmbchamber.com

Tentative Schedule of Events

Thursday, November 21, 2024 -- Event open 10am to 5pm

- Sand Sculpting 9am – 5pm
- Background music 10am – 5pm
- Quick Sand 12:00pm and 2pm
- Demos/Lessons: 11am and 1pm
- Chainsaw Carving – 3pm

Friday, November 22, 2024 – Event open 10am to 5pm

- Sand Sculpting 9am – 5pm
- Background music 10am – 5pm
- Quick Sand 12:00pm and 2pm
- Demos/Lessons: 11am and 1pm
- Chainsaw Carving – 3pm

Saturday, November 23, 2024 -- Event open 10am to 5pm

- Sand Sculpting 9am – 5pm
- Background music 10am – 5pm
- Amateur contest – 10am to 2pm
- Quick Sand 12:00pm and 2pm
- Demos/Lessons: 11am and 1pm
- Chainsaw Carving – 3pm

Sunday, November 24, 2024 -- Event open 10am to 5pm

- Sand Sculpting 9am – 5pm
- Background music 10am – 5pm
- Quick Sand 12:00pm and 2pm
- Demos/Lessons: 11am and 1pm
- Chainsaw Carving – 3pm
- Awards Ceremony – 3:30pm

34th Annual American Sand Sculpting Championship

Life Safety Evaluation

Name of Event Participants and projected number of attendees

Event Producers / Management: Jacki Liszak, FMB Chamber of Commerce, Neil Hopgood, GM, Diamondhead Beach Resort, Bill & Marianne Knight, The Sand Lovers, LLC

There will be a staff of 10 reporting directly to the event producers/managers. In addition, the Diamondhead will be fully staffed with all departments being represented and employees of DHBR will report directly to their immediate supervisors at DHBR. All staff members are certified in Crowd Control, human trafficking and event protocols. All staff will be trained what to do and who to contact in the case of any type of emergency. DHBR will have trained security staff on site 24x7, and the event producers will have private security staff at both locations (Diamond Head and Old San Carlos). Both sites will have

on site emergency first responders including the FMB Fire District and the Lee County Sheriff's office (number and nature of assets will be determined by each department).

Set up and break down of event:

Event location at Diamondhead Beach Resort will begin setup on Monday, November 19th with event fencing being dropped off. Event equipment will be staged into place each day until opening day, Thursday, November 21st. Breakdown at the Diamondhead location will commence on Sunday, November 24th at 5pm. The event setup at the Old San Carlos location will begin Wednesday, November 22nd, at approximately 3pm in the afternoon. Vendors will break down on Sunday, November 24th after 5pm. The Bayside Park Concert Series will continue to operate, as scheduled, until 7pm on November 24th.

Projected number of attendees:

It is expected that the event will draw between 1,000 to 2,000 attendees (total for both locations) each day or 4,000 – 8,000 over the four-day period.

Access and Egress movement, including crowd density problems

Based on previous history of this event or similar sand sculpting events, there has never been more than 800 people inside the fenced in area at any one time. The open fenced area with one main entrance is approximately 20 feet wide and will be clearly marked. There will be three main exits, clearly marked with "EXIT" in red letters on a white background. There will be one staff exit clearly marked with EXIT in red letters on a white background. There will be an additional exit to the open beach on the north side of the event, using swing gates that can be opened quickly in case of emergency which are also 10 feet wide. Exit widths are 10 feet.

Questions on public access:

Event staff and volunteers encountering the general public demanding access to the event site without paying are instructed to explain the event is fully permitted by the town, county and state, which provides us the ability to block off, secure and charge an admission fee. Event staff and volunteers are instructed to "NOT" be confrontational and immediately contact event management are available by cell phone or two-way radio.

Medical Emergency mitigation plan:

The FMB Fire District is scheduled to be on site during the peak hours of the event. Diamondhead Beach Resort will have in house security on site 24 hours a day for the duration of the event. The Old San Carlos location will have Lee County Sheriff's deputies on site during the day and private security staff at night for the duration of the event. Event staff is trained to immediately notify security staff or dial 911 in case of emergency. Access for emergency vehicles will be on the north side of the Diamondhead Beach Resort along the Palm Avenue access (Access #30). This area will remain open at all times. If necessary, there will be an additional access point (through the event staff gate) along the south side of the Diamondhead Beach Resort on the Gulf side of the parking lot. Access to the actual event site will require the use of a 4x4 vehicle as it is on sand.

Fire Hazards

All food concessions must meet all applicable fire safety standards.

Permanent and Temporary Structures

There will be no permanent structures. There will be temporary tents placed at the event location. One main tent will be used for attendees seating or gatherings and will remain open, have fire extinguishers and no smoking signs. Vendors attending the event will be required to bring their own 10x10 tent with tie/weight downs and fire extinguishers.

Mitigation plan for Severe Weather

Severe weather in Ft. Myers Beach includes tropical storms, hurricanes, and thunder storms. The event is being held during the tail end of hurricane season, lessening the threat of tropical weather/storms/hurricanes. Due to the nature of the event "sand sculpting" (an outdoor activity) the event management is continually monitoring weather conditions. In the event of approaching severe weather, the event producers/management will advise attendees they should seek shelter and /or close the event.

Mitigation plan for civil or other disturbances

The Following strategy is suggested to minimize the effects of American Sand Sculpting Championship during a civil disturbance; Contact and rely solely o the guidance of first responders, Fire and Police personnel. Direct communication with the Town of Ft. Myers Beach Town Manager and staff will be maintained at all times during the event. All local governmental channels will be monitored in the event of any emergency.

Relationship among facility management, event participants, emergency response agencies and others having a role in the events accommodated in the facility.

There is no facility management for this event. The event is being held outdoors, in an essentially open area. On-site during the event, there will be Diamondhead Beach Resort security staff, Private company security staff, FMB Fire District personnel, Lee County Sheriff's officers. Event staff, management and volunteers are instructed to immediately contact first responders in any emergency situation.

A site plan(s) is attached



PART OF
SUNSTREAM®
HOTELS &
RESORTS

September 24th, 2024

Town Of Fort Myers Beach
2731 Oak Street,
Fort Myers Beach, FL 33931

Re: FMB Sand Sculpting Championships 2024

To Whom It May Concern;

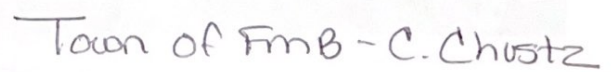
The Fort Myers Beach Chamber and The Sand Lovers have our permission to hold the American Sand Sculpting Championship event from November 21st to November 24th, 2024 on the property and beach at DiamondHead Beach Resort.

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

Sincerely,

Neil Hopgood
General Manager
DiamondHead Beach Resort
2000 Estero Blvd.
Fort Myers Beach, FL 33931

SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST
PLAT BOOK 8, PAGE 69)
LEE COUNTY, FLORIDA



2024 SAND SCULPTING CONTEST



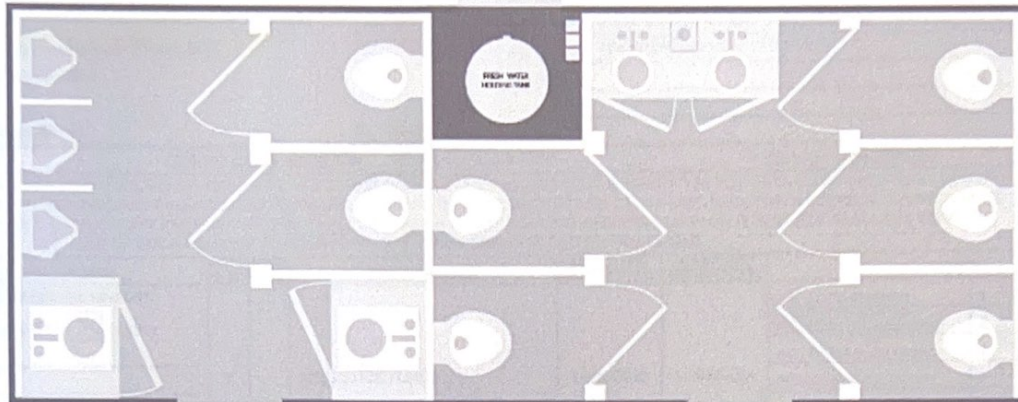
DIAMOND HEAD
BEACH RESORT



EVENT AREA



8x25', 10-Station Restroom Trailer



8x25', 10-Station Specifications

- No. of Stations: 10
- Length | w/Tongue: 25' | 30'
- Width | w/Steps Down: 8'6" | 12'6"
- Height w/AC: 11'8"
- Freshwater: 200 gal
- Wastewater: 950 gal
- Weight: 9,800 lbs
- Axle: (2) 7,000 lb Torsion
- Wheels: 16" Aluminum



September 20, 2024

CASEY KATHLEEN M +
32917 PEACH TREE LN
LEWES, DE 19958

Dear CASEY KATHLEEN M +:

Pursuant to the requirements of the Town of Fort Myers Beach Ordinance #16-03, the Fort Myers Beach Chamber of Commerce would like to notify you that the Chamber has applied for a Town of Fort Myers Beach Special Event Permit for the 34th Annual American Sand Sculpting Championship to be held from Thursday, November 21st, 2024, until Sunday, November 24th, 2024 along Old San Carlos Boulevard from Bayside Park at the base of Old San Carlos Boulevard to 3rd street. Vendors will be located on Old San Carlos between 1st and 3rd and live performances will be held on the Bayside Park stage from noon until 5pm each day.

You are receiving this notice because the event application includes amplified sound from a stage located in Bayside Park, which are within a 500-foot radius of the edge your property. Please be advised that, as a residential property within this radius, should you have an objection to the amplified sound, you may submit a letter of objection to the Town Manager at Town Hall within ten business days, or no later than on or before close of business on October 10, 2024.

Sincerely,

Jacki Liszak, President
Fort Myers Beach Chamber of Commerce
100 Lovers Lane, #3E
Fort Myers Beach, FL 33931
(239) 454-7500



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/01/2024

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.

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PRODUCER	CONTACT NAME: Stephanie Wilkinson
Brown & Brown Insurance Services, Inc.	PHONE (A/C, No, Ext): (239) 274-1430 FAX (A/C, No): (239) 278-5306
9617 Gulf Research Ln.	E-MAIL ADDRESS: Stephanie.Wilkinson@bbrown.com
#202	
Ft. Myers	INSURER(S) AFFORDING COVERAGE
FL 33912	INSURER A: AXIS Surplus Insurance Company
	INSURER B: Security National Insurance Company
	INSURER C: Insurance Company of the West
	INSURER D:
	INSURER E:
	INSURER F:
INSURED	NAIC #
Diamondhead Beach Resort, LLC	27847
2000 Estero Blvd.	
Ft Myers Beach	
FL 33931	

COVERAGES

CERTIFICATE NUMBER: 23-24 GL, WC & UMB

REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		P00100106372402	12/09/2023	12/09/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000 COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			XSS179713800	12/09/2023	12/09/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 PER STATUTE ☒ OTH-ER ☐
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WFL505884803	01/01/2024	01/01/2025	E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Regarding the General Liability and when required by a written contract or agreement, The Sand Lovers, LLC, Fort Myers Beach Chamber of Commerce, and Town of Fort Myers Beach are named as Additional Insureds for the American Sand Sculpting Event November 21, 2024 through November 24, 2024

CERTIFICATE HOLDER

CANCELLATION

Town of Fort Myers Beach 2731 Oak Street Fort Myers Beach FL 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

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INSURED Diamondhead Beach Resort, LLC 2000 Estero Blvd. Ft Myers Beach FL 33931		INSURER(S) AFFORDING COVERAGE INSURER A: AXIS Surplus Insurance Company INSURER B: Security National Insurance Company INSURER C: Insurance Company of the West INSURER D: INSURER E: INSURER F:	
		NAIC # 27847	

COVERAGES

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	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY					
B	☐ UMBRELLA LIAB ☒ EXCESS LIAB ☐ CLAIMS-MADE ☒ OCCUR DED ☒ RETENTION \$ 0		XSS179713800	12/09/2023	12/09/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 PER STATUTE ☒ OTH-ER ☐
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	WFL505884803	01/01/2024	01/01/2025	E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

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CERTIFICATE HOLDER

The Sand Lovers, LLC 10931 Russell Road Bokeelia FL 33922

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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INSURED Diamondhead Beach Resort, LLC 2000 Estero Blvd. Ft Myers Beach FL 33931		INSURER(S) AFFORDING COVERAGE INSURER A: AXIS Surplus Insurance Company INSURER B: Security National Insurance Company INSURER C: Insurance Company of the West INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 23-24 GL, WC & UMB **REVISION NUMBER:**
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B	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			XSS179713800	12/09/2023	12/09/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ ☒ PER STATUTE ☐ OTHER
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CERTIFICATE HOLDER

Fort Myers Beach Chamber of Commerce
100 Lover's Lane
Fort Myers Beach FL

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
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PRODUCER AMJ INSURANCE INC/PHS 36212133 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251		CONTACT NAME: PHONE (866) 467-8730 (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS:	
INSURED The Sand Lovers, LLC 10931 RUSSELL RD BOKEELIA FL 33922-3114		INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Underwriters Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC# 30104	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY			36 SBM AW5M31	03/01/2024	03/01/2025	EACH OCCURRENCE \$1,000,000
	CLAIMS-MADE ☒ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000				
	X General Liability		MED EXP (Any one person) \$10,000				
			PERSONAL & ADV INJURY \$1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$2,000,000
	X POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COM/OP AGG \$2,000,000
	OTHER:						
A	AUTOMOBILE LIABILITY			36 SBM AW5M31	03/01/2024	03/01/2025	COMBINED SINGLE LIMIT (Ea accident)
	ANY AUTO		BODILY INJURY (Per person)				
	ALL OWNED AUTOS	SCHEDULED AUTOS	BODILY INJURY (Per accident)				
	HIRED AUTOS	NON-OWNED AUTOS	PROPERTY DAMAGE (Per accident)				
A	X UMBRELLA LIAB EXCESS LIAB	X OCCUR CLAIMS-MADE		36 SBM AW5M31	03/01/2024	03/01/2025	EACH OCCURRENCE \$2,000,000
	DED	RETENTION \$ 10,000	AGGREGATE \$2,000,000				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			36 SBM AW5M31	03/01/2024	03/01/2025	PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	OTH-ER				
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	E.L. EACH ACCIDENT				
			E.L. DISEASE -EA EMPLOYEE				
							E.L. DISEASE - POLICY LIMIT
A	Employment Practices Liability Insurance			36 SBM AW5M31	03/01/2024	03/01/2025	Each Claim Limit \$25,000 Annual Aggregate Limit \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

The Town of Fort Myers Beach
2731 OAK ST
FORT MYERS BEACH FL 33931-3517

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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ACORD 25 (2016/03)

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INSURED The Sand Lovers, LLC 10931 RUSSELL RD BOKEELIA FL 33922-3114		INSURER(S) AFFORDING COVERAGE INSURER A: Hartford Underwriters Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC# 30104	

COVERAGES

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A	Employment Practices Liability Insurance			36 SBM AW5M31	03/01/2024	03/01/2025	Each Claim Limit \$25,000 Annual Aggregate Limit \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate holder is an additional insured per the Additional Insured - Designated Person Or Organization Form SL3042 attached to this policy.

CERTIFICATE HOLDER

Fort Myers Beach Chamber of Commerce
100 LOVERS LN
FORT MYERS BEACH FL 33931-3548

CANCELLATION

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Susan L. Castaneda

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REVISION NUMBER:

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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY			36 SBM AW5M31	03/01/2024	03/01/2025	EACH OCCURRENCE \$1,000,000
	CLAIMS-MADE ☒ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000				
	☒ General Liability		MED EXP (Any one person) \$10,000				
	GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER		PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000				
A	AUTOMOBILE LIABILITY			36 SBM AW5M31	03/01/2024	03/01/2025	COMBINED SINGLE LIMIT (Ea accident)
	ANY AUTO		BODILY INJURY (Per person)				
	ALL OWNED AUTOS	SCHEDULED AUTOS	BODILY INJURY (Per accident)				
	HIRED AUTOS	NON-OWNED AUTOS	PROPERTY DAMAGE (Per accident)				
A	UMBRELLA LIAB EXCESS LIAB	☒ OCCUR CLAIMS-MADE		36 SBM AW5M31	03/01/2024	03/01/2025	EACH OCCURRENCE \$2,000,000
	DED RETENTION \$ 10,000		AGGREGATE \$2,000,000				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			36 SBM AW5M31	03/01/2024	03/01/2025	PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	E L EACH ACCIDENT				
		N/A	E L DISEASE -EA EMPLOYEE				
			E L DISEASE - POLICY LIMIT				
A	Employment Practices Liability Insurance			36 SBM AW5M31	03/01/2024	03/01/2025	Each Claim Limit \$25,000 Annual Aggregate Limit \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. Certificate holder is an additional insured per the Additional Insured - Designated Person Or Organization Form SL3042 attached to this policy.

