



Fort Myers Beach Town Council

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

Agenda

Monday, December 2, 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

A. Lee County Property Appraiser Matt Caldwell

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

A. Public Safety Committee

VIII. APPROVAL OF MINUTES

A. Joint Session Town Council & Local Planning Agency - November 13, 2024

B. Town Council - November 18, 2024

IX. CONSENT AGENDA

A. Resolutions 24-257 through 24-261; 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 24-262 through 24-266; 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 24-267 through 24-271; 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 24-272 through 24-276; 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 24-277 through 24-281: 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. Resolution 24-285; SEZ20240194, 4950 & 4952 Estero - Kahlua Beach Club Special Exception

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW

RESTORATION OF A POOL, POOL DECK, TWO (2) CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

- B. Ordinance 24-36, DCI 20230213, Neptune Inn, 2310 & 2316/2320 Estero Blvd.

First reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH COMMONLY KNOWN AS THE NEPTUNE RESORT, TO ALLOW 148 LODGING UNITS AND ACCESSORY RETAIL AND RECREATIONAL USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on December 16, 2024 at 9:00 a.m.

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

Additional public hearing for 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. Interlocal Agreement Between the Town and the Tax Collector
Approval of an Interlocal Agreement Between the Town of Fort Myers Beach, Florida, and Lee County Tax Collector for the collection of non-ad valorem assessments related to demolition costs of unsafe buildings
- B. Special Event - FMB Women's Club Festival of Trees
FMB Women's Club is requesting approval of a special event permit to hold their Annual Christmas Tree Festival on Friday, December 13, 2024 and Saturday, December 14, 2024 from 1:00 p.m - 8:00 p.m. at Bay Oaks Recreational Center, to serve cocktails, have outdoor music and have a food truck on site.
- C. Resolution 24-282, Authorizing Budget Adjustment #2 - New Year's Eve Fireworks
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING BUDGET ADJUSTMENT (#2) TO FUND NEW YEAR'S EVE FIREWORKS; AND PROVIDING AN EFFECTIVE DATE.
- D. Resolution 24-255, Strategic Planning Research Agreement
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RATIFYING A RESEARCH AGREEMENT WITH THE UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES FOR STRATEGIC PLANNING SERVICES AS DESCRIBED IN A PROPOSAL UNANIMOUSLY APPROVED BY TOWN COUNCIL ON SEPTEMBER 9, 2024, IN AN AMOUNT NOT TO EXCEED \$225,427.60; AUTHORIZING THE USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS FOR THE PROJECT AND AUTHORIZING THE TOWN MANAGER OR MAYOR TO SIGN ANY AND ALL DOCUMENTS NEEDED TO IMPLEMENT THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.
- E. Resolution 24-256, STA #16 FY24 Axis Infrastructure Services
A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A SUPPLEMENTAL TASK AUTHORIZATION #16 WITH AXIS INFRASTRUCTURE, LLC IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO PROVIDE TECHNICAL SUPPORT, GIS, AND SPECIAL PROJECT MANAGEMENT FOR THE 2024-25 FISCAL YEAR; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- F. Resolution 24-255, Carlos Circle STA 4
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RECINDING RESOLUTION 24-177 AND AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO APPROVE AN UPDATED STANDARD TASK AUTHORIZATION #4 IN THE AMOUNT OF \$146,980.00 WITH TETRA TECH UNDER CONTRACT NO. 22-25-AD FOR TIER 1

**PROJECT CARLOS CIRCLE AND ANY ASSOCIATED DOCUMENTS;
AND PROVIDING FOR AN EFFECTIVE DATE.**

- G. Resolution 24-286; ITB-24-08-EN, Matanzas Pass Mooring Field Dinghy Dock Construction Project

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-24-08-EN TO KELLY BROTHERS, INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE THE DINGHY DOCK CONSTRUCTION PROJECT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND 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 Joint Session with Local Planning Agency

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

Minutes

Wednesday, November 13, 2024

8:30 AM

ORDER OF BUSINESS

I. CALL TO ORDER

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

LPA members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean, LPA Member Plummer and LPA Member Sudduth (virtually).

LPA Member Dunlap moved to allow LPA Member Sudduth to participate virtually due to unforeseen circumstances, seconded by LPA Member Plummer.
The motion carried unanimously.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Public Benefits / Special Benefits

Discussion of Public Benefits and Special Benefits

Chair Cereceda started the conversation and noted that LPA members Boan and Dunlap submitted ideas surrounding public and special benefits. LPA Member Dunlap did not think requiring staff involvement was fair or productive because they did not set policy. There had to be a set of guiding principles that they all agreed on and he referred to the three points in his handout, which were included in the agenda packet. He discussed the financial impact on the town. He stated it was the responsibility of the applicant to create a compelling case to present and explain why they believed it favorably impacted the town. He described his tier system and indicated that different parts of the island had other needs. He added that the LPA took a good stab at addressing public versus special benefits.

LPA Member Boan discussed a public, special, and amenity benefit. A public benefit would be perpetual in nature, special and unique. A special benefit

would be something that both the town and the development benefited from. An amenity was something that would be nice to have, but it did not carry any weight financially. He noted that the LPA agreed that the staff should not negotiate public benefits with the developer and should be given clear policy direction. The LPA also agreed that public benefits should be perpetual in nature. Chair Cereceda added that a special benefit was the pool at Margaritaville because the developer benefited and the public had access at a cost. The public benefits from the Neptune project are the parking spaces and open space on Delmar in perpetuity. She said she had discounted the financial element but changed her mind after the Neptune presentation.

Another critical element was not to put staff in the position of trying to figure out the policy decision surrounding a public benefit. She stated this was a general discussion about general policy because it would be different for every project.

Mayor Allers wanted to address how height, density and intensity could be related to a public benefit. He felt that a project doubling or tripling density created a detriment to the quality of life, as opposed to a project adding one or two stories. For example, if a project gets three stories, they must create a public park. Is the public benefit the same for a developer who wants to double or triple the density? He asked how to link intensity and density while staying at three stories above flood. Even though they were staying within the height restrictions, they massed the building, which was still detrimental to the quality of life. LPA Member Safford did not think density was a detriment because small business owners wanted more density. Mayor Allers responded that as a business owner, more density meant that his business would do better, but not if people could not get anywhere. He supported more height if the density was decreased because of the traffic.

Chair Cereceda asked how they drew the line between density and traffic correlation. She stated that in 1976, it could take someone three hours to travel Estero Blvd. She indicated that even though there were fewer people, it took her 48 minutes to get off the island from the LPA meeting yesterday. Mayor Allers asked whether replacing a two-bedroom cottage with a much larger house impacted infrastructure. If they were going to use traffic and density, they had to use the same argument with intensity and infrastructure. Chair Cereceda felt they had to separate traffic from the impact on water, sewer, public safety, etc. She stated that the traffic on the beach was an anomaly.

Mayor Allers struck the word detriment and asked whether one had more of an impact than the other and he thought density did. He asked how to relate density and intensity to LPA Member Dunlap's tiers. For example, the Meyerside Project added height, density and intensity and should have been in the higher tier, but they could not meet it. He asked how to balance that. LPA Member Dunlap replied that they did not want to limit the creativity of what they were willing to offer, invest in, or provide for. They could offer other opportunities by being a viable economic participant. LPA Member McLean brought up Patrick Vanasse's presentation regarding the basket of

benefits and his creative list of benefits and commitments. They should ensure that staff can refer to public benefits, special benefits and amenities and bring them to the LPA as the overall package, as opposed to a view corridor for height, although he acknowledged that it was written that way in the code. If the project did not have the land to provide certain benefits, they could be creative and provide other benefits.

Council Member Safford did not think a point system would work and others agreed. Chair Cereceda listed other items the community needed to thrive and questioned how the project contributed to those items. Mayor Allers stated that the Margaritaville parking lot was a perpetual, tangible economic stimulus that the town did not have before and, therefore, a public benefit.

The parking lot was a financial benefit and he felt it was more important than a linear park. Council Member Safford questioned whether a beach bar was more important than a park. Chair Cereceda looked at a beach bar as an amenity. LPA Member Sudduth agreed because the property owner benefited economically. He discussed what they were willing to give for how much. LPA Member Dunlap added that an amenity open to all would get credit for being inclusive.

Chair Cereceda questioned what they were willing to tolerate and suggested they identify what they expected the community to look like. Mayor Allers responded that the comp plan addressed future growth. He thought it was dangerous to say what they would tolerate because tolerance should be driven by public input. Chair Cereceda clarified that she meant being tolerant of changes on the island with flexibility and an open mind.

Mayor Allers felt they should look at resiliency as a public benefit. He described the 15-foot curvy wall in Clearwater and indicated you could not tell a hurricane hit. Members agreed it was a benefit.

Council Member Safford discussed being lenient with small properties since everything had to be off the ground. LPA Member Plummer was concerned about increasing the size of units from what had been there. She stated they were creating their height by making the units huge. LPA Member Dunlap did not think it was any of their business, but the developers should have to make their case for what they wanted. Mayor Allers explained that their process allowed what was happening now. For example, 150 units are converted to a condo with 4,000 sq. ft. units. The process did not say adding four bedrooms increased density, but it was like adding three more hotel rooms. He felt that it was a breakdown of the code and process. Community Development Principal Planner Judith Frankel indicated that square footage should be captured under impact fees. Town Attorney Stuparich noted they could create a fund for developers to contribute to for the greater good of the community. Community Development Planner Sarah Propst added that they could create different types of plans and add funds to the plans. Council Member Safford suggested a seawall for a coastal protection system. Other plan ideas were canal dredging, vegetation and transportation. Planner Propst described how to create the plans.

LPA Member Boan mentioned there were approaches based on a bedroom

formula for contributions to schools and parks, so the impact of a larger unit would carry a more significant financial contribution to the town. Council Member Safford noted they had to remember that larger units probably would not be full year-round. He stated that one-bedroom units made the most money per person.

Council Member King preferred discussing and solving topics before moving on to the next topic. Regarding public benefits, he supported building on developers offering deeded parking spaces, pumping out the town's boat, or offering the town higher ground to park town vehicles.

LPA Member Eckmann described steering things toward their vision for the island. Vice Mayor Atterholt liked creating guidelines for public benefits and letting the developers make a creative pitch. He noted they could discourage developers from asking for additional height and density in the guidelines and he wanted to encourage early developers. He questioned whether the third and fourth hotels were as valuable as the first and second for public benefit. He brought up facilitating medical facilities and other public services. He felt that parking lots might be better off as parks. Chair Cereceda noted Vice Mayor Atterholt was talking about guidelines and she was talking about expectations. Vice Mayor Atterholt liked expectations and expecting something in varying degrees.

LPA Member Dunlap discussed setting expectations. Town Attorney Stuparich was concerned about extractions and needed flexibility. Chair Cereceda suggested using aspirations and Town Attorney Stuparich agreed. LPA Member Plummer noted that a specific timeframe for building rather than waiting years to build was a benefit.

Council Member Woodson stated there were only four or five places where developers could build huge projects. She felt that people mandated development with the election results. She thought they had to address resilience, transportation systems and cleaning waterways and canals. LPA Member Plummer added transportation to and from the airport.

Members discussed how magical it was that they all met to talk about the issues.

Council Member Safford asked how to help smaller lots develop. Principal Planner Frankel noted that the small projects needed the same things as larger projects. They needed deviations or variances for ground-level parking. Council Member Safford suggested taking parking out of it.

Principal Planner Frankel discussed using development agreements for smaller projects. She indicated that removing ground-level parking from the FAR would help projects progress. Council Member Safford agreed and noted the developers would have to figure out their parking. Mayor Allers was concerned about spot zoning and allowing special rules for smaller developments. LPA Member McLean discussed the intent of not counting parking but ensuring that you do not have someone building a five-story parking garage with five habitable stories above.

Planner Propst questioned whether they should ask what the town envisioned during public input for the comp plan and LDC (Land

Development Code) to help guide and drive development. She described having the community tell them what mattered to them and building up the comp plan and LDC with that vision. Principal Planner Frankel displayed her notes from the meeting. Members agreed with the summary. Vice Mayor Atterholt asked that essential services be included as an aspirational goal. Mayor Allers agreed with including it as a guiding principle for essential services. Principal Planner requested that essential services be replaced with another terminology. Chair Cereceda suggested community services. She suggested allowing medically related facilities in more places and that goal can be addressed outside public benefits.

Mayor Allers would like to add corner stores since there was only one grocery store on the island.

Planner Propst asked for definitions. LPA Member Eckmann thought they could set conditions of a public benefit based on their discussion. LPA Member McLean reviewed the different categories as discussed. Mayor Allers felt they needed special, public, unique and amenity. What was unique in one location was not in another. Planner Propst commented that everyone thought their project was unique and she wanted to give them some criteria so the town had a way to say no. Chair Cereceda was not sure she wanted to qualify unique. LPA Member McLean described contributing to the eclectic culture and nature of Fort Myers Beach.

Town Manager Hyatt noted they would not solve traffic and he said to take it off the list. He focused on the infrastructure. He requested that the impact fees not be so precise that their vision would be limited. He talked about a transportation fund for months and stated parking would take care of itself. He indicated they were working on the strategic plan. He brought up offering developers protection from the storms. He noted that they had to focus on directing impact fees to general funds to help with projects. Operations & Compliance Director Frankie Kropacek discussed maneuvering through the first development agreement. He welcomed their guidance.

Principal Planner Frankel explained why she needed more guidance. Chair Cereceda agreed that they had to say what they wanted. Vice Mayor Atterholt questioned whether developer presentations could be entered into the record instead of verbally going through it to save time. Town Attorney Stuparich stated they could vote to enter the presentation into the record so it did not have to be presented. She offered to add that to the housekeeping items at the beginning of the hearings. She discussed applicants who presented new ideas during the hearings and having an automatic continuance depending on the significance of the new information. Mayor Allers brought up projects that changed details after the LPA and before the council. He requested that presentations be submitted before the meetings. Town Attorney Stuparich commented that they could set a time limit for presentations.

Public comment:

Dave Leigh, resident, supported the Neptune project and noted the process was perfect from beginning to end with no pushback from the community. He

stated they needed metrics on how many heads and beds they needed to use for decisions. He noted they needed to flush out the financial impacts of projects.

Chris Smuts from London Bay Development Group was encouraged by their efforts and supported their recommendations to include a list of items for public benefits. He agreed not to count the area below habitable towards FAR. He discussed the lack of amenities on the south end.

IV. ADJOURNMENT

LPA Member Dunlap moved to adjourn.

Chair Cereceda adjourned the meeting at 10:56 a.m.



Fort Myers Beach Town Council

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

Minutes

Monday, November 18, 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. CERTIFICATION OF ELECTION RESULTS

A. Resolution 24-250; Certification of 2024 Municipal Election

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CERTIFYING THE RESULTS OF THE 2024 TOWN ELECTION FOR SEATS THREE, FOUR AND FIVE; DETERMINING COUNCIL MEMBER SEAT ASSIGNMENTS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Clerk Baker displayed the official results of the vote and read the final numbers.

No public comment.

Council Member King moved to accept the certified results, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

V. INAUGURATION**A. Oath of Office**

Based on the approval of Resolution 24-250, the motion is to request administration of the Oath of Office to:

Daniel L. Allers, Seat #3

Jim Atterholt, Seat #4

Scott Safford, Seat #5

and completion of the Oath of Office attached to this agenda item.

Council Member Safford moved to administer the oath of office, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

Dan Allers, Jim Atterholt and Scott Safford completed the oath of office.

VI. REORGANIZATION OF COUNCIL OF NEWLY ELECTED OFFICIALS**A. Selection of Mayor and Vice Mayor**

Selection of Mayor and Vice Mayor in accordance with the Town Charter.

Council Member Atterholt nominated Dan Allers as Mayor.

Council Member Atterholt moved to unanimously accept Dan Allers as Mayor, seconded by Council Member King.

The motion carried unanimously by roll call vote.

Council Member King nominated Jim Atterholt as Vice Mayor.

Council Member King moved to unanimously accept Jim Atterholt as Vice Mayor, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

VII. APPROVAL OF FINAL AGENDA

Council Member King moved to approve the final agenda with consent agenda B. removed, seconded by Council Member Safford.

The motion carried unanimously.

VIII. PUBLIC COMMENT

Jackie Liszak, Fort Myers Beach Chamber of Commerce, noted that tents were being loaded at the Diamond Beach site for the Sand Sculpting Championship. The event starts on Thursday from 10:00 a.m. to 5:00 p.m. Details are online at fmgsculpting.com.

IX. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Safford recognized Leadership Lee for their fundraiser last week. The charity was the Homeless Coalition of Lee County.

Vice Mayor Atterholt described his volunteer efforts at the Sand Sculpting Event. He purchased a sandcastle kit and explained how the tools could be used.

He thanked all the volunteers and encouraged people to visit the event.
Mayor Allers thanked Commissioner Sandelli.
No items from other members.

X. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS

No items.

XI. APPROVAL OF MINUTES

A. Town Council - November 4, 2024

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

The motion carried unanimously.

B. Management & Planning Session - November 7, 2024

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

The motion carried unanimously.

XII. CONSENT AGENDA

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

The motion carried unanimously.

A. Resolution 24-254; FMB Endorsement of Bonita Estero Rail Trail

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA IN SUPPORT OF EFFORTS BY THE FRIENDS OF BONITA ESTERO RAIL TRAIL TO DEVELOP THE EXISTING TRAIL WITH THE POSSIBILITY OF CONNECTIVITY TO FORT MYERS BEACH IN ORDER TO PROVIDE TRANSPORTATION ALTERNATIVES AND RECREATIONAL OPPORTUNITIES FOR RESIDENTS OF THE TOWN AS WELL AS ITS VISITORS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution.

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

The motion carried unanimously.

