



Fort Myers Beach Town Council

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

Agenda

Monday, November 4, 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. Andrew Site Work - Tier 1 Project Update

VIII. APPROVAL OF MINUTES

A. Town Council - October 21, 2024

IX. CONSENT AGENDA

A. Resolutions 24-223 through 24-226; Extension of Local Emergency - Hurricane Ian

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

B. Resolutions 24-227 through 24-230; Extension of Local Emergency - Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE

CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

- C. Resolutions 24-231 through 24-234; Extension of Local Emergency - Tropical Storm Debby

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

- D. Resolutions 24-235 through 24-238; Extension of Local Emergency - Hurricane Helene

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

- E. Resolutions 24-239 through 24-245: Extending Local State of Emergency, Hurricane Milton

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

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

- A. Ordinance 24-34; DA20240170, Seagate/Home Rule Development Agreement

Continued to November 18, 2024 due to state required advertising requirements: Second Reading of 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.

XII. ADMINISTRATIVE AGENDA

- A. Resolution 24-219, Ratification of \$170,000 Sweeper Purchase and Budget Adjustment #2

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING TOWN MANAGER'S PURCHASE OF A SWEEPER FOR \$170,000.00; AUTHORIZING BUDGET ADJUSTMENT #2; AND PROVIDING AN EFFECTIVE DATE.

- B. Resolution 24-222, Turtle Time Agreement Addendum

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN ADDENDUM TO THE CONTRACT BETWEEN THE TOWN OF FORT MYERS BEACH AND TURTLE TIME, INC., TO ADD ADDITIONAL TERMS AND CONDITIONS TO ALLOW THE USE OF FEDERAL EMERGENCY MANAGEMENT FUNDS FOR REIMBURSEMENT OF EXPENSES INCURRED BY THE TOWN AND TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AUTHORIZING THE TOWN MANGER OR MAYOR TO SIGN THE ADDENDUM; AND PROVIDING FOR 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.



Fort Myers Beach Town Council

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

Minutes

Monday, October 21, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Mayor Allers stated that the LPA Chair asked that they postpone appointing members to the LPA. Also, a discussion regarding utilizing the library for after-school programs would be added as item L. under the Administrative Agenda.

Council Member King moved to approve the final agenda as discussed, seconded by Council Member Woodson.
The motion carried unanimously.

V. PUBLIC COMMENT

Rose Larkin, resident and MERTF member explained that MERTF did not exceed their boundary. She described the contributions, knowledge and experience of MERTF members Jennifer Rusk, Robert Howell and Steve Johnson.

Eddie Rood, resident, explained why he wanted to be appointed to MERTF. Steve Johnson, resident, discussed sand renourishment and those who did not sign easements. He asked that the town put the maximum amount of sand on the beach.

John Koss discussed the ILA (interlocal agreement) with the library and encouraged council members to approve it. He thanked everyone who reached out to him with support. He stated that enrollment increased by over 25% last year.

Thomas Houghton, owner of La Ola, described how he evacuated his trailers before the storm. He felt that his bar and restrooms should be allowed to remain

and asked that council members and others contact FEMA to accept their evacuation plan and remove them from the targeted property list.

Leah Gregg, resident, requested clarification regarding the appeal process in Ordinance 24-30 and described meetings regarding Building Official Joe Specht's decisions.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member King recognized residents, town manager and staff, town staff, Ed Ryan from Beach Talk Radio and council members for their hard work after hurricanes Helene and Milton.

Council Member Woodson thanked the town manager and town staff for the planning compared to two years ago.

Council Member Safford thanked those who helped after the storms.

Vice Mayor Atterholt and Mayor Allers agreed with all the comments.

A. Resolution 24-188; Florida City Government Week

Town Clerk Baker read the title of the resolution.

Council Member Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No reports.

VIII. APPROVAL OF MINUTES

A. Town Council - September 23, 2024

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

The motion carried unanimously.

B. Town Council Budget Hearings - September 23, 2024

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

The motion carried unanimously.

C. Joint Session, Town Council w/CELCAB - September 18, 2024

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

The motion carried unanimously.

IX. CONSENT AGENDA

Council Member Safford moved to approve the consent agenda, seconded by Council Member Woodson.

The motion carried unanimously.

A. Resolutions 24-193 through 24-196; Extension of Local Emergency - Hurricane Ian

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

Council Member Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

B. Resolutions 24-197 through 24-200; Extension of Local Emergency - Hurricane Idalia

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

Council Member Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

C. Resolutions 24-201 through 24-204; Extension of Local Emergency - Tropical Storm Debby

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

Council Member Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

- D. Resolutions 24-205 through 24-208; Extension of Local Emergency - Hurricane Helene

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

Council Member Safford moved to approve the resolution, seconded by Council Member Woodson.

The motion carried unanimously.

X. ITEMS REMOVED FROM CONSENT AGENDA

XI. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures. Town Clerk Baker confirmed that all agenda items were properly noticed, and she swore in those providing testimony.

- A. Ordinance 24-28; CPD20240015 1836 & 1840 Estero Blvd - EIBC

First reading and public hearing on proposed ordinance entitled: **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING A REQUEST TO REZONE PROPERTY LOCATED AT 1836 AND 1840 ESTERO BLVD. (LESS THE AREA WITHIN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT), GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W4- 03200.00CE AND 19-46-24-W4-03200.1010 FORT MYERS BEACH FROM DOWNTOWN DISTRICT TO COMMERCIAL PLANNED DEVELOPMENT; APPROVAL OF FIVE (5) DEVIATIONS FROM THE FORT MYERS BEACH CODE OF ORDINANCES, A SCHEDULE OF USES AND A MASTER CONCEPT PLAN; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

Mayor Allers read the title of the ordinance. Ex parte communications: all council members participated in a meeting(s) and received emails for and against the project. Town Clerk Baker stated that the applicants were not provided copies of the emails and would make them available before the vote.

Anthony Ashford described his 27 years in architecture and his qualifications. Council Member King moved to accept Mr. Ashford as an expert in his field, seconded by Council Member Safford.

The motion carried unanimously.

The applicant confirmed receipt of the agenda and backup materials. Community Development Senior Planner Jason Smalley reviewed the background of the request, and the deviations as stated on the blue sheet. He noted the applicant removed deviation 5.

Building Official Joe Specht stated that a new building had to comply 100% with ADA (Americans with Disabilities Act) accessibility requirements, although not every unit had to be accessible. Remodels were allowed 20% of the costs to add accessibility features.

Attorney Amy Thibaut from Roetzel & Andress represented the applicant and thanked the town staff for their hard work. Planner Fred Drovdlc utilized slides in his presentation, starting with the Location, Zoning, Future Land Use, History & Existing Conditions, The Past, Architectural Design, View Corridors, LDC Analysis: Post-Disaster Buildback, Post-Disaster Buildback Analysis, Historical Rooms and Post-Disaster Buildback Comparison, Historical Floor Area Comparison, Site Plan - Past to Present, Master Concept Plan, Conceptual Landscape Plan, Deviations, LDC Compliance, Compliance & Consistency, Public Benefits, Things to Consider and Conclusion.

Town Attorney Stuparich noted she was in the process of providing copies of the emails sent to council members.

John Shaw, the property manager, explained the discrepancy regarding unit sizes and noted that the square footage was not on the website and the figures came from a brochure not approved by the board of directors. Mayor Allers noted they previously met regarding a completely different design under the buildback and he questioned what changed to make them redesign the building. Mr. Shaw replied that the original design was not recommended by staff and was a preliminary drawing.

Public comment:

Dave Leigh, resident and neighbor, commented that the project should have been easy to build with three stories over flood. He did not support the project and stated the height request was why the town incorporated.

Margaritaville was the de facto standard for the town, with three stories over flood. He noted that public benefit had to be defined and used Margaritaville as an example. He provided examples of public benefits.

Michael Breith, resident, commented that Diamondhead's height was the reason the town incorporated, and he did not support the request. He encouraged the town council to deny their request.

Mathew Wadd, an owner, opposed the project and distributed documents. He requested that this item be tabled until the owners addressed the situation. He described how the board had not followed the by-laws and why he was a whistleblower.

Anthony Ashford, an owner, did not support the project and pointed out discrepancies.

Barbara Hill, resident, questioned why this was on the agenda since Town Manager Hyatt was going to schedule a meeting regarding the project. She opposed a ten-story building on the beach and was concerned about the discrepancies in the presentation.

Public comment closed.

Attorney Thibault commented that they reviewed the emails.

Mr. Ashford provided a historical analysis of the Estero Island Beach Club (EIBC). He reviewed the exhibits and explained the square footage of the units and what was being presented. He revealed that the ownership had not voted on the current plan. He added that if the units were 200 square feet smaller, it would be less money and the building could be five stories instead of ten. He provided an alternative concept design to the board, but it was rejected.

Attorney Thibault questioned Mr. Ashford's experience. Mr. Ashford confirmed that he submitted his building design to the town in 2022 and to the EIBC last month, but it was rejected. He listed the information he submitted to the owners and noted some of it was provided to him by RAL and the rest was public record. Attorney Thibault objected to Mr. Ashford being considered an expert.

Senior Planner Smalley stated that the town agreed to meet with Mr. Ashford before the hurricanes hit and they would reschedule it if Mr. Ashford was interested.

Attorney Thibault provided a rebuttal. She clarified that this was a zoning hearing and Mr. Ashford and Mr. Wadd's concerns were irrelevant.

Michael Sheely introduced himself and reviewed his experience as a licensed architect.

Vice Mayor Atterholt moved to accept Mr. Sheeley as an expert in his field, seconded by Mayor Allers,
The motion carried unanimously.

Mr. Sheeley answered Attorney Thibault's questions about the project. Mr. Sheeley noted that they proposed that all units be accessible per the Florida Building Code since it was more like a hotel. He discussed maintaining the view corridor and his reasons for designing the building. He stated that Mr. Ashford misquoted the dimensions and square footage. He agreed that without considering the view corridor, he could design a 75-unit building that met all the requirements without any deviations from the Town's LDC (Land Development Code) and Comprehensive Plan.

Council Member Woodson was confused since the EIBC came back with a new design based on what the LPA requested. She questioned why they were discussing the height at this point.

Attorney Thibault indicated that the town's experts found that the request met the criteria for approval and she requested that they vote in their favor.

Vice Mayor Atterholt felt that significant increases in height should be the last resort and the public benefit did not warrant the additional height.