CERTIFICATE HOLDER

Diamond Head Beach Resort
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931-3215

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/27/2024

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PRODUCER Heidrick & Company Insurance 1648 Periwinkle Way Sanibel FL 33957		CONTACT NAME: James Barreca PHONE (A/C, No, Ext): (239) 579-0660 FAX (A/C, No): (888) 767-1665 E-MAIL ADDRESS: james@sanibelinsurance.com															
INSURED Greater Fort Myers Beach Area Chamber Of Commerce 100 Lovers Lane Suite 3 East Fort Myers Beach FL 33931		<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A: Mount Vernon Fire Insurance Co</td><td>26522</td></tr><tr><td>INSURER B: Associated Industries Ins Co</td><td>23140</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></tbody></table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Mount Vernon Fire Insurance Co	26522	INSURER B: Associated Industries Ins Co	23140	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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COVERAGES

CERTIFICATE NUMBER: CL2462703394

REVISION NUMBER:

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A	COMMERCIAL GENERAL LIABILITY			NBP2553825D	02/05/2024	02/05/2025	EACH OCCURRENCE \$
	☐ CLAIMS-MADE ☐ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$				
			MED EXP (Any one person) \$				
			PERSONAL & ADV INJURY \$				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COM/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANY AUTO						BODILY INJURY (Per person) \$
	☐ OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
	☐ SCHEDULED AUTOS						\$
	☐ NON-OWNED AUTOS ONLY						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	☐ OCCUR ☐ CLAIMS-MADE						\$
	DED RETENTION \$						
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			AWC1201426	12/11/2023	12/11/2024	PER STATUTE OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	E.L. EACH ACCIDENT \$ 100,000				
	If yes, describe under DESCRIPTION OF OPERATIONS below		E.L. DISEASE - EA EMPLOYEE \$ 100,000				
			E.L. DISEASE - POLICY LIMIT \$ 500,000				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

Town of Fort Myers Beach 2731 Oak Street Fort Myers Beach FL 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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06/27/2024

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PRODUCER Heidrick & Company Insurance 1648 Periwinkle Way Sanibel FL 33957	CONTACT NAME: James Barreca PHONE (A/C, No, Ext): (239) 579-0660 FAX (A/C, No): (888) 767-1665 E-MAIL ADDRESS: james@sanibelinsurance.com INSURER(S) AFFORDING COVERAGE INSURER A: Mount Vernon Fire Insurance Co INSURER B: Associated Industries Ins Co INSURER C: INSURER D: INSURER E: INSURER F:
INSURED Greater Fort Myers Beach Area Chamber Of Commerce 100 Lovers Lane Suite 3 East Fort Myers Beach FL 33931	NAIC # 26522 23140

COVERAGES

CERTIFICATE NUMBER: CL2462703394

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A	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER			NBP2553825D	02/05/2024	02/05/2025	EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐	N/A	AWC1201426	12/11/2023	12/11/2024	PER STATUTE ☐ OTH-ER ☐ E L EACH ACCIDENT \$ 100,000 E L DISEASE - EA EMPLOYEE \$ 100,000 E L DISEASE - POLICY LIMIT \$ 500,000

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CERTIFICATE HOLDER

CANCELLATION

Sunstream - DiamondHead Beach Resort 2000 Estero Blvd Fort Myers Beach FL 33931	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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		INSURER A: Mount Vernon Fire Insurance Co	
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			MED EXP (Any one person) \$				
			PERSONAL & ADV INJURY \$				
						GENERAL AGGREGATE \$	
						PRODUCTS - COMP/OP AGG \$	
							\$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
							\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	AWC1201426	12/11/2023	12/11/2024	PER STATUTE OTH-ER
			E L EACH ACCIDENT \$ 100,000				
			E L DISEASE - EA EMPLOYEE \$ 100,000				
			E L DISEASE - POLICY LIMIT \$ 500,000				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

The Sand Lovers, LLC 10931 Russell Road Bokeelia FL 33922	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO SIGN AN AMENDMENT TO THE BRIDGE LOAN AGREEMENT AND PROMISSORY NOTE BETWEEN THE TOWN AND THE STATE OF FLORIDA, DEPARTMENT OF COMMERCE TO EXTEND THE MATURITY DATE OF THE EXISTING LOAN TO MAY 8, 2033; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary since the term of the loan is being extended, and indebtedness requires Town Council approval.

What the action accomplishes:

This action will allow the Town Manager to execute Amendment One to the Bridge Loan Agreement and associated Promissory Note which will extend the maturity date to May 8, 2033.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The Town entered into a Bridge Loan Agreement with the State of Florida, Department of Commerce on May 1, 2023. The proceeds were intended to fund operations in lieu of lost revenues resulting from the economic impact of Hurricane Ian. The original maturity date of the Bridge Loan was June 30, 2024. However, state legislation was subsequently passed and signed by the governor on June 13, 2024 extending the maturity date to May 8, 2033. The town received the official amendment to the bridge loan on September 12, 2024, and it requires the Town Manager's signature.

Attachments:

1. DEO Bridge Loan Amendment One
2. 24-213, Final Bridge Loan Amendment Extending Maturity Date ns

Financial Impact:

The financial impact is to avoid incurring any interest on the loan on any outstanding balance until May 8, 2033 at which point the Town should be in a better position to repay the loan if it has not yet been forgiven.

6. **Alternative Action**

The Town may choose not to authorize the amendment, leaving the maturity date as June 30, 2024, which would mean the Town must repay the loan immediately and would begin incurring 10% interest on the outstanding balance.

7. **Management Recommendations:**

Management recommends approval of the resolution.

8. **Recommended Approval:**

Joe Onzick, Finance Director

Created/Initiated - 10/23/2024

nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

**AMENDMENT ONE
TO THE LOAN AGREEMENT
AND PROMISSORY NOTE
BETWEEN
THE FLORIDA DEPARTMENT OF COMMERCE AND
TOWN OF FT. MYERS BEACH, FLORIDA**

This Amendment to Grant Agreement SL071 (this "Amendment") is made and entered into by and between the Florida Department of Commerce ("Commerce" or "Lender"), and Town of Ft. Myers Beach, Florida (the "Local Government" or "Borrower"). The Local Government and Commerce may individually be referred to herein as a "Party", and collectively as the "Parties".

WHEREAS, on June 13, 2024, the Governor signed into law Chapter 2024-234, which amended the term of loans extended under 288.066(3)(c) F.S.;

WHEREAS, Section 9 of the Promissory Note provides that any amendment to the Agreement shall be in writing and executed by the Parties;

WHEREAS, the Parties wish to amend the Agreement and associated Promissory Note to extend to May 8, 2033; and

WHEREAS, the Parties wish to amend the Agreement as set forth herein.

NOW THEREFORE, for and in consideration of the agreements, covenants, and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, amend the Agreement as follows:

1. Section 2, Borrowing and Payments, subsection 2.4.1 is hereby deleted in its entirety and replaced with the following:

2.4.1 The Borrower shall repay principal of \$11,900,000 (the "Outstanding Principal") on or before May 8, 2033 (the "Maturity Date"). The Outstanding Principal may be repaid at any time without penalty.
2. Section 3, Payment, of the associated Promissory Note is hereby deleted in its entirety and replaced with the following:

3. PAYMENT: The Borrower hereby agrees to repay principal of \$11,900,000 on or before May 8, 2033 (the "Maturity Date"). This Note may be repaid at any time without penalty.
3. All other terms and conditions remain in effect.

IN WITNESS WHEREOF, by signature below, the Parties agree to abide by the terms, conditions, and provisions of Contract SL071 as amended. This Amendment is effective on June 30, 2024.

FLORIDA DEPARTMENT OF COMMERCE

FT. MYERS BEACH, FLORIDA

By: _____
Signature

By: _____
Signature

Title **J. Alex Kelly**
Secretary

Title: **Andrew Hyatt**
Town Manager

Date: _____

Date: _____

Approved as to form and legal sufficiency, subject only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL
FLORIDA DEPARTMENT OF COMMERCE

By: _____

Approved Date: _____

RESOLUTION NO. 24-213

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER TO SIGN AN AMENDMENT TO THE BRIDGE LOAN AGREEMENT AND PROMISSORY NOTE BETWEEN THE TOWN AND THE STATE OF FLORIDA, DEPARTMENT OF COMMERCE TO EXTEND THE MATURITY DATE OF THE EXISTING LOAN TO MAY88, 2033; 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 Council approved Resolution 23-33, which authorized the Town to execute a loan and related promissory note with the Florida Department of Economic Opportunity in the amount of \$11,900,000 to fund governmental operations with a maturity date of June 30, 2024 (“Bridge Loan”); and

WHEREAS, on June 13, 2024, the Governor DeSantis signed into law Chapter 2024-234, which amended the term of “bridge” loans for an additional 10 years; and

WHEREAS, on September 12, 2024, the Town received a proposed amendment to its Bridge Loan to extend its maturity date to May 8, 2033, which requires signature by the Town Manager (“Amendment One”); and

WHEREAS, approval of Amendment One is in the best interest of the Town of Fort Myers Beach.

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

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

Section 2. The Town Council of the Town of Fort Myers Beach hereby authorizes the Town Manager to execute Amendment One and its related promissory note between the Town and the Florida Department of Commerce to extend the maturity date of the Bridge Loan to May 8, 2033. A copy of Amendment One is attached to this Resolution as Exhibit A.

Section 3. This resolution will take effect immediately.

The foregoing Resolution was _____ 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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 28st day of October 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 SOLELY:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____
2024.

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING THE TOWN MANAGER'S APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. LW738 WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE RECEIPT OF GRANT FUNDING FOR OUTDOOR RECREATION FACILITIES AS PART OF THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT TO EXTEND THE COMPLETION DATE TO AUGUST 31, 2025 AND THE GRANT EXPIRATION DATE TO DECEMBER 31, 2025; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

This action is necessary to ratify (authorize an action that has already been taken) the execution of an amendment to an existing grant agreement.

What the action accomplishes:

This resolution ratifies the execution of Amendment No. 1 to Agreement No. LW738 between the Florida Department of Environmental Protection and the Town of Fort Myers Beach which extends the grant project completion date by one year to August 31, 2025, and the grant agreement expiration date by one year to December 31, 2025.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The Town was awarded a \$1 million matching grant from the Florida Department of Environmental Protection ("Grant") for outdoor recreation facilities as part of the Bay Oaks Campus Redevelopment ("Project") that had a project completion date of August 31, 2024, and a grant agreement expiration date of December 31, 2024.

The Town Council authorized the Town Manager to execute the grant agreement at its Management and Planning Meeting on February 10, 2022, and subsequently ratified the agreement at its March 7, 2022 Town Council Meeting.

Preliminary design work was completed for the grant-funded improvements. However, as a result of suffering catastrophic damage from Hurricane Ian, the project was placed on hold while the Town focused on emergency response and recovery efforts. As a result, the town determined that it was in the best interests of the health, safety, and welfare of the town's residents and visitors to extend the grant's project completion date and grant expiration date by one year.

On March 4, 2024, the Town Council authorized the use of ARPA funds as the \$1 million required match.

On October 16, 2024, the town was notified that it had been granted a one-year time extension. Therefore, on that same day, the Town Manager executed Amendment No. 1 to Agreement No. LW738 between the Florida Department of Environmental Protection and the Town of Fort Myers Beach which extends the grant project completion date by one year to August 31, 2025, and the grant agreement expiration date by one year to December 31, 2025.

Attachments:

1. LW738 Grant Agreement - Signed by Town
2. LW738 Amendment No. 1 - Signed by Town
3. 24-218 Ratifying Time Extension to FDEP Grant Agreement NS

Financial Impact:

This will enable the town to utilize the \$1 million grant from the Florida Department of Environmental Protection to improve the Bay Oaks Recreation Campus.

6. Alternative Action

The town may allow the grant to expire by not ratifying this amendment, and in so doing would lose the \$1 million grant funding opportunity.

7. Management Recommendations:

Please ratify the execution of the amendment to the grant agreement to extend the project completion date to August 31, 2025 and the grant agreement expiration date to December 31, 2025.

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 - 10/22/2024
Approved - 10/22/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): Bay Oaks Recreational Campus Redevelopment	Agreement Number: LW738
2. Parties State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000 (Department)	
Grantee Name: Town of Fort Myers Beach	Entity Type: a local government
Grantee Address: 2525 Estero Boulevard, Fort Myers Beach, FL 33931	FEID: 65-0632342 (Grantee)

3. Agreement Begin Date: Upon Execution	Date of Expiration: 12/31/2024
4. Project Number: LW738 <i>(If different from Agreement Number)</i>	Project Location(s): 2731 Oak Street, Fort Myers Beach, FL 33931
Project Description: New multi-sport field use (soccer, baseball, softball, football, little league, outdoor fitness and community engagement events), four pickleball courts, loop trail, four picnic areas, playground, two batting cages, parking lot, sidewalks, landscaping, renovate basketball court and two tennis courts.	

5. Total Amount of Funding: \$1,000,000.00	Funding Source? ☐ State ☒ Federal ☐ State ☐ Federal ☒ Grantee Match	Award #s or Line Item Appropriations: Line Item No. 1692A, GAA, FY2021-2022	Amount per Source(s): \$1,000,000.00 \$1,000,000.00
Total Amount of Funding + Grantee Match, if any:			\$2,000,000.00

6. Department's Grant Manager Name: Tamika Bass or successor Address: 3900 Commonwealth Blvd. MS# 585 Tallahassee, FL 32399 Phone: 850-245-2501 Email: tamika.bass@floridadep.gov	Grantee's Grant Manager Name: Ms. Chelsea O'Riley or successor Address: 2525 Estero Boulevard Fort Myers Beach, FL 33931 Phone: 239-765-0202 Email: Cheslea@fmbgov.com
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7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☒ Attachment 6: Program-Specific Requirements
☒ Attachment 7: LW738 Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with §215.985, F.S.
☒ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements for Grants
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	P21AP12035
Federal Award Date to Department:	1/1/22
Total Federal Funds Obligated by this Agreement:	\$1,000,000.00
Federal Awarding Agency:	National Park Service
Award R&D?	☐ Yes ☒ N/A

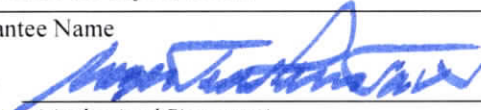
IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Town of Fort Myers Beach

GRANTEE

Grantee Name

By


(Authorized Signature)

CO

2/10/2022

Date Signed

Roger T. Hernstadt, Town Manager

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By

Secretary or Designee

Date Signed

Callie DeHaven, Florida ASLO

Print Name and Title of Person Signing

☐ Additional signatures attached on separate page.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
- i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
- (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.
- A change order to this Agreement may be used when:
- (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.
- This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement

the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to:
www.myfloridacfo.com/Division/AA/Vendors/default.htm.
- j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.

- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 691-72, Florida Administrative Code (F.A.C.) and/or Chapter 691-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting

Attachment 1

4 of 12

acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other

obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or

otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;

- ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. **Special Audit Requirements.** The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
 - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.

Attachment 1

10 of 12

- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

37. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual

reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

38. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. LW738**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Bay Oaks Recreational Campus Redevelopment. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on or after January 1, 2022, through the Project Completion Date.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur after approval of the final deliverable(s).
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☒	☒	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☒	☒	a. Fringe Benefits, which shall be calculated at the rate of 40% of direct salaries.
☒	☒	b. Indirect Costs, which shall be calculated at the rate of 15% of direct costs.
☒	☒	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☒	☒	Rental/Lease of Equipment
☒	☒	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

This Agreement requires at least a fifty percent (50%) non-federal match from the Grantee towards the work funded under this Agreement. Therefore, the Grantee is responsible for providing \$1,000,000.00 towards the Project funded under this Agreement. It is understood that any additional funds necessary for the completion of this project are the responsibility of the Grantee.

All required matching funds shall meet the federal requirements established in 2 CFR § 200.306 and other federal statutory requirements, as applicable. Grantee acknowledges and agrees to provide eligible match types as set forth in the LWCF Federal Financial Assistance Manual <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>). Grantee acknowledges and agrees not to provide ineligible match sources, including real property acquired or funds obtained from any of the following sources:

- a. Florida Recreation Development Assistance Program (FRDAP), Recreation Trails Program (RTP), and LWCF;
- b. Donated value of real property acquired prior to Department approval or through Land and Water Conservation Fund; and
- c. Other state or federal grant or land acquisition programs such as: legislative special interest projects, Save Our Coast Program, Preservation 2000, Florida Forever, Conservation and Recreation Lands Program, Save Our Rivers Program, and Land Acquisition Trust Fund.

Real property donated as all, or part of the Grantee's required match must be appraised prior to commencement of the Project. Pursuant to subsection 62D-5.071(9), F.A.C., the Grantee shall submit appraisal(s), obtained at its own expense and prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions ("UASFLA"). The appraisal must establish the fair market value of the Project site. Property appraised at \$500,000 or less requires one (1) appraisal. Property exceeding \$500,000 in appraised value requires a second appraisal. The appraisal(s) shall be dated no earlier than six (6) months prior to the closing date of the LWCF application submission period. The appraisal must be prepared by an appraiser on the list of approved appraisers maintained by the Department's Division of State Lands under the provisions of Sections 253.025(6)(b), 259.041(7)(c), F.S., and Rule 18-1.007, F.A.C. Property value is based on the purchase price or appraised value, whichever is lower; if two (2) appraisals are required, the property value is lowest of the two appraisals or the purchase price. Appraisal costs shall not be reimbursed under the terms and conditions of this Agreement. If the negotiated purchase price or approved appraised value is greater than the annual appropriation by USDOJ, NPS and the Florida Legislature, the Grantee must pay the additional cost.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. Grantee shall provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

- a. Comprehensive General Liability Insurance.
The Grantee shall provide adequate comprehensive general liability insurance coverage and hold such liability insurance at all times during the Agreement. The minimum limits shall be \$200,000 for each person and \$300,000 per occurrence.
- b. Commercial Automobile Insurance.
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
- c. Workers' Compensation.
The Grantee shall comply with the workers' compensation requirements of Chapter 440, F.S.
- d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

Attachment 2

2 of 3

11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Additional Terms.

None.

ATTACHMENT 3

GRANT WORK PLAN

LAND AND WATER CONSERVATION FUND PROGRAM (LWCF)

Project Name: Bay Oaks Recreational Campus Redevelopment

Grantee Name: Town of Fort Myers Beach

LWCF Project # LW738

SUMMARY: The Grantee shall complete the Project Element(s), which were approved by the Department through the LWCF Application Evaluation Criteria, pursuant to Chapter 62D-5, Florida Administrative Code (F.A.C.). Any alteration(s) to the Project Element(s) as submitted in the Grantee's application and listed in the Grant Work Plan is considered a significant change, and must be pre-approved by the Department and NPS, and may require a formal Amendment to this Agreement. All work must be completed in accordance with the LWCF Program, and local, state and federal laws, the approved Project plans, all required permits, and the Florida Building Code. Prior to the Department issuing a "Notice to Commence" to the Grantee, as specified in Attachment 6 of the Agreement, Program Specific Requirements, the Department must receive evidence of and have approved all Deliverables in Task 1.

For the purpose of this Agreement, the terms "Project Element" and "Project Task" are used interchangeably to mean an identified facility within the Project.

The Project is located at 2731 Oak Street, Fort Myers Beach, FL 33931 and is considered a "Development Project" pursuant to subsection 62D-5.070(5)(b), F.A.C.

Project Completion: The Project Completion Date for this Agreement is 8/31/2024.

Budget: Reimbursement for allowable costs for the Project shall not exceed the maximum Grant Award Amount outlined below. Required match for development projects will be provided by cash, in-kind services, or donated real property, as set forth in subparagraph 62D-5.070(6)(b)1., F.A.C. Required match for acquisition projects will be provided by cash or real property donated, as set forth in subparagraph 62D-5.070(6)(b)2., F.A.C. The total estimated Project cost provided below is based on the approved LWCF Application. A detailed cost analysis will be provided in the Deliverables for Task 1, prior to the Department issuing the "Notice to Commence." All final Project Costs shall be submitted to the Department with the payment request.