B. Resolution 24-246; Advisory Committee Votes

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Removed.

XIII. ITEMS REMOVED FROM CONSENT AGENDA**XIV. PUBLIC HEARINGS**

- A. Motion for Reconsideration - Estero Island Beach Club (Ordinance 24-28)
Rehearing of AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA 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. Town Attorney Stuparich stated that the property owner requested clarification regarding the prior denial.

Attorney Amy Thibaut from Roetzel & Andress requested that they be allowed to reapply before October 2025. Town Attorney Stuparich stated the denial stood, but they could vote to deny without prejudice, allowing them to reapply within a year.

No public comment.

Council Member Safford moved to deny without prejudice for the EIBC CPD Master Concept Plan, seconded by Council Member Woodson.

The motion carried unanimously by roll call vote.

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

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.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich noted that the property owner requested to continue the item to December 16, 2024, with an additional public hearing on December 2, 2024.

Public comment:

Ed Zemel, Lover's Lane resident, was concerned about the stormwater runoff since his road backs up to Coconut Park.

Terry Cain resident, commented that the comprehensive plan was the blueprint for future growth. She discussed items they should consider that fit the community.

Public comment closed.

The recording skipped past Tim's comments.

Council Member Woodson moved to approve the continuance to December 16, 2024, at 9:00 a.m., seconded by Council Member King.

The motion carried unanimously.

C. Ordinance 24-30; Unsafe Building Code Appeals

Second Reading and Final Public Hearing on proposed Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING: 1) DIVISION 3 "UNSAFE BUILDING ABATEMENT CODE" OF ARTICLE I "PROPERTY MAINTENANCE CODES"; AND 2) DIVISION 2 "LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS" OF ARTICLE II "BUILDING CODES" OF CHAPTER 6 "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS" OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO AMEND EXISTING PROVISIONS RELATED TO APPEALS OF THE BUILDING OFFICIAL'S DECISIONS; DIVESTING THE LEE COUNTY CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS OF THE RESPONSIBILITY FOR REVIEW OF APPEALS OF THE TOWN BUILDING OFFICIAL'S DECISIONS INCLUDING BUT NOT LIMITED TO DETERMINATION OF AN UNSAFE BUILDING; AUTHORIZING THE TOWN OF FORT MYERS BEACH SPECIAL MAGISTRATES TO HEAR APPEALS OF THE TOWN'S BUILDING OFFICIAL'S DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW, AND AN EFFECTIVE DATE.

Mayor Allers read the title of the ordinance. Town Attorney Stuparich reviewed the background of the request as stated in the blue sheet. She explained that the town could not use the Lee County Board of Adjustment and Appeals because there is no interlocal agreement. Town Manager Hyatt explained that the costs associated with Lee County could be prohibitive for some, so he was exploring other options.

Public comment:

Leah Greg, resident, indicated that her property was flooding due to improper drainage on a neighboring lot that was raised three feet. She described an engineer's report stating the plans were incorrect and did not demonstrate code compliance. She played recordings of conversations regarding appealing the building official's decision. She added that Lee County's building official told her that anyone who was adversely affected by a decision made by an official had the right to appeal the decision, not only the homeowner or violator.

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

The motion carried unanimously.

XV. ADMINISTRATIVE AGENDA

A. Resolution 24-246, Certification of Votes for Appointments

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING SECTION 5 OF RESOLUTION 23-182 AS AMENDED BY RESOLUTION 24-178, TO INCLUDE CERTIFICATION OF THE VOTE BY THE TOWN COUNCIL BEFORE A VOTE TO APPOINT MEMBERS TO THE TOWN'S ADVISORY BOARDS, COMMITTEES, AGENCY AND COMMISSIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich noted that the resolution provided more clarification and transparency of the process. She explained how the process would change. Vice Mayor Atterholt suggested that the town clerk call the roll and all members agreed.

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

The motion carried unanimously by roll call vote.

1. Anchorage Advisory Committee (AAC)

Appoint members to the FY2024-2025 Anchorage Advisory Committee (AAC) and if necessary, waive any prohibition for service on more than one committee

Jim Hockett pulled his application. Five applicants are vying for five vacancies: Theodore Lawwill, Sam Lurie, John Wesley Nash, Jennifer Rusk and Rebecca Weber. Town Clerk Baker announced the votes and displayed the results on the monitors. All applicants received five votes and were eligible for appointment. No further action was recorded.

2. Audit Committee

Appoint Members to the FY2024-2025 Audit Committee and if necessary, waive any prohibition for service on more than one committee

Mayor Allers stated there were four vacancies and four applicants. The four applicants are Debbie Dutton, Jack Leson, David Sandberg and Bryan Thomas. The votes were displayed on the monitors. All applicants received a total of five votes.

Mayor Allers moved to approve the accuracy of the vote for the Audit Committee and appoint those selected, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

3. Bay Oaks Recreational Campus Advisory Board

Appoint Members to the FY2024-2025 Bay Oaks Recreational Campus Advisory Board (BORCAB) and if necessary, waive any prohibition for service on more than one committee

The recording started with voting in progress. There are three vacancies and five applicants: Michele Cherney, John Dussliere, Dawn Fleming, Ed Schoonover and Betty Simpson. The results were displayed on the monitors and Betty Simpson was the only applicant who received five votes. John Dussliere and Ed Schoonover tied with four and Michele Cherney and Dawn Fleming tied with one. Mayor Allers and Council Member Safford thought a tie without a majority would not be eligible for another vote. The recording skipped to another vote in progress. Town Attorney Stuparich noted that she would make the change to the resolution. Town Clerk Baker announced the results displayed on the monitors, which were the same as the previous vote. Town Manager Hyatt asked whether they could make a motion to appoint the two who tied with the most votes. Town Attorney Stuparich replied that they could delay the appointments until the resolution was amended. She suggested that they could override their rules. The vote was taken a third time and the results were the same.

Mayor Allers moved to waive the rules and accept the two with the most votes. No further action was recorded.

4. Cultural and Environmental Learning Center Advisory Board

Appoint Members to the FY2024-2025 Cultural and Environmental Learning Center Advisory Board (CELCAB) and if necessary, waive any prohibition for service on more than one committee

The recording started with Mayor Allers stating there were four vacancies. The applicants are Kerrie Henderson, Barbara Hill, Betty Simpson and Cheryl Smith. Barbara Hill and Betty Simpson required a waiver for service on more than one committee. All applicants received five votes.

Vice Mayor Atterholt moved to affirm the election and appoint the four candidates for CELCAB, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

5. Marine and Environmental Resources Task Force

Appoint Members to the FY2024-2025 Marine and Environmental Resources Task Force (MERTF) and if necessary, waive any prohibition for service on more than one committee

Mayor Allers noted there were ten applicants and five vacancies. He indicated that Steve Johnson and Tom Torgerson withdrew their applications. Town Attorney Stuparich reviewed the ordinance regarding the qualifications for individuals to serve on advisory committees. Mayor Allers suggested that the ordinance be revisited next year. The applicants are Sharon Hegstrom, Robert Howell, Maureen Kocisco, Rose Larkin, Janes Onoda, David Patton, Diane Richardson, Edward Rood, Jennifer Rusk and Leo Sand. Town Clerk Baker announced the votes displayed on the monitors. Sharon Hegstrom, Edward Rood and Leo Sand received five votes and Jennifer Rusk received four. David Patton and Robert Howell tied with two votes and Maureen Kocisco and James Onoda tied with one vote. Rose Larkin and Diane Richardson received zero votes.

Mayor Allers moved to certify and appoint Sharon Hegstrom, Edward Rood, Jennifer Rusk and Leo Sand, seconded by Council Member Woodson. The motion carried unanimously by roll call vote.

The second vote included Robert Howell, David Patton, Maureen Kocisco and James Onoda. Town Clerk Baker read the votes displayed on the monitors. Robert Howell received three votes and David Patton received two.

Council Member King moved to accept and appoint Robert Howell and verified the numbers were correct, seconded by Council Member Safford. The motion carried unanimously by roll call vote.

6. Public Safety Committee

Appoint Members to the FY2024-2025 Public Safety Committee (PSC) and if necessary, waive any prohibition for service on more than one committee

Mayor Allers indicated there were three vacancies and two applicants. He noted Cindy Johnson pulled her application. Todd Capela and Keran Farrell received five votes.

Mayor Allers moved to approve the results and appoint Todd Capela and Keran Farrell, seconded by Council Member Woodson. The motion carried unanimously by roll call vote.

Mayor Allers moved to approve waivers for Jennifer Rusk, Betty Simpson, Barbara Hill and Ed Schoonover to serve on more than one committee, seconded by Council Member Safford. The motion carried unanimously by roll call vote.

B. Public Safety Committee

Appoint a new member to the FY2024-2025 Public Safety Committee (PSC)

Vice Mayor Atterholt moved to approve Dawn Thomas for the vacant seat, seconded by Council Member Safford.

The motion carried unanimously.

C. Proposed 2025 Town Council Schedule

Discuss and approve the monthly schedule for Town Council meetings for calendar year 2025

Mayor Allers revealed conflicts with the M&P and TDC (Tourist Development Council) meetings. Town Manager Hyatt indicated that the M&P meetings could be changed. Vice Mayor Atterholt noted he had a conflict with the January 6, 2025, meeting and suggested it be moved to January 13th. The January 6 meeting will be moved to January 8 and the M&P will be held right after the regular meeting. The remaining conflicting M&P meetings will be on April 9, May 7 and October 8.

Council Member King moved to approve the amended 2025 Town Council schedule, seconded by Mayor Allers.

The motion carried unanimously by roll call vote.

D. Resolution 24-251; Uniform Method for the Levy, Collection and Enforcement of Non-Ad Valorem Assessments

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES FOR DEMOLITION OF UNSAFE STRUCTURES DETERMINED BY THE BUILDING OFFICIAL AND REMOVAL OF RESULTING DEBRIS, ANY TITLE SEARCH FEES, ANY AND ALL COSTS ASSOCIATED WITH APPELLATE REVIEW OF A PROPERTY OWNER'S APPEAL OF THE TOWN'S BUILDING OFFICIAL'S DETERMINATION DEEMING A STRUCTURE UNSAFE UNDER CHAPTER 34 OF THE TOWN'S LAND DEVELOPMENT CODE, AS AMENDED FROM TIME TO TIME, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2024 AND SUBSEQUENT FISCAL YEARS, WITHIN THE TERRITORIAL BOUNDARIES OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich reviewed the background of the resolution as stated in the blue sheet. Council Member King moved to approve the resolution, seconded by Council Member Safford.

The motion carried unanimously by roll call vote.

E. Resolution 24-247; Development Agreements with Deviations

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING RESOLUTION 24-73, CONTAINING THE PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS TO CLARIFY THAT THESE DEVELOPMENT AGREEMENTS ARE HOME RULE DEVELOPMENT AGREEMENTS AND TO AMEND RELATED NOTICE REQUIREMENTS FOR CONSISTENCY WITH NOTICE REQUIREMENTS IN SECTION 2-98 AND CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND REQUIRE A RECOMMENDATION FROM THE TOWN MANAGER REGARDING THE PROPOSED DEVELOPMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Town Attorney Stuparich indicated inconsistencies regarding home rule development agreements were discovered and reviewed the change.

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

The motion carried unanimously by roll call vote.

F. Resolution 24-221, Authorizing Contract with Tyler Technologies

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER TO ENTER INTO A CONTRACT WITH TYLER TECHNOLOGIES TO PROVIDE SOFTWARE AS A SERVICE (SAAS) AND ANNUAL SUPPORT AND IMPLEMENTATION SERVICES TO REPLACE THE TOWN'S FINANCIAL AND ACCOUNTING SOFTWARE WITH TYLER ERP PRO, REPRESENTING AN INITIAL STARTUP FEE OF \$66,620 AND ANNUAL RECURRING FEES OF \$60,921; AUTHORIZING THE TOWN MANAGER TO SIGN THE CONTRACT AND ANY DOCUMENTS PERTAINING TO THE CONTRACT; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Finance Director Joe Onzick reviewed the reason for the request as stated in the blue sheet. He highlighted features that the current software lacked. He added the Audit Committee unanimously recommended the purchase and the cost was budgeted.

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

The motion carried unanimously by roll call vote.

- G. Resolution 24-253, Budget Amendment #8 - FY24 Year-End Adjustments
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING YEAR-END BUDGET ADJUSTMENT #8 FOR FISCAL YEAR 2024; AND PROVIDING AN EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick reviewed the budget adjustment.

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

The motion carried unanimously by roll call vote.

- H. Resolution 24-252, Budget Amendment #7 - Allocation of FY24 Savings to Emergency Reserves

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING BUDGET AMENDMENT #7 TO THE TOWN GENERAL FUND AND EMERGENCY FUND; PROVIDING AUTHORITY; EFFECTIVE DATE.

Mayor Allers read the title of the resolution. Director Onzick reviewed the budget amendment. He recommended that \$2 million of the \$2.5 million in savings be moved into the emergency fund.

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

The motion carried unanimously by roll call vote.

XVI. FINAL PUBLIC COMMENT

Terry Cain, resident, discussed the history of MERTF and noted that they allowed people who lived off the island to serve on the committee, especially if they had expertise. She noted that the Estero Bay Aquatic Preserve Act started on Fort Myers Beach and would celebrate its 50th anniversary in 2025. She reviewed her history with the town.

XVII. TOWN MANAGER'S ITEMS

Town Manager Hyatt reported that there was now a Town app available. The 7-Eleven closing should happen the week after Thanksgiving and the building will be demolished for parking. An architect was evaluating Bay Oaks Recreation Center, an RFP was out for the park and \$1 million of the ARPA (American Rescue Plan Act) funds had to be used by the end of the year. He received a consensus to close the Matanzas Bridge at 11:00 p.m. on December 31, 2024, and reopen at 1:00 a.m. on January 1, 2025, for fireworks. Town Manager Hyatt noted a conflict with the M&P meeting on December 5, 2024, and asked if it could be moved to the 9th or 11th. The meeting was moved to December 11, 2024. Operations & Compliance Director Frankie Kropacek stated that today was the deadline to move the temporary trailers. He described the code enforcement process moving forward. A third-party special magistrate from DOHA (Defense Office of Hearings and Appeals) will decide how the businesses move forward.

Town Attorney Stuparich described the special magistrate process and noted they were allowed to give additional time for people to come into compliance. Director Kropacek addressed the National Flood Insurance Program participation issue and noted that the local FEMA contact stated that the information provided was sufficient.

XVIII. TOWN ATTORNEY'S ITEMS

Town Attorney Stuparich will bring back the resolution on appointing members to advisory committees for discussion at the M&P meeting. Two code enforcement foreclosures were pending and one on Nature View was set to go to sale on December 21st. The White Sand property was going to mediation on December 9, 2024. She asked a council member to participate and Council Member Woodson agreed.

XIX. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Safford asked what was going on with the traffic at the base of the bridge. Town Manager Hyatt replied that he would contact Lee County to help direct traffic. Director Kropacek added that rangers were directing traffic at Fifth and Crescent from 2:00 p.m. to 6:00 p.m. The new directional signs should be installed in about a week and the signs directing people to go straight at Crescent and Fifth should have been installed on Friday.

Council Member Woodson asked whether someone could represent the town on the Horizon Council. Mayor Allers volunteered.

Vice Mayor Atterholt distributed a brochure about Fort Myers Beach Elementary School. He noted that the school was interviewing for a new principal. He thought the cost-per-student numbers were incorrect and were compatible with Pine Island and Sanibel. He suggested that a ceremonial swearing-in be scheduled in the new town hall chambers. All members agreed. He indicated that the building official told a condo officer that the milestone studies for condo buildings were based on 25 years of the age of the building. A lot of people thought the statute was 30 years. Council Member King commented that it was 25 years. Town Attorney Stuparich will check. He asked Deputy Clerk Jason Freeman about the status of land trusts and the Strandview property next to Newton Park. Deputy Clerk Freeman stated the asking price of the property was over \$11 million. He had been in contact with the Florida Communities Trust and the people who presented the nonprofit version at the last meeting. He added he was also looking at grants.

Council Member King stated the swearing-in for the new school board and new superintendent was tomorrow at 3:00 p.m. and the Board of County Commissioners swearing-in was tomorrow morning. He noted the town manager's contract was coming up and asked that they address it. Human Resources Manager Talissa Oliveira will develop a process.

Mayor Allers noted that FEMA administrator Criswell would appear before the subcommittee on economic development public hearings and emergency management at 10:00 a.m.

XX. ADJOURNMENT

Council Member King moved to adjourn, seconded by Mayor Allers.
The motion carried unanimously.

The meeting was adjourned at 12:03 p.m.

DRAFT

1. **Request:**

Meeting Date: December 2, 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. 24-257, Extending Declaration of Local Emergency Ian 12.3.24-12.9.24
2. 24-258, Extending Declaration of Local Emergency Ian 12.10.24-12.16.24
3. 24-259, Extending Declaration of Local Emergency Ian 12.17.24-12.23.24
4. 24-260, Extending Declaration of Local Emergency Ian 12.24.24-12.30.24
5. 24-261, Extending Declaration of Local Emergency Ian 12.31.24-1.6.25

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 - 11/19/2024
Approved - 11/21/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION 24-257

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 3rd day of December 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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION 24-258

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 10th day of December 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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION 24-259

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 17th day of December 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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION 24-260

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 24th day of December 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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION 24-261

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 31st day of December 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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

1. **Request:**

Meeting Date: December 2, 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. 24-262, Extension of Local Emergency - Idalia 12.3.24-12.9.24
2. 24-263, Extension of Local Emergency - Idalia 12.10.24-12.16.24
3. 24-264, Extension of Local Emergency - Idalia 12.17.24-12.23.24
4. 24-265, Extension of Local Emergency - Idalia 12.24.24-12.30.24
5. 24-266, Extension of Local Emergency - Idalia 1.31.24-1.6.25

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 - 11/19/2024
Approved - 11/21/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-262

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-263

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-264

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-265

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-266

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.