Mayor Allers did not think the LPA had the same information they had when they voted. He disagreed with the staff's decision and felt the project was a design choice.

Community Development Planner Sarah Propst clarified that staff evaluated deviations based on what the code said.

Mayor Allers moved to deny moving the ordinance to a second reading for the reasons stated, seconded by Vice Mayor Atterholt.

The motion carried 4-1 by roll call, with Council Member Woodson dissenting.

B. EMERGENCY ORDINANCE 24-33; Advisory Committees

AN EMERGENCY 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.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich explained that the law allowed them to adopt the emergency ordinance by a single reading of the title and apply the new proposed criteria to their advisory committee appointment decisions later in the meeting. She indicated that Item C. was the first reading of a similar ordinance that would get them back into the process of two readings.

She reviewed the changes in the ordinance and noted they could add a clause to allow anyone on committees with a Fort Myers Beach zip code except for the Audit Committee and LPA.

No public comment.

Council Member King moved to approve the emergency ordinance with the amendment, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

C. Ordinance 24-17; Advisory Committees

First Reading and introduction of a 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. Open the public hearing and schedule for second reading and final adoption on October 28, 2024 at 9:00 AM

Mayor Allers read the title of the proposed ordinance. Town Attorney Stuparich recommended adding the additional language from the emergency ordinance. She confirmed that the requirement to fill out financial disclosures on form six was overturned.

No public comment.

Council Member King moved to approve the ordinance with the amendment, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

D. 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.

Mayor Allers read the title of the resolution. Town Attorney Stuparich recommended no action on this item because it would come back to them on the second reading of the prior ordinance.

Council Member Safford moved to table the resolution, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

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

First reading and 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. Open the public hearing and schedule for second reading and final adoption on Monday, October 28, 2024 at 9:00 AM

Mayor Allers read the title of the proposed ordinance. Town Attorney Stuparich commented that the ordinance included an update to the Code of Ordinances to reflect the change.

No public comment.

Mayor Allers moved to approve the ordinance, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

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

First Reading and 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. Open the public hearing and schedule for second reading and final adoption on October 28, 2024 at 9:00 AM.

Mayor Allers read the title of the proposed ordinance. Town Attorney Stuparich explained that this was a housekeeping follow up.

No public comment.

Council Member King moved to approve the ordinance, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

XII. ADMINISTRATIVE AGENDA**A. Resolution 24-191; Marine Debris & Vegetation Removal**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DISASTER RECOVERY SERVICES FOR DEBRIS & VEGETATION REMOVAL FROM WATERWAYS, CANALS AND NATURAL CREEKS WITH AFTERMATCH DISASTER RECOVERY, INC., BASED ON COMPETITIVE PRICING PROCURED BY LEE COUNTY; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Operations & Compliance

Director Frankie Kropacek noted this was to clean up the canals.

Council Member Woodson moved to approve the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

B. DOAH Amended and Restate Contract for Special Magistrate Services

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND RESTATING ITS CONTRACT WITH THE FLORIDA DEPARTMENT OF ADMINISTRATIVE HEARINGS FOR DELIVERY OF SPECIAL MAGISTRATE SERVICES; AUTHORIZING THE TOWN MANAGER OR MAYOR TO SIGN THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the reason for the resolution as stated on the blue sheet. She addressed the public comment regarding the expired interlocal agreement with Fort Myers Beach regarding appeals.

Mayor Allers moved to approve the resolution, seconded by Council Member King.

The motion carried unanimously by roll call vote.

C. Resolution 24-209, Budget Amendment #1 - Purchase of 6221 Estero Blvd

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET ADJUSTMENT (#1) TO FUND PURCHASE OF 6221 ESTERO BLVD; PROVIDING AUTHORITY; EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick stated this was a budget adjustment.

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

The motion carried unanimously by roll call vote.

D. Fee waiver - Salty Sam's

Waive fees associated with pumping out the Salty Sam's pirate ship.

Council Member Safford moved to waive the fees, seconded by Council Member Woodson

The motion carried unanimously by roll call vote.

Council Member Safford moved to approve the hold harmless agreement between the town and Salty Sam's pirate ship, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

E. Local Planning Agency (LPA)

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

Mayor Aller moved to reschedule appointments to the LPA to Monday, October 28, 2024, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

John Dunlap expressed his desire to remain on the LPA.

F. Anchorage Advisory Committee

Appoint Members to the FY2024-2025 Anchorage Advisory Committee (AAC)

Vice Mayor Atterholt moved to approve the AAC appointees, seconded by Mayor Allers.

The motion carried unanimously.

Theodore Lawwill, Sam Lurie, John Wesley Nash, Jennifer Rusk and Rebecca Weber were appointed.

G. Audit Committee

Appoint Members to the FY2024-2025 Audit Committee

Council Member Safford moved to approve the Audit Committee appointees, seconded by Council Member Woodson.

The motion carried unanimously.

Debbie Dutton, Jack Leson, David Sanberg, and Bryan Thomas were appointed.

H. Bay Oaks Recreational Campus Advisory Board

Appoint Members to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB)

Michelle Cherney stated why she was interested in joining BORCAB.

Mayor Allers moved to approve BORCAB appointees, seconded by Council Member Safford.

The motion carried unanimously.

John Dussliere, Betty Simpson and Ed Schoonover were appointed.

I. Cultural & Environmental Learning Center Advisory Board

Appoint Members to the FY2024-2025 Cultural and Environmental Learning Center Advisory Board (CELCAB)

Vice Mayor Atterholt moved to approve the CELCAB appointees, seconded by Council Member Safford.

The motion carried unanimously.

Barbara Hill, Betty Simpson, Cherie Smith and Kerrie Henderson were appointed.

J. Marine & Environmental Resources Task Force

Appoint Members to the FY2024-2025 Marine and Environmental Resources Task Force (MERTF)

Sharon Hegstrom expressed her interest in joining MERTF. Steve Johnson withdrew his application because he felt that the town council had started politicizing the advisory boards. He discussed his negative feelings regarding Council Member King's actions.

Mayor Allers moved to approve MERTF appointees, seconded by Council Member Safford.

The motion carried unanimously.

Sharon Hegstrom, Ed Rood, Jennifer Rusk, Leo Sand and Robert Howell were appointed.

K. Public Safety Committee

Appoint Members to the FY2024-2025 Public Safety Committee (PSC)

Cynthia Johnson pulled her application.

Council Member Safford moved to approve the PSC appointees, seconded by Council Member Woodson.

The motion carried unanimously.

Todd Capela and Keran Farrell were appointed.

L. Interlocal Agreement with the Library for the Beach School

Mayor Allers read the title of the resolution. Vice Mayor Atterholt thanked several people who were involved.

Mayor Allers moved to approve the interlocal agreement with the library, seconded by Council Member King.

The motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

Leah Gregg, resident, commented on the interlocal agreement and the appeal process regarding decisions made by the building official. She noted that Lee County stated that anyone could appeal the building official's decision regardless of whether they were the property owner. She asked why the town changed its process because now there was no oversight.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hyatt commented that debris removal continued. The annual report was complete and available for distribution. Environmental Projects Manager Chadd Chustz stated that anyone who wants to put sand back on the beach should email him first. Town Manager Hyatt noted that the Town Hall took on some water from the storms, but it was remediated. He expected to start installing carpet and painting within the next couple of weeks. He thanked the Lee County Sheriff's Office and the Fort Myers Beach Fire District for their help with Milton. Town Manager Hyatt indicated that he was working on organizing charrettes regarding the comp plan.

The town received an extension for the recreation grant for the park. Town Manager Hyatt explained the appeal process and noted it was an economic decision to save residents \$1,000.00.

Culture, Parks & Recreation Director Jeff Hauge stated that the insurance company assessed Bay Oaks and started the remediation process. He expected a report soon. Kirkwood Electric was building a new switchgear to prevent interruptions.

Projects Manager Chustz indicated that the beach renourishment had started back up and he was waiting for a new schedule.

Director Hauge confirmed that residents with pools can fill out a form and get a water credit for 9,000 gallons. Vice Mayor Atterholt asked whether people using pressure washers were eligible for a credit. Director Hauge replied that he would discuss it with the town manager.

XV. TOWN ATTORNEY'S ITEMS

A. Collection of Demolition Costs

Town Attorney Stuparich noted that demolishing three structures would cost about \$100,000.00. She described an upcoming resolution to recover the funds on the tax roll and the advertisement in the paper. Director Kropacek reviewed the demolition process.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Atterholt noted that Linda Miller asked if she could temporarily move the Farmer's Market to Santini Plaza until Times Square was cleaned up. Director Kropacek replied positively.

Council Member King addressed the situation with Tom's trailers and FEMA. Town Manager Hyatt indicated that FEMA was well aware of La Ola. Director Kropacek sent a copy of Tom's video to FEMA in Atlanta a couple of months ago showing how quickly he could evacuate, but FEMA has not responded. Director Kropacek explained the Special Magistrate process. Town Manager Hyatt revealed that he received an email from FEMA on Friday stating that issuing notices of violation was insufficient. The trailers and containers had to be moved by November 18, 2024. Director Kropacek described how FEMA disregarded the town's process, but the town will continue the Special Magistrate process. Mayor Allers stated that FEMA continued to move the goalposts and refused to provide answers. He noted they had to keep trying to get answers. A consensus was reached to send FEMA a letter.

Council Member King responded to Steve Johnson's earlier comments.

XVII. ADJOURNMENT

Council Member King moved to adjourn the meeting, seconded by Council Member Safford.

The motion carried unanimously.

The meeting was adjourned at 2:28 p.m.

1. **Request:**

Meeting Date: November 4, 2024

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

Why the action is necessary:

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

What the action accomplishes:

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

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 24-223, Extending Declaration of Local Emergency Ian 11.5.24-11.11.24
2. 24-224, Extending Declaration of Local Emergency Ian 11.12.24-11.18.24
3. 24-225, Extending Declaration of Local Emergency Ian 11.19.24-11.25.24
4. 24-226, Extending Declaration of Local Emergency Ian 11.26.24-12.2.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 10/29/2024
Approved - 10/29/2024
Approved - 10/30/2024
Final Approval - 10/30/2024

RESOLUTION 24-223

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 5th day of November 2024.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by _____ 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 4th day of November 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 the ____ day of November 2024.

RESOLUTION 24-224

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 12th day of November 2024.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by _____ 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 4th day of November 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 the ____ day of November 2024.