Maximum Grant Award Amount:	\$1,000,000.00
Required Grantee Match Amount:	\$1,000,000.00
Total Estimated Project Cost:	\$2,000,000.00
Match Ratio:	50%

Scope of Work/Tasks		Deliverables		Due Date	Financial Consequences
TASK 1		DELIVERABLE 1			
1.A. Development of Commencement Documentation Checklist (DRP-122)¹.		The Department will issue "Notice to Commence" upon receipt and approval of:		180 calendar days after Execution of Agreement²	The Department shall terminate the Project Agreement if the required Deliverables are not submitted and approved by the Department.
1.B. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable).		1.A. All applicable Project specific Commencement documentation listed on Commencement Documentation Checklist (DRP-122) 1.B. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable). Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, Project			

	inspection, and other similar fees are eligible for reimbursement. However, reimbursement, if requested, shall not exceed fifteen (15%) of total Project cost, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule.		
TASK 2 2.A. Development of Primary and Support Project Elements, which includes: New multi-sport field use (soccer, baseball, softball, football, little league, outdoor fitness and community engagement events), four pickleball courts, loop trail, four picnic areas, playground, two batting cages, parking lot, sidewalks, landscaping, renovate basketball court and two tennis courts. 2.B. Development of Completion of Documentation Checklist (DRP-125). 2.C. Completion of Final Status Report (DRP-109).	The Grantee may not proceed with development of the Project until Notice to Commence has been issued. DELIVERABLE 2 The Grantee may request reimbursement upon Department receipt and approval of: 2.A. Development of required Project Elements. 2.B. All applicable Project specific Completion documentation listed on Completion Documentation Checklist (DRP-125) 2.C. Final Status Report (DRP-109). The Grantee may request reimbursement for allowable budgeted expenses and costs pursuant to the Agreement that are directly related to the successful development of the Project site. Reimbursement shall not exceed the Grant Award Amount, less any reimbursement requested for in Deliverable 1, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule below. Ten percent (10%) of the Grant Award will be retained until the Project is designated complete by the Department.	Due 8/31/2024, which shall also be the Project Completion Date ³	No reimbursement will be made for Deliverable(s) deemed unsatisfactory by the Department. Payment(s) will not be made for unsatisfactory or incomplete work. In addition, a Task may be terminated for Grantee's failure to perform.

Project Task Performance Standard: The Department's Grant Manager will review the Project Completion Certificate and the Deliverables to verify compliance with the requirements for funding under LWCF; approved plans and application approved for funding. Upon review and written acceptance by the Department's Grant Manager of the Project Completion Certificate and the Deliverables under each Project Task, the Grantee may proceed with the payment request submittal.

Payment Request Schedule: Following Department approval of all Deliverables, the Grantee may submit a **single payment request** on Exhibit C, Payment Request Summary Form, DRP-115, along with all required documentation as outlined in the Financial Reporting Procedures (DRP-110), as applicable, to support payment. A payment request submitted as part of the reimbursement process must correspond with the Cost Analysis and supporting documents provided under Project Tasks.

Endnotes:

1. LWCF documentation is available at <https://floridadep.gov/lands/land-and-recreation-grants/content/land-and-water-conservation-fund-program> and/or from the Land and Recreational Grants Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS# 585, Tallahassee, Florida, 32399-3000.
2. Project Agreement is subject to termination if Commencement documentations under Task 1 are not received and approved by the Department within 180 calendar days of the Project Agreement execution.
3. Due Date will not be extended beyond the Grant Period as outlined in Rule 62D-5.073, F.A.C.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROGRAM SPECIFIC REQUIREMENTS

LAND AND WATER CONSERVATION FUND PROGRAM

ATTACHMENT 6

1. Project Submittal Forms.

Grantees can find the Administrative Forms, Reimbursement Forms, and Guidelines referenced in this Agreement at <https://floridadep.gov/lands/land-and-recreation-grants/content/lwcf-assistance>, or by contacting the Department's Grant Manager.

2. Notice to Commence.

Prior to starting the Project, the Grantee will provide to the Department all documentation listed on the Commencement Documentation Checklist, DRP-122. Once the commencement documentation is approved, the Department will issue a written "Notice to Commence" to the Grantee. **The Grantee MAY NOT proceed until the Department issues a "Notice to Commence."** Until the Department issues the "Notice to Commence," the Department is not obligated to reimburse Grantee for fees, costs, or general expenses of any kind.

Grantees are required to provide the Department with a description of any foreseeable impacts to the environment from grant-supported activities or demonstrate that no impacts will occur through documentation provided to the Department. The applicant must submit an Application & revision form in order to assist the Department and the NPS in determining the appropriate NEPA pathway when grant-assisted development and other ground disturbing activities are expected.

3. Site Plans.

Project site facilities must be attractive for public use and compatible with the environment. Plans and specifications for Project site improvements and facilities must be in accordance with current engineering and architectural standards. Grantees should emphasize the health and safety of users, accessibility to the general public, and the protection of the recreational and natural values of the area. **A Grantee may alter a conceptual site plan only after written approval by the Department and National Park Service (NPS).** All utility lines installed within the Project site must be placed underground.

The Grantee shall have final site plans (site, engineering, and architectural) prepared for the Project and sealed by a registered architect or engineer licensed in accordance with the laws of the State of Florida (collectively the "Project Plans"). The Grantee must deliver a complete original, signed, and sealed set of the Project Plans to the Department.

4. The following supplements paragraph 2.d., Attachment 1, Standard Terms and Conditions:

The Department may, and in certain circumstances the NPS must, approve any changes to this Agreement. The Grantee may submit a request for an amendment to the Department's Grant Manager, who will determine whether the request requires NPS approval. This Agreement may be amended to provide for additional services if additional funding is made available by USDO, NPS, and the Florida Legislature.

5. The following paragraphs is added to paragraph 2, Attachment 1, Standard Terms and Conditions:

- f. The costs must meet all requirements and financial reporting of the LWCF Program and rules and regulations applicable to expenditures of federal and state funds. These rules and regulations are hereby adopted and incorporated by reference.
- g. This Agreement is not transferable.

6. The following replaces paragraph 8.d, Attachment 1, Standard Terms and Conditions:

d. Reimbursement for Costs.

Project costs will be reimbursed as provided in paragraph 62D-5.073(2)(a), F.A.C., the LWCF Manual, and in the Project Agreement. Project costs must be incurred between the effective date of this Agreement and the Project Completion Date. The Grantee will be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of all deliverables identified in the Grant Work Plan.

Attachment 6

1 of 4

Reimbursement must be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, cost(s) must meet all LWCF requirements, financial reporting requirements, and rules and regulations applicable to expenditures of state funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>. If the total cost of the Project exceeds the grant amount and the required match, the Grantee must pay the excess cost. The Grantee must submit all project completion and reimbursement documentation to the Department within 60 days of the project completion date to ensure timely authorization of payment by NPS.

7. The following paragraph is added to paragraph 8, Attachment 1, Standard Terms and Conditions:
 - k. **Cost Limits.** Pursuant to paragraph 62D-5.073(2)(b), F.A.C., project planning expenses, such as application preparation, surveys (boundary and topographic), title searches, project signs, architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible Project costs provided that they do not exceed fifteen percent (15%) of the total Project cost.
 8. The following replaces paragraph 8.h, Attachment 1, Standard Terms and Conditions:
 - h. **Annual Appropriation Contingency.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature and the availability of funding and grants from the USDOJ and NPS. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if USDOJ, NPS, and/or the Florida Legislature reduces or eliminates appropriations. It is further understood that Grant Awards may be revised by the Department due to the availability of LWCF Program Funds.
 9. The following replaces paragraph 10, Attachment 1, Standard Terms and Conditions:
- Status Reports.**
- a. The Grantee must utilize Project Status Report Form, DRP-109, available online and incorporated herein by reference, to describe the work performed during the reporting period, problems encountered, problem resolutions, and to schedule updates and proposed work for the next reporting period. The Project Status Reports must be submitted to the Department's Grant Manager no later than January 5, May 5, and September 5. The Department's Grant Manager has thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.
 - b. Additionally, the Grantee shall comply with the reporting and inventory requirements set forth in the Statewide Comprehensive Outdoor Recreation Plan (SCORP), available online: <https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida> and hereby incorporated by reference, by updating the Florida Outdoor Recreation Inventory (FORI) system (<https://floridadep.gov/parks/florida-outdoor-recreation-inventory>).

10. Site Dedication.

The interest in land developed or acquired by the Grantee with LWCF Program Funds shall be subject to the site dedication requirements set forth in Chapter 62D-5, F.A.C. and of the LWCF Act, as codified in 36 CFR § 59.3. Pursuant to the LWCF Act and general requirements of the LWCF Program, land owned by the Grantee that is developed or acquired with LWCF Program Funds shall be dedicated in perpetuity as an outdoor recreation site for the use and benefit of the public. Land that is leased from the federal government or another public agency by Grantee must include safeguards to ensure the perpetual use requirement contained in the LWCF Act. Safeguards include such things as joint sponsorship of the Project or an agreement between the Parties that the lessor will assume compliance responsibility for the Project site in the event of default by the lessee (Grantee) or termination or expiration of the lease. Execution of this Agreement by the Department constitutes an acceptance of a Project site(s) dedication on behalf of the public of the State of Florida. These dedications must be recorded in the county's public property records by the Grantee in accordance with subsection 62D-5.074(1), F.A.C.

11. Management of Project Sites.

- a. **Site Inspections.** Department staff will periodically inspect LWCF Projects to ensure compliance with subsections 62D-5.074(1)-(3), F.A.C., and section 675.9 of the LWCF manual. Grantees must ensure by site inspections that the property acquired or developed through the LWCF is being operated and maintained for outdoor recreation purposes.

Attachment 6

2 of 4

- b. Management. All projects must be open at reasonable times and be managed in a safe and attractive manner appropriate for public use. Facilities must be kept in reasonable repair for a minimum of 25 years from the date set forth on the project completion certificate to prevent undue deterioration.
- c. Non-Compliance. Before a project is closed, the Department and the NPS have the right to terminate a project agreement and demand return of the program funds for non-compliance by a grantee. Failure by a grantee to comply with the Agreement will result in the Department declaring the grantee ineligible for further participation in LWCF until the Grantee comes into compliance as determined by the Department under this rule and the LWCF Manual.
- d. Survival. This provision shall survive termination, cancellation, or expiration of this Agreement.

12. Procurement Requirements for Grantee.

The Grantee must secure all goods and services for the Project according to its adopted procurement procedures.

13. Project Completion Certification.

Project completion means the Project is open and available for use by the public. To certify completion, the Grantee will submit to the Department the Project Completion Certification, DRP-126, available online and incorporated herein by reference. The Project must be designated complete prior to the Department releasing final reimbursement.

14. Signage.

Grantee must erect a permanent information sign on the Project site that credits funding, or a portion thereof, to the Florida Department of Environmental Protection and the Land and Water Conservation Fund Program. Use of the LWCF Logo on the permanent Project signs is required. Grantee is encouraged to position signage acknowledging LWCF assistance at entrances to outdoor recreation sites, at other appropriate on-site locations, and in folders and park literature. The acknowledgement of LWCF assistance will be checked during compliance inspections. The sign must be installed on the Project site and approved by the Department before the final Project reimbursement request is processed. The required LWCF Logo, LWCF Terms of Use, and sample sign are available online: <https://floridadep.gov/lands/land-and-recreation-grants/content/land-and-water-conservation-fund-program>. This provision shall survive termination, cancellation, or expiration of this Agreement.

15. Termination and Ineligibility.

In addition to the remedies provided elsewhere in this Agreement, if the Grantee fails to comply with the terms stated in this Agreement or with any provisions in Rule Chapter 62D-5, F.A.C., the Department will terminate this Agreement and demand return of the LWCF program funds (including interest). Furthermore, the Department will declare the Grantee ineligible for further participation in LWCF until the Grantee is in compliance pursuant to subsection 62D-5.074(4), F.A.C. Further, the Grantee agrees to ensure that all necessary permits are obtained prior to implementing any Grant Work Plan activity that may fall under applicable federal, state, or local laws. This provision shall survive termination, cancellation, or expiration of this Agreement.

16. Conversion.

This Project site acquired and/or developed with LWCF assistance must be retained and used for public outdoor recreation. This Project site so acquired and/or developed may not be wholly or partly converted to other than public outdoor recreation uses without the written approval of the NPS pursuant to the conversion provisions of Section 6(f)(3) of the LWCF Act, 36 CFR Part 59, the LWCF Manual, and all other applicable regulations. All conversion provisions and guidelines apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the Project in the assisted area or facility and consistent with the contractual agreement between USDOl, NPS, and the State of Florida.

Should Grantee convert all or part of the Project site to other than public outdoor recreational uses, the Grantee is required to replace the area, facilities, resource, or Project site at its own expense with an acceptable project of comparable or greater value, scope, and quality pursuant to LWCF mandates. All conversions require amendments to the original Project agreement (36 CFR § 59.3(c)). Therefore, amendment requests should be submitted concurrently with conversion requests. Project boundary maps must be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new Project area pursuant to the substitution. Once conversion has been approved, replacement property should be immediately acquired. When it is not possible for replacement property to be acquired immediately, an express commitment to satisfy Section 6(f)(3) substitution requirements with a specified period, normally not to exceed one (1) year following conversion approval,

is required. This commitment will be in the form of an amendment to the original Agreement. This provision shall survive termination, cancellation, or expiration of this Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

Attachment 5

1 of 6

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

3 of 6

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
A	U.S. Department of Interior, National Park Service	15.916	Outdoor Recreation, Acquisition, Development and Planning – Land and Water Conservation Fund Grants	\$ 1,000,000.00	14001
B					

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:				
Federal Program	Federal Agency	CFDA	CFDA Title	Funding Amount
A				
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:				
State Program	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description
A				
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description

Total Award	\$ 1,000,000.04
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]. The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROGRAM SPECIFIC REQUIREMENTS

LAND AND WATER CONSERVATION FUND PROGRAM

ATTACHMENT 6

1. Project Submittal Forms.

Grantees can find the Administrative Forms, Reimbursement Forms, and Guidelines referenced in this Agreement at <https://floridadep.gov/lands/land-and-recreation-grants/content/lwcf-assistance>, or by contacting the Department's Grant Manager.

2. Notice to Commence.

Prior to starting the Project, the Grantee will provide to the Department all documentation listed on the Commencement Documentation Checklist, DRP-122. Once the commencement documentation is approved, the Department will issue a written "Notice to Commence" to the Grantee. **The Grantee MAY NOT proceed until the Department issues a "Notice to Commence."** Until the Department issues the "Notice to Commence," the Department is not obligated to reimburse Grantee for fees, costs, or general expenses of any kind.

Grantees are required to provide the Department with a description of any foreseeable impacts to the environment from grant-supported activities or demonstrate that no impacts will occur through documentation provided to the Department. The applicant must submit an Application & revision form in order to assist the Department and the NPS in determining the appropriate NEPA pathway when grant-assisted development and other ground disturbing activities are expected.

3. Site Plans.

Project site facilities must be attractive for public use and compatible with the environment. Plans and specifications for Project site improvements and facilities must be in accordance with current engineering and architectural standards. Grantees should emphasize the health and safety of users, accessibility to the general public, and the protection of the recreational and natural values of the area. **A Grantee may alter a conceptual site plan only after written approval by the Department and National Park Service (NPS).** All utility lines installed within the Project site must be placed underground.

The Grantee shall have final site plans (site, engineering, and architectural) prepared for the Project and sealed by a registered architect or engineer licensed in accordance with the laws of the State of Florida (collectively the "Project Plans"). The Grantee must deliver a complete original, signed, and sealed set of the Project Plans to the Department.

4. The following supplements paragraph 2.d., Attachment 1, Standard Terms and Conditions:

The Department may, and in certain circumstances the NPS must, approve any changes to this Agreement. The Grantee may submit a request for an amendment to the Department's Grant Manager, who will determine whether the request requires NPS approval. This Agreement may be amended to provide for additional services if additional funding is made available by USDOJ, NPS, and the Florida Legislature.

5. The following paragraphs is added to paragraph 2, Attachment 1, Standard Terms and Conditions:

- f. The costs must meet all requirements and financial reporting of the LWCF Program and rules and regulations applicable to expenditures of federal and state funds. These rules and regulations are hereby adopted and incorporated by reference.
- g. This Agreement is not transferable.

6. The following replaces paragraph 8.d, Attachment 1, Standard Terms and Conditions:

d. Reimbursement for Costs.

Project costs will be reimbursed as provided in paragraph 62D-5.073(2)(a), F.A.C., the LWCF Manual, and in the Project Agreement. Project costs must be incurred between the effective date of this Agreement and the Project Completion Date. The Grantee will be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of all deliverables identified in the Grant Work Plan.

Attachment 6

1 of 4

Reimbursement must be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, cost(s) must meet all LWCF requirements, financial reporting requirements, and rules and regulations applicable to expenditures of state funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>. If the total cost of the Project exceeds the grant amount and the required match, the Grantee must pay the excess cost. The Grantee must submit all project completion and reimbursement documentation to the Department within 60 days of the project completion date to ensure timely authorization of payment by NPS.

7. The following paragraph is added to paragraph 8, Attachment 1, Standard Terms and Conditions:
- k. **Cost Limits.** Pursuant to paragraph 62D-5.073(2)(b), F.A.C., project planning expenses, such as application preparation, surveys (boundary and topographic), title searches, project signs, architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible Project costs provided that they do not exceed fifteen percent (15%) of the total Project cost.
8. The following replaces paragraph 8.h, Attachment 1, Standard Terms and Conditions:
- h. **Annual Appropriation Contingency.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature and the availability of funding and grants from the USDOJ and NPS. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if USDOJ, NPS, and/or the Florida Legislature reduces or eliminates appropriations. It is further understood that Grant Awards may be revised by the Department due to the availability of LWCF Program Funds.
9. The following replaces paragraph 10, Attachment 1, Standard Terms and Conditions:
Status Reports.
 - a. The Grantee must utilize Project Status Report Form, DRP-109, available online and incorporated herein by reference, to describe the work performed during the reporting period, problems encountered, problem resolutions, and to schedule updates and proposed work for the next reporting period. The Project Status Reports must be submitted to the Department's Grant Manager no later than January 5, May 5, and September 5. The Department's Grant Manager has thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.
 - b. Additionally, the Grantee shall comply with the reporting and inventory requirements set forth in the Statewide Comprehensive Outdoor Recreation Plan (SCORP), available online: <https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida> and hereby incorporated by reference, by updating the Florida Outdoor Recreation Inventory (FORI) system (<https://floridadep.gov/parks/florida-outdoor-recreation-inventory>).

10. Site Dedication.

The interest in land developed or acquired by the Grantee with LWCF Program Funds shall be subject to the site dedication requirements set forth in Chapter 62D-5, F.A.C. and of the LWCF Act, as codified in 36 CFR § 59.3. Pursuant to the LWCF Act and general requirements of the LWCF Program, land owned by the Grantee that is developed or acquired with LWCF Program Funds shall be dedicated in perpetuity as an outdoor recreation site for the use and benefit of the public. Land that is leased from the federal government or another public agency by Grantee must include safeguards to ensure the perpetual use requirement contained in the LWCF Act. Safeguards include such things as joint sponsorship of the Project or an agreement between the Parties that the lessor will assume compliance responsibility for the Project site in the event of default by the lessee (Grantee) or termination or expiration of the lease. Execution of this Agreement by the Department constitutes an acceptance of a Project site(s) dedication on behalf of the public of the State of Florida. These dedications must be recorded in the county's public property records by the Grantee in accordance with subsection 62D-5.074(1), F.A.C.