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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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

1. **Request:**

Meeting Date: December 2, 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. 24-267, Extension of Local Emergency - Debby 12.3.24-12.9.24
2. 24-268, Extension of Local Emergency - Debby 12.10.24-12.16.24
3. 24-269, Extension of Local Emergency - Debby 12.17.24-12.23.24
4. 24-270, Extension of Local Emergency - Debby 12.24.24-12.30.24
5. 24-271, Extension of Local Emergency - Debby 12.31.24-1.6.25

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

Created/Initiated - 11/19/2024
Approved - 11/21/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-267

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:
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 - (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.
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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.

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Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-268

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.

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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.

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FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
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RESOLUTION NUMBER 24-269

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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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-270

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-271

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.**

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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:
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 - 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.
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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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

1. **Request:**

Meeting Date: December 2, 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. 24-272, Extension of Local Emergency - Helene 12.3.24-12.9.24
2. 24-273, Extension of Local Emergency - Helene 12.10.24-12.16.24
3. 24-274, Extension of Local Emergency - Helene 12.17.24-12.23.24
4. 24-275, Extension of Local Emergency - Helene 12.24.24-12.30.24
5. 24-276, Extension of Local Emergency - Helene 12.31.24-1.6.25

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 - 11/19/2024
Approved - 11/21/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-272

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.**

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Dan Allers, Mayor	Aye
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John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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

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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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-274

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-275

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-276

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

1. **Request:**

Meeting Date: December 2, 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. 24-277, Extension of Local Emergency - Milton 12.3.24-12.9.24
2. 24-278, Extension of Local Emergency - Milton 12.10.24-12.16.24
3. 24-279, Extension of Local Emergency - Milton 12.17.24-12.23.24
4. 24-280, Extension of Local Emergency - Milton 12.24.24-12.30.24
5. 24-281, Extension of Local Emergency - Milton 12.31.24-1.6.25

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:**

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

Created/Initiated - 11/19/2024
Approved - 11/21/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-277

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.
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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.

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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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-278

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.
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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:
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Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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
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RESOLUTION NUMBER 24-279

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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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-280

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

RESOLUTION NUMBER 24-281

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 Mayor Allers and seconded by Council Member Woodson, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 2nd day of December 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 3rd day of December 2024.

1. **Request:**

Meeting Date: December 2, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW RESTORATION OF A POOL, POOL DECK, TWO (2) CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Approval of a Special Exception is required for any work to a property located in the Environmentally Critical (EC) zoning district.

What the action accomplishes:

Approval of the special exception will allow the applicant to restore a swimming pool, pool deck, two (2) chickee huts, shuffleboard area and fencing along an existing retaining wall at the property.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Judith Frankel, Principal Planner

5. **Background:**

The applicant is proposing to restore to pre-Hurricane Ian conditions several recreational elements that are partially within the Environmentally Critical (EC) zoning district, including a swimming pool, pool deck, two (2) chickee huts, shuffleboard area and fencing along an existing retaining wall at the property. The subject property is located in the Center Island portion of the Town, on the south side of Estero Blvd. Based. No pre-Ian property survey has been located, however historic aerials and photographs demonstrate the presence of the recreation elements that the application is requesting to be restored.

The LPA recommended approval of this application in a 6-0 vote at the November 12th, 2024 meeting.

Attachments:

1. Resolution 24-285, SEZ20240194 for Kahlua Beach Club ns
2. Staff Report
3. Exhibit A - Site Plan
4. Exhibit B Property Survey 2024
5. Exhibit C Historic Imagery
6. Exhibit D Application
7. Declaration of Condominium 1978
8. Attorney's letter re Kahlua Owners' Association, Inc.
9. 2024 Rebuild Vote Record
10. KahluaBallotFinal

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Approval with conditions

8. **Recommended Approval:**

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

Created/Initiated - 11/15/2024
Approved - 11/17/2024
Approved - 11/21/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-285

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW RESTORATION OF A POOL, POOL DECK, TWO 920 CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Applicant Ink Engineering, Inc and James Ink PE on behalf of The Kahlua Beach Club is requesting a special exception to repair accessory structures in the EC zoning district per Section 6-366 of the Town of Fort Myers Land Development Code; and

WHEREAS, the STRAP numbers for the subject property are 28-46-24-W4-02400.1010 and 28-46-24-W4-02400.00CE; and

WHEREAS, the Property is located in the “Recreation” category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the “Environmentally Critical” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was noticed and held before the Local Planning Agency (LPA) on November 12, 2024, and at the hearing the LPA gave full and complete consideration to the request of the Applicant recommendations of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted 6 to 0 recommending approval with conditions of the Special Exception; and

WHEREAS, on the 2nd day of December, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/ is not in the best interest of the Town to approve/approve with conditions/deny the request for a Special Exception.

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

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

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Special Exception does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is/ is not in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the Special Exception to allow reconstruction of a major accessory structure in the EC zoning district per section 6-366.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested Special Exception and the following conditions of approval are imposed on the Applicant and the subject property:

1. A new Special Exception must be applied for each time the structure is repaired.

2. Construction shall not occur during sea turtle nesting season.
3. Any repairs must comply with all relevant local and state floodplain regulations.
4. Repairs may not damage existing dunes or dune vegetation.
5. Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
6. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

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

Dan Allers, Mayor	_____
Jim Atterholt, Vice-Mayor	_____
John R. King, Council Member	_____
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.

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, Town Attorney

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



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20240194

CASE NAME: Special Exception for restoration of a swimming pool, shuffleboard area, two (2) chickee huts, paver pool deck and fences along existing seawall portions of which are in the EC zoning district.

Town Council HEARING DATE: December 2nd, 2024, at 9:00 AM

STAFF RECOMMENDATION: APPROVAL

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

I. APPLICATION SUMMARY

Applicant/Owner: Ink Engineering, Inc and James Ink PE/Kahlua Beach Club

Requests: Special exception to restore several recreation features present pre-Hurricane Ian in the EC zoning district .

Physical Address: 4950 and 4952 Estero Blvd

STRAP #: 28-46-24-W4-02400.1010; 28-46-24-W4-02400.00CE

FLU: Medium Residential and Recreation

Zoning: Residential Multi-family and Environmentally Critical

Adjacent zoning and land uses:

North: Commercial Boulevard (CB)
Low Density

South: Environmentally Critical (EC)
Recreation

East: Residential Multi-family (RM)
Medium Residential

West: Residential Planned Development (RPD)
Medium Residential

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing to restore to pre-Hurricane Ian conditions several recreational elements that are partially within the Environmentally Critical (EC) zoning district, including a swimming pool, pool deck, two (2) chickee huts, shuffleboard area and fencing along an existing retaining wall at the property. The subject property is located in the Center Island portion of the Town, on the south side of Estero Blvd. Based. No pre-Ian property survey has been located, however historic aerals and photographs demonstrate the presence of the recreation elements that the application is requesting to be restored.

The applicant provided photographs of the property from pre-Ian and coupled with aerial image records from Lee County it is apparent that the chickee structures have been at the site since 2016. The pool, deck, and retaining wall have existed substantially longer, at least since 1992. Any type of development within the EC zoning district requires a special exemption to be approved. In this case the special exception will allow for the restoration of the existing pool deck, shuffleboard court, and fencing. The chickees were completely destroyed and the applicant is seeking to rebuild. The west chickee huts and BBQ grill area huts are proposed to be of approximately similar size. The east chickee hut has been proposed to be expanded approximately 50 SF. The original pool was 1056 SF. The proposed restored pool is 1,170 SF and had been relocated farther and aligned with the seawall to allow deck chairs on waterside of pool.

The applicant must concurrently apply for the required Coastal Construction Control Line (CCCL) permit with the Department of Environmental Protection (DEP) for this proposed work scope.

The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received a list of the owners, record of vote, and notice letter. Of the 1,262 owners eligible to vote, 1,087 returned their ballots. Approximately 86% of the voting owners voted to remain as a timeshare association and apply for the necessary permit for rebuilding. The applicant has provided a letter of opinion from their attorney as required.

Analysis:

The condominium structure at The Kahlua Beach Club was built on or around 1978, per Lee County records. The Declaration of Condominium statement from Lee County

dated 1978 is available. The seawall/retaining wall and pool deck area are not mentioned in the document and permit records are not available to verify that these elements were built at the same time as the condominium, however it likely was part of the original design.

The LDC allows for repairs to existing retaining and sea wall structures. The location, seaward of the 1978 CCCL necessitates the approval of a special exception. Per LDC sec. 26-77(d), Existing seawall walls and retaining walls along the Gulf of Mexico may be maintained but may not be rebuilt. The applicant has stated that the subject wall is structurally sound and will only require aesthetic modifications.

Neighborhood Compatibility:

The pool, pool deck, retaining wall have been in the same location since at least 1998 as shown on Lee County aerial imagery. These elements appear to have been in place prior to the establishment of the 1978 CCCL although records are not available. The chickee huts have been at the site since 2016. It does not seem that the restoration and slight alteration of these recreation elements will change the character of the subject property.

Findings and Conclusions:

Section 6-366(b)(3) Regulations and Considerations

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

- a. *Any repairs must comply with all relevant local and state floodplain regulations.*

The development must comply with local and state floodplain requirements.

- b. *Repairs may not damage existing dunes or dune vegetation.*

The repairs and proposed structures are proposed landward of the dune. No dunes or native vegetation will be impacted.

- c. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

Sea turtle nesting season begins May 1st and ends on October 31st.

- d. *A new special exception must be applied for each time the structure is repaired.*

This will be a condition of the special exception approval.

Special Exception Findings

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) *Whether there exist changed or changing conditions which make approval of the request appropriate.*

The recreation elements in the EC were damaged or destroyed during Hurricane Ian. Construction in the EC is likely to be damaged by storm surge in the future.

- 2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

The proposed work scope for this special exemption is to restore the recreation elements to pre-Hurricane Ian conditions with slight modifications. The retaining wall itself will not be removed, replaced or altered in any fashion.

LDC Sec. 34-652(e)(3) states that a special exception may be approved for “reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage to existing primary structures, which encroach into the EC district and their customary accessory uses.” The subject recreation elements existed pre-Hurricane Ian and are located partially in the EC.

- 3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

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

The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

- 5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

- 6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. The development of minor structures are allowed in the EC through a special exception. LDC Section 26-77(d) states that, "Existing seawalls and retaining walls along the Gulf of Mexico may be maintained but may not be rebuilt." This is in line with the Fort Myers Beach Comprehensive Plan Policy 5-D-1.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of major accessory structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **approval with conditions** of SEZ20240194 for the reconstruction of a partially damaged retaining wall seaward of the 1978 Lee County Line (CCCL).

If LPA recommends approval for the requests, staff has recommended conditions of approval.

IV. CONDITIONS OF APPROVAL

1. A new special exception must be applied for each time the structures are reconstructed.
2. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
3. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
4. Any violation of the conditions of approval shall render the special exception null and void.
5. The applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834. The applicant must also obtain an approved landscaping plan as outlined in LDC Sec. 10-413.

Staff Report Exhibits:

Exhibit A - Site Plan

Exhibit B- Property Survey

Exhibit C – Historic Photographs

Exhibit D - Complete Application

Exhibit E – Postcards to adjacent properties

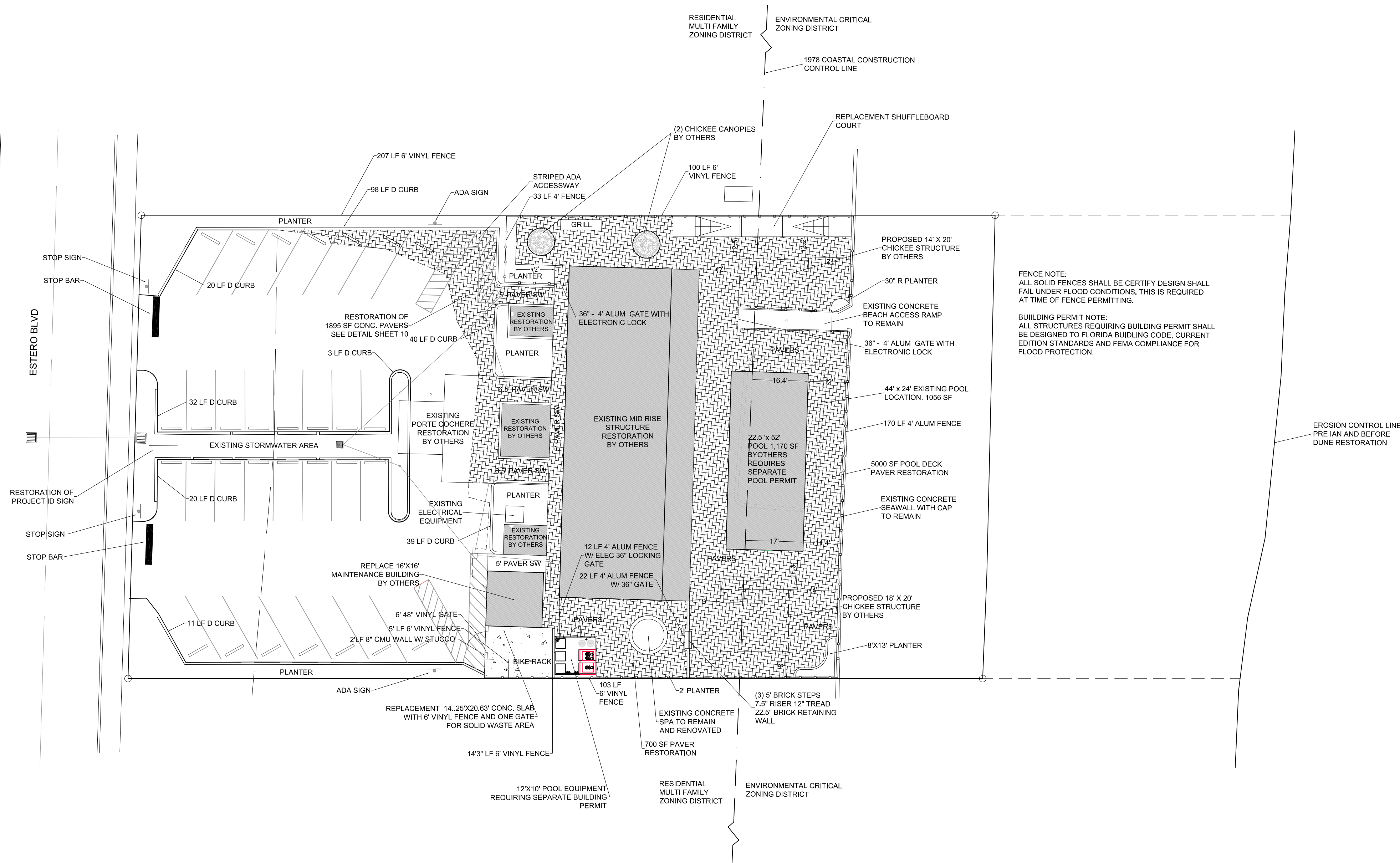
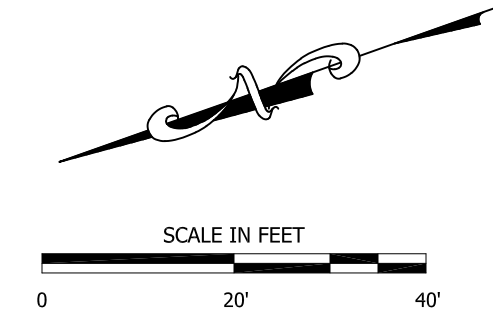
ADDRESS:	4950 ESTERO BLVD, FT MYERS BEACH, FL 33931
STRAP:	28-46-24-W4-024000.00CE
ZONING:	RESIDENTIAL MULTIFAMILY
LAND USE:	MIXED RESIDENTIAL
OWNER:	KAHLUA BEACH CLUB CONDO TIMESHARE 4950 ESTERO BLVD, FT MYERS BEACH, FL 33931
FEMA FLOOD:	VE: 14.00' IN BUILDABLE AREA VE: 15.00' SEAWARD OF 1978 CCCL LINE
FDEP CCCL ELEV:	19.83' LOWEST STRUCTURAL HORIZONTAL BEAM

PROPERTY REGULATIONS IN DOWNTOWN DISTRICT
FRONT (STREET) SETBACK: 25 FT

MINIMUM REAR SETBACK:	20 FT
MINIMUM SIDE SETACK:	20 FT
MAXIMUM BUILDING HEIGHT:	35 FT ABOVE DFE
MAXIMUM NUMBER OF STORIES:	3
PARKING:	RESIDENTIAL = 2 PER UNIT

1. THE LOCATION OF EXISTING UTILITIES ARE APPROXIMATE. CONTRACTOR RESPONSIBLE TO LOCATE ANY EXISTING UTILITY.
2. PRIOR TO ANY WORK, CONTRACTOR SHALL CONTACT SUNSHINE STATE ONE CALL OF FLORIDA, 800-432-4770 OR 811 FOR LOCATION OF UTILITY LINES.

	ASPHALT
	CONCRETE
	STABILIZED GRASS FOR EMERGENCY ACCESS ONLY
	PROPOSED PARKING COUNT

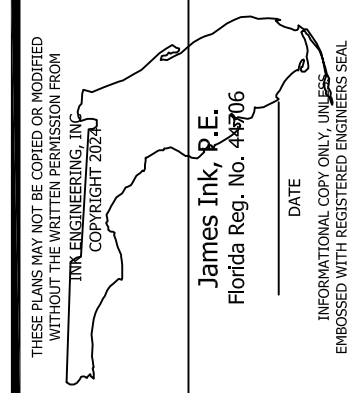


FENCE NOTE:
ALL SOLID FENCES SHALL BE CERTIFY DESIGN SHALL
FAIL UNDER FLOOD CONDITIONS. THIS IS REQUIRED
AT TIME OF FENCE PERMITTING.