RESOLUTION 24-225

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

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

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

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

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

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

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

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

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

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 19th day of November 2024.

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by _____ 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 4th day of November 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 the ____ day of November 2024.

RESOLUTION 24-226

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by _____ 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 4th day of November 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 the ____ day of November 2024.

1. **Request:**

Meeting Date: November 4, 2024

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Idalia

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

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

Attachments:

1. 24-227, Extension of Local Emergency - Idalia 11.5.24-11.11.24
2. 24-228, Extension of Local Emergency - Idalia 11.12.24-11.18.24
3. 24-229, Extension of Local Emergency - Idalia 11.19.24-11.25.24
4. 24-230, Extension of Local Emergency - Idalia 11.26.24-12.2.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 10/29/2024
Approved - 10/29/2024
Approved - 10/30/2024
Final Approval - 10/30/2024

RESOLUTION NUMBER 24-227

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

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

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

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

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

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

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

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

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

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

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-228

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

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

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

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

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

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

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

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

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

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

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-229

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

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

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

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

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

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

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

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

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

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

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-230

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

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

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

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

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

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

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

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

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

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

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action

shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

1. **Request:**

Meeting Date: November 4, 2024

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Tropical Storm Debby

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-154.

Attachments:

1. 24-231, Extension of Local Emergency - Debby 11.5.24-11.11.24
2. 24-232, Extension of Local Emergency - Debby 11.12.24-11.18.24
3. 24-233, Extension of Local Emergency - Debby 11.19.24-11.25.24
4. 24-234, Extension of Local Emergency - Debby 11.26.24-12.2.24

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Tropical Storm Debby

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

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

Created/Initiated - 10/29/2024
Approved - 10/29/2024
Final Approval - 10/30/2024

RESOLUTION NUMBER 24-231

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-232

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-233

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-234

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

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

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

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

WHEREAS, the effects of Tropical Storm Debby impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 5, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

1. **Request:**

Meeting Date: November 4, 2024

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Helene

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-192

Attachments:

1. 24-235, Extension of Local Emergency - Helene 11.5.24-11.11.24
2. 24-236, Extension of Local Emergency - Helene 11.12.24-11.18.24
3. 24-237, Extension of Local Emergency - Helene 11.19.24-11.25.24
4. 24-238, Extension of Local Emergency - Helene 11.26.24-12.2.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Eva Spychalski, Administrative Resources Coordinator
nancy stuparich, Town Attorney
Andy Hyatt, Town Manager

Created/Initiated - 10/29/2024
Approved - 10/29/2024
Final Approval - 10/30/2024

RESOLUTION NUMBER 24-235

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-236

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-237

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-238

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE HELENE (FORMERLY KNOWN AS POTENTIAL TROPICAL CYCLONE NINE); PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

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

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

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

WHEREAS, the effects of Hurricane Helene impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on September 23, 2024, must be extended.

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

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

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

2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.
3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.

- (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.
 - (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such

other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefore, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

1. **Request:**

Meeting Date: November 4, 2024

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

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Milton

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 24-214

Attachments:

1. 24-239, Extension of Local Emergency - Milton 10.13.24-10.21.24
2. 24-240, Extension of Local Emergency - Milton 10.22.24-10.28.24
3. 24-241, Extension of Local Emergency - Milton 10.29.24-11.4.24
4. 24-242, Extension of Local Emergency - Milton 11.5.24-11.11.24
5. 24-243, Extension of Local Emergency - Milton 11.12.24-11.18.24
6. 24-244, Extension of Local Emergency - Milton 11.19.24-11.25.24
7. 24-245, Extension of Local Emergency - Milton 11.26.24-12.2.24

Financial Impact:

6. **Alternative Action**

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

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/29/2024
Approved - 10/29/2024
Approved - 10/30/2024
Final Approval - 10/30/2024

RESOLUTION NUMBER 24-239

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-240

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-241

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-242

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-243

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-244

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

RESOLUTION NUMBER 24-245

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

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

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

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

WHEREAS, the effects of Hurricane Milton impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on October 6, 2024, must be extended.

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

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

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

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

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

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

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

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

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

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

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a 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 4th day of November 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 November 2024.

1. **Request:**

Meeting Date: November 4, 2024

Continued to November 18, 2024 due to state required advertising requirements:

Second Reading of 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.

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 Exhibits 10.23.24
2. Staff Report 2nd 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 approve or not approve the development agreement.

8. Recommended Approval:

Sarah Propst, Community Development, Planning Manager
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 10/30/2024
Approved - 10/31/2024
Approved - 10/31/2024
Final Approval - 10/31/2024

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 22ndgth 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 28th1st 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.C. 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 COASTAL OUT
COMMUNICATIONS BOX
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 (L84919)
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
WPP 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:753698.744	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:673959.329

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 805 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 West 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 805); 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 S.A.O.A. 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:

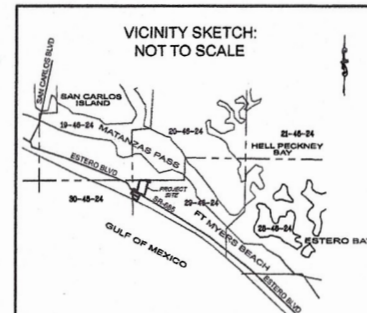
1. Non survey related item.
2. a-bke. Non survey related item.
3. Survey data has been shown to side in the verification of any encroachments encumbrances, violations, variations or adverse circumstances
4. All supplied easements have been shown on survey.
5. Intentionally Omitted.
6. Non survey related 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.
14. Non survey related item.
15. Riparian and littoral rights not determined with this survey.
16. Any artificially filled lands have not been determined for this survey.
17. Any portion of the Land created by accretion, avulsion, reliction or artificial means have not been determined for this survey.
18. Any public use lands have not been determined for this survey.
19. Any lands waterward of the mean high water line have not been determined for this survey.
20. Erosion Control Line identified in Plat Book 70, Page 25 Public Records of Lee County, Florida, has been plotted on said survey.
21. 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.
22. Non survey related item.

LINE TABLE

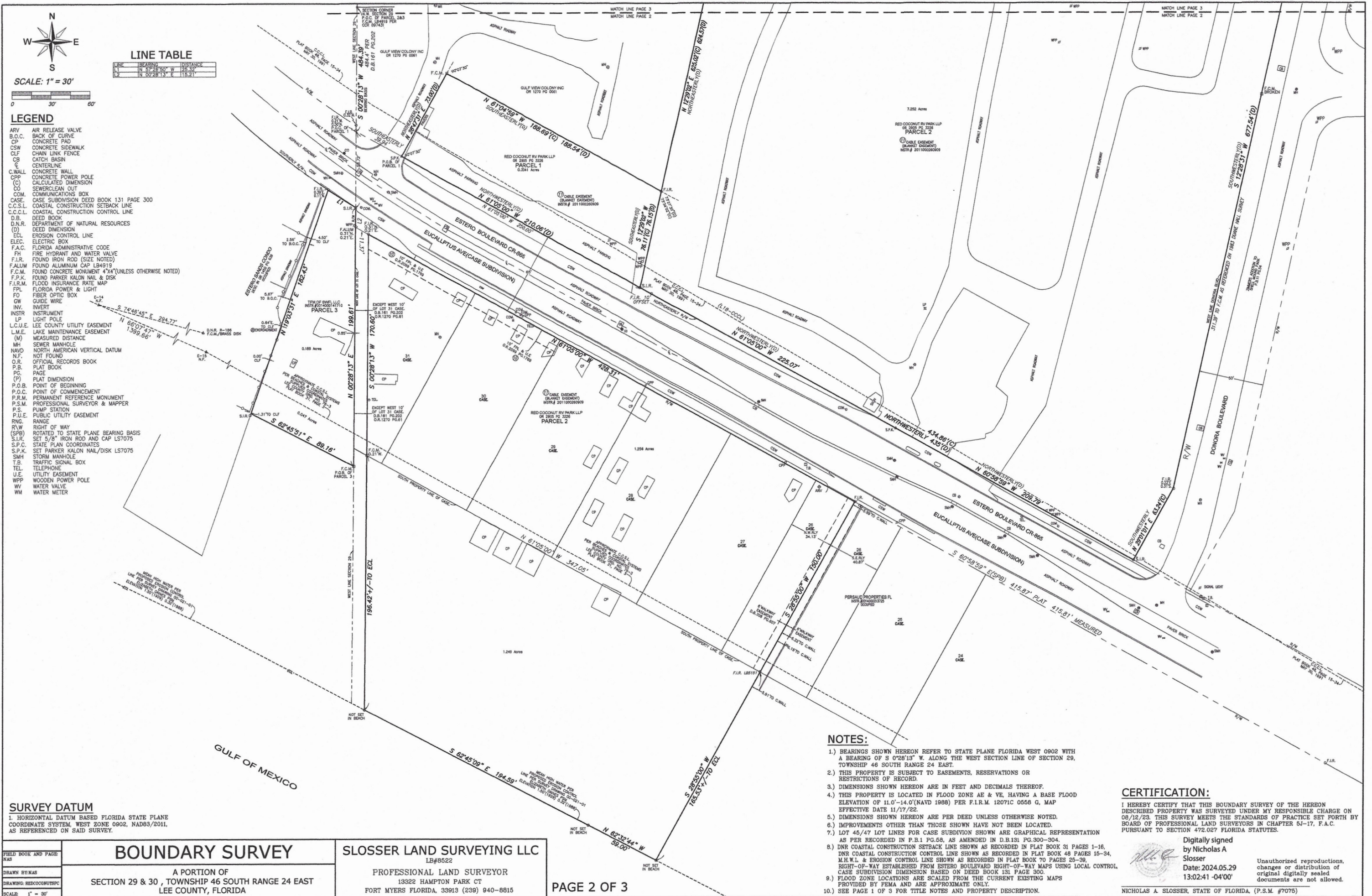
LINE	BEARING	DISTANCE
1(P)	N 02°45'51" W	89.16
1(R)	N 01°18' W	110.00
2(R)	N 00°48'59" W	110.00
3(R)	N 89°11'01" E	120.00
4(P)	N 89°11'01" E	120.00
4(R)	N 00°48'59" W	110.00
5(P)	N 01°18' W	110.00
6(P)	N 01°18' W	110.00
7(P)	N 19°03'31" E	182.43
8	S 00°28'13" W	199.81
9	N 28°55'00" E	150.00
10	S 29°01'01" W	83.24
11	S 55°12'35" E	609.40
12	S 77°05'14" W	853.58
13	S 61°43'49" E	937.38
14	S 61°43'49" E	937.38
15	S 61°43'49" E	937.38
16	S 61°43'49" E	937.38
17	S 61°43'49" E	937.38
18	S 61°43'49" E	937.38
19	S 61°43'49" E	937.38
20	S 61°43'49" E	937.38
21	S 61°43'49" E	937.38
22	S 61°43'49" E	937.38
23	S 61°43'49" E	937.38
24	S 61°43'49" E	937.38
25	S 61°43'49" E	937.38
26	S 61°43'49" E	937.38
27	S 61°43'49" E	937.38
28	S 61°43'49" E	937.38
29	S 61°43'49" E	937.38
30	S 61°43'49" E	937.38
31	S 61°43'49" E	937.38
32	S 61°43'49" E	937.38
33	S 61°43'49" E	937.38
34	S 61°43'49" E	937.38
35	S 61°43'49" E	937.38
36	S 61°43'49" E	937.38
37	S 61°43'49" E	937.38
38	S 61°43'49" E	937.38
39	S 61°43'49" E	937.38
40	S 61°43'49" E	937.38
41	S 61°43'49" E	937.38
42	S 61°43'49" E	937.38
43	S 61°43'49" E	937.38
44	S 61°43'49" E	937.38
45	S 61°43'49" E	937.38
46	S 61°43'49" E	937.38
47	S 61°43'49" E	937.38
48	S 61°43'49" E	937.38
49	S 61°43'49" E	937.38
50	S 61°43'49" E	937.38
51	S 61°43'49" E	937.38
52	S 61°43'49" E	937.38
53	S 61°43'49" E	937.38
54	S 61°43'49" E	937.38
55	S 61°43'49" E	937.38
56	S 61°43'49" E	937.38
57	S 61°43'49" E	937.38
58	S 61°43'49" E	937.38
59	S 61°43'49" E	937.38
60	S 61°43'49" E	937.38
61	S 61°43'49" E	937.38
62	S 61°43'49" E	937.38
63	S 61°43'49" E	937.38
64	S 61°43'49" E	937.38
65	S 61°43'49" E	937.38
66	S 61°43'49" E	937.38
67	S 61°43'49" E	937.38
68	S 61°43'49" E	937.38
69	S 61°43'49" E	937.38
70	S 61°43'49" E	937.38
71	S 61°43'49" E	937.38
72	S 61°43'49" E	937.38
73	S 61°43'49" E	937.38
74	S 61°43'49" E	937.38
75	S 61°43'49" E	937.38
76	S 61°43'49" E	937.38
77	S 61°43'49" E	937.38
78	S 61°43'49" E	937.38
79	S 61°43'49" E	937.38
80	S 61°43'49" E	937.38
81	S 61°43'49" E	937.38
82	S 61°43'49" E	937.38
83	S 61°43'49" E	937.38
84	S 61°43'49" E	937.38
85	S 61°43'49" E	937.38
86	S 61°43'49" E	937.38
87	S 61°43'49" E	937.38
88	S 61°43'49" E	937.38
89	S 61°43'49" E	937.38
90	S 61°43'49" E	937.38
91	S 61°43'49" E	937.38
92	S 61°43'49" E	937.38
93	S 61°43'49" E	937.38
94	S 61°43'49" E	937.38
95	S 61°43'49" E	937.38
96	S 61°43'49" E	937.38
97	S 61°43'49" E	937.38
98	S 61°43'49" E	937.38
99	S 61°43'49" E	937.38
100	S 61°43'49" E	937.38