11. Management of Project Sites.

- a. **Site Inspections.** Department staff will periodically inspect LWCF Projects to ensure compliance with subsections 62D-5.074(1)-(3), F.A.C., and section 675.9 of the LWCF manual. Grantees must ensure by site inspections that the property acquired or developed through the LWCF is being operated and maintained for outdoor recreation purposes.

- b. Management. All projects must be open at reasonable times and be managed in a safe and attractive manner appropriate for public use. Facilities must be kept in reasonable repair for a minimum of 25 years from the date set forth on the project completion certificate to prevent undue deterioration.
- c. Non-Compliance. Before a project is closed, the Department and the NPS have the right to terminate a project agreement and demand return of the program funds for non-compliance by a grantee. Failure by a grantee to comply with the Agreement will result in the Department declaring the grantee ineligible for further participation in LWCF until the Grantee comes into compliance as determined by the Department under this rule and the LWCF Manual.
- d. Survival. This provision shall survive termination, cancellation, or expiration of this Agreement.

12. Procurement Requirements for Grantee.

The Grantee must secure all goods and services for the Project according to its adopted procurement procedures.

13. Project Completion Certification.

Project completion means the Project is open and available for use by the public. To certify completion, the Grantee will submit to the Department the Project Completion Certification, DRP-126, available online and incorporated herein by reference. The Project must be designated complete prior to the Department releasing final reimbursement.

14. Signage.

Grantee must erect a permanent information sign on the Project site that credits funding, or a portion thereof, to the Florida Department of Environmental Protection and the Land and Water Conservation Fund Program. Use of the LWCF Logo on the permanent Project signs is required. Grantee is encouraged to position signage acknowledging LWCF assistance at entrances to outdoor recreation sites, at other appropriate on-site locations, and in folders and park literature. The acknowledgement of LWCF assistance will be checked during compliance inspections. The sign must be installed on the Project site and approved by the Department before the final Project reimbursement request is processed. The required LWCF Logo, LWCF Terms of Use, and sample sign are available online: <https://floridadep.gov/lands/land-and-recreation-grants/content/land-and-water-conservation-fund-program>. This provision shall survive termination, cancellation, or expiration of this Agreement.

15. Termination and Ineligibility.

In addition to the remedies provided elsewhere in this Agreement, if the Grantee fails to comply with the terms stated in this Agreement or with any provisions in Rule Chapter 62D-5, F.A.C., the Department will terminate this Agreement and demand return of the LWCF program funds (including interest). Furthermore, the Department will declare the Grantee ineligible for further participation in LWCF until the Grantee is in compliance pursuant to subsection 62D-5.074(4), F.A.C. Further, the Grantee agrees to ensure that all necessary permits are obtained prior to implementing any Grant Work Plan activity that may fall under applicable federal, state, or local laws. This provision shall survive termination, cancellation, or expiration of this Agreement.

16. Conversion.

This Project site acquired and/or developed with LWCF assistance must be retained and used for public outdoor recreation. This Project site so acquired and/or developed may not be wholly or partly converted to other than public outdoor recreation uses without the written approval of the NPS pursuant to the conversion provisions of Section 6(f)(3) of the LWCF Act, 36 CFR Part 59, the LWCF Manual, and all other applicable regulations. All conversion provisions and guidelines apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the Project in the assisted area or facility and consistent with the contractual agreement between USDOJ, NPS, and the State of Florida.

Should Grantee convert all or part of the Project site to other than public outdoor recreational uses, the Grantee is required to replace the area, facilities, resource, or Project site at its own expense with an acceptable project of comparable or greater value, scope, and quality pursuant to LWCF mandates. All conversions require amendments to the original Project agreement (36 CFR § 59.3(c)). Therefore, amendment requests should be submitted concurrently with conversion requests. Project boundary maps must be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new Project area pursuant to the substitution. Once conversion has been approved, replacement property should be immediately acquired. When it is not possible for replacement property to be acquired immediately, an express commitment to satisfy Section 6(f)(3) substitution requirements with a specified period, normally not to exceed one (1) year following conversion approval,

is required. This commitment will be in the form of an amendment to the original Agreement. This provision shall survive termination, cancellation, or expiration of this Agreement.

ATTACHMENT 8

Contract Provisions for DOI-Funded Agreements

The Department, as a Non-Federal Entity as defined by 2 CFR §200.69, shall comply with the following provisions, where applicable. For purposes of this Grant Agreement between the Department and the Grantee, the term "Recipient" shall mean "Grantee."

Further, the Department, as a pass-through entity, also requires the Grantee to pass on these requirements to all lower tier subrecipients, and to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated terms and conditions. Therefore, Grantees must include these requirements in all related subcontracts and/or sub-awards. Grantees can include these requirements by incorporating this Attachment in the related subcontract and/or sub-awards, however for all such subcontracts and sub-awards, the Grantee shall assume the role of the Non-Federal Entity and the subrecipients shall assume the role of the Recipient.

2 CFR PART 200 APPENDIX 2 REQUIREMENTS

1. Administrative, Contractual, and Legal Remedies

The following provision is required if the Agreement is for more than \$150,000. In addition to any of the remedies described elsewhere in the Agreement, if the Recipient materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules or regulations, applicable to this Contract, the Non-Federal Entity may take one or more of the following actions.

- i. Temporarily withhold payments pending correction of the deficiency by the Recipient.
- ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- iii. Wholly or partly suspend or terminate this Contract.
- iv. Take other remedies that may be legally available.

The remedies identified above, do not preclude the Recipient from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689. The Non-Federal entity shall have the right to demand a refund, either in whole or part, of the funds provided to the Recipient for noncompliance with the terms of this Agreement.

2. Termination for Cause and Convenience

Termination for Cause and Convenience are addressed elsewhere in the Agreement.

3. Equal Opportunity Clause

The following provision applies if the agreement meets the definition of "federally assisted construction contract" as defined by 41 CFR Part 60-1.3:

During the performance of this Agreement, the Recipient agrees as follows:

- i. The Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient 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:
 - a. 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 Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, 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 Recipient 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 Recipient's legal duty to furnish information.

- iv. The Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The Recipient 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.
- vi. The Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering 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 Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government contracts or federally assisted construction 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 Recipient will include the portion of the sentence immediately preceding paragraph (1) and 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 Recipient will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. Davis Bacon Act

If the Agreement is a prime construction contract in excess of \$2,000 awarded by the Recipient, and if required by the Federal Legislation, the Recipient must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. The Recipient must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

5. Contract Work Hours and Safety Standards Act

Where applicable, if the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, the Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Recipient must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not

less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions Made Under Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Non-Federal Entity or subrecipient 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 Non-Federal Entity or subrecipient 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.

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

If the Agreement is in excess of \$150,000, the Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)

The Recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Recipient certifies 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. If applicable, the Recipient shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award, using form SF-LLL, available at:

https://apply07.grants.gov/apply/forms/sample/SFLLL_1_2_P-V1.2.pdf.

10. Procurement of Recovered Materials

The Recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as described in 2 CFR part 200.322.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

12. Domestic Preferences for Procurement

The Recipients and subrecipients must to the greatest extent practical give preference to the purchase, acquisition, or use of goods, products, or materials produced in the United States in accordance with 2 CFR 200.322.

ADMINISTRATIVE

1. General Federal Regulations

Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.

2. Rights to Patents and Inventions Made Under a Contract or Agreement

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.

3. Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175)

Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

4. Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234)

Recipients must comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable. This act requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

5. Water Resources Reform and Development Act (WRRDA) P.L. 113-121

Recipients must comply with the Water Resources Reform and Development Act (WRRDA) P.L. 113-121, if applicable. This act provides for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources.

6. Whistleblower Protection

Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).

(a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).

(b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The Recipient shall insert this clause, including this paragraph (c), in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph (c) in any subawards and contracts awarded prior to the effective date of this provision.

7. Notification of Termination (2 CFR § 200.340)

In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.

8. Additional Lobbying Requirements

- (a) The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
- (b) The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.

- (c) Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

COMPLIANCE WITH ASSURANCES

9. Assurances

Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.

FEDERAL REPORTING REQUIREMENTS

Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act ("FFATA") of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.

DEPARTMENT OF INTERIOR-SPECIFIC

10. Department of Interior (DOI) General Terms and Conditions

Recipients shall comply with DOI General Terms and Conditions available at https://www.doi.gov/pam/programs/financial_assistance/TermsandConditions, and incorporated by reference.

11. DOI Regulations

Recipients shall comply with the following regulations: 2 CFR 1400-1402, 43 CFR 9, 43 CFR 17, 43 CFR 18, 43 CFR 41, and 43 CFR 44.

12. Drug-Free Workplace

Recipients must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1401. Additionally, in accordance with these regulations, the recipients must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

13. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

As applicable, Recipient shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) to provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

14. Deposit of Publications Produced under Grants

Pursuant to Departmental Manual 505 DM4 (DOI) and Service Manual FW1 (USFWS), any grant or cooperative agreement that will produce a publication (other than those listed as exceptions) must provide two copies of each publication to the Department of Interior's Natural Resources Library. For a list of exceptions, transmittal requirements, and delivery information see Departmental Manual 505 DM 4, Deposit of Publications Produced under Grants at: <http://elips.doi.gov/ELIPS/DocView.aspx?id=1671>.

UNITED STATES FISH & WILDLIFE SERVICE-SPECIFIC

15. USFWS Financial Assistance Award Terms and Conditions

Recipients shall comply with the USFWS Financial Assistance Award Terms and Conditions applicable to the specific Federal Award funding source, available at <https://www.fws.gov/grants/atc.html>, and incorporated by reference.

NATIONAL PARKS SERVICE LAND AND WATER CONSERVATION FUND STATE ASSISTANCE PROGRAM-SPECIFIC

16. LWCF Federal Financial Assistance Manual

As applicable, Recipients shall comply with the LWCF Federal Financial Assistance Manual Effective March 11, 2021, or later, available at <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>, and incorporated by reference.

17. Historic Preservation

As applicable, Recipients shall comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).

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Land and Water Conservation Fund Program Florida Recreation Development Assistance Program Project Status Report

Project Name: _____

Project Number: _____

Project Sponsor: _____

Identify primary and support recreation areas and facilities to be constructed. (50% of total costs must be in primary facilities).

PROVIDE PHOTOS OF WORK IN PROGRESS

PRIMARY FACILITIES/ELEMENTS:

DRP-109 (Effective 05-22-2015)

[illegible]

Period Covered (Check Appropriate Period):	Due May 5 th	Due September 5 th	Due January 5 th
☐ January through April:			
☐ May through August:			
☐ September through December:			

LIAISON: _____

Signature

Date



Florida Department of Environmental Protection

EXHIBIT C
PAYMENT REQUEST SUMMARY FORM

Required Signatures: **Adobe Signature**

Date: _____

Grantee

Project Name and Number

Billing Period: _____

Billing #: _____

DEP Division: _____

DEP Program: _____

	Project Costs This Billing	Cumulative Project Costs
Contractual Services DRP-116		
Grantee Labor DRP-117		
Employee Benefits (_____ % of Salaries)		
Direct Purchases: Materials & Supplies DRP-118		
Grantee Stock DRP-120		
Equipment DRP-119		
Land Value		
Indirect Costs (15% of Grantee Labor)		
TOTAL PROJECT COSTS	\$0.00	\$0.00

CERTIFICATION: I hereby certify that the above expenses were incurred for the work being accomplished in the attached progress reports.

Project Administrator

Date

CERTIFICATION: I hereby certify that the documentation has been maintained as required to support the project expenses as reported above and is available for audit upon request.

Project Financial Officer

Date

**AMENDMENT NO. 1
TO AGREEMENT NO. LW738
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
TOWN OF FORT MYERS BEACH**

This Amendment to Agreement No. LW738 (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and Town of Fort Myers Beach, 2731 Oak Street, Fort Myers Beach, FL 33931 (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for new multi-sports field, four pickleball courts, loop trail, four picnic areas, playground, two batting cages, parking lot, sidewalks, landscaping, renovate basketball court, and two tennis courts effective February 10, 2022 and,

WHEREAS, the parties wish to amend the Agreement as set forth herein to extend the grant project completion date by one year to August 31, 2025 and the grant expiration date by one year to December 31, 2025.

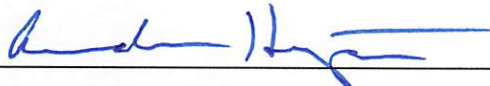
NOW THEREFORE, the parties agree as follows:

- 1) Attachment 1, Standard Terms and Conditions (Rev. 10/18/2021) is hereby deleted in its entirety and replaced with Attachment 1, Standard Terms and Conditions (Rev. 10/01/2024) as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 1 shall hereinafter refer to Attachment 1, Standard Terms and Conditions (Rev. 10/01/2024).
- 2) Attachment 2, Terms and Conditions (Rev. 10/18/2021) is hereby deleted in its entirety and replaced with Attachment 2, Special Terms and Conditions (Rev. 07/08/2024) as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 2 shall hereinafter refer to Attachment 2, Special Terms and Conditions (Rev. 07/08/2024).
- 3) Attachment 3, Grant Work Plan is hereby deleted in its entirety and replaced with Attachment 3-A, Revised Grant Work Plan as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 3 shall hereinafter refer to Attachment 3-A, Revised Grant Work Plan.
- 4) Attachment 4, Public Records Requirements (Rev. 04/27/2018) is hereby deleted in its entirety and replaced with Attachment 4, Public Records Requirements (Rev. 04/08/2024) as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 4 shall hereinafter refer to Attachment 4, Public Records Requirements (Rev. 04/08/2024).
- 5) Attachment 5, Special Audit Requirements (Rev. 12/14/2020) is hereby deleted in its entirety and replaced with Attachment 5, Special Audit Requirements (Rev. 11/08/2022) as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to Attachment 5 shall hereinafter refer to Attachment 5, Special Audit Requirements (Rev. 11/08/2022).
- 6) All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

Town of Fort Myers Beach

**Florida Department of
Environmental Protection**

By: 

By: _____

Title: Town Manager

Secretary or Designee

Date: 10/16/24

Date: _____

LIST OF ATTACHMENTS/EXHIBITS INCLUDED AS PART OF THIS AMENDMENT:

Attachment	1	Standard Terms and Conditions (Rev. 10/01/2024) (14 pages)
Attachment	2	Special Terms and Conditions (Rev. 07/08/2024) (3 pages)
Attachment	3-A	Revised Grant Work Plan (3 pages)
Attachment	4	Public Records Requirements (Rev. 04/08/2024) (1 page)
Attachment	5	Special Audit Requirements (Rev. 11/28/2022) (2 pages)

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
 - i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
 - (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.A change order to this Agreement may be used when:
 - (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

Attachment 1

1 of 14

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Invoice reduction
If Grantee does not meet a deadline for any deliverable, the Department will reduce the invoice by 1% for each day the deadline is missed, unless an extension is approved in writing by the Department.
- c. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department

Attachment 1

2 of 14

does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.
- e. Rural Communities and Rural Areas of Opportunity. If Grantee is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" (RAO) as defined in subsection 288.0656(2), F.S., such Grantee may request from the Department that all invoice payments under this Agreement be directed to the relevant county or municipality or to the RAO itself. The Department will agree to Grantee's request if:
 - i. Grantee demonstrates that it is a county or municipality that qualifies as a "rural community" or "rural area of opportunity" under subsection 288.0656(2), F.S.;
 - ii. Grantee demonstrates current financial hardship using one (1) or more of the "economic distress" factors defined in subsection 288.0656(2)(c), F.S.;
 - iii. Grantee's performance has been verified by the Department, which has determined that Grantee is eligible for invoice payments and that Grantee's performance has been completed in accordance with this Agreement's terms and conditions; and
 - iv. Applicable federal and state law(s), rule(s) and regulation(s) allow for such payments.

This subsection may not be construed to alter or limit any other applicable provisions of federal or state law, rule, or regulation. A current list of Florida's designated RAOs can be accessed at the following web address: <https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity>.
- f. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- g. State Funds Documentation. Pursuant to section 216.1366, F.S., if Contractor meets the definition of a non-profit organization under section 215.97(2)(m), F.S., Contractor must provide the Department with documentation that indicates the amount of state funds:
 - i. Allocated to be used during the full term of the contract or agreement for remuneration to any member of the board of directors or an officer of Contractor.

Attachment 1

3 of 14

- ii. Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the Contractor.

The documentation must indicate the amounts and recipients of the remuneration. Such information must be posted on the State's the contract tracking system and maintained pursuant to section 215.985, F.S., and must be posted on the Contractor's website, if Contractor maintains a website.

- h. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- i. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- j. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- k. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to: <https://www.myfloridacfo.com/division/aa/local-governments/judgement-interest-rates>.
- l. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.
- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in chapters 273 and/or 274, F.S., and Chapter 69I-72, Florida Administrative Code (F.A.C.) and/or Chapter 69I-73, F.A.C., as applicable. For grants funded with federal funds, nonconsumable and/or nonexpendable personal property or equipment costing \$10,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in 2 CFR 200. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-

Attachment 1

4 of 14

- price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
- ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with section 112.061, F.S.
 - e. Direct Purchase Equipment. For grants funded fully or in part with state funds, equipment is defined as capital outlay costing \$5,000 or more. For grants funded fully with federal funds, equipment is defined as capital outlay costing \$10,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
 - f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
 - g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
 - h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform

Attachment 1

5 of 14

that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.

- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant

Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first

arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

Attachment 1

8 of 14

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Development, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Build America, Buy America Act (BABA) - Infrastructure Projects with Federal Funding.

This provision does not apply to Agreements that are wholly funded by Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act. Also, this provision does not apply where

there is a valid waiver in place. However, the provision may apply to funds expended before the waiver or after expiration of the waiver.

If applicable, Recipients or Subrecipients of an award of Federal financial assistance from a program for infrastructure are required to comply with the Build America, Buy America Act (BABA), including the following provisions:

- a. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. All manufactured products used in the project are produced in the United States--this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- c. All construction materials are manufactured in the United States--this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

25. Investing in America

Grantees of an award for construction projects in whole or in part by the Bipartisan Infrastructure Law or the Inflation Reduction Act, including the following provision:

- a. Signage Requirements
 - a. Investing in America Emblem: The recipient will ensure that a sign is placed at construction sites supported in whole or in part by this award displaying the official Investing in America emblem and must identify the project as a “project funded by President Biden’s Bipartisan Infrastructure Law” or “project funded by President Biden’s Inflation Reduction Act” as applicable. The sign must be placed at construction sites in an easily visible location that can be directly linked to the work taking place and must be maintained in good condition throughout the construction period.

The recipient will ensure compliance with the guidelines and design specifications provided by EPA for using the official Investing in America emblem available at: <https://www.epa.gov/invest/investing-america-signage>.
 - b. Procuring Signs: Consistent with section 6002 of RCRA, 42 U.S.C. 6962, and 2 CFR 200.323, recipients are encouraged to use recycled or recovered materials when procuring signs. Signage costs are considered an allowable cost under this assistance agreement provided that the costs associated with signage are reasonable. Additionally, to increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to translate the language on signs (excluding the official Investing in America emblem or EPA logo or seal) into the appropriate non-English language(s). The costs of such translation are allowable, provided the costs are reasonable.

26. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in section 287.135, F.S. Pursuant to section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized

Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

- c. As provided in subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to section 216.347, F.S., except that pursuant to the requirements of section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with sections 11.062 and 216.347, F.S.

28. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

29. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;
 - ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. Special Audit Requirements. The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. Proof of Transactions. In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect,

Attachment 1

11 of 14

general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.

- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
 - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

30. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

31. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

32. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.
- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Development at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

33. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee

Attachment 1

12 of 14

is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

34. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

35. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

36. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

37. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

38. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

39. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

40. Disclosure of Gifts from Foreign Sources.

If the value of the grant under this Agreement is \$100,000 or more, Grantee shall disclose to Department any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern, as defined in section 286.101, F.S., if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous 5 years. Such disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or 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. If the disclosure requirement is applicable as described above, then within 1 year before applying for any grant, Grantee must also provide a copy of such disclosure to the Department of Financial Services.

41. Food Commodities.

To the extent authorized by federal law, the Department, its grantees, contractors and subcontractors shall give preference to food commodities grown or produced in this state when purchasing food commodities, including farm products as defined in section 823.14, F.S., of any class, variety, or use thereof in their natural state or as processed by a farm operation or processor for the purpose of marketing such product.

42. Anti-human Trafficking.

If the Grantee is a nongovernmental entity, the Grantee must provide the Department with an affidavit signed by an officer or a representative of the Grantee under penalty of perjury attesting that the Grantee does not use coercion for labor or services as defined in section 787.06, F.S.

43. Iron and Steel for Public Works Projects.

If this Agreement funds a “public works project” as defined in section 255.0993, F.S., or the purchase of materials to be used in a public works project, any iron or steel permanently incorporated in the Project must be “produced in the United States,” as defined in section 255.0993, F.S. This requirement does not apply if the Department determines that any of the following circumstances apply to the Project:

- (1) iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- (2) the use of iron or steel products produced in the United States will increase the total cost of the project by more than twenty percent (20%); or
- (3) complying with this requirement is inconsistent with the public interest.

Further, this requirement does not prevent the Contractor’s minimal use of foreign steel and iron materials if:

- (1) such materials are incidental or ancillary to the primary product and are not separately identified in the project specifications; and
- (2) the “cost” of such materials, as defined in section 255.0993, F.S., does not exceed one-tenth of one percent (1%) of the total Project Cost under this Agreement or \$2,500, whichever is greater.

Electrical components, equipment, systems, and appurtenances, including supports, covers, shielding, and other appurtenances related to an electrical system that are necessary for operation or concealment (excepting transmission and distribution poles) are not considered to be iron or steel products and are, therefore, exempt from the requirements of this paragraph.

This provision shall be applied in a manner consistent with and may not be construed to impair the state’s obligations under any international agreement.

44. Complete and Accurate information.

Grantee represents and warrants that all statements and information provided to DEP are current, complete, and accurate. This includes all statements and information in this Grant, as well as its Attachments and Exhibits.

45. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. LW738**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Bay Oaks Recreational Campus Redevelopment. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on or after January 1, 2022, through the Project Completion Date.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur after approval of the final deliverable(s).
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☒	☒	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☒	☒	a. Fringe Benefits, which shall be calculated at the rate of 40% of direct salaries.
☒	☒	b. Indirect Costs, which shall be calculated at the rate of 15% of direct costs.
☒	☒	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☒	☒	Rental/Lease of Equipment
☒	☒	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

This Agreement requires at least a fifty percent (50%) non-federal match from the Grantee towards the work funded under this Agreement. Therefore, the Grantee is responsible for providing \$1,000,000.00 towards the Project funded

under this Agreement. It is understood that any additional funds necessary for the completion of this project are the responsibility of the Grantee.

All required matching funds shall meet the federal requirements established in 2 CFR § 200.306 and other federal statutory requirements, as applicable. Grantee acknowledges and agrees to provide eligible match types as set forth in the LWCF Federal Financial Assistance Manual <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>. Grantee acknowledges and agrees not to provide ineligible match sources, including real property acquired or funds obtained from any of the following sources:

- a. Florida Recreation Development Assistance Program (FRDAP), Recreation Trails Program (RTP), and LWCF;
- b. Donated value of real property acquired prior to Department approval or through Land and Water Conservation Fund; and
- c. Other state or federal grant or land acquisition programs such as: legislative special interest projects, Save Our Coast Program, Preservation 2000, Florida Forever, Conservation and Recreation Lands Program, Save Our Rivers Program, and Land Acquisition Trust Fund.

Real property donated as all, or part of the Grantee's required match must be appraised prior to commencement of the Project. Pursuant to subsection 62D-5.071(9), F.A.C., the Grantee shall submit appraisal(s), obtained at its own expense and prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions ("UASFLA"). The appraisal must establish the fair market value of the Project site. Property appraised at \$500,000 or less requires one (1) appraisal. Property exceeding \$500,000 in appraised value requires a second appraisal. The appraisal(s) shall be dated no earlier than six (6) months prior to the closing date of the LWCF application submission period. The appraisal must be prepared by an appraiser on the list of approved appraisers maintained by the Department's Division of State Lands under the provisions of Sections 253.025(6)(b), 259.041(7)(c), F.S., and Rule 18-1.007, F.A.C. Property value is based on the purchase price or appraised value, whichever is lower; if two (2) appraisals are required, the property value is lowest of the two appraisals or the purchase price. Appraisal costs shall not be reimbursed under the terms and conditions of this Agreement. If the negotiated purchase price or approved appraised value is greater than the annual appropriation by USDO, NPS and the Florida Legislature, the Grantee must pay the additional cost.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. All insurance policies shall be through insurers licensed and authorized to issue policies in Florida, or alternatively, Grantee may provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

- a. **Commercial General Liability Insurance.**
The Grantee shall provide adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees, and officers shall be named as an additional insured on any general liability policies. The minimum limits shall be \$250,000 for each occurrence and \$500,000 policy aggregate.
- b. **Commercial Automobile Insurance.**
If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The Department, its employees, and officers shall be named as an additional insured on any automobile insurance policy. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage
- c. **Workers' Compensation and Employer's Liability Coverage.**
The Grantee shall provide workers' compensation, in accordance with Chapter 440, F.S. and employer liability coverage with minimum limits of \$100,000 per accident, \$100,000 per person, and \$500,000 policy aggregate. Such policies shall cover all employees engaged in any work under the Grant.
- d. **Other Insurance.** None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of this Agreement.

11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior knowledge of the Department's Grant Manager. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Common Carrier.

- a. Applicable to contracts with a common carrier – firm/person/corporation that as a regular business transports people or commodities from place to place. If applicable, Contractor must also fill out and return PUR 1808 before contract execution. If Contractor is a common carrier pursuant to section 908.111(1)(a), Florida Statutes, the Department will terminate this contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.
- b. Applicable to solicitations for a common carrier – Before contract execution, the winning Contractor(s) must fill out and return PUR 1808, and attest that it is not willfully providing any service in furtherance of transporting a person into this state knowing that the person unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq. The Department will terminate a contract immediately if Contractor is found to be in violation of the law or the attestation in PUR 1808.

15. Financial Assistance and Payment of Invoices to Rural Communities or Rural Areas of Opportunity

This agreement does not provide federal or state financial assistance to a county or municipality that is a rural community or rural area of opportunity as those terms are defined in s. 288.0656(2).

16. Additional Terms.

ATTACHMENT 3-A
REVISED GRANT WORK PLAN
LAND AND WATER CONSERVATION FUND PROGRAM (LWCF)
Project Name: Bay Oaks Recreational Campus Redevelopment
Grantee Name: Town of Fort Myers Beach
LWCF Project # LW738

SUMMARY: The Grantee shall complete the Project Element(s), which were approved by the Department through the LWCF Application Evaluation Criteria, pursuant to Chapter 62D-5, Florida Administrative Code (F.A.C.). Any alteration(s) to the Project Element(s) as submitted in the Grantee's application and listed in the Grant Work Plan is considered a significant change, and must be pre-approved by the Department and NPS, and may require a formal Amendment to this Agreement. All work must be completed in accordance with the LWCF Program, and local, state and federal laws, the approved Project plans, all required permits, and the Florida Building Code. Prior to the Department issuing a "Notice to Commence" to the Grantee, as specified in Attachment 6 of the Agreement, Program Specific Requirements, the Department must receive evidence of and have approved all Deliverables in Task 1.

For the purpose of this Agreement, the terms "Project Element" and "Project Task" are used interchangeably to mean an identified facility within the Project.

The Project is located at 2731 Oak Street, Fort Myers Beach, FL 33931 and is considered a "Development Project" pursuant to subsection 62D-5.070(5)(b), F.A.C.

Project Completion: The Project Completion Date for this Agreement is **August 31, 2025**.

Budget: Reimbursement for allowable costs for the Project shall not exceed the maximum Grant Award Amount outlined below. Required match for development projects will be provided by cash, in-kind services, or donated real property, as set forth in subparagraph 62D-5.070(6)(b)1., F.A.C. Required match for acquisition projects will be provided by cash or real property donated, as set forth in subparagraph 62D-5.070(6)(b)2., F.A.C. The total estimated Project cost provided below is based on the approved LWCF Application. A detailed cost analysis will be provided in the Deliverables for Task 1, prior to the Department issuing the "Notice to Commence." All final Project Costs shall be submitted to the Department with the payment request.

Maximum Grant Award Amount:	\$1,000,000.00
Required Grantee Match Amount:	\$1,000,000.00
Total Estimated Project Cost:	\$2,000,000.00
Match Ratio:	50%

Scope of Work/Tasks	Deliverables	Due Date	Financial Consequences
TASK 1 1.A. Development of Commencement Documentation Checklist (DRP-122) ¹ . 1.B. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable).	DELIVERABLE 1 The Department will issue "Notice to Commence" upon receipt and approval of: 1.A. All applicable Project specific Commencement documentation listed on Commencement Documentation Checklist (DRP-122) 1.B. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable). Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, Project	180 calendar days after Execution of Agreement ²	The Department shall terminate the Project Agreement if the required Deliverables are not submitted and approved by the Department.

	inspection, and other similar fees are eligible for reimbursement. However, reimbursement, if requested, shall not exceed fifteen (15%) of total Project cost, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule.		
	The Grantee may not proceed with development of the Project until Notice to Commence has been issued.		
TASK 2 2.A. Development of Primary and Support Project Elements, which includes: New multi-sport field use (soccer, baseball, softball, football, little league, outdoor fitness and community engagement events), four pickleball courts, loop trail, four picnic areas, playground, two batting cages, parking lot, sidewalks, landscaping, renovate basketball court and two tennis courts. 2.B. Development of Completion of Documentation Checklist (DRP-125). 2.C. Completion of Final Status Report (DRP-109).	DELIVERABLE 2 The Grantee may request reimbursement upon Department receipt and approval of: 2.A. Development of required Project Elements. 2.B. All applicable Project specific Completion documentation listed on Completion Documentation Checklist (DRP-125) 2.C. Final Status Report (DRP-109). The Grantee may request reimbursement for allowable budgeted expenses and costs pursuant to the Agreement that are directly related to the successful development of the Project site. Reimbursement shall not exceed the Grant Award Amount, less any reimbursement requested for in Deliverable 1, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule below. Ten percent (10%) of the Grant Award will be retained until the Project is designated complete by the Department.	Due August 31, 2025, which shall also be the Project Completion Date³	No reimbursement will be made for Deliverable(s) deemed unsatisfactory by the Department. Payment(s) will not be made for unsatisfactory or incomplete work. In addition, a Task may be terminated for Grantee's failure to perform.

Project Task Performance Standard: The Department's Grant Manager will review the Project Completion Certificate and the Deliverables to verify compliance with the requirements for funding under LWCF; approved plans and application approved for funding. Upon review and written acceptance by the Department's Grant Manager of the Project Completion Certificate and the Deliverables under each Project Task, the Grantee may proceed with the payment request submittal.

Payment Request Schedule: Following Department approval of all Deliverables, the Grantee may submit a **single payment request** on Exhibit C, Payment Request Summary Form, DRP-115, along with all required documentation as outlined in the Financial Reporting Procedures (DRP-110), as applicable, to support payment. A payment request submitted as part of the reimbursement process must correspond with the Cost Analysis and supporting documents provided under Project Tasks.

Endnotes:

1. LWCF documentation is available at <https://floridadep.gov/lands/land-and-recreation-grants/content/land-and-water-conservation-fund-program> and/or from the Land and Recreational Grants Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS# 585, Tallahassee, Florida, 32399-3000.
2. Project Agreement is subject to termination if Commencement documentations under Task 1 are not received and approved by the Department within 180 calendar days of the Project Agreement execution.
3. Due Date will not be extended beyond the Grant Period as outlined in Rule 62D-5.073, F.A.C.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. 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 Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department 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 Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$1,000,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$1,000,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$1,000,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <https://sam.gov/content/assistance-listings>.

Attachment 5

1 of 7

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

3 of 7

5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program A	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	
Federal Program B	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program A	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category
	U.S. Department of the Interior	15.916	Outdoor Recreation, Acquisitions, Development and Planning – Land and Water Conservation Fund Grants	\$1,000,000.00	14001
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program A	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category

Total Award					\$1,000,000.00	
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<https://sam.gov/content/assistance-listings>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]). The

¹ Subject to change by Change Order.

² Subject to change by Change Order.

services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

RESOLUTION NO. 24-218

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING THE TOWN MANAGER'S APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. LW738 WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE RECEIPT OF GRANT FUNDING FOR OUTDOOR RECREATION FACILITIES AS PART OF THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT TO EXTEND THE COMPLETION DATE TO AUGUST 31, 2025 AND THE GRANT EXPIRATION DATE TO DECEMBER 31, 2025; 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 was awarded a \$1 million matching grant from the Florida Department of Environmental Protection ("Grant") for outdoor recreation facilities as part of the Bay Oaks Campus Redevelopment ("Project") that had a project completion date of August 31, 2024, and a grant agreement expiration date of December 31, 2024; and

WHEREAS, on March 7, 2022, the Town Council ratified the execution of the grant agreement by the Town Manager as previously authorized by the Town Council at its Management and Planning Meeting on February 10, 2022; and

WHEREAS, as a result of the catastrophic destruction of Hurricane Ian and subsequent focus by the Town on emergency response and recovery efforts, the Town determined that it was in the best interests of the health, safety, and welfare of the Town's residents and visitors to request an extension of the grant's project completion date and grant expiration date by one year; and

WHEREAS, on October 16, 2024, the town was notified that it had been granted the extension, and on that same day the Town Manager executed Amendment No. 1 to Agreement No. LW738 between the Florida Department of Environmental Protection and the Town of Fort Myers Beach which extends the grant project completion date by one year to August 31, 2025 and the grant agreement expiration date by one year to December 31, 2025; and

WHEREAS, the Town Council wishes to ratify the Town Manager's execution of the Amendment to the Grant Agreement which extends the grant project completion date by one year to August 31, 2025, and the grant agreement expiration date by one year to December 31, 2025.

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

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

Section 2. The Town Council ratifies the Town Manager's execution of Amendment No. 1 to Agreement No. LW738 between the Florida Department of Environmental Protection and the Town of Fort Myers Beach which extends the grant project completion date by one year to August 31, 2025, and the grant agreement expiration date by one year to December 31, 2025.

Section 3. This Resolution shall take effect 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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 28th day of October 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, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this _____ day of October 2024.

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON SEPTEMBER 23, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVING A NEW CONTRACT WITH SOFTRIM LLC TO CONTINUE PROVIDING REMOTE INFORMATION TECHNOLOGY SUPPORT SERVICES AND SOFTWARE LICENSING, AND TO ADD FULL-TIME, ONSITE SUPPORT FOR A TOTAL ANNUAL AMOUNT OF \$191,784 FOR A TWO YEAR TERM AS AN EMERGENCY PURCHASE, APPROVING AN ADDENDUM TO THE SOFTRIM CONTRACT CONTAINING REQUIRED TERMS AND CONDITIONS UNDER FLORIDA LAW; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Ratification of an emergency purchase is required by the Town's purchasing ordinance.

What the action accomplishes:

The action ratifies the contract for information technology services that was executed by the Town Manager on September 23, 2024 on an emergency basis when the Town's System Administrator position became vacant as of September 11, 2024.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Joe Onzick, Finance Director

5. **Background:**

There was an existing contract in place with Softrim, LLC to provide remote information technology support services and software licensing for an annual cost of \$93,792. In addition, the Town of Fort Myers Beach had a full-time position of Systems Administrator with salary and benefits budgeted for \$109,061. However, the position of Systems Administrator was vacated on September 11, 2024 leaving the Town without full-time, onsite information technology support. Since the cost of Softrim, LLC providing a full-time, onsite information technology specialist would only increase the existing service contract with Softrim, LLC by \$97,992 (which is \$11,069 less than what had been budgeted for an employee), and since Softrim, LLC was already familiar with the town's software environment and support needs, it was in the best interest of the Town for the Town Manager to execute an updated contract with Softrim, LLC to include a full-time, onsite information technology specialist with Softrim, LLC for a total annual contract cost of \$191,784. The contract is for a term of 2 years with an annual cost of \$191,784, subject to a 3% increase for each 1 year renewal.

Attachments:

1. 24-211, Ratification of Emergency Information Technology Services Contract FINAL
2. Softrim, LLC Service Provider Agreement
3. Softrim LLC Contract Addendum FINAL

Financial Impact:

Since the full cost of the System Administrator position with salary and benefits was budgeted for \$109,061, and the cost of adding a full-time, onsite information technology specialist to our existing Softrim, LLC contract only added \$97,992 to the total contract cost, the Town will save \$11,069. (The new contract total cost of \$191,784 is \$97,992 more than the previous contract cost of \$93,792.)

6. **Alternative Action**

The Town Council may consider not ratifying this contract and pursue selection of an alternative service provider. However, the Town may be at increased risk by not having a software vendor that is as familiar with the Town's software environment and support needs as Softrim, LLC is.

Should the Town desire to seek an alternative, the existing contract with Softrim would need to be terminated.

7. **Management Recommendations:**

Management recommends ratification of the contract.