BUILDING PERMIT NOTE:
ALL STRUCTURES REQUIRING BUILDING PERMIT SHALL
BE DESIGNED TO FLORIDA BUILDING CODE, CURRENT
EDITION STANDARDS AND FEMA COMPLIANCE FOR
FLOOD PROTECTION.

MASTER CONCEPT PLAN - SPECIAL EXCEPTION

KAHLUA BEACH CLUB
KAHLUA BEACH CLUB CONDO TIMESHARE
4950 ESTERO BLVD, FORT MYERS BEACH, FL 33931



PROJECT NO.	23036
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	06.2024
SCALE	1" = 20'
SHEET NO.	1
OF 2	

Page 156 of 814

CONTROL STATIONS USED:

1) FOOT FPRN STATION: FT.MYERS2
 LAT: 26°35'27.50615N, LONG. 81°51'50.98482"W
 N: 820515.68, E: 700556.97
 NAD83/2011, FL WEST ZONE
 ELEVATION: 35.62 FEET NAVD 88,

2) NGS STATION: BOOB 2 1955
 PUBLISHED:
 LAT: 26.45250524N,
 LONG: -81.89624036W
 NAD27/1979, FL WEST ZONE
 ELEVATION: 6.25' NAVD 29
 NGS NCAT CONVERSION:
 LAT: 26.40717375N,
 LONG: -81.89604799W
 N: 753698.01, E: 690191.18
 NAD83/2011, FL WEST ZONE
 ELEVATION: 5.07' NAVD 88
 CONVERGENCE: 00°02'46.44
 SCALE FACTOR: 0.99994250
 MEASURED:
 LAT: 26.40717602N,
 LONG: -81.89604759W
 N: 753698.84, E: 690191.31
 NAD83/2011, FL WEST ZONE
 ELEVATION: 5.07' NAVD 88

3) CCCL STATION: 12-83-A25A
 PUBLISHED:
 LAT: 26.45250524N,
 LONG: -81.95519580W
 N: 770130.38, E: 514596.20
 NAD27/1979, FL WEST ZONE
 NGS NCAT CONVERSION:
 LAT: 26.45286351N,
 LONG: -81.9551976491W
 N: 770294.03, E: 670825.13
 NAD83/2011, FL WEST ZONE
 CONVERGENCE: 00°01'11.85
 SCALE FACTOR: 0.99994142
 MEASURED:
 LAT: 26.45286604N,
 LONG: -81.95538890W
 N: 770294.95, E: 670825.73
 NAD83/2011, FL WEST ZONE

COASTAL CONSTRUCTION CONTROL LINE
 PB 48, PG 15
 RECORDED MAY 30, 1991
 LEE COUNTY PUBLIC RECORDS

****NOTE: MONUMENTATION MOSTLY DESTROYED BY RECENT CONSTRUCTION OF ESTERO BLVD****

FND. CCCL D/SK
 12-83-A25A
 NAD83/2011
 LAT: 26.45286604
 LONG: -81.95538890
 N: 770294.95
 E: 670825.73
 FL WEST ZONE

FND. CCCL C.M. & NGS STATION
 BOOB 2 1955
 NAD83/2011
 LAT: 26.40717602
 LONG: -81.89604759
 N: 753698.84
 E: 690191.31
 FL WEST ZONE

VICINITY MAP
 (NOT TO SCALE)

LINE	BEARING	DISTANCE
11	S45°10'05"E	17.86'
12	S39°5'30"E	23.82'
13	S46°38'58"E	23.27'
14	S46°22'27"E	23.27'
15	S49°41'25"E	24.32'
16	S47°55'38"E	22.78'
17	N47°59'53"W	27.80'
18	S67°44'54"E	102.06'
19	S61°10'05"E	86.06'
20	S74°40'08"E	106.170'
21	S61°53'52"E	1023.60'
22	S61°34'56"E	937.38'
23	S77°05'21"E	865.58'
24	S55°15'42"E	609.40'
25	S59°19'43"E	609.40'
26	S59°17'33"E	694.83'
27	S60°21'09"E	1035.98'
28	S60°32'12"E	1034.34'
29	S56°40'49"E	883.60'
30	S55°37'27"E	883.60'
31	S53°27'00"E	850.32'
32	S47°11'00"E	1320.81'
33	S47°01'15"E	945.29'
34	S48°14'53"E	904.47'
35	S45°23'38"E	912.70'
36	S43°31'06"E	927.22'
37	S39°09'46"E	1099.56'
38	S53°49'22"E	908.90'
39	S28°02'21"E	1142.40'
40	S18°21'00"E	1063.12'
41	S10°19'49"E	1293.12'
42	S3°30'33"E	1181.94'
43	S3°01'07"E	623.26'
44	S45°43'16"E	1133.31'
45	N37°13'08"E	25.01'
46	N42°49'00"E	25.01'
47	N37°44'02"E	25.01'
48	N42°49'00"E	45.84'

BENCHMARK	
▲	SET NAIL & DISK, #BB8450
●	SET 5/8" IRON ROD, #BB8450
○	FOUND NAIL & DISK, AS NOTED
○	FOUND 5/8" IRON ROD, AS NOTED
□	FOUND CONCRETE MONUMENT, AS NOTED
□	DRAINAGE STRUCTURE
○	WOOD POWER POLE
○	CONCRETE POWER POLE
→	GUY ANCHOR
⊕	PULL BOX
⊕	ELECTRIC SERVICE
⊕	BLACK FLUX PREVENTER
⊕	WATER GATE VALVE
⊕	WATER METER
⊕	COMMUNICATIONS BOX
LS	LICENSED SURVEYOR
LS	LICENSED BUSINESS
P	PROFESSIONAL LAND SURVEYOR
FND	FOUND
END	EDGE OF PAVEMENT
N/D	IRON ROD
N/D	NAIL & DISK
○	CONCRETE MONUMENT
I.D.	IDENTIFICATION
(M)	AS MEASURED
(P)	AS PER RECORD PLAT
(I)	AS PER DESCRIPTION
(C)	CALCULATED BASED ON MEASUREMENTS
OR	OFFICIAL RECORDS
OR	OFFICIAL RECORDS INSTRUMENT
PB	PLAT BOOK
PG	PAGE
CONC.	CONCRETE
R/W	RIGHT OF WAY
O/H	OVERHEAD UTILITIES
CCCL	COASTAL CONSTRUCTION CONTROL LINE (1991)
CCCL	COASTAL CONSTRUCTION SETBACK LINE (1978)
FDEP	FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FDOT	FLORIDA DEPARTMENT OF TRANSPORTATION
FDRN	FLORIDA PERMANENT REFERENCE NETWORK
NCS	NATIONAL GEODEIC SURVEY
NAD	NORTH AMERICAN DATUM
NGVD29	NATIONAL GEODEIC VERTICAL DATUM OF 1929
NAV88	NORTH AMERICAN VERTICAL DATUM OF 1988
x 5.11	NAD83 COORDINATE CONVERSION AND TRANSFORMATION TOOL
	ELEVATION POINT

[illegible]

OF A PARCEL LYING IN
SECTION 28, TOWNSHIP 46 SOUTH,
RANGE 24 EAST,
LEE COUNTY, FLORIDA.

(AS PER OR 1270, PG 330)

FROM THE SOUTHEAST CORNER OF THE FRACTIONAL SOUTH EAST QUARTER (SW1/4) OF SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST, RUN WESTERLY ALONG THE SOUTH BOUNDARY OF SAID SW1/4 TO A POINT BEARING N43°07'W DISTANCE 201 IN BLOCK 6 OF GULF HEIGHTS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 6 AT PAGE 39 OF THE PUBLIC RECORDS OF LEE COUNTY; THENCE RUN NORTHWESTERLY AT AN ANGLE OF 139 DEGREES 59' EAST TO NORTHEAST CORNER OF SAID BLOCK 6; THENCE RUN NORTHWESTERLY TO A POINT BEARING N81°00'W DISTANCE 100 TO THE INTERSECTION OF SAID LINE WITH THE CENTERLINE OF ESTERO BOULEVARD (STATE ROAD NO. 885), WHICH IS THE POINT OF BEGINNING OF THE LANDS HEREBY CONVEYED, FROM SAID POINT OF BEGINNING, RUN NORTHWESTERLY ALONG SAID CENTERLINE FOR 135-64 FEET; THENCE RUN SOUTHWESTERLY TO A POINT BEARING N88°05'W DISTANCE 221 TO THE POINT OF BEGINNING OF THE WATERS OF THE GULF OF MEXICO; THENCE RUN SOUTHEASTERLY ALONG SAID WATERS TO AN INTERSECTION WITH A LINE PASSING THROUGH THE POINT OF BEGINNING AT AN ANGLE OF 88 DEGREES 221 SOUTHEAST TO SOUTHWEST WITH SAID CENTERLINE OF ESTERO BOULEVARD; THENCE RUN SOUTHWESTERLY TO A POINT BEARING N88°05'W DISTANCE 221 SUBJECT TO EXISTING RIGHT OF WAY OF ESTERO BOULEVARD.

THIS PLAN WAS PREPARED AS A BOUNDARY AND TOPOGRAPHIC AND TIDAL WATER SURVEY.

THIS SURVEY PREPARED BASED ON THE DESCRIPTION OF RECORD, AND EXISTING MONUMENTATION.

BEARINGS ARE BASED ON BEARING AMERICAN DATUM OF 1983/2011; THE SOUTH RIGHT OF WAY LINE OF ESTERO BOULEVARD AS NORTH MEASURING S50°37'47"E.

ELEVATIONS ARE BASED ON NORTH AMERICAN DATUM OF 1988, FROM NATIONAL GEODETIC SURVEY BENCHMARKS, 1) C 245, ELEVATION: 4.97 FEET AND 2) B008 2, ELEVATION: 5.03 FEET.

AS PER FDPF TIDAL WATER SURVEY PROCEDURAL APPROVAL, DATED 12/15/2013, TIDAL WATER SURVEYS, NAVD 88, NTDE 1983-2001, AT SITE: MEAN LOW WATER 0.26 FEET; MEAN LOW WATER -1.60 FEET; AND SEASONAL HIGH WATER 3.0 FEET.

THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

THE COASTAL CONSTRUCTION CONTROL, & SETBACK LINE MONUMENTS AND THE MEAN HIGH WATER LINE ARE BASED ON SEASONAL HIGH FLOOD LINE, LOCATED WITH CARLSON SVT ROVER GPS SYSTEM USING REAL TIME KINEMATICS METHOD; SOFTWARE: CARLSON SURVEY PROGRAM 6.16.

COASTAL CONSTRUCTION SETBACK LINE (CCLS) MONUMENTS E-6 THRU E-11 AND REFERENCE MONUMENTS NOT FOUND. DESTROYED BY EROSION AND/OR CONSTRUCTION OR COVERED BY STORM DEBRIS.

PARCEL LIES IN THE FLOOD ZONES WITH BASE FLOOD ELEVATIONS AS SHOWN, THIS INFORMATION TAKEN FROM FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NO. 12070C0566G, EFFECTIVE DATE NOVEMBER 17, 2022.

UNDERGROUND IMPROVEMENTS, OTHER THAN THOSE SHOWN, IF ANY, WERE NOT LOCATED.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF AN ABSTRACT OF TITLE, AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW. PARCEL, SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY OF RECORD.

Said PARCEL CONTAINS 33800.39 SQUARE FEET, OR 0.78 ACRES, MORE OR LESS.

I HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, THAT THIS PLAT OF THE HEREON DESCRIBED PROPERTY IS A TRUE REPRESENTATION OF A FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPPERS AS OUTLINED IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

Kenneth E. Trask
PLS4684 State of Florida

Digitally signed by Kenneth E.
Trask PLS4684 State of Florida
Date: 2023.12.19 14:08:17 -0500

KENNETH E. TRASK
PROFESSIONAL LAND SURVEYOR
FLORIDA LICENSE NO. LS4684

DATE

NOTICE:

THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

K.E. Trask, P.A.

Land Surveyors

Florida Licensed Business No. LB8450
12345 Blasingim Road

OWNER OF RECORD:
KAHLUA BEACH CLUB CONDO
PROPERTY ADDRESS:
4950 ESTERO BLVD
FORT MYERS BEACH, FL 339

date	dwg	scale	job#	sheet
12-7-23	23-48SR	1"=20'	23-48	1 of 1









smoking area

Legend

4950 Estero Blvd

Google Earth

© 2024 Google



5.60 ft



EXTERIOR VIEW OF RESIDENTIAL BUILDING



EXTERIOR VIEW OF RESIDENTIAL BUILDING

← Kahlua Beach Club

ew Prices Reviews Location **Photos**

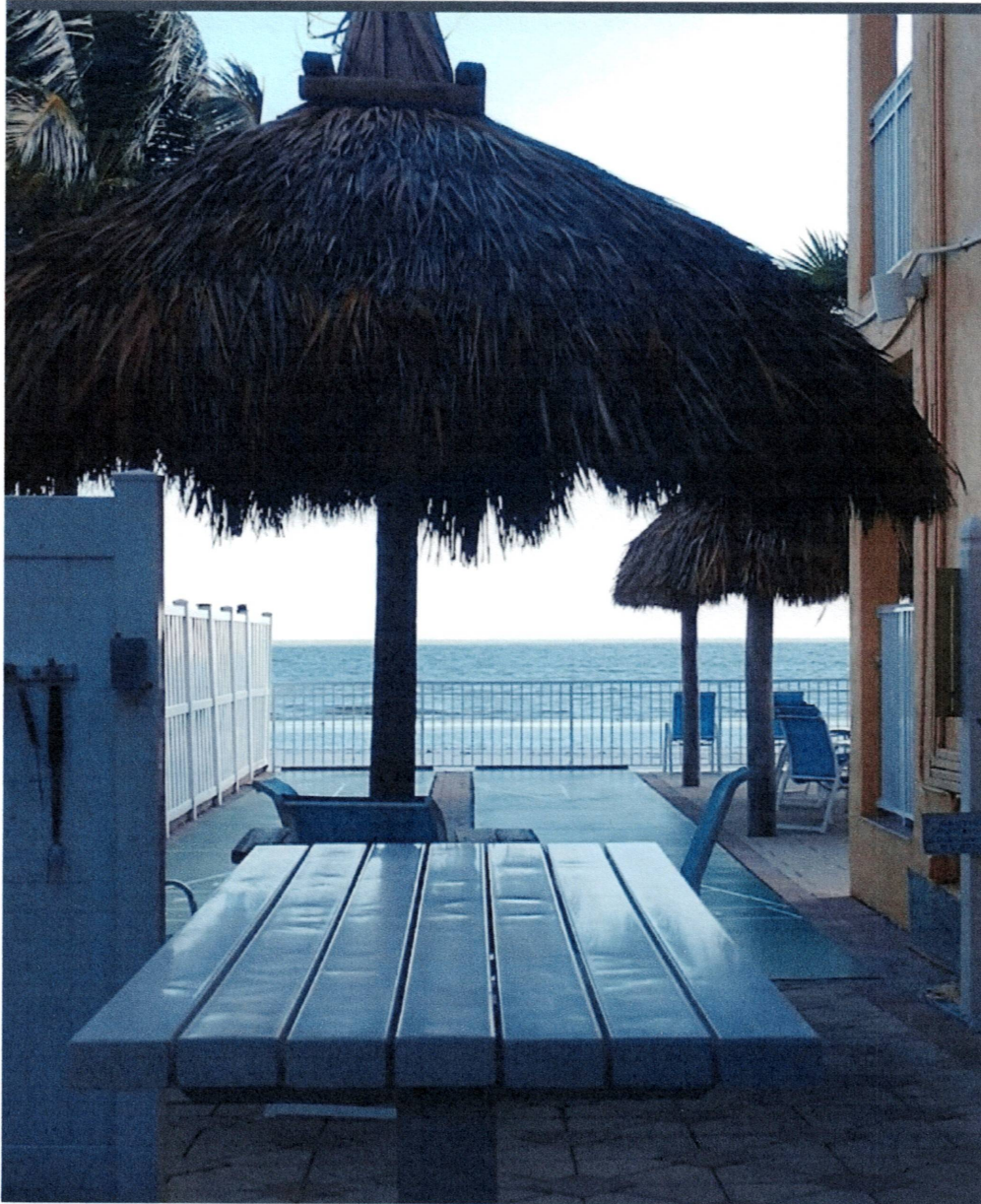
Rooms

Exterior

Amenities

Food &

Images may be subject to copyright



Mar 29 – 30

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← Kahlua Beach Club

ew Prices Reviews Location **Photos**

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Amenities

Food &

Images may be subject to copyright



Mar 29 – 30

[View prices](#)



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Collections





COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 4950 Estero Blvd
STRAP Number: 28-46-24-W4-02400.00CE
Applicant: Ink Engineering, Inc Phone: 239-940-2504
Contact Name: James Ink PE Phone: _____
Email: jink@inkengineeringinc.net Fax: _____
Current Zoning District: RM
Future Land Use Map (FLUM) Category: Mixed Residential
FLUM Density Range: 6 u/a Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

- ☒ Special Exception
- ☐ Variance
- ☐ Conventional Rezoning
- ☐ Planned Development ☐ Commercial ☐ Residential
- ☐ Master Concept Plan Extension
- ☐ Appeal of Administrative Action
- ☐ Vacation of Platted Right-of-way and Easement
- ☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. Applicant*: Ink Engineering, James Ink PE Phone: 239-940-2504
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 2055 West First Street, Fort Myers, FL 33901
Email: jink@inkengineeringinc.net Fax: _____
Contact Name: James Ink PE Phone: 239-940-2504



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|--|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☒ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical

presence OR ____ online notarization, this ____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

as identification.