VICINITY SKETCH:

NOT TO SCALE



Page 150 of 299



SURVEY DATUM

1. HORIZONTAL DATUM BASED FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE 0902, NAD83/2011, AS REFERENCED ON SAID SURVEY.

FIELD BOOK AND PAGE HAS	BOUNDARY SURVEY
DRAWN BY: N.A.S.	
DRAWING: REDCOCONUTSFC	
SCALE: 1" = 30'	
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

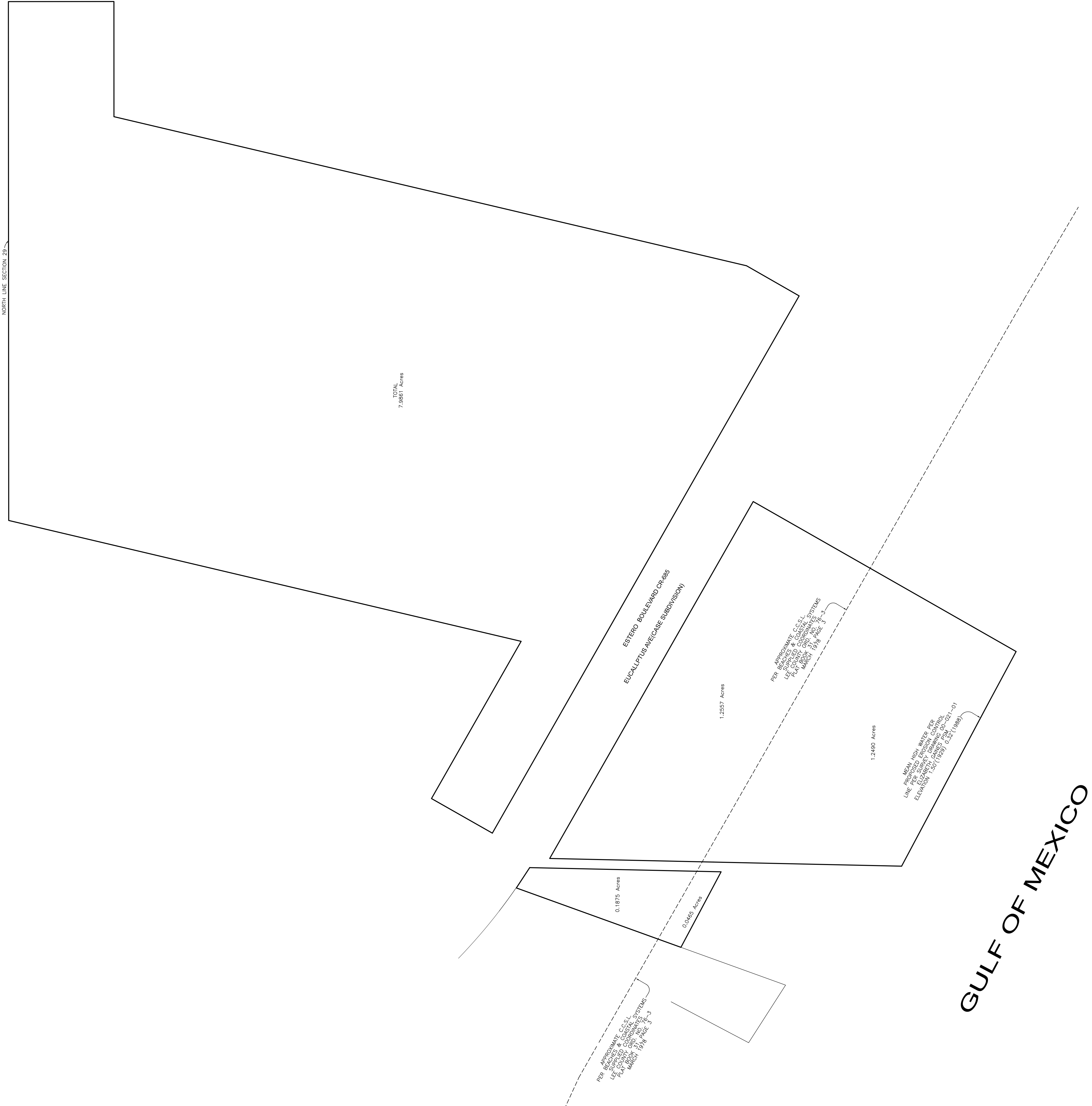
NOTES:

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)	



TOTAL
7,9851 Acres

ESTERO BOULEVARD CR-885
EUCALIPTUS AVE/CASE SUBDIVISION

1,2557 Acres

APPROXIMATE CCS/L
PER BEP/RES & LOCAL SYSTEMS
LEAD/INT. COORDINATE SYSTEMS
PLAN/INT. COORDINATE SYSTEMS
MARCH 1914 PAGE 3-3

1,2480 Acres

MEAN HIGH WATER FOR
PROPOSED FLOOD CONTROL
PER STATE OF CALIFORNIA
ELEVATION 1,230' (1929) 0,321 (1989)

APPROXIMATE CCS/L
PER BEP/RES & LOCAL SYSTEMS
LEAD/INT. COORDINATE SYSTEMS
PLAN/INT. COORDINATE SYSTEMS
MARCH 1914 PAGE 3-3