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 - 10/2/2024
Approved - 10/2/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

RESOLUTION NUMBER 24-211

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON SEPTEMBER 23, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND APPROVING A NEW CONTRACT WITH SOFTRIM LLC TO CONTINUE PROVIDING REMOTE INFORMATION TECHNOLOGY SUPPORT SERVICES AND SOFTWARE LICENSING, AND TO ADD FULL-TIME, ONSITE SUPPORT FOR A TOTAL ANNUAL AMOUNT OF \$191,784 FOR A TWO YEAR TERM AS AN EMERGENCY PURCHASE, APPROVING AN ADDENDUM TO THE SOFTRIM CONTRACT CONTAINING REQUIRED TERMS AND CONDITIONS UNDER FLORIDA LAW; 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 resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach had a contract in place with Softrim, LLC to provide remote information technology support services and software licensing for an annual cost of \$93,792; and

WHEREAS, the Town of Fort Myers Beach had a full-time position of Systems Administrator with salary and benefits budgeted for \$109,061; and

WHEREAS, the position of Systems Administrator was vacated on September 11, 2024 leaving the Town without full-time, onsite information technology support; and

WHEREAS, the cost of Softrim, LLC providing a full-time, onsite information technology specialist would only increase the existing service contract with Softrim, LLC by \$97,992, which is less than the budget of \$109,061 for the Systems Administrator position; and

WHEREAS, it was in the best interest of the Town to immediately contract a full-time, onsite information technology specialist with Softrim, LLC, since they as our existing information technology services provider already had familiarity with the town's software environment and support needs; and

WHEREAS, Florida law requires the inclusion of certain contractual terms and conditions which have been included in the addendum to the Softrim contract.

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

Section 1. That 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. That the new 2-year contract with Softrim, LLC with an effective date of October 1, 2024 with an annual cost of \$191,784 that was executed by the Town Manager on September 23, 2024 so as to immediately fill the vacancy of the Systems Administrator position while also saving the Town \$11,069, is hereby ratified by the Town Council as an emergency purchase. A copy of this contract and it's addendum is approved and attached to the Resolution as Exhibit A.

Section 3. That the 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 _____ 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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of _____ 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 _____, 2024.

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into this 1 day of October 2024, by and between the Town of Fort Myers Beach, a Florida municipal corporation with an address of 2523 Estero Boulevard, Fort Myers Beach, FL 33931, (hereafter "Town"), and Softrim, LLC, a Florida corporation with an address of 9210 Estero Park Commons Blvd., Units 1-6 Estero, FL 33928 (hereafter "Provider").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Scope of Services. The provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing, and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. Term. The term of this Agreement is (2) years commencing on October 1st, 2024, and terminating on September 30th, 2026. The agreement will automatically renew each year for an additional one year until terminated. The contracted price is subject to a 3% annual increase discussed by both parties prior to the increase.
3. Payment Obligation. The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
4. Provider's Obligations. The Provider's obligations include, but are not limited to, the following:
 - a) Licensure. The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) Provision of Services. The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations, and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. The provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.
 - c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work, and materials.
 - d) Indemnity and Hold Harmless. The Provider agrees to indemnify and hold harmless the Town, its officers, and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement.

- e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. The provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
 6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, the Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.
 7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C"; "Attachment "A".
 8. Termination of Agreement. Either party may terminate this Agreement without cause upon 90 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
 9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from the merger or consolidation of the Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to the Provider in connection with its performance of services and work pursuant to this Agreement.
 10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such a period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
 11. Public Records. The contractor is required to comply with the provision of F.S. 119.0701. Specifically, the

Contractor is required to keep and maintain the records required the Town to perform the services. Upon request by the Town or any third party, Contractor is required to provide the Town with a copy of the requested records, or the ability to inspect and copy records, within a reasonable time and at a cost to the Town that does not exceed the costs established under F.S. chapter 119. Upon completion of the contract the Contractor must transfer, at no cost to the Town, all public records in a format compatible with the Town's information technology system, or, in the alternative, the Contract may retain the records in a manner consistent with F.S. 119.0701(2)(b)4.

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 THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
13. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
14. E-Verify. ***As a condition precedent to entering into this AGREEMENT***, and in compliance with Section 448.095, Fla. Stat., Contractor, and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
 - a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
 - b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
 - d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
 - e. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

15. Miscellaneous Provisions.

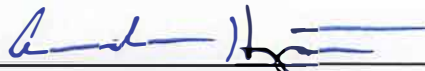
- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

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IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH

ATTEST:

BY: 
Andrew Hyatt, TOWN MANAGER

BY: 
Amy Baker, TOWN CLERK

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

BY: 
Becky Yose TOWN ATTORNEY

PROVIDER:

BY: 
Signature


Witness Signature

Name: Kevin Harvey

Name: Bruce Snauwaert

Title: EVP

EXHIBIT "A"

Scope of Services

Included in the Managed Support:

Softrim will provide a full-time onsite IT specialist for the Town of Fort Myers Beach Mon-Friday during normal business hours (40 hours/week). In addition to the onsite Softrim managed resource, we will also provide 24/7 Service Desk support from our Florida and Georgia office locations.

- Mon-Friday onsite support
- 24/7 Remote Support
- Management of ConnectWise Automate
- Management of Anti-Virus and other Cyber Security Systems
- Management of Microsoft 365 emails
- Network Monitoring
- Vulnerability Management
- Quarterly Service and Network Reporting (sample report below)
- Provide managed support:
 - Town Hall
 - Mound House
 - Bay Oaks Recreation Campus
 - Fort Myers Beach Community Pool
 - Upland Services Office
 - Water Towers

Existing Licensing and service:

Softrim will transfer, support, and manage the existing licensing and systems. Estimates will be provided as required to maintain subscription renewals that are not identified as part of this agreement. Softrim will evaluate the systems during transition and may recommend other solutions based on the results of our evaluation

Licensing and Systems Include in the monthly fees: (quantities need to be verified during transition)

- Onsite & Offsite Backups
- MS Office 365 Licensing (on a separate invoice in addition to this agreement)
- Mimecast Spam Filtering
- Mimecast Archiving
- SonicWALL Capture Client
- DUO 2 Factor Authentication
- Auvik Network Monitoring (**New security service to be added**)
- Vulnerability Management (**New security service to be added**)

EXHIBIT "A" Continued

Scope of Services

Out of Scope Items:

- Any onsite services and support in addition to the contracted 40 hours per week
- Special projects including major network upgrades, a new line of business applications, and custom programming will be quoted and billed separately.
- All 3rd party vendor subscriptions and renewals will be billed separately.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXHIBIT "B"

PAYMENT OBLIGATION

1. The Town will pay the Provider as follows for all services listed in Exhibit "A":

Monthly Agreement Amount \$15,982 (Includes Listed Annual Renewals)

2 Year Term. Will auto-renew each year. Can be cancelled at the end of the term by providing notice 60 days prior to the renewal date.

Softrim Services included in the monthly agreement:

- 24/7 Remote Support
 - Mon-Friday onsite support
 - Softrim will provide remote desktop, network, and server support.
 - Support of network infrastructure including switching, firewalls & routers
 - Support of local and network printers and copiers
 - Standard support is included during business hours Monday – Friday from 8am – 6pm
 - Emergency afterhours support is included on weekdays and weekends.
- Management of MS 365 email and tenant
 - Softrim will manage and maintain the MS 365 email account and tenant.
 - Creation and Removal of email accounts during onboarding and offboarding
- Access and use of Softrim ConnectWise Ticketing System
 - Inhouse IT and Staff will be able to open and manage tickets.
 - Reporting on ticket counts, response times, and history
 - Inhouse IT will be able to escalate tickets to the Softrim remote support team.
- Management of renewals and licensing subscriptions
 - Annual renewals and licenses will be managed, evaluated, and renewed by Softrim to avoid lapses in coverage.
 - Quotes will be provided prior to renewing.
 - A schedule of renewals and budget will be provided at the start of each year.
 - Softrim can add the renewals to the cost of this agreement and charge monthly vs annually.
 - Current renewals include:
 - a. Capture Client End Point Protection
 - b. Mimecast Spam Filtering and Archiving
 - c. Duo 2-Factor Authentication
 - d. Auvik Monitoring
 - e. Vulnerability Management

Out of Scope Items & Pricing:

- Special projects including major network upgrades, a new line of business applications, and custom programming will be quoted and billed separately in this agreement.
- All 3rd party vendor subscriptions and renewals will be billed separately.
- Rates for onsite support in addition to the contracted 40 hours/week and other Softrim services are billed hourly as follows:
 - IT/Networking \$150
 - Access Control \$125
 - Surveillance \$125
 - Audio Video \$125
 - Telecom \$115
 - Structured Cabling \$95
 - Consulting/Programming \$155

Note: Licensing and Renewal Fees will be reviewed and adjusted monthly. Changed to brands quantities or subscription levels will result in a change to this monthly fee.

Note: The Microsoft 365 email and backups invoice is not included in this agreement and will continue to be billed separately.

EXHIBIT "C"

INSURANCE

All Service Providers shall submit proof of insurance as set forth below. Certificates of insurance written by a company or companies acceptable to the Town shall be submitted to the Town no later than ten (10) days after award of the contract. Failure to do so will disqualify the Service Provider automatically. The award of a contract is conditioned upon such submittal to the Town's satisfaction. Certificates of insurance shall list the Town as the certificate holder and as an additional insured. Insurance shall be maintained during the entire term of the contract, shall include Contractual Liability and Products and Completed Operations Coverage, and shall be of the following forms and limits:

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws.

Commercial General Liability Insurance with minimum limits of \$1,000,000 each occurrence combined single limit or \$1,000,000 each occurrence/\$1,000,000 general aggregate.

Business Automobile Liability Insurance with minimum limits of \$1,000,000 each occurrence Combined Single Limit or \$1,000,000 each occurrence/\$1,000,000 general aggregate; and

Crime Coverage with minimum limits of \$200,000.

The establishment of minimum limits on insurance by the Town does not reduce or limit the liability or responsibilities of Service Provider.

Renewal shall be sent to the Town at least 30 days prior to any expiration date. Service Provider shall ensure that its insurer provides a 30-day notification to the Town in the event of cancellation, renewal, or modification of any required insurance coverage requirements that the Service Provider is required to meet. The Service Provider shall provide the Town with certificates of insurance meeting the required insurance provisions.

TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this 28th day of October, 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Softtrim, LLC, hereinafter referred to as “Contractor”, concerning that certain agreement dated the 1 day of October, 2024 (“Agreement”).

WITNESSETH:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning the contractor’s compliance for 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 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; 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; 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”. 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, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an

officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute;

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
2731 OAK STREET
FORT MYERS BEACH, FL. 33931**

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.

8. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, 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), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], 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."

9. 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 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.

10. 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' fees and costs.

11. 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.

12. 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.

13. 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.

14. 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.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

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

A. Paragraphs 11 and 14 are deleted from 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.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM

Town Attorney

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN SEPTEMBER 27, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ICS MATERIALS INC. TO TAKE EMERGENCY PROTECTIVE MEASURES TO REMOVE HAZARDS TO PUBLIC HEALTH AND SAFETY FROM THE BEACH; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to so as comply with the Town's procurement policy which requires the Town Council to ratify emergency expenditures that exceed \$75,000. This contract is for a not-to-exceed amount of \$200,000.

What the action accomplishes:

The Town's ratification of the agreement provides the necessary approval required by the Town's Purchasing Ordinance, which in turn is required for FEMA reimbursement.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

On September 23, 2024 Governor Ron DeSantis by Executive Order No. 24-208, as amended by Executive Order No. 24-209, declared a State of Emergency based upon the serious threat to the public health, safety, and welfare posed by the developing tropical storm, that later became known as Hurricane Helene.

On September 24, 2024, the Florida Department of Environmental Protection issued Emergency Final Order OGC NO. 24-2534 and Emergency Procurement Order OGC NO. 24-2533 to suspend the effect of any statute, rule or order, on the procurement of services, to the extent necessary to ensure emergency response functions.

On September 23, 2024 the Town of Fort Myers Beach approved Resolution 24-192 declaring a state of local emergency as authorized by Section 252.38(3), Florida Statutes, thereby waiving the procedures and formalities otherwise required.

In accordance with the Town of Fort Myers Beach Code Sec. 2-480 (d) that provides the basis for emergency purchase of services for the Town Manager to make when there exists a threat to public health, welfare or safety; provided, on September 27th the Town Manager entered into a contract with ICS Materials, Inc. to remove debris deposited by Hurricane Helene from the beaches within the Town's jurisdiction. This was necessary to protect the health and welfare of the citizens and visitors of the Town of Fort Myers Beach, as well as to protect the financial well-being of the businesses in the Town that depend on tourism.

The term of the contract is 10 days: from September 27, 2024 to October 7, 2024, for a not-to-exceed amount of \$200,000.

Attachments:

1. 24-212, Ratify ICS Contract Hurricane Helene Beach Cleanup

2. SPA-24-10-EN Hurricane Helene ICS Contract FINAL - unsigned

Financial Impact:

This contract is for a not-to-exceed amount of \$200,000. It should be reimbursable by FEMA.

6. Alternative Action

The Town Council may choose not to ratify the contract. However, doing so will jeopardize reimbursement from FEMA.

7. Management Recommendations:

Management recommends approval of this resolution.

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 - 10/4/2024
Approved - 10/4/2024
Approved - 10/21/2024
Approved - 10/21/2024
Final Approval - 10/21/2024

RESOLUTION NUMBER 24-212

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION OF THE TOWN TAKEN SEPTEMBER 27, 2024, UNDER THE EMERGENCY PROCUREMENT POLICY TO CONTRACT WITH ICS MATERIALS INC. TO TAKE EMERGENCY PROTECTIVE MEASURES TO REMOVE HAZARDS TO PUBLIC HEALTH AND SAFETY FROM THE BEACH; 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, on September 23, 2024 Governor Ron DeSantis by Executive Order No. 24-208, as amended by Executive Order No. 24-209, declared a State of Emergency throughout the Emergency Area based upon the serious threat to the public health, safety, and welfare posed by the Storm; and

WHEREAS, on September 24, 2024, the Florida Department of Environmental Protection issued Emergency Final Order OGC NO. 24-2534 for an Emergency Area of 61 counties including Lee County; and

WHEREAS, on September 24, 2024, the Florida Department of Environmental Protection issued Emergency Procurement Order OGC NO. 24-2533 to suspend, to the extent necessary to ensure said emergency response functions, the effect of any statute, rule, or order, including Chapter 255 and Sections 287.055(3)(a)-(d), 4(a)-(d), 5(a)-(c), and 287.057(3), Florida Statutes, and Chapters 60A- 1.002(4), 60A-1.021(2), and 60A-1.043(1)-(3), and 60D-5, Florida Administrative Code, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources to include, without limiting the generality of the foregoing, any and all statutes, rules, and orders which affect budgeting, leasing, printing, purchasing, travel, the conditions of employment, and the compensation of employees as set forth in an established Tracker item at the Florida Emergency Operations Center, as prescribed in the State Comprehensive Emergency Management Plan, as directed by the State Coordinating Officer, or as directed by the Executive Office of the Governor; and

WHEREAS, on September 23, 2024 the Town of Fort Myers Beach approved Resolution 24-192 declaring a state of local emergency as authorized by Section 252.38(3), Florida Statutes, thereby waiving the procedures and formalities otherwise required of political subdivisions by; 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, the Town of Fort Myers Beach Code Sec. 2-480 (d) provides the basis for emergency purchase for the Town Manager to make, or authorize others to make, emergency purchases of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency purchases are made with such competition as is practicable under the circumstances.

WHEREAS, on September 27, 2024 the Town Manager entered into a contract with ICS Materials, Inc. for a term of 10 days (from September 27, 2024 to October 7, 2024) to remove debris deposited by

Hurricane Helene from the beaches within the Town's jurisdiction in order to protect the health and welfare of the citizens and visitors of the Town of Fort Myers Beach, as well as to protect the financial well-being of the businesses in the Town that depend on tourism; and

WHEREAS, the contract with ICS Materials, Inc. was for a not-to-exceed amount of \$200,000, which requires ratification by the Town Council.

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 contract with ICS MATERIALS INC. for removal of hazards to public safety from the beach for a period of 10 days for a not-to-exceed amount of \$200,000, and approves the Town Manager’s emergency procurement.

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 _____ 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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this ____ day of October 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 October 2024.

EMERGENCY SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this **4th day of October 2024** by and between the **TOWN OF FORT MYERS BEACH**, 2731 Oak Street, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **ICS MATERIALS, INC.** with an address of **9160 FORUM CORPORATE PKWY #350, FORT MYERS, FL 33905** (hereafter "Provider").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is **10 days** retroactive from **27th Day of September** to the **7th day of October 2024**.
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
3. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
 - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.

- c) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.
 - d) Indemnity and Hold Harmless. The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement.
 - e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of

coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance.

Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C"; Exhibit "D"; Exhibit "E".
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Provider shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Provider shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall 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's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract. If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the

Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

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 THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2731 OAK ST. ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. References to Town. Public Records Compliance Indemnification. Provider agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Provider's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Provider'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. Provider authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Provider in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.
13. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
14. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
15. 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.

a. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.

b. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.

c. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

16. 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.
17. 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.

18. 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.
19. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, 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), Florida Statutes: "In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], 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."

20. 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 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.
21. 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' fees and costs.
22. 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.
23. 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.
24. 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.
25. 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.
26. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

27. Additional Terms. The parties further agree as follows:

A. Federal Emergency Management Agency Supplemental Conditions. The terms and conditions contained in the Federal Emergency Management Supplemental Conditions attached as Exhibit E are incorporated by reference herein.

28. Miscellaneous Provisions.

- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH

ATTEST:

BY: _____
Andrew Hyatt, Town Manager,

BY: _____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: ICS Materials

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of witness

Title (printed)

EXHIBIT "A"

TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED THE 7th
DAY OF OCTOBER 2024 BETWEEN THE TOWN AND PROVIDER.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement:

Provide emergency measures to protect public life, health, and safety within the jurisdiction of the Town of Fort Myers Beach as directed by Town Staff including:

- Clear roads of storm generated overwash sand and debris by collecting, removing, transporting and staging storm generated overwash sand and debris from the right of way and public areas to Town Staff approved disaster debris management sites and landfills.
- Collect, remove and dispose of storm related construction, demolition and vegetative debris from the beach to Town Staff approved disaster debris management sites and landfills.
- Clear beach accesses of storm generated overwash sand and debris by collecting, removing, transporting and staging storm generated overwash sand and debris from the right of way and public areas to Town Staff approved disaster debris management sites and landfills.

Storm-related debris must be properly disposed of at Town approved and permitted waste management facility authorized to accept the type of debris offered for disposal. The Provider shall provide the Town with all compliance documentation including tipping fee receipts, truck tickets, waste disposal facility location and disposal facility permit information.

Newton Park, Bay Oaks Recreational Campus, and Waistina Way Parking Lot shall be used as the Disaster Debris Management Site for staging and handling of debris as directed by Town Staff. All debris Receipt documentation of proper disposal of debris from the disposal facility shall be submitted to Town Staff within 7 days of disposal.

All Provider operators and subcontractors shall provide the Town with complete Florida Recovery Obligation Calculation Individual and Team Forms daily to support operator and equipment claims.