(SEAL)

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, DEBORAH L. CIMINSKI (name), as RESORT MANAGER (title)
of Kahlua Owners Association, Inc (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Kahlua Owners Association, Inc

Name of Entity (corporation, partnership, LLP, LLC, etc)

Deborah L Ciminski
Signature

DERORAH L. CIMINSKI
Typed or Printed Name

RESORT MANAGER
Title

6/14/2024
Date

STATE OF FL COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 14th day of June, 2024, by Deborah Ciminski ☐ who is personally known to me OR ☒ who has produced FL DL as identification.

Seal



Notary Public Signature

[Signature]

PART 66 - Property Information

A. Legal Description:

STRAP: 28-46-24-W4-02400.00CE

Property Address: 4950 Estero Blvd

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 135 feet

Depth (please provide an average width if irregular in shape) 256 feet

Frontage on street: 135 feet. Frontage on waterbody: 135 feet

Total land area: 0.78 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

south on Estero Blvd, Gulfside at intersection of Estero Blvd and Madera Road

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☒ Mixed Residential

☐ Boulevard

☐ Pedestrian Commercial

☐ Marina

☐ Recreation

☐ Wetlands

☐ Platted Overlay

LETTER OF AUTHORIZATION

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as

Kahlua Owners Association, Inc
4950 Estero Blvd
Fort Myers Beach FL 33931

legally described in exhibit A attached hereto.

The property described herein is the subject of an application for development. We hereby designate James Ink, c/o Ink Engineering, Inc, 2055 West First Street, Fort Myers, FL 33901 as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to obtain entitlement authorization from Lee County for comprehensive plan amendment, bonus density, zoning, development orders, and code enforcement mitigation on the subject property. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.


Owner (signature)

DEBORAH L. CIMINSKI
Printed Name, Title Resort MANAGER

STATE OF FL
COUNTY OF Lee

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 14th day on June (date), 2024 by Deborah Cimini (name of person providing oath or affirmation), who is personally known to me or who has produced FL DL as identification.

(SEAL)




Signature of Notary Public



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: Kahlua Beach Club
Authorized Applicant: Ink Engineering, Inc / James Ink PE
LEPA STRAP Number(s): 28-46-24-W4-02400.00CE

Current Property Status:
Current Zoning: RM
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ yes ☐ no FLUM Density Range:

Requested Action:

☒ Use of premises in the EC (Environmentally Critical) zoning district for: Restore to pre-lan conditions a swimming pool, shuffle board, chickee huts (2) paver pool deck, fences. Pool equipment is proposed to be relocated . behind 78 line. All improvements located behind existing seawall that will remain
☐ Use of premises in the _____ zoning district for:



Case# _____

Date Received: _____

PART I
Narrative Statements

A. Request for: (indicate the proposed use that requires a special exception)

Swimming Pool
Chickee Huts (2)
Shuffleboard court (1), second existing court is not being replaced
fencing on property line and atop existing seawall for pool security

B. Reasons for request: (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
Restore uses to pre-lan condition for an existing time share development



No impact as all improvements are substantially the same as what was existing before Hurricane Ian.

Page 179 of 814

For Consumption of Alcoholic Beverages (COP) license approval:

- a. Notarized authorization from the Property Owner to apply for permit
- b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
- c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
- d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

- a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
- b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

“Request for...”

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

“The property qualifies for a special exception because...”

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

“Granting the requested special exception could impact surrounding properties as follows...”

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide



A completed Public Hearing Application Form.



A completed Supplemental form PH-A.

Site Plan. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements: "Request for..."

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because..."

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows..."

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government

- corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line. Exhibit 6-2
 - C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.



INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING

2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

Exhibit 6-3



VICINITY MAP

(NOT TO SCALE)



May 16, 2024

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd
Fort Myers Beach, FL 33931

Re: Kahlua Beach club special Exception Public Hearing (SEZ 20240194) RAI#1 Response
Strap# 28-46-24-W4-02400.00CE
4950 Estero Blvd

To whom it may concern:

The following is our response to the request for additional information dated August 1, 2024.
The following documents are provided in this submittal:

- Response Cover Letter
- Revised Master Concept Plan
- Waterside view of Site Plan pre-Ian (2) pictures
- SW view of Pre-Ian chickee hut: (2) pictures
- Grilling Area: (3) pictures
- SE view of Pre-Ian chickee hut: (3) pictures

Zoning Review: 8/1/2024

- Pre-Ian survey has not been provided, only a 2022 pre-Ian aerial image. A survey would be best able to verify dimensions. Other pre-Ian permits or records for chickee huts, pool, seawall, or fences have not been provided. However, the Town recognizes that many records were destroyed by Hurricane Ian and these records may not be available.

Response: Not pre-Ian survey can be located. However, there are many photographs that can be used for reference records for chickee huts, pool, seawall and fences. Engineering judgement has been used to best locate structures in their original position with some dimensional changes to update a 40-year-old design.

- Per LDC sec. 34-652(e) reconstruction of previously existing accessory structures is permitted with the approval of Council. The aerial image provided and those available from Lee County Property Appraiser demonstrate the existence of the



applied for structures.

Response: Substantial photographic evidence has been provided with this resubmittal.

- Dimensions for the chickee huts are noted on MCP. The southeast chickee appears nearly the same in size to the aerial image. The southwest chickee seems proposed slightly larger than the aerial image. Please provide the estimated difference in size in square feet for both chickees.

Response: The west chickee huts and BBQ grill area huts are approximately to be similar size. The east chickee hut has been expanding approximately 50 SF to be placed in the area of existing pool equipment that has been relocated by solid waste area.

- Additionally, were the structures authentic chickees built by members of Seminole or Miccosukee tribes or are they tikis huts? Will the newly proposed chickees be authentic or will they be tiki-style huts? Please clarify the intent of the replacements.

Response: All chickee huts are to construction by Indian Tribes.

- Will the chickees have utility connections? A quick disconnect may be required. The application has not been reviewed for floodplain concerns, but will be at the time of LDO/DO

Response: The only utility proposed is lighting. The lighting will be performed at time of LDO and will be consistent with Florida building code and Turtle Lighting compliance.

- Has the seawall been determined to be structurally sound? Please confirm that it does not require reconstruction, only maintenance, as it is not a listed structure in the SEZ application. If it needs to be demolished and rebuild it should be included in the SEZ application.

Response: The seawall has been determined to be structurally sound. No work other than cosmetic maintenance is proposed.

- Information regarding any structural elements for the shuffleboard court should be noted. MCP references Sheet 8 but a Sheet 8 was not provided.

Response: The one shuffleboard court will be replaced of similar size in a similar location. The note has been revised.

- The swimming pool is proposed to be reconstructed in a slightly altered location and dimensions. Please provide the size difference from the existing to the reconstructed pool in square feet.

Response: The original pool location has been added to MCP. The original pool was 1056 SF and constructed over 40 years ago. The proposed pool is 1,170 SF and had been relocated farther and aligned with seawall to allow deck chairs on waterside of pool. The pool enlargement is designed to current code which changes dimensional changes.

Environmental Review: Chadd Chustz 7/31/24

The following information will be required at the time of LDO:

- At the time of LDO a Lighting Plan will be required per LDC Secs. 34-1834 and 34-105 and Chapter 34 Division 20:

Response: Noted and will be requesting that a photometric plan shall be provided at time of Certificate of Completion of LDO.

- Pool underwater lighting and deck lighting shall comply with Land Development Code Chapter 34, DIVISION 20: Lighting Standards and Chapter 32, ARTICLE V. Sea Turtle Conservation Code.

Response: Noted and will be requesting that a photometric plan shall be provided at time of Certificate of Completion of LDO.

- All vegetation planted in the planter boxes in the EC zoning district must comply with LDC Sec. 34-1575

Response: Noted and will be requesting that a photometric plan shall be provided at time of Certificate of Completion of LDO.

If you have any questions, please feel free to call.

My good will and respect,

A handwritten signature in blue ink, appearing to read 'James M Ink', with a stylized flourish at the end.

James M Ink PE
Authorized Agent

DECLARATION OF CONDOMINIUMKAHLUA BEACH CLUB, A CONDOMINIUM

I.

SUBMISSION STATEMENT

This Condominium Declaration, made and executed this 24th day of April, 1978, by Sunset Beach Club, Inc., a Florida Corporation, (hereinafter called the "Developer") for itself, its successors, grantees and assigns, and said Developer does submit the condominium property as more particularly described and set forth on the survey exhibits attached hereto as "Exhibit No. 1", which are made a part hereof as though fully set forth herein, to condominium ownership, pursuant to the Condominium Act of the State of Florida, F.S. 718 Et Seq., and does herewith file for record this Declaration of Condominium.

Definitions: - As used in this Declaration of Condominium and By-Laws and Exhibits attached hereto, and all Amendments thereof, unless the context otherwise requires, the following definitions shall prevail:-

A. Declaration, or Declaration of Condominium, means this instrument, as it may be from time to time amended.

B. Association, means Kahlua Owners' Association, Inc., a Florida non-profit Corporation, said entity is responsible for the operation of the Condominium. During any period when a Management Agreement is in effect, any rights or responsibilities of the Association shall also be the rights and responsibilities of the Management Firm under said Management Agreement.

C. By-Laws, means the By-Laws of the Association, as they exist from time to time.

D. Common Elements, means the portions of the Condominium property not included in the Units. Common elements shall include the tangible personal property required for maintenance and operation of the Condominium, even though owned by the Association.

E. Limited Common Elements, means and includes those common elements which are reserved for the use of a certain unit or units, to the exclusion of all other units.

F. Condominium, means that form of ownership of Condominium property under which units of improvements are subject to ownership by one or more owners, and there is appurtenant to each unit, as part thereof, an undivided share in the common elements.

This Instrument was prepared by:

DAVIS AND LANGER, P.A.
BY: MARK G. LANGER
4th Floor-Security Federal Building
6075 Sunset Drive
South Miami, Florida 33143

- D-1-

RECORD VERIFIED - SAI CONTRACT CLERK
BY G. WORKINGER D.C.

G. Condominium Act, means and refers to the Condominium Act of the State of Florida (F.S. 718 Et. Seq.).

H. Common Expenses, means the expenses for which the unit owners are liable to the Association.

I. Common Surplus, means the excess of all receipts of the Association including, but not limited to, assessments, rents, profits and revenues on account of the common elements, over and above the amount of common expenses.

J. Condominium Property, means and includes the land in a Condominium, whether or not contiguous, and all improvements thereon, and all easements and rights appurtenant thereto, intended for use in connection with the Condominium.

K. Assessment, means a share of the funds required for the payment of common expenses which, from time to time, are assessed against the unit owners.

L. Condominium Parcel or Parcel means a unit, together with the undivided share in the common elements which are appurtenant to the unit.

M. Condominium Unit, or Unit, is a Unit as defined in the Condominium Act, referring therein to each of the separate and identified units delineated in the Survey attached to the Declaration as Exhibit No. 1, and when the context permits, the Condominium parcel includes such unit, including its share of the common elements appurtenant thereto.

N. Unit Owner, or Owner of a Unit, or Parcel Owner, means the owner of a Condominium parcel.

O. Developer, means Sunset Beach Club, Inc., a Florida Corporation, its successors and assigns.

P. Institutional Mortgagee, means a Bank, Savings and Loan Association, Insurance Company or Union Pension Fund authorized to do business in the United States of America, an Agency of the United States Government, a real estate or mortgage investment trust, or a lender generally recognized in the community as an Institutional type lender.

Q. Occupant means the person or persons, other than the unit owner, in possession of a unit.

R. Condominium Documents, means this Declaration, the By-Laws and all Exhibits annexed hereto, as the same may be amended from time to time.

S. Board of Administration, or Board of Directors, means the representative body responsible for administration of the Association.

T. Management Agreement, means and refers to that certain Agreement attached to this Declaration and made a part hereof, which provides for the management of the Condominium property.

U. Management Firm, means and refers to the entity identified as the Management Firm in the Management Agreement attached to this Declaration, its successors and assigns. The Management Firm shall be responsible for the management of the Condominium property as provided in the Management Agreement attached to this Declaration and made a part hereof.

V. Unless the context otherwise requires, all other terms used in this Declaration shall be assumed to have the meaning attributed to said term by Section 718.103 of the Condominium Act as of the date of this Declaration.

W. The following definitions shall refer only to those units committed to and sold under a plan of "Interval Ownership":

1. "Interval Ownership" is a concept whereby units and the share of the common elements assigned to the unit are conveyed for periods of time, the purchaser receiving a stated time period for a period of years, together with a remainder over in fee simple as tenant in common with all other purchasers of "Unit Weeks" in each such Condominium Unit in the year 2018.

2. "Unit Week" means a period of ownership in a Unit committed to Interval Ownership.

"Unit Weeks" are computed as follows:

Unit Week No. 1 is the seven (7) days commencing on the first Saturday in each year. Unit Week No. 2 is the seven (7) days succeeding. Additional weeks up to and including Unit Week No. 52 are computed in a like manner. Unit Week No. 52 contains the seven (7) days succeeding the end of Unit Week No. 51 without regard to the month or year. Unit Week No. 53 contains any excess days not otherwise assigned. Unit weeks run from noon on the first Saturday of the period to noon on the last Saturday of the period.

3. A "Unit Committed to Interval Ownership" shall be any unit sold under a plan of Interval Ownership.

II.

NAME

The name by which this Condominium is to be identified shall be "Kahlua Beach Club, a Condominium".

III.

COMMITTING A UNIT TO INTERVAL OWNERSHIP

A unit shall become a unit committed to Interval Ownership upon the recording of the first deed in said unit, conveying unit weeks, by the Developer. No unit may be committed to Interval Ownership by any person, or other entity other than the Developer. A unit will no longer be committed to Interval Ownership any time all unit weeks are owned by the same legal entity. Notwithstanding the above, the Developer may assign its right to commit units to Interval Ownership to any other entity to which it conveys substantially all units which it owns in the Condominium property.

IV.

IDENTIFICATION OF UNITS

The Condominium property consists essentially of all units and other improvements as set forth in Exhibit No. 1 attached hereto and for purpose of identification, all units located on said Condominium property are given identifying numbers and are delineated on the Survey Exhibits, collectively identified as "Exhibit No. 1", hereto attached and made a part of this Declaration. No unit bears the same identifying number as does any other unit. The aforesaid identifying number as to the unit is also the

identifying number as to the Condominium parcel. The said Exhibit No. 1 also contains a survey of the land, graphic description of the improvements, and a plot plan and, together with this Declaration, they are in sufficient detail to identify the location, dimensions and size of the common elements and of each unit, as evidenced by the Certificate of the Registered Land Surveyor hereto attached. The legend and notes contained within the said Exhibit are incorporated herein and made a part hereof by reference.

The aforesaid units, buildings and improvements were constructed substantially in accordance with the Plans and Specification and any modification thereof on file with the Building and Zoning Department of the applicable governmental authority.

V.

IDENTIFICATION OF UNITS COMMITTED TO
INTERVAL OWNERSHIP

Wherever the term "unit Owner" or "unit owners" is used anywhere within the context of this Declaration or any Amendment or Supplementary Declaration hereto, it shall be construed to include all owners of unit weeks within any unit committed to interval ownership as one unit owner. The respective interests of each owner of unit weeks within such unit committed to interval ownership with respect to each other shall be delineated on Exhibit No. 6 which is annexed to this Declaration and made a part hereof.

VI.

OWNERSHIP OF COMMON ELEMENTS

Each of the Unit Owners of the Condominium shall own an undivided interest in the Common Elements and limited Common Elements, and the undivided interest, stated as percentages of such ownership in the said Common Elements and limited Common Elements, as set forth on Exhibit No. 5 which is annexed to this Declaration and made a part hereof.

The fee title to each Condominium Parcel shall include both the Condominium Unit and the above respective undivided interest in the Common Elements, said undivided interest in the Common Elements to be deemed to be conveyed or encumbered with its respective Condominium Unit. Any attempt to separate the fee title to a Condominium Unit from the undivided interest in the Common Elements appurtenant to each Unit shall be null and void. The term "Common Elements" when used throughout this Declaration, shall mean both Common Elements and limited Common Elements unless the context otherwise specifically requires.

VII.

VOTING RIGHTS

There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Association and such person shall be known (and is hereinafter referred to) as the "Voting Member". If a Unit is owned by more than one person, the Owners of said Unit shall designate one of them as the Voting Member, or in the case of a Corporate Unit Owner, an officer or employee thereof shall be the Voting Member. The designation of the Voting Member shall be made as provided by and subject to the provisions and restrictions set forth in the By-Laws of the Association.

Each Owner or group of Owners shall be entitled to one vote for each Unit owned. The vote of a Condominium Unit is not divisible.

Notwithstanding the above, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to vote at meetings of the Association and shall be entitled to one fifty-first (1/51st) vote for each Unit Week owned.

VIII.

COMMON EXPENSE AND COMMON SURPLUS

The common expenses of the Condominium, including the obligation of each Unit Owner under the Management Agreement attached to this Declaration, shall be shared by the Unit Owners, as specified and set forth in Exhibit No. 5. Any common surplus of the Association shall be owned by each of the Unit Owners in the same percentage specified for sharing common expense.

IX.

MAINTENANCE FEE AND PER DIEM CHARGE FOR UNITS
COMMITTED TO INTERVAL OWNERSHIP

All Owners of Unit Weeks in Units committed to Interval Ownership shall pay a "maintenance fee". The maintenance fee shall include the following:

The particular Unit Week Owner's share of common expenses, as set forth in Paragraph VIII above;

Repair and upkeep of Units for normal wear and tear (example - repainting interior walls);

Repair and replacement of furniture, fixtures, appliances, carpeting and utensils;

Casualty and/or liability insurance on the Unit;

Utilities for the subject Unit;

Personal property, real estate, and any other applicable taxes;

Any other expenses incurred in the normal operations and maintenance of the Unit which cannot be attributed to a particular Unit Week Owner.