0,0465 Acres

GULF OF MEXICO

NORTH LINE SECTION 29

Exhibit B

**Conceptual Plans and Renderings
September 4, 2024**

DRAFT



SEAGATE
DEVELOPMENT GROUP

SOLOMON CORDWELL BUENZ

3001 Estero Blvd, Fort Myers Beach, FL

STEARNS WEAVER MILLER



Henderson | Franklin
ATTORNEYS AT LAW





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



ACCESS LEGEND

- Pedestrian Access Point
- Public Pedestrian Circulation

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



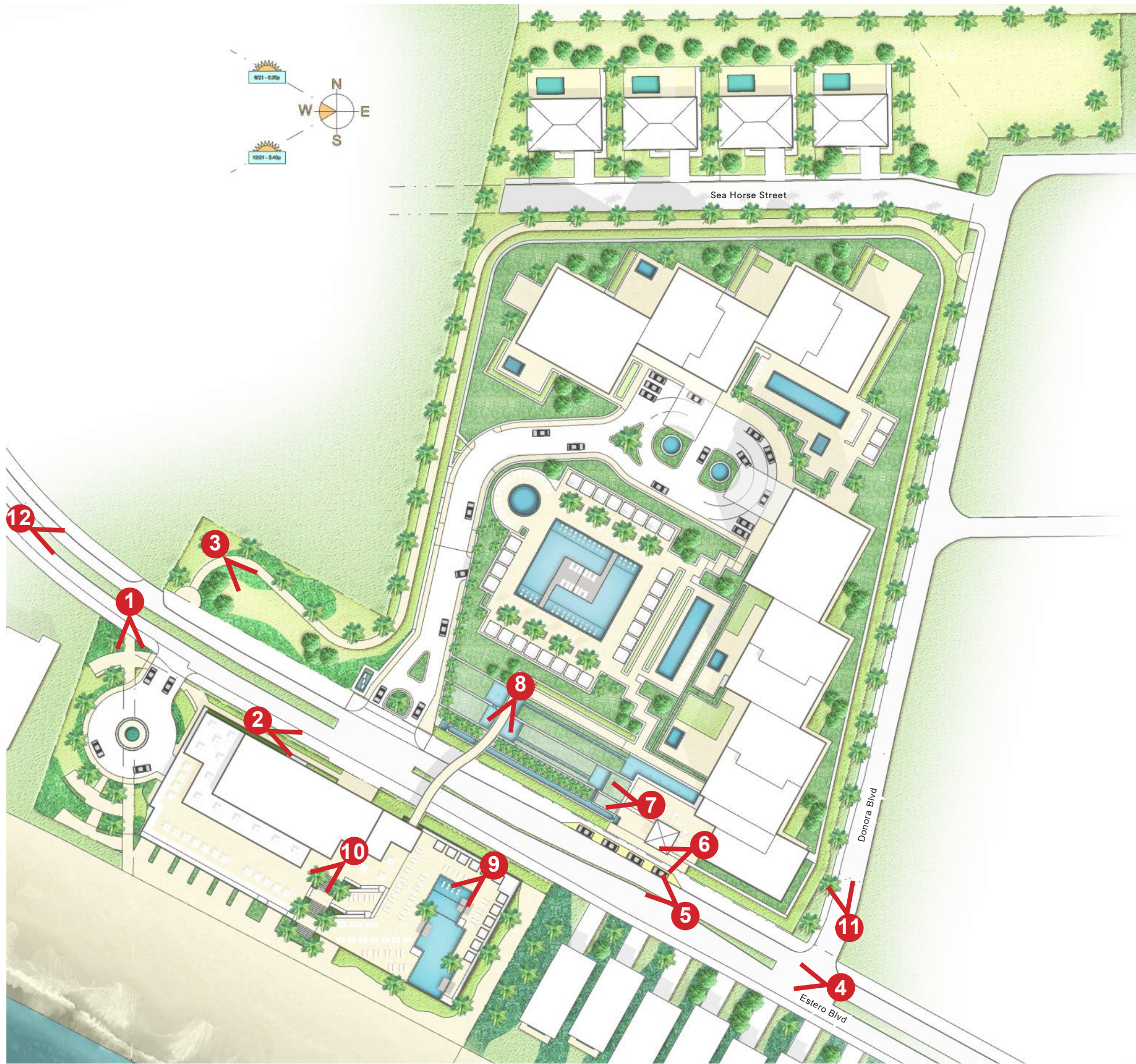
3001 ESTERO BOULEVARD
15 Stories Over Parking