Provider shall comply with all Federal, State, and Local Rules and guidelines for Storm debris removal and construction on the Beach, including the United States Fish and Wildlife Service 2015 Statewide Programmatic Biological Opinion, the State issued Executive Order 24-2222, the Florida Fish & Wildlife Conservation Guidelines for Driving on the Beach, and the Florida Department of Environmental Protection Guidance for Establishment, Operation, and Closure of Disaster Debris Management Sites, United States National Marine Fisheries Service Sea Turtle and Saw Fish Construction Conditions, and the United States Fish and Wildlife Service EHP FEMA Statewide Programmatic Consultation.

EXHIBIT "B"

TO THE EMERGENCY SERVICE PROVIDER AGREEMENT DATED THE 7th
DAY OF OCTOBER 2024 BETWEEN THE TOWN AND PROVIDER.

PAYMENT OBLIGATION

The Town will pay the Provider as follows for all services listed in Exhibit "A":

The Town will compensate the Provider on a time and materials basis for staff labor, equipment and vehicle equipment usage, and actual disposal costs incurred in the performance of the scope of services listed in Exhibit A and at the rates identified in Exhibit D.

The Provider will receive no compensation for mobilization to the site.

Invoicing for services must include the following documentation to support labor, equipment and vehicle usage, and disposal charges:

- List of vehicles and equipment used in providing services with type of equipment vehicle including capacity and size necessary to determine correct equipment rental rates.
- Proof of proper disposal of debris including but not limited to receipts for tipping fees for other charges from a properly permitted solid waste disposal facility
- Copies of Florida Recovery Obligation Calculation Individual and Team Forms for each operator assigned to the project describing work performed and equipment used in providing services claimed
- Supervisor and employee-approved timecards or timesheets which support the number of hours charged for individual staff members

The Provider will be reimbursed for use of equipment and vehicles based on hourly rates in accordance with the currently applicable Blue Book Rental Rates used by the Federal Highway Administration for performance of work under Federal transportation projects. The Provider will not be reimbursed for any fuel, mileage, or other expenses incidental to the operation of equipment or vehicles. The Provider will be reimbursed for properly documented staff time as may be required by federal, state or local regulations or laws.

Compensation under this Agreement shall not exceed \$200,000.

EXHIBIT "C"

INSURANCE: The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
- b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
- c) Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 aggregate for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.
- d) Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

EXHIBIT "D"

ICS Rate Sheet

Project:

Hurricane Helene Emergency Protective Measures

Category	Description	Hourly Rate
Equipment:	740 B - Off Road End Dump	\$ 208.23
	950 CAT Loader	\$ 135.07
	Mid Island Tractor	\$ 95.00
	ISC Kubota Tractor	\$ 95.00
	Rake Attachment	\$ 19.55
	Kubota Skidsteer	\$ 85.64
	Clamshell Attachment	\$ 6.91
	CAT D3 Dozer	\$ 125.64
	Broom Sweeper	\$ 142.99
	12 CY Dump Trailer	\$ 35.00
	2500 Dodge Ram	\$ 36.62
Labor:	Supervisor Standard Time	\$ 78.00
	Supervisor Overtime	\$ 117.00
	Operator Standard Time	\$ 50.00
	Operator Overtime	\$ 75.00
	Laborer Standard Time	\$ 43.00
	Laborer Overtime	\$ 64.50

EXHIBIT “E”

ADDITIONAL TERMS – SUPPLEMENTAL FEDERAL EMERGENCY MANAGEMENT AGENCY SUPPLEMENTAL CONDITIONS

FEDERAL EMERGENCY MANAGEMENT AGENCY PUBLIC ASSISTANCE

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In cases of disagreement with any other section of this contract, the Supplemental Conditions shall govern. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract.

Pursuant uniform requirements of federal awards (2 CFR Part 200.23) the definition of CONTRACTOR is an entity that receives a Contract / Purchase Order.

Compliance with Federal Law, Regulations and Executive Orders: The Sub-Recipient (Town) 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 all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- 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

Access to Records: The contractor agrees to provide the Town, the Florida Department of Emergency Management, 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. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the Town and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

Affirmative Socioeconomic Steps If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

Changes: To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allowable, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable.

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. The contractor shall include this provision in any subcontracts.

Domestic Preference for Procurements 200.322 As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

License and Delivery of Works Subject to Copyright and Data Rights: The Contractor grants to the Town, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the Town or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the Town data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Town.

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.

Prohibition on Covered Telecommunications Equipment or Services

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for covered Telecommunications Equipment or Services As used in this clause –

(b) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

(1) This clause does not prohibit contractors from providing — (i). A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii). Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to: (i). Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii). Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer

number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph(e), in all subcontracts and other contractual instruments.

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.

Rights to Inventions Made Under a Contract or Agreement: Exempt from FEMA Public Assistance Funding

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 Town. 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 Town, 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.

Procurement of Recovered Materials (§200.323) (Over \$10,000): 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— Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines webpage:

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Termination for Cause and Convenience (over \$10,000): See Standard Purchase Order and/or Contract Terms and Conditions

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."

Contractors must sign and submit a certification to the Town with each bid or offer exceeding \$100,000. See Certifications and Assurances and the end of this document.

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 \$27 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 Town or FEMA 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.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and 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."

For contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1

"Further Compliance with the Contract Work Hours and Safety Standards Act.

(1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Clean Air 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 report each violation to the Town and understands and agrees that the Town 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. 3. 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.

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 Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. 2. The contractor agrees to report each violation to the Town and understands and agrees that the Town 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. 3. 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.

Administrative, Contractual, or Legal Remedies (over \$250,000): 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.

CONSTRUCTION ACTIVITIES

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:

(1) 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 setting forth the provisions of this nondiscrimination clause.

(2) 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.

(3) 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.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) 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.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction 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.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis Bacon Act: Exempt under FEMA Public Assistance Funding

Copeland Anti-Kickback Act: Exempt under FEMA Public Assistance Funding

**STATE OF FLORIDA PROVISIONS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BEACH MANAGEMENT FUNDING ASSISTANCE PROGRAM**

Applicable Laws - The Town and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Town shall include this provision in all contracts issued.

Data Collection: The Project shall be conducted in accordance with the terms and conditions set forth under this Agreement, all applicable Department permits and the eligible Project task items established below. All data collection and processing, and the resulting product deliverables, shall comply with the standards and technical specifications contained in the Department's Monitoring Standards for Beach Erosion Control Projects (2014) and all associated state and federal permits, unless otherwise specified in the approved scope of work for an eligible Project item. The monitoring standards may be found at: [Project Monitoring \(floridadep.gov\)](http://ProjectMonitoring.floridadep.gov)

In order to comply with Florida Auditor General report 2014-064 regarding conflicts of interest and to be consistent with Section 287.057(17)(a)(I), F.S., **all monitoring data and statistical analysis must be provided directly and concurrently from the monitoring contractor to the Florida Department of Environmental Protection/Town/permittee/engineering consultant.** The Town's engineering consultant must provide an adequate mitigation plan, consistent with Section 287.057(17)(a)(I), F.S., including a description of organizational, physical, and electronic barriers to be used by the Town's engineering consultant, that addresses conflicts of interest when contracting multi-disciplinary firms for Project engineering and post-construction environmental monitoring services, or when the Project engineering consultant firm subcontracts for post-construction environmental monitoring. Environmental monitoring includes hardbottom, seagrass, and mangrove resources.

Equal Employment Opportunity: No person on the ground of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of, otherwise subjected to discrimination.

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.

Lobbying: No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch or a state agency.

Local Preference: Pursuant to Section 255.0991, F.S. local vendor preference is not applicable

Physical Access and Inspection: Grantor personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:

- i. The Town shall provide access to any location or facility on which Town is performing work, or storing or staging equipment, materials or documents.
- ii. The Town shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
- iii. The Town shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.

Record Retention: A. 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

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

made and shall allow the Town, the State, or its authorized representatives access to such records for audit purposes upon request.

Statutory Notices Relating to Unauthorized Employment: The Town shall consider the employment by any Contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement

Statutory Notices Relating to Subcontracts: Pursuant to Sections 287.133 and 287.134, F.S., the following restrictions apply to persons placed on the convicted vendor list or the discriminatory vendor list:

- i. **Public Entity Crime.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- ii. **Discriminatory Vendors.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 any public entity; and may not transact business with any public entity.
- iii. **Notification.** The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list or the discriminatory vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and posts the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**Compliance with Federal Law, Regulations, And Executive Orders
and Acknowledgement of Federal Funding**

Certification

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

If the Contractor subcontracts any of the work required under this Agreement, a copy of the signed subcontract must be available to the Town for review and approval. The Contractor 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 Town and the Grantor Agency 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 Town may document in the quarterly report the Contractor's progress in performing its work under this agreement.

On behalf of my firm, I acknowledge, the grant requirements identified in this document.

Vendor/Contractor Name _____

Date _____

Authorized Signature _____

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
and VOLUNTARY EXCLUSION**

Contractor Covered Transactions

- (1) The prospective subcontractor of the Sub-recipient, Town, 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

By: _____
Signature

Name and Title

Street Address

City, State, Zip

UEI Unique Entity Identifier (for SAM.gov verification)

Date

Sub-Recipient Name: Town of Fort Myers Beach

DEM Contract Number: TBD

FEMA Project Number: TBD

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

FEDERAL CONTRACT PROVISIONS AND ASSURANCES

TOWN OF FORT MYERS BEACH																						
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 FED NUMBER		CONTRACT DOLLAR AMOUNT																		
IS THE PRIME A FLORIDA-CERTIFIED DISADVANTAGED, MINORITY OR WOMEN BUSINESS ENTERPRISE? (DBE/MBE/WBE) OR HAVE A SMALL DISADVANTAGED BUSINESS BA CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION? A SERVICE DISABLED VETERAN?		VETERAN Y N DBE? Y N MBE? Y N WBE? Y N SOB BA? Y N		IS THE ACTIVITY OF THIS CONTRACT... CONSTRUCTION ? Y N CONSULTATION? Y N OTHER? Y N																		
IS THIS SUBMISSION A REVISION?		Y N		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 VETERAN	M/WBE	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																		
EMAIL ADDRESS OF PRIME (SUBMITTER)		TELEPHONE NUMBER		FAX NUMBER																		
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.																						
<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th style="text-align: center;">ETHNICITY</th> <th style="text-align: center;">CODE</th> </tr> </thead> <tbody> <tr><td>Black American</td><td>BA</td></tr> <tr><td>Hispanic American</td><td>HA</td></tr> <tr><td>Native American</td><td>NA</td></tr> <tr><td>Subcont. Asian American</td><td>SAA</td></tr> <tr><td>Asian-Pacific American</td><td>APA</td></tr> <tr><td>Non-Minority Women</td><td>NMW</td></tr> <tr><td>Other, not of any other group listed</td><td>O</td></tr> </tbody> </table>							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
ETHNICITY	CODE																					
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Asian-Pacific American	APA																					
Non-Minority Women	NMW																					
Other, not of any other group listed	O																					
D. SECTION TO BE COMPLETED BY TOWN OF FORT MYERS BEACH																						
DEPARTMENT NAME		FMS CONTRACT # (IF RFP or PO/REQ)		GRANT PROGRAM/CONTRACT																		
ACCEPTED BY:					DATE																	

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.

Contractor (Firm Name)

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A SECOND AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AXIS INFRASTRUCTURE, LLC TO EXTEND THE TERM OF THE PROFESSIONAL SERVICES AGREEMENT FOR ONGOING MISCELLANEOUS PROFESSIONAL SERVICES, TO SEPTEMBER 30, 2025 BY THE EXERCISE OF THE SECOND OF TWO ONE-YEAR RENEWAL OPTIONS; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT AND THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Planning and Zoning services are essential to Town operations.

What the action accomplishes:

Prevents any potential disruption in services to staff and the public and ensures continued operations.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town is in need of continued Planning & Zoning services and believes it is in the best interest of the Town to continue services with the current provider Axis Infrastructure to prevent any potential disruption in public services. Axis Infrastructure is currently in agreement with the Town under an STA for work through October 31, 2024, but with this Amendment would continue and formalize the agreement through its final renewal period from October 1, 2024 to September 30, 2025.

Attachments:

1. 24-219 Second Amendment Axis Infrastructure
2. Axis Infrastructure PSA FULLY EXECUTED
3. Amendment 1 : Renewal 1 of 2 for Axis Infrastructure RFQ-20-22-AD
4. Second Amendment to Axis Infra Final Renewal

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 - 10/23/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

RESOLUTION NO. 24-219

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A SECOND AMENDMENT TO AN AGREEMENT BETWEEN THE TOWN OF FORT MYERS BEACH AND AXIS INFRASTRUCTURE, LLC TO EXTEND THE TERM OF THE PROFESSIONAL SERVICES AGREEMENT FOR ONGOING MISCELLANEOUS PROFESSIONAL SERVICES, TO SEPTEMBER 30, 2025 BY THE EXERCISE OF THE SECOND OF TWO ONE-YEAR RENEWAL OPTIONS; AUTHORIZING THE MAYOR TO SIGN THE AMENDMENT 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 executed a professional services agreement under RFQ-20-22-AD with Axis Infrastructure, LLC ("Contractor"), whereby Contractor will provide the Town with professional services to assist with ongoing miscellaneous professionals services within the categories of work included within the agreement; and

WHEREAS, the Town Council approved the Agreement on September 21, 2020 for services until September 30, 2023; and

WHEREAS, on September 25, 2023, the Town approved the first one-year renewal ("First Amendment") to the Agreement, which extended the term of the Agreement to September 30, 2024; and

WHEREAS, the Town desires to further amend the Agreement for a second one-year renewal, which will extend the term of the Agreement to September 30, 2025; and

WHEREAS, approval of a Second Amendment to the Agreement is in the best interest of the residents of Fort Myers Beach as it will provide for the uninterrupted delivery of service.

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 Second Amendment to the Agreement between the Town and Contractor for the provision of ongoing miscellaneous professional services as attached and incorporated herein as Exhibit "A" is approved.

Section 3. That the Mayor is authorized to execute the Second Amendment, and the Town Manager is authorized to expend budgeted funds on behalf of the Town as needed.

Section 4. That 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. That 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 roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 28th day of October 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 October 2024

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this 1 day of October, 2020 by and between the Town of Fort Myers Beach, Florida, a chartered municipality of the State of Florida, whose address is 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Town"), and Axis Infrastructure, LLC ("Consultant"), whose address is 1111 Cambridge Sgaure Alpharetta, GA, 30009.

WHEREAS, the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Ongoing Miscellaneous Professional Services, ("Project"); and

WHEREAS, the selection and engagement of the Consultant has been made by the Town in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes and applicable Town Ordinances, Rules, and Charter Provisions;

TIME OF CONTRACT: This contract will be for a period of three (3) years with an option to renew for two (2) terms of one-year each by mutual agreement of the parties. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract period, and any subsequent renewal.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.01 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.02 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.03 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01. LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.02 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.03 PERSONNEL

- (1) **QUALIFIED PERSONNEL:** The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.

(2) CONSULTANT'S PROJECT DIRECTOR: The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance by the Town.

(3) REMOVAL OF PERSONNEL: Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such request with or without cause.

(4) SUB-CONSULTANT: The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

(5) SUB-CONTRACTOR: The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

2.04 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed and completed in a timely and diligent manner throughout.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) RESPONSIBILITY TO CORRECT: The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations,

estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.

(2) TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY: Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall be liable and agrees to be liable for and shall indemnify and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's errors, omissions, and/or negligence, and/or willful and/or deliberate acts or failure to act, or those of any and all Sub consultants and/or Subcontractors engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid it by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of

any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

(1) **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.

(2) **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

(1) **LUMP SUM FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.

(2) **NOT-TO-EXCEED FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:

- For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
- For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
- For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
- Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
- The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
- When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
- If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

(1) **MONTHLY STATEMENTS:** The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.

(2) PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:

(A) The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(B) The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(3) PAYMENT SCHEDULE: The Town shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the Town object or take exception to the amount of any Consultant's invoice statement, the Town shall notify the Consultant of such objection or exception within the thirty (30) calendar day payment period set forth in this subparagraph. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the Town shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

4.05 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:

If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for services performed prior to the effective date of termination and reimbursable expenses then due including project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required be providing and performing by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension and reimbursable expenses then due.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE: If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated or unanticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. A separate Notice to Proceed shall be issued for each Project requested by the Town hereunder.

5.02 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement by the date assigned with each individual Supplemental Task Authorization as defined for completion of the various phases and/or tasks of each individual project as set forth and described in this Agreement, and specifically as set forth in EXHIBIT "C", entitled "Time and Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.03 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule for each project. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work requiring completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis or as otherwise indicated by the Town in writing.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT:

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.00 - CONFLICT OF INTEREST:

The Consultant 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. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its Sub-consultants and Subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such Sub consultant or Subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to the Town's attention, in writing. The Town will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the Town to determine if such a conflict of interest exists. If the Town determines that there is a conflict of interest, Consultant or such Sub consultant shall decline the representation upon written notice by the Town.

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub consultant under this Agreement, then the Consultant or such Sub consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub consultants to comply with the provisions of this Section. Should the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW:

Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be Lee County, Florida. The prevailing party in any litigation arising out of this Agreement is entitled to recover reasonable attorney's fees from the non-prevailing party.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub consultants.

ARTICLE 12.00 - WAIVER OF BREACH:

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the Town of written Supplemental Task Authorization(s) deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the Town, shall be delivered by the Consultant to the Town within seven (7) calendar days of the Town making such a request. If the Town gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the Town of a written Supplemental Task Authorization deleting all or part of the services or work required, the Consultant shall deliver to the Town the requested documents as set forth hereinabove, with the mutual understanding and commitment by the Town that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the date of issuance of the Notice of Termination or Supplemental Task Authorization.

The Consultant, at its expense, may make and retain copies of all documents delivered to the Town for reference and internal use. The Consultant shall not, and agrees not to use any of these documents, and data and information contained therein on any other project or for any other client without the prior express written permission of the Town.

Any use by the Town of said documents, and data and information contained therein, obtained by the Town hereunder for any purpose not within the scope of this Agreement shall be at the risk of the Town, and without liability to the Consultant.

ARTICLE 14.00 - MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed hereunder. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

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 THE PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM , 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

ARTICLE 15.00 - TERMINATION

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

19.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 20.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

TOWN OF FORT MYERS BEACH

By: 

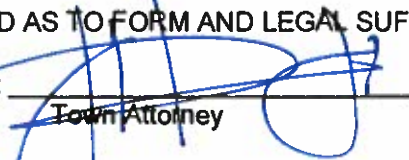
Roger T. Hernstadt, Town Manager

ATTEST:

By: 

Michelle Mayher, Town Clerk

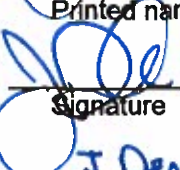
APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: 

Town Attorney

PROVIDER: Axis Infrastructure, LLC

Printed name of organization

BY: 

Signature

J. DEAN COLLINS

Printed name of person signing

PRESIDENT

Title (printed)


Witness Signature

Lorraine Wynn

Printed name of Witness

ARTICLE 18.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitute the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated October 1, 2020.
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated October 1, 2020.
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance", dated October 1, 2020.
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub- Consultant(s) and Subcontractor(s)", dated October 1, 2020.
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated October 1, 2020.
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated October 1, 2020.
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated October 1, 2020.
- (9) EXHIBIT "I" entitled "Public Entity Crime Affidavit", dated October 1, 2020.
- (10) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws", dated October 1, 2020.
- (11) EXHIBIT "K" entitled "Affidavit of Confidentiality", dated October 1, 2020.