The maintenance fee shall be prorated among all Owners of Unit Weeks in a specific Unit by applying a fraction, the numerator of which is the number of Unit Weeks owned by a specific Owner, the denominator of which is fifty-one (51), to the total of all such expenses. The foregoing shall not apply to any Unit Week conveyed to the Association.

In addition to the maintenance fee all owners of Unit Weeks in Units committed to interval ownership shall pay a "per diem charge" for each day said unit is occupied.

X.

MAINTENANCE WEEK IN UNITS
COMMITTED TO INTERVAL OWNERSHIP

Upon conveying thirty (30) Unit Weeks in any Unit committed to Interval Ownership, or six (6) months from the date of the first conveyance under Interval Ownership in any Unit committed to Interval Ownership, whichever date comes first, the Developer agrees to

convey and the Association agrees to accept one unit week to be used for maintenance purposes, and Unit Week No. 53 to be used for maintenance purposes or any other purpose determined by the Board of Directors. The Developer shall have the right to choose the Unit Week to be so conveyed. In the event any one person, or other legal entity, becomes holder of record title to all unit weeks in any one unit, that person, or other legal entity, may cause the Association to convey said unit weeks conveyed to the Association to it by notifying the Association, in writing, of its desire that said unit cease being a unit committed to interval ownership. The Association shall execute the necessary papers to complete said conveyance no later than sixty (60) days after notice. All expenses of said conveyance, including state stamps and recording fees, shall be borne by the person, or other legal entity, desiring such conveyance.

XI.

METHOD OF AMENDMENT OF DECLARATION

This Declaration may be amended at any regular or special meeting of the Unit Owners, called and convened in accordance with the By-Laws, by the affirmative vote of Voting Members casting not less than fifty-one percent (51%) of the total vote of the members of the Association.

All Amendments shall be recorded and certified as required by the Condominium Act. Subject to the provisions of Article VIII, no Amendment shall change any Condominium Parcel, nor a Condominium Unit's proportionate share of the common expenses or common surplus, nor the voting rights appurtenant to any Unit, unless the record Owner(s) thereof, and all record Owners of mortgages or other voluntarily placed liens thereon, shall join in the execution of the Amendment. No Amendment shall be passed which shall impair or prejudice the rights and priorities of any mortgages or change the provisions of this Declaration with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record, nor shall the provisions of Article XVI of this Declaration be changed without the written approval of all Institutional Mortgagees of record.

No Amendment shall change the rights and privileges of the Developer without the Developer's written approval.

Notwithstanding the foregoing paragraphs of this Article XI:

A. The Developer reserves the right to change the interior design and arrangement of all Units and to alter the boundaries between Units, as long as the Developer owns the Units so altered; however, no such change shall increase the number of Units nor alter the boundaries of the Common Elements, except the party wall between any Condominium Units, without Amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in Units, as provided in this paragraph, such changes shall be reflected by the Amendment of this Declaration with a Survey attached, reflecting such authorized alteration of Units, and said Amendment need only be executed and acknowledged by the Developer and any holders of Institutional Mortgages encumbering the said altered Units. The Survey shall be certified in the manner required by the Condominium Act.

B. The Developer, so long as it owns more than twenty-five percent (25%) of the Condominium Units or Unit Weeks in the Condominium, reserves the right at any time to amend the Declaration, as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary to carry out the purposes of the project provided that such Amendment shall not increase the proportion of common expenses nor decrease the Ownership of Common Elements borne by the Condominium Owners.

XII.

BY-LAWS

The operation of the Condominium's property shall be governed by the By-Laws of the Association which are set forth in a document which is annexed to this Declaration, marked Exhibit No. 2, and made a part hereof.

No modification of or Amendment to the By-Laws of said Association shall be valid unless set forth in or annexed to a duly recorded Amendment to this Declaration. The By-Laws may be amended in the manner provided for therein, but no Amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel, or which would change the provision of the By-Laws with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record. No Amendment shall change the rights and privileges of the Developer without the Developer's written approval. Any Amendment to the By-Laws, as provided herein, shall be executed by the parties as required in this Article and in Article XI above, and said Amendment shall be recorded in the Public Records of Lee County, Florida.

XIII.

THE OPERATING ENTITY

The operating entity of the Condominium shall be the Association, which has been organized pursuant to the Condominium Act. The said Association shall have all of the powers and duties set forth in the Condominium Act, as well as all of the powers and duties granted to or imposed upon it by this Declaration, the By-Laws of the Association and its Articles of Incorporation, a copy of said Articles of Incorporation being annexed hereto marked Exhibit No. 3, and made a part hereof, and all of the powers and duties necessary to operate the Condominium, as set forth in this Declaration and the By-Laws, and as they may be amended from time to time.

Every Owner of a Condominium Parcel, whether he has acquired his Ownership by purchase, by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the By-Laws and Articles of Incorporation of the said Association, the provisions of this Declaration and the Management Agreement.

XIV.

ASSESSMENTS

The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the common expenses of the Condominium property and such other assessments as are specifically provided for in this Declaration and Exhibits attached hereto. The procedure for the determination of all such assessments shall be as set forth in the By-Laws of the Association and this Declaration, and the Exhibits attached hereto.

The common expenses shall be assessed against each Condominium Parcel Owner as provided for in Article VIII of this Declaration.

Assessments, installments and maintenance fees that are unpaid for over ten (10) days after due date shall bear interest at the rate of ten percent (10%) per annum from due date until paid, and at the sole discretion of the Board of Directors, a late charge of \$25.00 shall be due and payable. Regular assessments shall be due and

payable monthly on the first of each month and monthly bills for same shall not be mailed or delivered to Unit Owners. Maintenance fees for Units committed to Interval Ownership shall be due and payable on January 1 of each year.

The Association shall have a lien on each Condominium Parcel for unpaid assessments, together with interest thereon, against the Unit Owner of such Condominium parcel, together with a lien on all tangible personal property located within said Unit, except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record. Reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien, shall be payable by the Unit Owner and secured by such lien. The Board of Directors, may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in its best interests. Said lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association, shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due, as provided herein, covered by the lien enforced. In case of such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Condominium Parcel for the period of time said Parcel is occupied by the Unit Owner or anyone by, through or under said Unit Owner, and Plaintiff in such foreclosure shall be entitled to the appointment of a Receiver to collect same from the Unit Owner and/or Occupant.

In the case of a lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, said lien shall be limited to the Unit Weeks owned by said Owner and shall not encumber the property, real or personal, of any other Owner of Unit Weeks in said Unit.

Where the Mortgagee of an Institutional First Mortgage of record, or other purchaser of a Condominium Unit, obtains title to a Condominium Parcel as a result of foreclosure of the Institutional First Mortgage, or when an Institutional First Mortgagee of record accepts a Deed to said Condominium Parcel in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the shares of common expenses or assessment by the Association pertaining to such Condominium Parcel, or chargeable to the former Unit Owner of such Parcel, which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such Deed in lieu of foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Unit Owners, including such acquirer, his successors and assigns.

Any person who acquires an interest in a Unit, except through foreclosure of an Institutional First Mortgage of record, or by virtue of an Institutional First Mortgagee accepting a Deed to a Condominium Parcel in lieu of foreclosure, as specifically provided hereinabove including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid assessments due and owing by the former Unit Owners have been paid. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments to the Developer, or to any Unit Owner or group of Unit Owners, or to any third party.

XV.

INSURANCE PROVISIONS

I. INSURANCE

A. Purchase of Insurance: The Association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance insuring all of the insurable improvements within the Condominium, together with such other insurance as the Association deems necessary in and for the interest of the Association, all Unit Owners and their Mortgagees, as their interests may appear, in an amount which shall be equal to the maximum insurable replacement value as determined annually; and the premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the common expense. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their Mortgagees.

Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

B. Coverage:

(1) Casualty. All buildings and improvements upon the Condominium property shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

- (a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and
- (b) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Parcel, including but not limited to vandalism and malicious mischief.

(2) Public Liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability and endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(3) Insurance On Units Committed to Interval Ownership. The Board of Directors of the Association, shall obtain casualty and liability insurance, as needed, on all Units committed to Interval Ownership. Each such policy shall reflect the respective interests of the Association, and all Owners of Unit Weeks in each such Unit. Casualty insurance shall be in an amount equal to the maximum insurable replacement value of the Unit and the personal property therein without deduction for depreciation as determined annually by the Board of Directors of the Association. The

premiums shall be a part of the maintenance fee. All losses thereunder shall be payable to the Insurance Trustee hereinafter designated. All such proceeds shall be used for the purpose of repair or replacement of any loss, or in the event such loss is not to be repaired or replaced, as determined elsewhere, to be divided among all Owners of Unit Weeks in such Unit in accordance with their percentage interest in remainder. Any deficit or overage in such proceeds, after repair or replacement, shall be divided among all such Owners of Unit Weeks in that Unit in accordance with Exhibit 6 to this Declaration. Deficits shall be treated as part of the maintenance fee next due.

(4) Workmen's Compensation policy to meet the requirements of law.

(5) Such Other Insurance as the Board of Directors of the Association shall determine from time to time desirable.

C. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

D. Insurance Trustee; Shares of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the insurance trustee, which shall be designated by the Board of Directors and which shall be any bank or trust company in Florida with trust powers. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(1) Common Elements. Proceeds on account of damage to Common Elements - an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(2) Condominium Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

(a) When the Building is to be Restored - For the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(b) When the Building is Not to be Restored - An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(3) Mortgagees. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

E. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following Manner:

(1) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provision made therefor.

(2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners. Remittance to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

(4) Certificate. In making distribution to Unit Owners and their Mortgagees, the insurance trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their respective shares of the distribution.

F. Association as Agent: The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

G. Notice of Insurance Coverage: In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association will give Notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

H. Inspection of Insurance Policy: A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

II. RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. Determination to Reconstruct or Repair: If any part of the Condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(1) Common Element. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(2) Condominium Units.

(a) Lesser Damage - If the damaged improvement is a building containing Condominium Units, and

if Units to which 50% of the Common Elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within 60 days after the casualty, it is determined by Agreement in the manner elsewhere provided that the Condominium shall be terminated.

- (b) Major Damage - If the damaged improvement is a building containing Condominium Units, and if Units to which more than 50% of the Common Elements are appurtenant are found by the Board of Directors to be not tenantable, then the damaged property will not be reconstructed or repaired and the Condominium will be terminated without Agreement as elsewhere provided, unless within 60 days after the casualty, the Owners of 75% of the Common Elements agree in writing to such reconstruction or repair.

(3) Certificate. The insurance trustee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as Exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association and if the damaged property is a building containing Condominium Units by the Owners of not less than 75% of the Common Elements, including the Owners of all damaged Units, which approval shall not be unreasonably withheld.

C. Responsibility: If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Estimates of Costs: Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments: The amount by which an award of insurance proceeds to the insurance trustee is reduced on account of a deductible clause in an insurance policy shall be assessed against all Unit Owners in proportion to their shares in the Common Elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners, in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements.

F. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than \$5,000.00, then the sums paid upon such assessments shall be deposited by the Association with the insurance trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(2) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Association from collections of assessment against Unit Owners on account of such Casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

- (a) Association - Lesser Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than \$5,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the insurance trustee by a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund. Such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.
- (b) Association - Major Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.
- (c) Unit Owner - The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the insurance trustee to the Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and Mortgagee jointly, who may use such proceeds as they may be advised.
- (d) Surplus - It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated;

except, however, that the part of a distribution to a beneficial Owner which is not in excess of assessments paid by such Owner into the construction fund shall not be made payable to any Mortgagee.

- (e) Certificate - Notwithstanding the provisions herein, the insurance trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Owners. Instead, the insurance trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided, that when a Mortgagee is herein required to be named as payee, the insurance trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a Mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

XVI.

USE AND OCCUPANCY

A. Residential Use Restriction: The Owner of a Unit shall occupy and use his Unit as a single family private dwelling for himself and the members of his family, his social guests, lessees, licensees and invitees. Notwithstanding the foregoing, nothing in this Declaration shall be construed to restrict the Developer, or any successor in interest to the Developer, from selling and/or conveying any Unit under a plan of Interval Ownership, or any person, group of persons, corporation, partnership, or other entity, from selling, reconveying, or in any other way, transferring same, at any time under said plan of Interval Ownership.

B. Prohibited Acts: The Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance in the Condominium property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises, or otherwise, nor shall the Unit Owners commit or permit any nuisance, immoral or illegal acts in or about the Condominium property.

C. Restrictions on Alterations: The Owner of a Unit shall not cause anything to be affixed or attached to, hung, displayed or placed, on the exterior walls, doors or windows of the Units nor the limited Common Elements or the Common Elements, nor shall they cause any type of ground coverage to be installed nor shall they grow any type of plant, shrubbery, flower, vine or grass outside their Unit, nor shall they cause awnings or storm shutters, screens, enclosures and the like

to be affixed or attached to any Units, limited Common Elements or Common Elements; nor shall they place any furniture or equipment outside their Unit except with the prior written consent of the Board of Directors, and further, when approved, subject to the Rules and Regulations adopted by the Board of Directors. No clothes line or similar device shall be allowed on any portion of the Condominium property, nor shall clothes be hung anywhere except where designated by the Board of Directors of the Association.

D. Common Elements: No person shall use the Common Elements and limited Common Elements or any part thereof, or a Condominium Unit, or the Condominium property, or any part thereof, in any manner contrary to or not in accordance with such Rules and Regulations pertaining thereto, as from time to time promulgated by the Association.

E. Holdover Interval Owners: In the event any Owner of a Unit Week in a Unit committed to Interval Ownership fails to vacate his Unit at the expiration of his period of Ownership each year, or at such earlier time as may be fixed by the Rules and Regulations adopted by the Association from time to time, he shall be deemed a "holdover owner". It shall be the responsibility of the Association to take such steps as may be necessary to remove such holdover Owner from the Unit, and to assist the Owner of any subsequent Unit Week, who may be affected by the holdover Owner's failure to vacate, to find alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the Association shall secure, at its expense, alternate accommodations for any Owner who may not occupy his Unit due to the failure to vacate of any holdover Owner. Such accommodations shall be as near in value to the Owner's own Unit as possible. The holdover Owner shall be charged for the cost of such alternate accommodations, any other costs incurred due to his failure to vacate, and an administrative fee of \$50.00 per day during his period of holding over. In the event it is necessary that the Association contract for a period greater than the actual period of holding over, in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the holdover Owner, although the \$50.00 per day administrative fee shall cease upon actual vacating by the holdover Owner.

The Association shall submit a bill to the holdover Owner in accordance with this paragraph. In the event the holdover Owner fails to pay same within ten (10) days of the date of same, a lien shall be filed against said holdover Owner's Unit Weeks in accordance with the provisions of Article XIV hereof.

The above provisions of Article XVI, E, shall not abridge the Association's right to take such other action as is provided by law including, but not limited to, eviction proceedings.

XVII.

MAINTENANCE AND ALTERATIONS

A. The Board of Directors of the Association may enter into a Contract with any firm, person or Corporation, or may join with other Condominium Associations and entities in contracting for the maintenance and repair of the Condominium property and other type properties, and may contract for or may join with other Condominium Associations in contracting for the management of the Condominium property and other type properties, and may delegate to the Contractor or Manager all the powers and duties of the Association, except such as are specifically required by this Declaration, or by the By-Laws, to have the approval of the Board of Directors or the membership of the Association. The Contractor or Manager may be authorized to determine the budget, make assessments

for common expenses and collect assessments, as provided by this Declaration, By-Laws, and Exhibits to the Declaration. The Association, through its Board of Directors, has entered into a Management Agreement, attached hereto as Exhibit No. 4, which encompasses the provisions of this paragraph.

B. Each Owner of a Unit not committed to Interval Ownership agrees as follows:

(1) To maintain in good condition and repair his Unit and all interior surfaces within or surrounding his Unit (such as the surfaces of the walls, ceilings, floors) whether or not a part of the Unit or Common Elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit.

(2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change of the Common Elements or to any outside or exterior portion of the building whether within a Unit or part of the limited Common Elements without the prior written consent of the Board of Directors of the Association.

C. Each Owner of Unit Weeks in a Unit committed to Interval Ownership agrees:

(1) To pay his proportionate share of the cost of the maintenance and repair of all interior and exterior components of said Unit, the cost of maintenance, repair and replacement of all appliances, furniture, carpeting, fixtures, equipment, utensils, and other personal property within said Unit, and such other costs of repair, maintenance, upkeep and operation of the Unit as is necessary to the continued enjoyment of said Unit by all said Owners of Unit Weeks therein.

(2) Not to make, cause, or allow to be made, any repairs, modifications, alterations, or replacements to the Common Elements, limited Common Elements, outside or exterior portion of the buildings whether within a Unit or part of the limited Common Elements or Common Elements, exterior or interior of his Unit, or of the furnishings, appliances, personal property, or decor thereof, without the prior written consent of the Board of Directors of the Association, and all other Owners of Unit Weeks therein.

(3) Expenses of repairs or replacements to the Unit or its components, furnishings, carpeting, appliances, or other property, real, personal, or mixed, occasioned by the specific use or abuse of any Owner of Unit Weeks in any Unit, or any licensee or tenant of said Owner, shall be borne in their entirety by said Owner.

(4) The Association, shall determine the interior color scheme, decor and furnishings, of each such Unit, as well as the proper time for redecorating and replacements thereof.