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

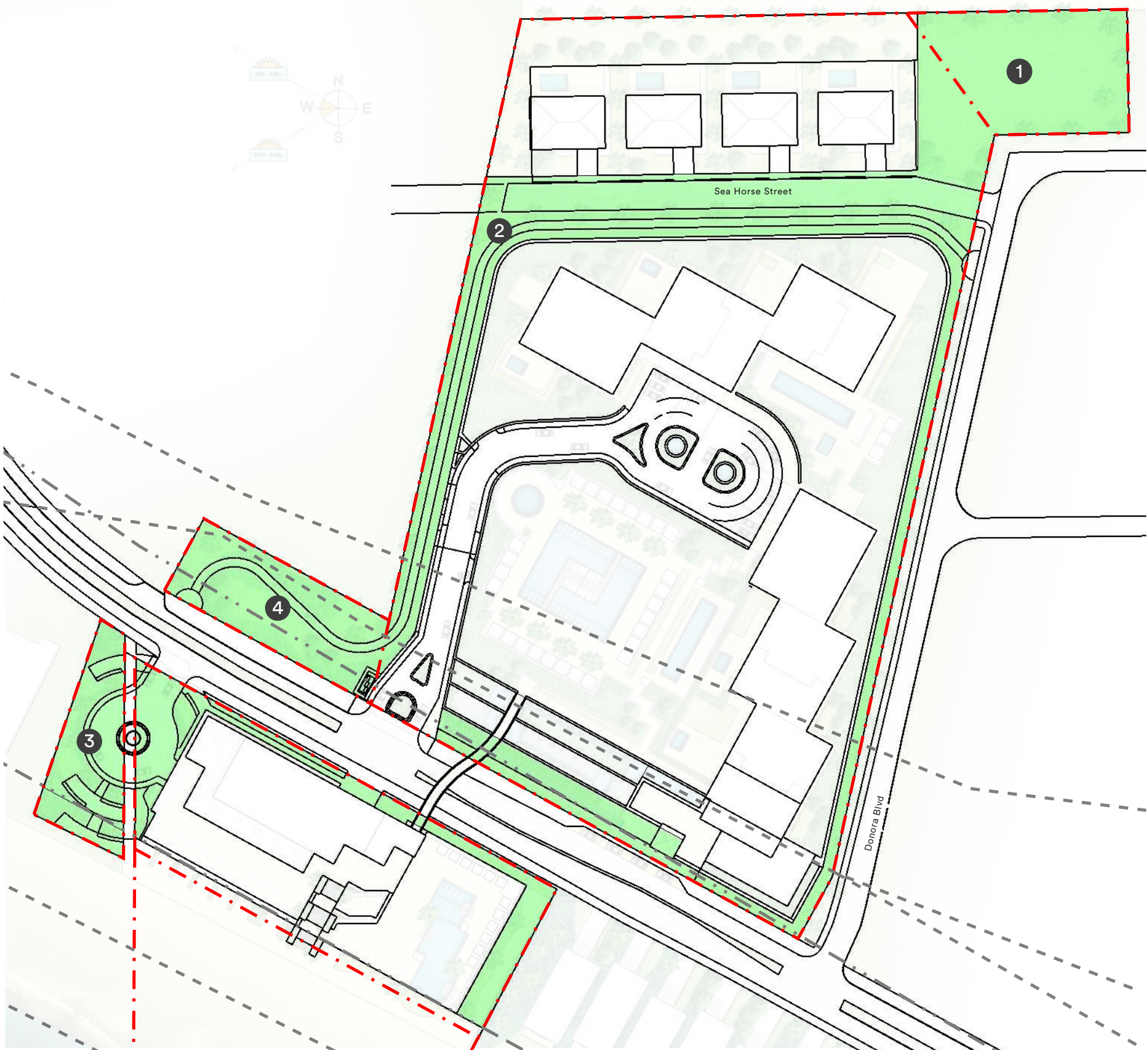
VIEW 12

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

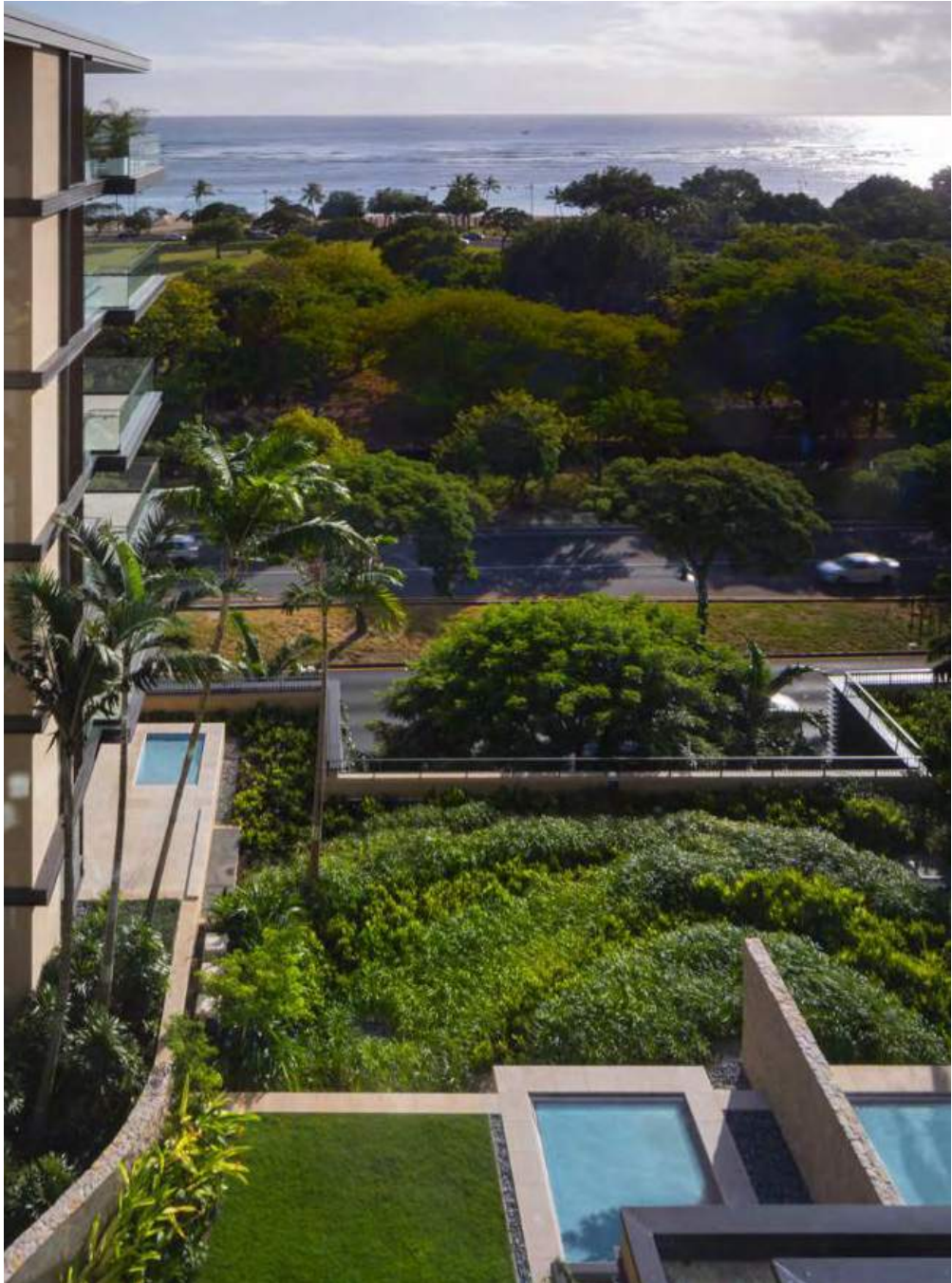
3001 Estero Blvd, Fort Myers Beach, FL

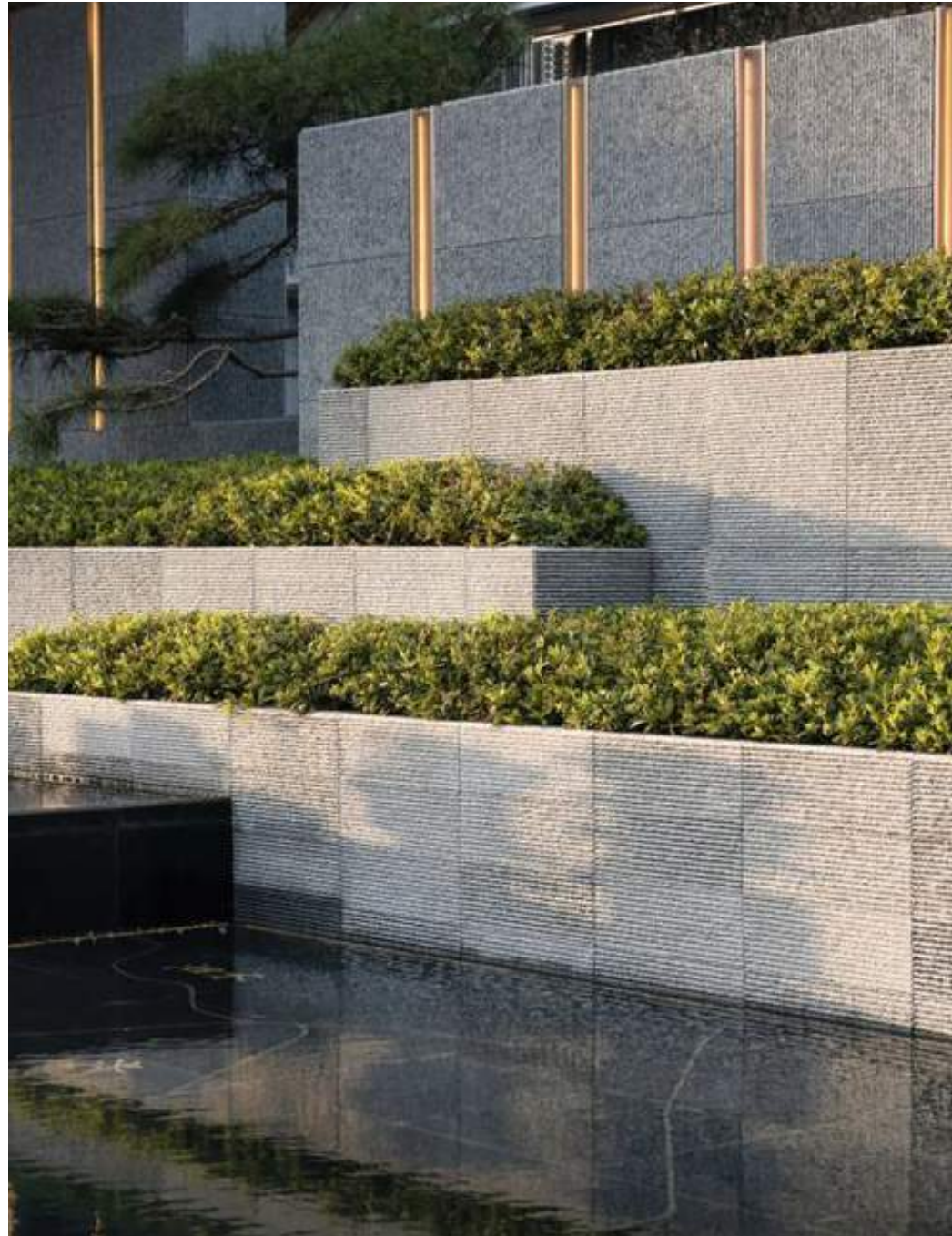
STEARNS WEAVER MILLER















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

1ST TOWN COUNCIL

HEARING DATE: October 28, 2024, at 9 AM

2ND TOWN COUNCIL

HEARING DATE: November 4, 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 and 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.

The Town held a first Town Council hearing on this case and recommended scheduling a second hearing on a 4-1 vote, with the changes that were discussed during the hearing.

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.

Exhibit A – Comp Plan and LDC discussion of Red Coconut

...(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

-
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: November 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING TOWN MANAGER'S PURCHASE OF A SWEEPER FOR \$170,000.00; AUTHORIZING BUDGET ADJUSTMENT #2; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to comply with our purchasing ordinance which requires approval by Town Council for purchases in excess of \$75,000, and the budget adjustment is necessary to appropriate the required funding.

What the action accomplishes:

The action ratifies the \$170,000 emergency purchase of the Multihog Sweeper and authorizes the required budget adjustment.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

The Lee County Visitor and Convention Bureau approved the distribution of Tourism Development Tax funds to the Town of Fort Myers Beach for beach and shoreline maintenance, which specifically included approval of \$67,000 of funding for the purchase of a new \$170,000 Multihog Sweeper, and is included in the TDC adopted budget for Fiscal Year 2025.

The remaining \$103,000 balance was to be funded with \$35,972 of insurance proceeds from the Emergency Fund, and \$67,028 from the accumulated fund balance in the Gas Tax Fund, but neither of these funding sources were included in the Fiscal Year 2025 budget. Therefore, a budget adjustment for these two funding sources is required.

The Multihog Sweeper was purchased from Jet-Vac through Sourcewell and was delivered on October 22, 2024, to be put to immediate use in removing sand from beach accesses and sidewalks that was deposited by Hurricane Milton.

Attachments:

1. 24-219, Ratification of \$170,000 Sweeper Purchase and Budget Adjustment #2 ns
2. PO REQUEST FOR STREET SWEEPER - MULTIHOG

Financial Impact:

The financial impact is a total of \$170,000. The funding sources are as follows:

\$67,000 - TDC Grant
\$35,972 - Insurance Proceeds from previously owned sweeper that was destroyed by the storm surge
\$67,028 - accumulation of unspent Gas Tax revenue from previous years

\$170,000 - Total

6. **Alternative Action**

The town may choose not to ratify the emergency purchase and/or not to authorize the budget adjustment, or it may propose alternate funding sources.

7. **Management Recommendations:**

Management recommends ratification of purchase and authorization of budget adjustment

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 - 10/29/2024
Final Approval - 10/29/2024

RESOLUTION NUMBER 24-219

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING TOWN MANAGER'S PURCHASE OF A SWEEPER FOR \$170,000.00; AUTHORIZING BUDGET ADJUSTMENT #2; 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 Lee County Visitor and Convention Bureau approved the distribution of Tourism Development Tax funds to the Town of Fort Myers Beach for beach and shoreline maintenance, which specifically included approval of \$67,000 of funding for the purchase of a new \$170,000 Multihog Sweeper and is included in the TDC adopted budget for Fiscal Year 2025; and

WHEREAS, the remainder of funding is proposed to be provided by \$35,972 of insurance proceeds from the Emergency Fund and \$67,028 from the accumulated fund balance in the Gas Tax Fund, neither of which funding sources are included in the Fiscal Year 2025 budget; and

WHEREAS, the Multihog Sweeper was purchased from Jet-Vac through Sourcewell and was delivered on October 22, 2024, to be put to immediate use in removing sand from beach accesses and sidewalks that was deposited by Hurricane Milton; and

WHEREAS, Florida Statutes s. 200.065 establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Florida Statutes s. 166.241 requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 23, 2024, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2024-25, as set forth with greater specificity in Town Resolution 24-185; and

WHEREAS, Section 11.05(a) of Article XI of the Town Charter provides that if, during the fiscal year, the town manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council, by resolution, may make supplemental appropriations for the year up to the amount of such excess, so long as a fiscally responsible reserve is maintained; and

WHEREAS, \$35,972 of insurance proceeds from the Town’s previously owned sweeper that was destroyed in the storm surge of Hurricane Ian are being held on reserve in the Emergency Fund; and

WHEREAS, there is a fund balance of approximately \$1.3 million in the Gas Tax Fund from which \$67,028 may be withdrawn while still leaving a fiscally responsible reserve; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town.

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 purchase of the \$170,000 Multihog Sweeper from Jet-Vac through Sourcewell is hereby ratified by the Town Council as an emergency purchase for use in removing sand deposited by Hurricane Milton, with the understanding that it will be funded by \$67,000 from TDC, \$35,972 from insurance proceeds in the Emergency Fund, and \$67,028 from the Gas Tax Fund.

Section 3. That the following adjustment to the Fiscal Year 2025 budget is hereby authorized:

13.31.541.38100	Emergency Fund-Public Works: Prior Year Carryover	\$35,972
13.31.541.64500	Emergency Fund-Public Works: Other Equipment	\$35,972
20.31.541.38100	Gas Tax Fund: Prior Year Carryover	\$67,028
20.31.541.64500	Gas Tax Fund: Other Equipment	\$67,028

Section 4. 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.



Town of Fort Myers Beach
Purchase Requisition

Requested By: Jeff Hauge	PO No:
Department: Public Works/ TDC	Request Date: 10/2/2024

Vendor Name:	JET VAC
Vendor Address:	1350 Sheeler Avenue, Building 12, Unit 7, Apopka, FL 32703
Vendor Phone:	847-980-8369
Vendor ID (if known):	

Include as much detail as possible to explain why this purchase is needed.

Include as much detail as possible to explain why this purchase is needed:				
Item Number	Description	Qty	Price	Extended Price
	MULTIHOG CV-350 SWEEPER	1.00	170,000.00	170,000.00
	Stock Number: E004434			-
	Machine Serial #: UN9CV20H9RD015618			-
	*see attached quote- using Sourcewell pricing			-
				-
				170,000.00
Detailed Description:	New sweeper to use at all beach accesses, Town Parks, & roads			

Account Coding: 13.31.541.64000.608 - \$ 35,972 - Insurance proceed
22.75.579.64000.000 - \$ 67,000 - TDC ask
20.31.541.64000.000 - \$ 67,028 - Gas Tax

Payment Type: Invoice Store Account Pcard Suntrust
(circle one)

Director's Signature:

Date: 10/2/2024

Required Documents: \$5000-\$10,000 - 3 verbal quotes
\$10,000-\$75,0000 - 3 written quotes
\$75,000-over - Sealed competitive bid**
**\$35,000-over for FEMA Reimburseable Purchases

Form Included
☐
☐
☐
☐
☐
☐

If contract has been awarded, attach contract
If STA has been approved, attach STA
Sole source

Invoices and packing slips must be provided to Finance upon receipt of goods/services.