ARTICLE 19.00 - NOTICES AND ADDRESS OF RECORD**19.01 NOTICES BY CONSULTANT TO TOWN**

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, Florida 33931

19.02 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by U.S. first class mail service, postage prepaid, addressed to:

Axis Infrastructure, LLC
(Consultant's Business Name)

1111 Cambridge Sqaure
(Street/ P.O. Box)

Alpharetta GA 30009
(City) (State) (Zip Code)

Telephone Number: 863-255-3213

Email: jasongreen@axiscompanies.com

Fax Number: _____

ATTENTION: Jason Green
Project Director

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES**Ongoing Miscellaneous Professional Services
RFQ-20-22-AD****TYPES OF WORK**

The following is a list of the Types of Work the Town of Fort Myers Beach may require. Each Type of Work states the minimum requirements to be met in order to be qualified by the Town of Fort Myers Beach.

Type of Work**101 Water Resource**

Requires engineering expertise in planning, design, permitting, bidding, construction administration, long term loan and grant funding programs in connection with Water Resources as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Water Resources.

102 Architectural Design

Requires architectural expertise in planning, designing, permitting, bidding and construction administration phases of service in Architectural Design. The firm must employ at least one architect, registered with the Florida State Board of Architecture and Interior Design. Additionally, the firm must have knowledge of current rules and regulations of local, state and federal agencies as applicable.

103 Stormwater

Requires engineering expertise in planning, designing, permitting, bidding and construction administration phases of service for Storm Water Design, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Storm Sewer.

104 Water Distribution, Including Lift and Pump Station Design

Requires engineering expertise in long term loan and grant funding programs, planning, designing, permitting, bidding, and construction administration phases of service for Water Distribution, as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of gravity and pressure systems.

106 Landscape Architect

Requires expertise in planning designing, permitting, bidding and construction administration phases of service for Landscape Architecture, including design of Community Parks and Streetscape. The firm must employ at least one landscape architect, registered with the Florida State Board of Landscape Architecture. Additionally, the firm must employ sufficient personnel to provide services normally associated with this type of work.

107 Community and Neighborhood Improvements

Requires engineering, architectural or landscape architectural expertise in planning, designing, permitting, bidding and construction administration phases of service for various neighborhood improvements, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the environment and all land use and building code provisions. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers or at least one professional architect, registered with the Florida State Board of Professional Architects and Interior Design or at least one professional Landscape Architect, registered with the Florida State Board of Landscape Architecture, having training and experience in the area of Community Parks and Streetscape.

108 Electrical Systems

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with electrical systems as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Electrical Systems.

109 Structural Systems

Requires engineering expertise in planning, designing with an emphasis on hurricane resistant design, permitting, bidding and construction administration services in connection with structural design, as well as knowledge of current rules and regulations of local, state and federal agencies regulating the industry. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in the area of Structural Systems.

111 Civil Engineering

Requires engineering expertise in planning, designing, permitting, bidding and construction administration services in connection with Civil Engineering as well as knowledge of current rules and regulations of local, state and federal agencies as applicable. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in this general area.

112 Development and Building Services

Requires engineering expertise with review of property development proposals and construction design plans. Must be familiar with local land development code and Florida Building Code, including plan reviews and inspection services for all professional disciplines. Development order review services, for all disciplines.

113 Transportation Planning and Traffic Engineering Services

Requires engineering expertise in planning, design and operation of traffic control devices to provide technical support and engineering recommendations on traffic engineering and related issues. Services shall include, but are not limited to; traffic data/counts, traffic models, signal operations, traffic monitoring, traffic analysis, roadway safety assessment, ITS applications, traffic operations improvements, traffic calming, roadway lighting and traffic control device assessment.

114 Planning / Zoning

The selected individual/firm will work with Town staff to provide expertise in the detailed review of development projects (including projects seeking rezoning) and their consistency with all local, state and federal requirements; preparation of Land Development Code Regulations; preparation of Comprehensive Plan Amendments; Floodplain Management review; Community Rating System review and preparation; Risk-map assessments; oversight of projects through all local, state and federal application processes and approvals to ensure adherence to all Town codes as well as public and Town Council concerns. The individual/firm will prepare staff reports and make presentations to the Local Planning Agency and Town Council. The firm must employ at least one professional engineer, registered with the Florida State Board of Professional Engineers, having training and experience in site development. The firm must also employ at least one member who is certified through AICP. The firm must employ at least one Certified Floodplain Manager.

119 Geographical Information System

Requires Geographic Information System (GIS) support services and experience including familiarity with custom GIS applications for Capital Improvement Plans (CIP), As-built Document Retrieval, Map Gallery, and other business functions, Technical requirements including an understanding of relational database design, Command-line SQL capability, including the ability to construct triggers and stored procedures, demonstrated knowledge of PHP, HTML5 and CSS2, and the use of those tools to link tabular and spatial data sets. Support for geospatial data and applications that provide GIS integration with existing business applications and other enterprise databases e.g. the Lee County Tax Parcel data, for use within existing GIS applications. This would include OSSI, CIP, Asset Management, addressing, etc. with technical

experience with GIS data structures and links to external data sets, thorough understanding of current addressing practice, especially the Federal Geographic Data Committee (FGDC) data content standard, the United States Thoroughfare, Landmark and Postal Address Data Standard.

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

Date October 1, 2020

**Ongoing Miscellaneous Professional Services
RFQ-20-22-AD**

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 4.04(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 LS or NTE	If Applicable Indicate (W.I.P.P.)
	To be negotiated through each Supplemental Task Authorization issued.			
TOTAL				

(Unless list is continued on next page)

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 October 1, 2020 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 dated October 1, 2020 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

ATTACHMENT NO. 1 TO EXHIBIT B
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

Date: **October 1, 2020**

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: **Axis Infrastructure, LLC**

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)

*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.

**ATTACHMENT NO. 2 TO EXHIBIT B
NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR THE
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD**

CONSULTANT NAME: Axis Infrastructure, LLC

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.58/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$12.01
Lunch	\$11.82
Dinner	\$24.72
Reproduction (Photocopy) 8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursable (i.e. film/developing):	
NOTE: Receipts or In-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursable etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

Date: October 1, 2020

This EXHIBIT "C" establishes a total time for completion, detailed by 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
	Shall be negotiated through each Supplemental Task Authorization issued.		

EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

Date: October 1, 2020

The Town has established the following Guidelines, Criteria, Goals, Objectives, Schedule, Budget and/or Requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

Item No. 1

Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

Item No. 3

Work may be assigned at any-time during the thirty-six (36) month contract duration. This contract also contains an option to renew by mutual agreement of both parties.

Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

Item No. 6

This Contract Document does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all required work in house, through another firm, and/or by any means it so desires. The Consultant may be requested to complete portions of certain tasks in coordination with the Town and/or other Consultants under contract with the Town.

Item No. 7

In reference to Attachment No. 2 to Exhibit "B" of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

Item No. 8

Town reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

The Consultant's services may be retained for any of the tasks separately or all of the tasks collectively. The Town and the Consultant will mutually establish the specific scope of work, which will serve as the basis for the Supplemental Task Authorization (STA) and will be based on the specifics and parameters relating to the issue or concern under study.

Item No. 9

Town shall have the right to use the documents on any Town project without the Consultant's authorization. All documents created, prepared and presented under this Agreement may be used by the Town in connection with any public offering; borrowing or other financing arrangements The Consultant shall have the right to retain copies of all such materials.

EXHIBIT F - TRUTH IN NEGOTIATION CERTIFICATE
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

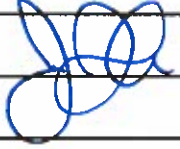
This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Town of Fort Myers Beach for the project known as:
Ongoing Miscellaneous Professional Services

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

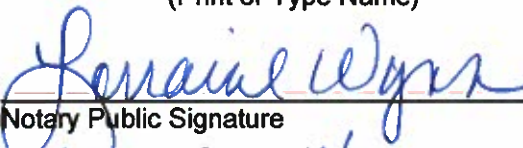
1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 2.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

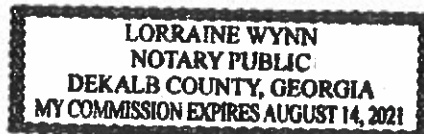
Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

AXIS INFRASTRUCTURE, LLC

BY: JACOB DEAN COLLINS 
TITLE: PRESIDENT

The foregoing instrument was signed and acknowledged before me this 5th day of October, 2020,
by Jacob Dean Collins who has produced Personally known as identification
(Print or Type Name) (Type of Identification)


Notary Public Signature
Lorraine Wynn
Printed Name of Notary Public
8-14-2021
Notary Commission Number/Expiration



ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

EXHIBIT "G": INSURANCE

FOR THE PROJECT KNOWN AS:
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

Section One. Insurance Coverage's to Be Obtained

(1) The Consultant shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

Service and/or work to be Provided and/or Performed	Indicate Name of Individual or Firm
(If none, enter the word "none" in the space above.)	

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement and all subsequent Supplemental Task Authorization(s). In the event the Town shall execute and issue written Supplemental Task Authorization(s) authorizing the Consultant to provide or perform services or work in addition to those set forth in this Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Consultant, the compensation established for the Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the Consultant to obtain same.

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGER, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT "G" and are hereby incorporated by reference thereto.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance, the Town will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or

such indemnification agreement.

- (C) Such additional requirements as are set forth in the Agreement above.

(3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

- (A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

- (B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

- (C) Such additional requirements as are set forth in the Agreement above.

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

- (A) A minimum aggregate limit of \$1,000,000.00.

- (B) Such additional requirements as are set forth in the Agreement above.

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

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

**EXHIBIT H - AMENDMENT TO ARTICLES
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD**

Date: October 1, 2020

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth below and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions, and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY
CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No.____ is hereby amended as follows:

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

EXHIBIT I - PUBLIC ENTITY CRIME AFFIDAVIT

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER
OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Town of Fort Myers Beach
(print name of public entity)
by James Dean Collins, President
(print individual's name and title)
for Axis Infrastructure, LLC
(print name of entity submitting sworn statement)
whose business address is 1111 Cambridge Sq
Alpharetta, GA 30009
and (if applicable) its Federal Employer Identification Number (FEIN) is 81-265-1071
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: _____.)
2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of a public entity crime; or
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate
5. I understand that a "person" as defined in Paragraph 287.133 (1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)
☒ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

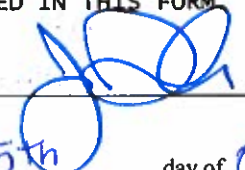
ONGOING MISCELLANEOUS PROFESSIONAL SERVICES

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM

Sworn to and subscribed before me this



(Signature)
5th day of October, 2020

Personally known

YES

OR Produced Identification _____

Notary Public – State of

Georgia

My Commission expires

8-14-2021

(Type of Identification)


(Printed typed or stamped commissioned name of notary public)

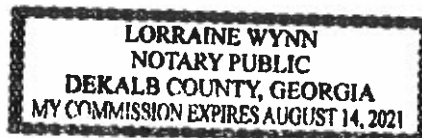


EXHIBIT J – AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

PROVIDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name:

Axis Infrastructure, LLC

(Signature)

(Title)

(Date)

PRESIDENT9.28.2020

STATE OF

Georgia

COUNTY OF

DeKalb

The foregoing instrument was signed and acknowledged before me this 28 day of October, 2020, by Jacob Dean Collins who ~~has produced~~
(Print or Type Name)

is personally known to me as identification.
(Type of Identification and Number)

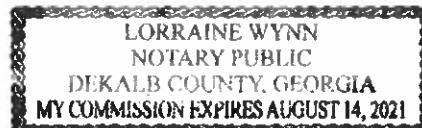
Notary Public Signature

Lorraine Wynn

Printed Name of Notary Public

8-14-2021

Notary Commission Number/Expiration



The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.

ONGOING MISCELLANEOUS PROFESSIONAL SERVICES
EXHIBIT K – AFFIDAVIT OF CONFIDENTIALITY
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-20-22-AD

I, the undersigned, Jacob Dew Collins, am an employee of Axis Infrastructure, LLC, the Town's provider of Ongoing Miscellaneous Professional Services.

This is to certify that I have been informed of the Town's policy on disclosure of information, and agree to not use, disclose, or share Town information in any way, except for as directed by the Town Manager or his/her designee. I agree to use my best efforts to prevent and protect information, or any part thereof, from disclosure to any person other than the intended recipient, who is required to receive said information.

Signature

Date

9.28.2020

Project Position	Hourly Charge
Principal	250.00
Senior Construction Manager (Ext)	175.00
Senior Civil Engineer	165.00
Senior Architect	150.00
Senior Project Manager	150.00
Senior Structural Engineer	150.00
Construction Manager	145.00
Project Manager	145.00
Senior Construction Manager	145.00
Civil Engineer	140.00
Senior MEP Engineer	140.00
Snior Planner	140.00
Business Development	130.00
Architectural Designer	125.00
Construction Coordinator	100.00
Engineer EIT	100.00
Marketing	100.00
Permits Coordinator	90.00
Administration	75.00

Reimbursables are at cost plus 15% administrative fee

Postage & Shipping
Commercial Air Travel
Vehicle Travel Allowance (NTE 50 miles one-way or \$.58 mile)
Lodging (Per Person)
Meals
Reproduction
Tolls

PROFESSIONAL SERVICES AGREEMENT RENEWAL

The undersigned parties to that certain Professional Services Agreement entered between the Town of Fort Myers Beach and Axis Infrastructure, LLC, originally dated October 1, 2020, hereby agree, pursuant to Section 3 of the Agreement, to renew the Agreement on the same terms and conditions for a period of one year, commencing on October 1, 2023, and expiring on September 30, 2024. Those terms and conditions are reflected in the prior agreement that is attached hereto and incorporated herein by reference as Exhibit A. There is one additional one-year renewal option remaining upon written agreement.

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement Renewal on the dates set forth below.

TOWN OF FORT MYERS BEACH

Axis Infrastructure, LLC

By: _____
Andy Hyatt, Town Manager

By: _____

Title: _____

DATE: _____

DATE: _____

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO LEGAL FORM:

Vose Law Firm, LLC, Town Attorney

**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
AXIS INFRASTRUCTURE, LLC**

THIS SECOND AMENDMENT is made and entered into this ____ day of _____, 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Axis Infrastructure, LLC hereinafter referred to as “Contractor”, to that certain Professional Services Agreement, dated October 1, 2020 (“Agreement”) for ongoing miscellaneous professional services concerning that certain Agreement, approved by the Town Council of the Town of Fort Myers Beach on September 21, 2020.

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 and its first amendment by the exercise of the second of two optional 1-year renewal contract periods; 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
2731 OAK STREET
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 second of two optional year renewals of the Agreement, beginning October 1, 2024, thereby extending the term of the Agreement to September 30, 2025.

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: _____

Company: Axis Infrastructure, LLC

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

1. **Request:**

Meeting Date: October 28, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, WAIVING THE PROHIBITION OF MEMBERSHIP OF MULTIPLE BOARDS OR COMMITTEES UNDER SECTION 2-98 OF ARTICLE IV. OF THE TOWN'S CODE OF ORDINANCES ; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

During the Town Council Advisory Committee appointments at the October 21, 2024 meeting, there were multiple members who were appointed to serve on, or continuing to serve on, more than one committee.

Section 2-98 of Article IV. of the Town of Fort Myers Beach Code of Ordinances states that a member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment.

This Resolution waives the prohibition and allows for those appointed or serving on more than one committee to continue doing so.

As of October 2024, there are 4 individuals who are appointed to serve on multiple committees:

- Barbara Hill – Bay Oaks Recreational Campus Advisory Board (BAYOAKS)
Cultural and Environmental Learning Center Advisory Board (CELCAB)
- Jennifer Rusk – Anchorage Advisory Committee (AAC)
Marine and Environmental Resources Task Force (MERTF)
- Betty Simpson – Bay Oaks Recreational Campus Advisory Board (BAYOAKS)
Cultural and Environmental Learning Center Advisory Board (CELCAB)

Attachments:

1. Resolution 24-220, Advisory Committee Waiver for Membership to Multiple Committees
FINAL UPDATED EXHIBIT A

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/23/2024
Approved - 10/23/2024
Approved - 10/23/2024
Final Approval - 10/23/2024

RESOLUTION NO. 24-220

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
FORT MYERS BEACH, FLORIDA, WAIVING THE
PROHIBITION OF MEMBERSHIP ON MULTIPLE BOARDS OR
COMMITTEES UNDER SECTION 2-98 OF ARTICLE IV OF THE
TOWN'S CODE OF ORDINANCES; 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, Section 2-98 of Article IV of the Town of Fort Myers Beach Code of Ordinances states that a member may not be a member of another Town of Fort Myers Beach board or committee unless this prohibition is specifically waived by the Town Council during their appointment; and

WHEREAS, during the Town Council meeting on October 21st, 2024, the Town Council appointed members to the Town Council's advisory committees; and

WHEREAS, included within the Town Council's appointments were multiple members who were or were also appointed to serve on more than one committee; and

WHEREAS, those individuals appointed to serve on more than one committee require waiving of the prohibition of membership on multiple boards or committee to maintain their appointment and membership on their respective committees; and

WHEREAS, approval of this Resolution is in the best interest of the Town of Fort Myers Beach; and

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

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

Section 2. The Town Council of the Town of Fort Myers Beach hereby waives the prohibition of membership on multiple boards or committees set forth in Section 2-98 of Article IV. of the Town's Code of Ordinances for those appointed during the October 21st, 2024 Town

Council meeting. A list of those specific members and their committee memberships is attached to this Resolution as Exhibit A.

Section 3. This resolution will take effect immediately.

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	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this 28th day of October 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 SOLELY:

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on the ____ day of October 2024.

EXHIBIT A

Advisory Board and/or Advisory Committee Members who are on more than one Advisory Board/Committee as of October 2024

MEMBER NAME	ADVISORY BOARD / COMMITTEE NAME
Barbara Hill	• Bay Oaks Recreational Campus Advisory Board (BORCAB) • Cultural and Environmental Learning Center Advisory Board (CELCAB)
Jennifer Rusk	• Anchorage Advisory Committee (AAC) • Marine and Environmental Resources Task Force (MERTF)
Edward Schoonover	• Anchorage Advisory Committee (AAC) • Bay Oaks Recreational Campus Advisory Board (BORCAB)
Betty Simpson	• Bay Oaks Recreational Campus Advisory Board (BORCAB) • Cultural and Environmental Learning Center Advisory Board (CELCAB)