D. All Owners of Units, including Owners of Unit Weeks in Units committed to Interval Ownership, agree as follows:

(1) To allow the Board of Directors, or the agents or employees of any Management Firm or the Association, to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, limited Common Elements or the Common Elements, or to determine in case of emergency, circumstances threatening Units, limited Common Elements or the Common Elements, or to determine compliance with the provisions of this Declaration and the By-Laws of the Association.

(2) To show no signs, advertisements or Notices of any type on the Common Elements, limited Common Elements, or his Unit, and to erect no exterior antenna or aerials, except as consented to by the Board of Directors of the Association.

E. In the event the Owner of a Unit fails to maintain the said Unit and limited Common Elements, as required herein, or makes any alterations or additions without the required written consent, or otherwise violates or threatens to violate the provisions hereof, the Association, shall have the right to proceed in a Court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition thereto, the Association shall have the right to levy an assessment against the Owner of a Unit, and the Unit, for such necessary sums to remove any unauthorized addition or alteration and to restore the property to good condition and repair. Where said failure, alteration, addition, or other violation is attributable to an Owner of Unit Weeks in a Unit committed to Interval Ownership, any such levy of an assessment shall be limited to the Unit Weeks owned by said Owner of Unit Weeks and shall be of no force and effect as to any other Owner of Unit Weeks in said Unit.

Said assessment shall have the same force and effect as all other special assessments. The Association, shall have the further right to have its employees or agents, or any subcontractors appointed by it, enter a Unit at all reasonable times to do such work as is deemed necessary by the Board of Directors of the Association, to enforce compliance with the provisions hereof.

F. The Association, shall determine the exterior color scheme of the buildings and all exteriors, and interior color scheme of the Common Elements, and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, or any exterior surface, or replace anything thereon or affixed thereto, without the written consent of the Board of Directors of the Association.

G. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to all recreation facilities, and all property not required to be maintained, repaired and/or replaced by the Unit Owners. Notwithstanding the Unit Owner's duty of maintenance, repair, replacement and the other responsibilities as to his Unit, as is provided in this Declaration and Exhibits attached thereto, the Association, may enter into an Agreement with such firms or companies as it may determine to provide certain services and/or maintenance for and on behalf of the Unit Owners whereby maintenance and service are provided on a regularly scheduled basis for air conditioning maintenance and service and appurtenances thereto, exterminating services and other types of maintenance and services as the Association deems advisable and for such period of time and on such basis as it determines. Said Agreements shall be on behalf of all Unit Owners and the monthly assessment due from each Unit Owner for common expenses shall be increased by such sum as the Association deems fair and equitable under the circumstances in relation to the monthly charge for said maintenance or service. Each Unit Owner shall be deemed a party to said Agreement with the same force and effect as though said Unit Owner had executed said Agreement and it is understood and agreed that the Association shall execute said Agreements as the Agent for the Unit Owners. The aforesaid assessment shall be deemed to be an assessment under the provisions of Article XIV of this Declaration.

XVIII.

LIMITED COMMON ELEMENTS

Those areas reserved for the use of certain Unit Owners or a certain Unit Owner, to the exclusion of other Unit Owners, are designated as "limited Common Elements", and are shown and located on the Surveys annexed hereto as "Exhibit No. 1". Any expense for the maintenance, repair or replacement relating to limited Common Elements shall be treated as and paid for as part of the common expenses of the Association unless otherwise specifically provided in this Declaration and Exhibits attached hereto. The limited Common Elements are comprised of the private balconies appurtenant to the units.

XIX.

TERMINATION

A. If all Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels execute and duly record an instrument terminating the Condominium property, or if "major damage" occurs as defined in the insurance clauses hereunder, said property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the Condominium.

B. It is understood that in the year 2018, the purchasers of Units committed to Interval Ownership shall become tenants in common. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days prior to the actual date of such conversion to tenancy in common, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, a vote shall be taken to decide the disposition of the Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting the Owners, by a majority vote, may vote to continue their intervals, in which case the restrictive covenants set forth below will be adopted as covenants running with the land for a period of ten (10) years. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days prior to the actual expiration of said ten year period, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. The Owners may then vote to continue the intervals for an additional 10 year period. This process shall be repeated as the end of each successive 10 year period approaches. Should less than a majority of the Owners vote to continue the intervals at any such meeting, then the Board of Directors of the Association shall file suit in a Court of competent jurisdiction in Lee County, Florida, for partition of the Units.

In the event the Owners vote to continue their Unit Weeks as provided above, then each Owner shall have the exclusive right to occupy his Unit, and as between Owners to use and enjoy the Common Elements of the Condominium, and the rights and easements appurtenant to his Unit during his Unit Weeks (and, in the case of Developer, during all Unit Weeks not theretofore conveyed, and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Association), to maintain and repair the Units during maintenance weeks. No Owner shall occupy his Unit, or exercise

any other rights of Ownership in respect of his Unit other than the rights herein provided to him, during any other Unit Weeks unless expressly so authorized by the Owner entitled to occupy the Unit during such Unit Weeks or during any maintenance week except when acting through the Association. Each Owner shall keep his Unit and all furnishings in good condition and repair during his Unit Weeks, vacate the Unit at the expiration of his Unit Weeks, remove all persons and property therefrom excluding only furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Association.

No Owner or other person or entity acquiring any right, title or interest in a Unit shall seek or obtain through any legal procedures, judicial partition of the Unit or sale of the Unit in lieu of partition at any date prior to the expiration of each successive ten (10) year period voted by a majority of Owners. If, however, any Unit Weeks shall be owned by two or more persons as tenants-in-common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Unit Weeks in lieu of partition as between such co-tenants or joint tenants.

XX.

USE OF COMMON ELEMENTS AND FACILITIES

The Association, its members, the Developer and its successors and assigns and all parties who own an interest in and to the aforesaid facilities agree that they shall not have any right to bring any action for partition or division of the real property that constitutes said facilities and said parties do hereby waive said rights of partition or division of said facilities. The initial Rules and Regulations, and all Amendments thereof and revision thereof pertaining to use of the Common Elements and facilities shall be posted in conspicuous places on the Common Elements or facilities. The Unit Owners hereby covenant and agree to be bound by all of such Rules and Regulations and said parties shall obey same and be responsible for their being obeyed by the said Unit Owners, their family, guests, invitees, lessees and servants. Should a Unit Owner fail to pay an assessment for common expenses, as required under the terms of this Declaration of Condominium for the period of time specified herein whereby said assessment becomes delinquent, the Association may deny the Unit Owner and/or the authorized user of the facilities the use and enjoyment of same until such time as all assessments are paid. The Association shall further have the right in its sole discretion to suspend any Unit Owner and/or authorized user of said facilities from the use of same for a period not to exceed thirty (30) days for any infraction of the promulgated Rules and Regulations pertaining to said facilities, and in the case of a Unit committed to Interval Ownership for a period not to exceed seven (7) days. Should the Unit Owner or the authorized user of said facilities rights to use same be suspended, there shall be no reduction in the assessments due and payable by said Unit Owner or authorized user. In the case of a Condominium Unit committed to Interval Ownership, all sanctions, as outlined above, shall be limited to the delinquent Unit Week Owner and shall be of no force and effect against non-delinquent Owners of Unit Weeks in such Condominium Unit committed to Interval Ownership.

Any person who is the Owner of a Condominium Parcel, together with members of his family, social guests, lessees, invitees and licensees, may use the facilities. Where a Corporation is a Parcel Owner, the use of said facilities shall be limited at any one time to

such Officer, Director or employee of said Corporation who is in actual residence and such individual shall be deemed to be the Condominium Parcel Owner for the purposes of this paragraph. Where a party owns one Condominium Unit and leases same, the lessee shall be entitled to the use of the facilities and said lessee's rights thereto shall be the same as though said lessee were the Unit Owner and during the term of said lease, the Unit Owner and his family shall not be entitled to the use of the facilities. Use of the facilities by Owners of Unit Weeks in Units committed to Interval Ownership, or any other person using the facilities through said Owner, shall be limited to the period of Ownership each year of said Owner of Unit Weeks in such Unit.

XXI.

MANAGEMENT AGREEMENT

A. The Association has entered into a Management Agreement, a copy of which is annexed hereto as Exhibit No. 4 and made a part hereof.

The Association has delegated to the Management Firm the power of the Association, through its Board of Directors, to determine the budget, make assessments for common expenses and collect assessments. Each Unit Owner, his heirs, successors and assigns, shall be bound by said Management Agreement for the purposes therein expressed, including but not limited to:

(1) Adopting, ratifying, confirming and consenting to the execution of said Management Agreement by the Association.

(2) Covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by Unit Owners in the cases provided therefor in said Management Agreement.

(3) Ratifying, confirming and approving each and every provision of said Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.

(4) Agreeing that the persons acting as Directors and Officers of the Association entering into such an Agreement have not breached any of their duties or obligations to the Association.

(5) It is specifically recognized that some or all of the persons comprising the original Board of Directors of the Association, are or may be stockholders, Officers and Directors of the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

(6) The acts of the Board of Directors and Officers of the Association in entering into the Management Agreement be and the same are hereby ratified, approved, confirmed and adopted.

XXII.

MISCELLANEOUS PROVISIONS

A. The Owners of the respective Condominium Units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding

their respective Condominium Units, nor shall the Unit Owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective Condominium Units which are utilized for or serve more than one Condominium Unit, which items are, by these presents, hereby made a part of the Common Elements. Said Unit Owner, however, shall be deemed to own the walls and partitions which are contained in said Unit Owner's Condominium Unit, and shall also be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings, including plaster, paint, wallpaper, etc.; however, all load bearing walls and, where applicable, the floor between the first ground floor and second floor located within a Condominium Unit and, where applicable, the floor between any subsequent higher floors located within a Condominium Unit, and the floor of the first ground floor within a Condominium Unit, are a part of the Common Elements to the unfinished surface of said walls and floors.

B. The Owners of the respective Condominium Units agree that if any portion of a Condominium Unit or Common Element or limited Common Element encroaches upon another, a valid easement for the encroachment and maintenance of same, so long as it stands, shall and does exist. In the event a Condominium building or buildings are partially or totally destroyed and then rebuilt, the Owners of the Condominium Parcels agree that encroachments on parts of the Common Elements or limited Common Elements or Condominium Units, as aforescribed, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

C. No Owner of a Condominium Parcel may exempt himself from liability for his contribution toward the common expenses or, in the case of an Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership, the maintenance fee, by waiver of the use and enjoyment of any of the Common Elements or the recreation facilities, or by the abandonment of his Condominium Unit.

D. The Owners of each and every Condominium Parcel shall return the same for the purpose of ad valorem taxes with the Tax Assessor of the County wherein the Condominium is situated, or for such other future legally authorized governmental Officer or authority having jurisdiction over same. Nothing herein shall be construed, however, as giving to any Unit Owner the right of contribution or any right of adjustment against any other Unit Owner on account of any deviation by the taxing authorities from the valuation herein prescribed, each Unit Owner to pay ad valorem taxes and special assessments as are separately assessed against his Condominium Parcel. Ad valorem taxes on a Unit committed to Interval Ownership shall be paid by the Association and said taxes shall be collected as part of the maintenance fee.

For this purpose of ad valorem taxation, the interest of the Owner of a "Condominium Parcel" in his "Condominium Unit" and in the "Common Elements", shall be considered a Unit. The value of said Unit shall be equal to the percentage of the value of the entire Condominium, including land and improvements, as has been assigned to said Unit in this Condominium Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

E. All provisions of this Declaration and Exhibits attached hereto, and Amendments thereof, shall be construed as covenants running with the land, and of every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto, and every Unit Owner and Occupant of the

property, or any part thereof, or of any interest therein, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any Amendments thereof.

F. If any of the provisions of this Declaration, or of the By-Laws, the Articles of Incorporation of the Association, the Management Agreement, or of the Condominium Act, or any section, clause, phrase, word, or the application thereof, in any circumstance, is held invalid the validity of the remainder of this Declaration, the By-Laws, Articles of Incorporation and Management Agreement, or the Condominium Act, and of the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby.

G. Whenever Notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their place of residence on file with the Condominium Association from time to time. Proof of such mailing or personal delivery by the Association or any Management Firm shall be given by the Affidavit of the person mailing or personally delivering said Notices. Notices to the Association shall be delivered by mail to the Secretary of the Association, or the President of the Association, or to any member of the Board of Directors of the Association. The change of the mailing address of any party as specified herein shall not require an Amendment to this Declaration.

Notices to the Developer shall be delivered by mail at: Sunset Beach Club, Inc., 4950 Estero Blvd., Ft. Myers Beach, Florida 33931.

Notices to the Management Firm shall be delivered by mail at: Kahlua Property Management, Inc., 4950 Estero Blvd., Ft. Myers Beach, Florida 33931.

All Notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written Notice, duly receipted for. Notices required to be given the personal representatives of a deceased Owner or devisee, when there is no personal representative, may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the Estate of such deceased Owner is being administered. The change of the mailing address of any party, as specified herein, shall not require an Amendment to the Declaration.

H. The Developer shall have the right to use a portion of the Common Elements for the purpose of aiding in the sale of Condominium Units including the right to use portions of the Condominium property for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall mean and include the right to display and erect signs, billboards and placards and store, keep and exhibit same and distribute audio and visual promotional materials upon the Common Elements.

I. Each unit owner and the Association shall be governed by and shall comply with this Declaration and the By-Laws attached hereto, and the Condominium Act of the State of Florida, as it may exist from time to time. Failure to do so shall entitle the Association or any unit owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a unit owner or the Association in a proper case by or against one or more unit owners, and the prevailing party shall be entitled to receive reasonable attorney's fees. Such relief shall not be exclusive of other remedies provided by law.

J. Subsequent to the filing of this Declaration of Condominium, the Condominium Association, when authorized by a vote of the majority of the total vote of the members of the Association, and approved by the Owners and holders of Institutional First Mortgages encumbering Condominium Parcels who represent a majority of the dollar institutionally mortgaged indebtedness against this Condominium may, together with other Condominium Associations and others, purchase and/or acquire and enter into Agreements, from time to time, whereby it acquires leaseholds, memberships, and other possessory or use interests in lands or facilities, including but not limited to country clubs, golf courses, marinas, and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the enjoyment, recreation and other use or benefit of the Unit Owners. The expense of Ownership, rental membership fees, operations, replacements and other undertakings in connection therewith shall be common expenses, together with all other expenses and costs herein or by law defined as common expenses.

K. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

L. The captions used in this Declaration of Condominium and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits hereto annexed.

M. Where an Institutional First Mortgage, by some circumstance, fails to be a First Mortgage, but it is evident that it is intended to be a First Mortgage, it shall, nevertheless, for the purpose of this Declaration and Exhibits annexed, be deemed to be an Institutional First Mortgage.

N. Subject to the provisions of Section 718.203 of the Condominium Act, the Developer specifically disclaims any intent to have made any warranty or representation in connection with the property or the Condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein unless otherwise stated. Maintenance fees, common expenses, taxes or other charges are estimates only and no warranty, guaranty or representation is made or intended, nor may one be relied upon.

O. Condominium Association, by its execution of this Declaration of Condominium, approves the foregoing and all of the covenants, terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto. The Condominium Unit Owners, by virtue of their acceptance of the Deed of Conveyance as to their Condominium Unit, and other parties by virtue of their occupancy of Units hereby approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto.

P. No Condominium Parcel Owner shall bring, or have any right to bring, any action for partition or division of the Condominium property, nor shall any Owner of Unit Weeks within any Condominium Unit committed to Interval Ownership have any right to bring any such action with reference to other Owners of Unit Weeks in such Condominium Unit.

The Interval Conveyance consists of an estate for years, together with a remainder over as tenants in common with all other purchasers of Unit Weeks, in each such Condominium Unit as set forth in the Deed of Conveyance. No Owner of Unit Weeks in a Unit committed to Interval Ownership, shall have the right to separate the estate for years from the remainder interest.

Q. The real property submitted to Condominium Ownership herewith is subject to conditions, limitations, restrictions, reservations, all matters of record and the rights of the United States of America, the State of Florida or any governmental authority or agency as to any submerged lands and as to any lands lying below the natural ordinary high-water line of the surrounding bodies of water, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates, and the said Developer shall have the right to grant such easements and designate the beneficiaries thereof for such time as it determines in its sole discretion, and thereafter, the Association shall be empowered to grant such easements on behalf of its members. During the period of time that the Developer has the right to grant the foregoing easements, the consent and approval of the Association and its members shall not be required. The right to grant the foregoing easements shall be subject to said easements not structurally weakening the buildings and improvements upon the Condominium property nor unreasonably interfering with the enjoyment of the Condominium property by the Association's members.

R. In order to insure the Condominium and the Complex with adequate and uniform water service and sewerage disposal service the Developer shall and hereby reserves the exclusive right to contract for the servicing of said Condominium and the Unit Owners therein with said services. Pursuant to the foregoing, the Developer has, will or may contract with a utility company which may include a municipal or governmental agency or authority for the furnishing of said services and the Association and Unit Owners agree to pay the charges therefor pursuant to and to comply with all of the terms and conditions of said utility Agreement.

S. Notwithstanding the fact that the present provisions of the Condominium Act of the State of Florida are incorporated by reference and included herein thereby, the provisions of this Declaration and Exhibits attached hereto shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise, the provisions of said Condominium Act shall prevail and shall be deemed incorporated therein.

T. Leasing or renting of a Condominium Unit or Unit Weeks within a Condominium Unit committed to Interval Ownership is not prohibited.

U. Owners of units shall have as an appurtenance thereto a perpetual easement for ingress and egress to and from their units over stairs, terraces, balconies, walks and other Common Elements.