Please send invoices to Invoices@fmbgov.com

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



FLORIDA SHERIFFS
ASSOCIATION



Sourcewell

HGACBuy
THE SMART PURCHASING SOLUTION

Date: 10/02/2024

Quoted To:

Town of Fort Myers Beach
Attn: Accounts Payable
2525 Estero Blvd.
Fort Myers Beach FL 33931

Location: APOPKA

Quote Number: Q00714

Expiry Date: 10/31/2024

Salesperson: MEAGAN MEYERS
meagan@jet-vac.com

Responsible: BRITTANY WINDHAM
brittany@jet-vac.com

Attention: Frankie Kropacek

We propose to furnish the equipment described herein in accord with the specification, terms, and conditions outlined.

MULTIHOG CV-350 SWEEPER

192,411.37

Stock Number: E004434 Machine Serial #: UN9CV20H9RD015618

To Include the Following:

CV 350 Sweeper 75HP Tier IV diesel engine
Permanent 4 wheel hydrostatic drive
3 speed transmission
2 drive modes - Road and work
Independent spring and damper suspension
Spacious, panoramic driver cab with cushioned mounting system
High Back Air Suspension driver seat with 3-point seatbelt and head rest
Adjustable, Seat mounted, multifunction control armrest with twin miniature joysticks for ease of operation and control for improved driver comfort
7" high resolution colour screen with anti-glare technology
Low level of vibration
Low driver noise level
Rear view mirrors
40kmh travel speed
150 amp alternator
Disk brakes
Multi-disc parking brakes with automatic activation upon leaving the driver seat or turning the engine off
Adjustable steering with 2 tilt adjustments of steering column and telescopic height adjustment of steering wheel
Interior light, variable flow load sensing hydraulic

supply, 0 -100 litres per min with a maximum 225 bar pressure depending on flow setting. (See flow/ pressure graph for exact flow and pressure capability)
Maximum flow to front is 100 l/m, Maximum flow to rear is 60 l/m
Combined Maximum flow to front and rear is 100 l/m
2 double acting hydraulic functions to the front 1 double acting hydraulic function to the rear
Front mounted hydraulic lift arms with independent controls and 750kg combined lift capacity
Emergency release brake system, to override parking brake and allow movement of machine in the event of breakdown
In Cab Pollen Filter
Air Conditioning
Cab doors with opening windows
Heavy duty cooling system for engine, charge air and oil cooling with twin variable speed fans
On Board Diagnostics
1.5m³ Vacuum Hopper
Suction Hood and Suction hose

STANDARD OPTIONS INCLUDED IN TOTAL:
STANDARD WHITE REMOVABLE PANELS (INCLUDING HOPPER)
STANDARD HIGH BACK AIR SUSPENSION DRIVER SEAT WITH 3-POINT SEATBELT AND HEAD REST
STANDARD REAR VIEW MIRRORS
STANDARD DIFFERENTIAL REPLACEMENT
RIGHT HAND TRAFFIC HEADLIGHTS
STANDARD WINDSCREEN
CRUISE CONTROL
IN-CAB ELECTRONIC GROUND PRESSURE CONTROL FOR FRONT MOUNTED ATTACHMENTS
HIGH PRESSURE WASHER PUMP AND LANCE 10M REEL
LED FRONT WORK LIGHTS
REVERSING CAMERA MOUNTED ON REAR OF HOPPER
ADDITIONAL CAMERA, FRONT SUCTION HOOD
LED FLASHERS FRONT
LED FLASHERS REAR
RAIN WATER DRAIN (HOSE PIPE CONNECTIONS TO OVERFLOW PORTS)
VACUUM GAUGE MOUNTED IN CABIN
STANDARD HOPPER ACCESS DOORS
STANDARD BRUSH ARM ASSEMBLY (PAIR)
FRONT ATTACHMENT HARNESS WITH DEUTSCH CONNECTOR
STANDARD GROSS VEHICLE WEIGHT 3.5 TONNE 3500KG
CV COOPER DISCOVERER MAXX 245/75 R16 WHEELS
INTERMEDIATE MUDGUARDS AND SUPPORT PLATES (SET)
900MM POLY BRUSH (PRICE EACH)

Additional Charges

EQP SOURCEWELLDISCOUNT	-9,620.57
EQP SHIPPING	8,000.00
JET-VAC DISCOUNT	-20,790.80

Comments

Sourcwell Contract #111522-MUL
Multhihog - Airport Runway Equip.
Maturity Date: 02/03/2027

Selling Price:	170,000.00
Tax:	
Net Selling Price:	170,000.00

Accepted by:

Prepared by:

1. **Request:**

Meeting Date: November 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN ADDENDUM TO THE CONTRACT BETWEEN THE TOWN OF FORT MYERS BEACH AND TURTLE TIME, INC., TO ADD ADDITIONAL TERMS AND CONDITIONS TO ALLOW THE USE OF FEDERAL EMERGENCY MANAGEMENT FUNDS FOR REIMBURSEMENT OF EXPENSES INCURRED BY THE TOWN AND TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AUTHORIZING THE TOWN MANGER OR MAYOR TO SIGN THE ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The approval of this Addendum to the Contract between the Town and Turtle Time, Inc. is necessary to supplement the terms of the contract between the Town and Turtle Time, Inc., to meet the criteria sought by FEMA for reimbursement of \$30,000 spent by the Town in 2023 on turtle monitoring services.

What the action accomplishes:

This addendum supplements the terms of the contract between the Town and Turtle Time, Inc., as requested by FEMA.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

In the Spring of 2023, Turtle Time, Inc. submitted a proposal for marine turtle monitoring services in the Town. On June 20, 2023, the Town Council authorized the Town Manager to sole source Turtle Time, Inc.'s services for sea turtle nest monitoring and relocation in the emergency berm project area, which established a contractual relationship between the Town and Turtle Time, Inc. The Town intended to seek reimbursement of funds paid to Turtle Time, Inc. from the funding available from the Federal Emergency Management Agency ("FEMA"). The Town has expended \$30,000 for turtle monitoring services in 2023 and wishes to seek reimbursement of those funds from FEMA. FEMA notified the Town that the contract required additional terms in order for the Town to receive a reimbursement of the expended funds. The proposed addendum to the contract contains the required terms, along with additional terms required under Florida law, which were missing from the original contract.

Attachments:

1. Final Resolution 24-222, Approving Addendum to Turtle Time Contract 10-31-24 mr
2. Final Ex. A to Resolution 24-222 - Addendum to Turtle Time Contract - 10-31-24 mr
3. Ex. A to Addendum to Contract
4. TC 6-20-23 meeting minutes and blue sheet (Berm)

Financial Impact:

n/a

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison

Frankie Kropacek, Operations & Compliance Director

Joe Onzick, Finance Director

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 10/29/2024

Approved - 10/30/2024

Approved - 10/30/2024

Approved - 10/31/2024

Approved - 10/31/2024

Final Approval - 10/31/2024

RESOLUTION NUMBER 24-222

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN ADDENDUM TO THE CONTRACT BETWEEN THE TOWN OF FORT MYERS BEACH AND TURTLE TIME, INC., TO ADD ADDITIONAL TERMS AND CONDITIONS TO ALLOW THE USE OF FEDERAL EMERGENCY MANAGEMENT FUNDS FOR REIMBURSEMENT OF EXPENSES INCURRED BY THE TOWN AND TERMS AND CONDITIONS REQUIRED BY FLORIDA LAW; AUTHORIZING THE TOWN MANGER OR MAYOR TO SIGN THE ADDENDUM; 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, in the Spring of 2023, Turtle Time, Inc. submitted a proposal for marine turtle monitoring and relocation services as a sole source provider for the emergency berm project for \$45,000 (the “Proposal”); and

WHEREAS, on June 20, 2023, the Town Council authorized the Town Manager to acquire needed services from Turtle Time, Inc., which established a contractual relationship between the Town and Turtle Time, Inc. (the “Contract”); and

WHEREAS, the Town intended to seek reimbursement of funds paid to Turtle Time, Inc. for its services from funding available from the Federal Emergency Management Agency when it approved the Contract with Turtle Time, Inc. as a sole source provider; and

WHEREAS, the terms and conditions required by the Federal Emergency Management Agency and under Florida law were not formally included in the Contract when it was approved; and

WHEREAS, the Town Council has determined it is in the best interests of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution to amend the Contract to include the omitted terms and conditions by Addendum.

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 Addendum to the Contract between Turtle Time, Inc., and the Town of Fort Myers Beach. A copy of the Addendum to the Contract is attached to this Resolution as Exhibit “A.”

Section 3. The Mayor or Town Manager are authorized to execute the Addendum to the Contract and any other documents required to allow the Town to obtain reimbursement from FEMA for the services provided by Turtle Time, Inc.

Section 4. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

This Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
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.

**ADDENDUM TO CONTRACT WITH TURTLE TIME, INC.
FOR SEA TURTLE MONITORING SERVICES
(EMERGENCY BERM PROJECT)**

THIS ADDENDUM (the “Addendum”) is made by and between the TOWN OF FORT MYERS BEACH, a municipal corporation (the “Town”), and TURTLE TIME, INC., a Florida not for profit corporation (the “Contractor”), to a Proposal from Contractor for sea turtle monitoring services in the Town’s Emergency Berm Project approved by the Town Council at the June 20, 2023, Town Council meeting (“the Contract”).

WITNESSETH:

WHEREAS, since entering into the Contract, the Town has made payment to the Contractor for services, which have been provided pursuant to the terms of the Contract, a copy of which is attached as Exhibit A; and

WHEREAS, in order to seek reimbursement from the Federal Emergency Management Agency (“FEMA”) of the payments made by the Town, which was intended at the time the Town approved the Contract, certain terms and conditions must be included in the Contract pursuant to 2 C.F.R. Part 200, Appendix II(B); and

WHEREAS, to be eligible for reimbursement from FEMA, 2 C.F.R. Part 200, Appendix II(B) requires that all contracts in excess of \$10,000, must include a term for termination for cause and for convenience; and

WHEREAS, Section 119.0701, Fla. Statutes requires that certain public agency contracts include statutorily required provisions related to the Contractor’s compliance with the Florida Public Records Act; and

WHEREAS, Section 768.28, Fla. Statutes sets forth certain mandatory limitations on indemnification and liability for Florida public agencies, such as the Town; and

WHEREAS, Section 287.0582, Fla. Statutes requires that public agency contracts include a non-appropriation term and remain contingent upon an appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Statutes 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. Statutes restricts local governments from contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

WHEREAS, additional terms consistent with Section 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also required contractual terms; and

WHEREAS, Section 286.101, Fla. 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.” Section 286.101, Fla. Statutes requires any entity that does business with a state agency or political subdivision must disclose their dealings with those “foreign countries of concern” to the Florida Department of Financial Services; and

WHEREAS, Section 787.06(13), Fla. 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; and

WHEREAS, the parties agree to amend the Contract to include these additional terms and conditions and approval of this Addendum is in the best interest of the residents of the Town of Fort Myers Beach.

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

1. **Incorporation by Reference.** The above “Whereas” clauses are incorporated by reference as if fully stated herein.
2. **Amendment.** This Addendum hereby approves, amends and supplements the terms of the Contract as provided herein. In the event of a conflict between the terms of the Contract and the terms of this Addendum, the terms of this Addendum shall prevail.
3. **Termination.**
 - (a) Termination for Cause. The Contract may be terminated by either party for cause by providing written notice to the other party not less than 10 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations under the Contract through the date of the actual termination. Prior to any termination for cause, by either party, the breaching party shall be given written notice of its breach and an opportunity to cure such breach. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.
 - (b) Termination for Convenience. The Town may terminate the Contract in whole or in part at any time without cause by giving the Contractor a prior written notice not less than 30 days prior to the date of termination; provided, however, that in such event, neither party will be relieved from its rights or obligations

under the Contract through the date of the actual termination. Notice must be delivered by certified mail, return receipt requested, or in person with proof of delivery.

4. 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), Fla. Statutes in providing its services under the parties' Contract, 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931
(239)765-0202
AMY@FMBGOV.COM**

5. 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), Fla. 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.

6. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Contract 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 under the Contract in derogation hereof shall be void and of no force or effect.

7. Non-appropriation. Town's performance and obligation to pay under the Contract 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 Contract, and the Contract shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Contract 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 Contract was funded by appropriations.

8. E-Verify Compliance. By executing this Addendum, the Contractor is obligated to comply with the provisions of Section 448.095, Fla. 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 the Contract. Failure to comply with this paragraph will result in the termination of the Contract as provided in Section 448.095, Fla. Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Contract was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of the Contract in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. 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, Fla. Statutes.

9. Compliance/Consistency with Scrutinized Companies Provisions of Fla. Statutes. Section 287.135(2)(a), Fla. 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, Fla. Statutes, or is engaged in a boycott of Israel.

Section 287.135(2)(b), Fla. 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, Fla. 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, Fla. 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.

10. Disclosure Requirements for "Foreign Countries of Concern." Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Fla. 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), Fla. Statutes: "In addition to any fine assessed under [Section 286.101(7)(a), Fla. 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."

11. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, the Contract, this Addendum, and the parties' actions under the same 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 the parties' Contract, 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 the Contract or this Addendum.

12. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding the Contract or this Addendum, each party hereto shall bear its own attorneys' fees and costs.

13. 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), Fla. Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

14. 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 Section 282.3185(5) and (6), Fla. Statutes in the event of a data breach.

15. 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.

16. 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.

17. 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.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the month and day last signed below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Section 92.525, Fla. Statutes, Contractor declares that Contractor has read the foregoing Section 17 above and that the facts stated in it are true.

ATTEST:

CONTRACTOR:

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

ATTEST:

TOWN OF FORT MYERS BEACH

Amy Baker, Town Clerk

Dan Allers, Town Mayor

**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

EXHIBIT “A”



MARINE TURTLE MONITORING ESTERO ISLAND NOURISHMENT PROJECT AND FEMA BERM

Submitted by:

Eve M. Haverfield

Turtle Time, Inc.

MTP-23-003A; MTP-23-138A (Exp. 1/31/2024)

Ecological Services:

Permit-Required Marine Turtle Monitoring for Estero Island Nourishment Project (DEP Permit No. 0413684-001-JC) and FEMA Berm Construction. First Year Sand Placement.

Daily surveys of the project area and the concomitant reference area will commence on April 15, 2023, and end October 31, 2023, or when all nests have hatched - relocated nests and *in situ* nests. All reports, including escarpment surveys, stranding documentation, nesting obstruction, disorientation reports and all end-of-season nesting and hatching productivity reports will be submitted in electronic format to FWC Bureau of Imperiled Species Management, DEP, and the Town of Fort Myers Beach by November 30, 2023. In addition, the required annual monitoring follow-up reports will be sent on a timely basis.

Pay Request:

\$15,000 May 1, 2023

\$15,000 November 30, 2023

\$ 5,000 May 1, 2024 - First-Year Post-Construction

\$ 5,000 May 1, 2025 - Second-Year Post-Construction

\$ 5,000 May 1, 2026 - Third Year Post-Construction (if required by FWC)

Thank you.

Eve Haverfield

Director

P.O. Box 2621 - Fort Myers Beach, FL 33932 - 239-481-5566
www.turtletime.org



**MARINE TURTLE MONITORING
ESTERO ISLAND NOURISHMENT PROJECT
AND FEMA BERM**

Submitted by:
Eve M. Haverfield
Turtle Time, Inc.
MTP-23-003A; MTP-23-138A (Exp. 1/31/2024)

Ecological Services:

Permit-Required Marine Turtle Monitoring for Estero Island Nourishment Project (DEP Permit No. 0413684-001-JC) and FEMA Berm Construction. First Year Sand Placement.

Daily surveys of the project area and the concomitant reference area will commence on April 15, 2023, and end October 31, 2023, or when all nests have hatched - relocated nests and *in situ* nests. All reports, including escarpment surveys, stranding documentation, nesting obstruction, disorientation reports and all end-of-season nesting and hatching productivity reports will be submitted in electronic format to FWC Bureau of Imperiled Species Management, DEP, and the Town of Fort Myers Beach by November 30, 2023. In addition, the required annual monitoring follow-up reports will be sent on a timely basis.

Pay Request:

\$15,000 May 1, 2023
\$15,000 November 30, 2023
\$ 5,000 May 1, 2024 - First-Year Post-Construction
\$ 5,000 May 1, 2025 - Second-Year Post-Construction
\$ 5,000 May 1, 2026 - Third Year Post-Construction (if required by FWC)

Thank you.
Eve Haverfield
Director

Authorize the Town Manager to sole source Turtle Time Inc. services for sea turtle nest monitoring and relocation in the emergency berm project area.

Council Member King requested an explanation of the cost. Contracts Manager Kropocek stated that Turtle Time was a non-profit, volunteer-based organization and the only one deemed qualified by the FWC (Fish & Wildlife Conservation Commission). The fee being charged was part of the permit fee for the berm restoration and had to tie in with Turtle Time for turtle nest relocation and any related fees. Environmental Project Manager Chadd Chustz explained that the permits required that an expert be hired to monitor the berm area. He added that the charge would be covered under FEMA.

Council Member King moved to authorize; second by Council Member Veach.

Motion carried unanimously.

- I. Direct Staff to place sand waterward of the Erosion Control Line for beachfront properties that do not sign the Town's Easement to place sand landward of the Erosion Control Line.

Direct Staff on whether to place sand waterward of the Erosion Control Line for beachfront properties that do not sign the Town's Easement to place sand landward of the Erosion Control Line.

Project Manager Chadd Chustz utilized PowerPoint for his presentation. Slides included: Recover Summary; Berm Updates; Estero Island Shore Protection Project (aka Beach Renourishment) and Estero Island Shore Protection Project Easements. Coastal Engineering Consultant Michael Poff explained how much sand was added to the beach project. Vice Mayor Atterholt stated that this infusion of sand would transform the beach and encouraged people to consider signing the easement. Mr. Poff indicated the crux of the question was whether the Council would place sand on private property without permission. Town Attorney Herin, Jr. replied that more consideration had to be provided by his office as to the possible ramifications of going onto private property without the owner's permission.

Mr. Poff continued the presentation with slides describing options. Mayor Allers questioned whether they should table the issue until August and Mr. Poff agreed that it would give the town more time to appeal to the residents to sign the easement. Mr. Poff explained the benefits of signing the easement and addressed issues from people who did not want to sign the easements. Project Manager Chustz stated that ADA accesses would be restored once the emergency berm was finalized. Go to [FMBgov.com/beach](https://fmbgov.com/beach) to sign the easement online.

Mayor Allers moved to table the topic to the first meeting in August; second by Council Member King.

Motion carried unanimously.

1. **Requested Motion:**

Meeting Date: June 20, 2023

Authorize the Town Manager to sole source Turtle Time Inc. services for sea turtle nest monitoring and relocation in the emergency berm project area.

Why the action is necessary:

State and Federal guidelines require sea turtle nest monitoring. Eve Haverfield of Turtle Time Inc. is the only entity authorized by the Florida Wildlife & Conservation Commission to monitor and relocate sea turtle nests.

What the action accomplishes:

Allows the Town to construct the emergency berm in accordance with State and Federal regulations.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The Town is constructing an emergency berm on the beach to protect upland property from storm surge. Construction activities are occurring in sea turtle nesting habitat, during sea turtle nesting season. State and Federal guidelines require sea turtle nest monitoring. Sole source procurement is required, because Eve Haverfield of Turtle Time Inc. is the only entity authorized by the Florida Wildlife & Conservation Commission to monitor and relocate sea turtle nests.

Attachments:

1. turtle time sole source form
2. Marine Turtle Monitoring Proposal_FMB_2023

Financial Impact:

6. **Alternative Action**

Do not authorize the Town Manager

7. **Management Recommendations:**

Authorize the Town Manager to sole source Turtle Time Inc. services for sea turtle nest monitoring and relocation in the emergency berm project area.

8. **Recommended Approval:**

Chadd Chustz, Environmental Services
Steve Poposki, Town Engineer
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 6/13/2023
Approved - 6/13/2023
Approved - 6/15/2023
Approved - 6/15/2023
Final Approval - 6/15/2023