V. The Owner of a unit shall have an easement for ingress and egress, over such streets, walks and other rights-of-way serving the units within the Condominium as a part of the "Common Elements" as may be necessary to provide reasonable access to said public ways, and such easement shall extend to the invitees and licensees of said unit owner. In the event that any of said

easements for ingress and egress shall be encumbered by any leasehold or lien, other than those on the Condominium parcels, such leaseholds or liens shall hereby be subordinate to the use rights of any Condominium unit owner or owners whose Condominium parcel is not also encumbered by said lien or leasehold.

IN WITNESS WHEREOF, SUNSET BEACH CLUB, INC., a Florida Corporation, has caused these presents to be signed in its name by its proper officers and its Corporate Seal affixed, this 24 day of April, 1978.

Signed, sealed and delivered in the presence of:

Ordery C. Ballantine
Idith Wharfe

SUNSET BEACH CLUB, INC.
a Florida Corporation

By: Marvin L. Matheny, Jr. (SEAL)
President
(DEVELOPER)

STATE OF FLORIDA)
SS:
COUNTY OF Lee)

BEFORE ME, the undersigned authority, personally appeared MARVIN L. Matheny, Jr., to me well known to be the person described in and who executed the foregoing Declaration of Condominium as President of SUNSET BEACH CLUB, INC., a Florida Corporation, and he acknowledged before me that he executed such instrument as such Officer of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that it was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal, at the State and County aforesaid, this 24 day of April, 1978.

My Commission Expires:
Nov. 21, 1981

Laura J. Olmsted (SEAL)
Notary Public, State of Florida

FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, KAH LUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Condominium and Exhibits attached hereto.

IN WITNESS WHEREOF, the above described Corporation, a Florida Corporation not for profit, has caused these presents to be signed in its name by its President, and its Corporate Seal affixed, attested by its Secretary, this 24 day of April, 1978.

Signed, sealed and delivered in the presence of:

Ordery C. Ballantine
Idith Wharfe

KAH LUA OWNERS' ASSOCIATION, INC.

By: Clark S. Kuter (SEAL)
President

Attest: Marvin L. Matheny, Jr. (SEAL)
Secretary
(ASSOCIATION)

STATE OF FLORIDA)
COUNTY OF Lee) SS:

BEFORE ME, the undersigned authority, personally appeared Charles A. Cutina + Marvin L. Metheny, to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary respectively of KAHlua OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, and they severally acknowledged before me that they executed such instrument as such Officers of said Corporation, and that it was affixed to said instrument by due and regular Corporate authority, and that the said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal at said County and State, this 24 day of April, 1978.

Laura J. Olmsted (SEAL)
Notary Public, State of Florida

My Commission Expires:
Nov. 21, 1981

JOINDER

4368 Motel Corp., a Florida corporation being the owner of record to the real property described in Exhibit No. 1 to this Declaration of Condominium, pursuant to Chapter 718.104(2) Florida Statutes, joins in the execution of this Declaration of Condominium of Kahlua Beach Club, a Condominium.

IN WITNESS WHEREOF, the undersigned has executed this Joinder this 24 day of April, 1978.

4368 MOTEL CORP.,
a Florida corporation

Ordene C. Ballentine
Witness

By: Charles A. Cutina
President

Judith Whaley
Witness

(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF Lee)

BEFORE ME, the undersigned authority, personally appeared Charles A. Cutina, to me well known to be the person described in and who executed the foregoing instrument as President of 4368 Motel Corp., a Florida Corporation, and he acknowledged before me that he executed such instrument as such Officer of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that it was affixed to said instrument as the free act and deed of said Corporation.

WITNESS my hand and Official Seal, at the State and County aforesaid, this 24 day of April, 1978.

Laura J. Olmsted
Notary Public, State of Florida

My Commission Expires:
Nov. 21, 1981

OFF. 1270 PC 356
REC

EXHIBIT NO. 1
TO DECLARATION

CLERK NOTE:

EXHIBIT 1-A, 1-B, 1-C SEE OFFICIAL RECORDS CONDOMINIUM
PLAT BOOK 5, AT PAGE 144-146

SAL GERACI, CLERK

BY: *John W. King*
Deputy Clerk

LEGAL DESCRIPTION
OF
KAHLUA BEACH CLUB, A CONDOMINIUM

From the southeast corner of the fractional southwest quarter (SW $\frac{1}{4}$) of Section 28, Township 46 South, Range 24 East, run westerly along the South line of said Section 28 for 1643.70 feet to the northwesterly corner of Lot 20 in Block 6 of GULF HEIGHTS SUBDIVISION, according to the map or plat thereof recorded in Plat Book 6 at Page 39 of the public records of Lee County; thence run northwesterly at an angle of 139 degrees 39' East to Northwest for 736.27 feet; thence run northeasterly at an angle of 92 degrees 00' southwesterly to northwesterly with the last mentioned course, along the northwesterly line of the lands conveyed by deed recorded in Deed Book 212 at Page 490 of said public records for 256 feet, more or less, to the centerline of Estero Boulevard (State Road No. 865), which is the point of beginning of the lands hereby conveyed. From said point of beginning, run northwesterly along said centerline for 135.64 feet; thence run southwesterly at an angle of 91 degrees 38' northwest to southwest with said centerline to the waters of the Gulf of Mexico. Thence run southeasterly along said waters to an intersection with a line passing through the point of beginning at an angle of 88 degrees 22' southeast to southwest with said centerline of Estero Boulevard; thence run northeasterly along said line to the point of beginning. SUBJECT to existing right of way of Estero Boulevard.

EXHIBIT 1-D

SURVEYOR'S CERTIFICATION
KAHLUA BEACH CLUB, A CONDOMINIUM

I have examined the declaration of Condominium and attached Exhibits, including the "Plot Plan" of Kahlua Beach Club, a Condominium, and certify that the construction of the improvements described is sufficiently complete so that such material, together with the provisions of the Declaration describing the Condominium Property is an accurate representation of the location and dimensions of the improvements, and that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.

DONE this 9 day of NOVEMBER, 1977.

By: Walter A. Rytting

Registered Land Surveyor No. 2654

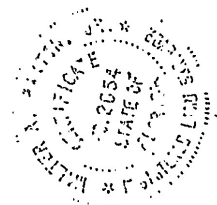


EXHIBIT 1-E

BY-LAWS
OF
KAHLUA OWNERS' ASSOCIATION, INC.
A FLORIDA NON-PROFIT CORPORATION

ARTICLE I. IDENTITY

The following By-Laws shall govern the operation of the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

The Association whose name appears at the end of this instrument is a Florida Corporation not for profit, organized and existing under the laws of the State of Florida for the purpose of administering (but not exclusively unless so provided in the Association's Articles of Incorporation) the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

Section 1. The office of the Association shall be at the Condominium property, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. The Seal of the Corporation shall bear the name of the Corporation, the word "Florida", the words, "Corporation not for profit", and the year of incorporation.

Section 3. As used herein, the word, "Corporation", shall be the equivalent of "Association"; as defined in the Declaration of Condominium to which these By-Laws are attached. All other words, as used herein, shall have the same definitions as attributed to them in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE II. MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership in the Association shall be limited to Owners of the Condominium Units in Condominiums wherein this Corporation has been designated the Association to operate and administer said Condominium by virtue of the Declaration of Condominium of said Condominium. Transfer of Unit Ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit Ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member". If Unit Ownership is vested in a Corporation, said Corporation may designate an individual officer or employee of the Corporation as its "voting member". Notwithstanding the foregoing, each Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership shall be entitled to cast his share of the vote of the Unit in which he owns his Unit Weeks. "Unit committed to Interval Ownership" and "Interval Ownership" are defined in the Declaration of Condominium.

Section 2. Voting:

(a) The Owner(s) of each Condominium Unit shall be entitled to one (1) vote. If a Condominium Unit Owner owns more than one (1) Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Condominium Unit shall not be divisible. Notwithstanding

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EXHIBIT NO. 2
TO DECLARATION

the foregoing, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to 1/51 of the total vote assigned to the Unit in which he owns his Unit Weeks for each Unit Week owned. The Association shall not have a vote for any Unit Weeks conveyed to it.

(b) A majority of the Unit Owners' total votes shall decide any question, unless the Declaration of Condominium, By-Laws or Articles of Incorporation of the Association provide otherwise.

Section 3. Quorum: Unless otherwise provided in these By-Laws, the presence in person or by proxy of a majority of the Unit Owners' total votes shall constitute a quorum.

Section 4. Proxies: Votes may be cast in person or by proxy. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Section 5. Designation of Voting Member: If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated in a Certificate, signed by all of the recorded Owners of the Unit and filed with the Secretary of the Association. If a Condominium Unit is owned by a Corporation, the officer or employee thereof entitled to cast the vote of the Unit for the Corporation shall be designated in a Certificate for this purpose, signed by the President or Vice-President, attested to by the Secretary or Assistant Secretary of the Corporation, and filed with the Secretary of the Association. The person designated in such Certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a Certificate is not on file with the Secretary of the Association for a Unit owned by more than one person or by a Corporation, the vote of the Unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit, except if said Unit is owned by a husband and wife. Such Certificates shall be valid until revoked or until superseded by a subsequent Certificate, or until a change in the Ownership of the Unit concerned. If a Condominium Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.

(b) If they do not designate a voting member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a Unit is not divisible).

(c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

Section 6. Units Committed to Interval Ownership: Notwithstanding any other provisions in these By-Laws, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to cast the fractional vote attributable to his Unit Weeks owned. In the case of a Unit committed to Interval Ownership, the provisions of

Section 5, Designation of Voting Member, shall apply to each Unit Week owned.

ARTICLE III. MEETING OF THE MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at the Condominium(s) property, or at such other place and at such time as shall be designated by the Board of Directors of the Association and stated in the Notice of the meeting, and shall be open to all Unit Owners.

Section 2. Notices: It shall be the duty of the Secretary to mail or deliver a Notice of each annual or special meeting, stating the time and place thereof, to each Unit Owner of record at least fourteen (14) but not more than thirty (30) days prior to such meeting. Notice of any special meeting shall state the purpose thereof. All Notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association.

Section 3. Annual Meeting: The annual meeting shall be held at 3:00 p.m., Eastern Standard Time, on the second Wednesday of February each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the members, provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next secular day following. At the annual meeting, the members shall elect by plurality vote - (cumulative voting prohibited), a Board of Directors, and shall transact such other business as may properly be brought before the meeting.

Section 4. Special Meeting: Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or at the request, in writing, of voting members representing twenty-five percent (25%) of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the objects stated in the Notice thereof.

Section 5. Waiver and Consent: Whenever the vote of members at a meeting is required or permitted by any provision of these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if not less than a majority of the members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken; however, Notice of such action shall be given to all members, unless all members approve such action.

Section 6. Adjourned Meeting: If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

Section 7. Approval or Disapproval: Approval or disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting members provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

Section 8. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to Notice of all Association meetings, and shall be entitled to attend the Association's meetings, and it may designate such person(s) as it desires to attend such meetings on its behalf.

ARTICLE IV. DIRECTORS

Section 1. Number, Term and Qualifications: The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) nor more than seven (7) persons, as is determined from time to time by the members. All Directors, except those designated by the Developer, shall be members of the Association. All officers of a Corporate Unit Owner shall be deemed to be members of the Association so as to qualify as a Director herein. The term of each Director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below.

Section 2. First Board of Directors:

(a) The first Board of Directors of the Association who shall hold office and serve until their successors have been elected and qualified, shall consist of the following:

Charles A. Cutaia
Daniel Reinfried
Marvin Metheny

(b) The organizational meeting of a newly elected Board of Directors of the Association shall be held within ten (10) days of their election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further Notice of the organizational meeting shall be necessary, provided a quorum shall be present.

Section 3. Removal of Directors: At any time after the first annual meeting of the membership at any duly convened regular or special meeting, any one or more of the Directors may be removed, with or without cause, by the affirmative vote of the voting members casting not less than two-thirds (2/3rds) of the total votes present at said meeting, and a successor may then and there be elected to fill the vacancy thus created. Should the membership fail to elect said successor, the Board of Directors may fill the vacancy in the manner provided in Section 4 below.

Section 4. Vacancies on Directorate: If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors.

Section 5. Disqualification and Resignation of Directors: Any Director may resign at any time by sending a written Notice of such resignation to the office of the Corporation, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Commencing with the Directors elected at such first annual meeting of the membership, the transfer of title of his Unit by a Director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors. No member shall continue to serve on the Board should he be more than thirty (30) days delinquent in the payment of an assessment and said delinquency shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 6. Regular Meetings: The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such

regular meetings shall nevertheless, be given to each Director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings in accordance with Section 7 below, shall be open to all Unit Owners.

Section 7. Special Meetings: Special meetings of the Board of Directors may be called by the President, and in his absence, by the Vice-President, or by a majority of the members of the Board of Directors, by giving five (5) days Notice, in writing, to all of the members of the Board of Directors of the time and place of said meeting. All Notices of special meetings shall state the purpose of the meeting.

Section 8. Directors' Waiver of Notice: Before or at any meeting of the Board of Directors, any Director may waive Notice of such meeting and such waiver shall be deemed equivalent to the giving of Notice. Attendance by a Director at any meeting of the Board shall be a waiver of Notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no Notice shall be required and any business may be transacted at such meeting.

Section 9. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the Minutes thereof, shall constitute the presence of such Director for the purpose of determining a quorum.

Section 10. Compensation: The Directors' fees, if any, shall be determined by the voting members.

Section 11. Developer's Selection of Directors: Subject to the provisions of Section 718.301 of the Condominium Act, the Developer shall have the right to designate the Directors who need not be Owners of Units in the Condominium, and said Directors may not be removed by members of the Association, as elsewhere provided herein; and where a vacancy occurs for any reason whatsoever, the vacancy shall be filled by the person designated by the Developer.

Section 12. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to Notice of all Directors' meetings and shall be entitled to attend the Directors' meetings and it may designate such person(s) as it desires to attend such meetings on its behalf.

Section 13. Powers and Duties: The Board of Directors of the Association shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration of Condominium, this Association's Articles of Incorporation, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall specifically include, but shall not be limited to the following:

(a) To exercise all powers specifically set forth in the Declaration of Condominium, this Association's Articles of Incorporation, in these By-Laws, and in the Condominium Act, and all powers incidental thereto.

(b) To make assessments, collect said assessments, and use and expend the assessments to carry out the purposes and powers of the Association.

(c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the project, and of the common areas and facilities including the right and power to employ attorneys, accountants, contractors, and other professionals as the need arises.

(d) To make and amend regulations respecting the operation and use of the Common Elements and Condominium property, and the use and maintenance of the Condominium Units therein.

(e) To contract for the management of the Condominium and to delegate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration of Condominium to have approval of the Board of Directors or membership of the Association. To contract for the management or operation of portions of the Common Elements susceptible to the separate management or operation thereof, and to lease or concession such portions.

(f) The further improvement of the Condominium property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into Agreements pursuant to Section 718.114 of the Condominium Act, and as amended, subject to the provisions of the applicable Declaration of Condominium, this Association's Articles of Incorporation and these By-Laws.

(g) Designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least three (3) members of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular Minutes of their proceedings and report the same to the Board of Directors, as required. The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by Unit Owners when such is specifically required.

(h) To enter into and terminate Agreements with organizations providing Owners of Unit Weeks to trade their time periods with Owners of time periods at other resorts.

ARTICLE V. OFFICERS

Section 1. Elective Officers: The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors.

One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice-President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice-President being members of the Board of Directors shall not apply while the Association is under the control of the Developer, the control being the right of the Developer to select a majority of the Board of Directors in accordance with Section 718.301 of the Condominium Act.

Section 2. Election: The officers of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members.

Section 3. Appointive Officers: The Board may appoint Assistant Secretaries and Assistant Treasurers, and such other officers as the Board of Directors deems necessary.

Section 4. Term: The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors, provided however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors (e.g. if the Board of Directors is composed of five persons, then three of said Directors must vote for removal). If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President: He shall be the chief executive officer of the Association; he shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. The Vice-President: He shall perform all of the duties of the President in his absence, and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 7. The Secretary: He shall issue Notices of all Board of Directors' meetings and all meetings of the Unit Owners; he shall attend and keep the Minutes of same; he shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 8. The Treasurer:

(a) He shall have custody of the Association's funds and securities, except the funds payable to any Management Firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the manner required by Section 718.111(7)(b) of the Condominium Act.

(b) He shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association.

(c) He shall collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors.

(d) He shall give status reports to potential transferees on which reports the transferees may rely.

(e) The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

(f) The duties of the Treasurer may be fulfilled by a Management Firm employed by the Association, and said Management Firm shall fulfill the duties of the Treasurer, and shall have custody of such books of the Association as it determines in its sole discretion and the foregoing shall include any books required to be kept by the Secretary of the Association.

ARTICLE VI. FINANCES, ASSEMENTS AND MAINTENANCE FEES

Section 1. Depositories: The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by at least two officers of the Association; provided, however, that the provisions of any Management Agreement between the Association and a Management Firm relative to the subject matter in this Section shall supersede the provisions hereof.

Section 2. Fidelity Bonds: The Treasurer and all officers who are authorized to sign checks, and all officers and employees of the Association, and any contractor handling or responsible for Association funds shall be bonded in such amount as may be determined by the Board of Directors. The premiums on such Bonds shall be paid by the Association. The Bond shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a bank account or other depository account; however, notwithstanding the foregoing, the Management Firm, under the terms Management Agreement, attached to the Declaration of Condominium to which these By-Laws are attached, as to funds in its possession and/or control, shall determine, in its sole discretion, the amount of and who is to be bonded, if any, among its employees.

Section 3. Fiscal Year: The fiscal year for the Association shall begin on the first day of January of each year provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 4. Determination of Assessments:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sum or sums necessary and adequate for the common expenses of the Condominium. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, and any other expenses designated as common expenses from time to time by the Board of Directors of the Association, or under the provisions of the Declaration of Condominium to which these By-Laws are attached. The Board of Directors is specifically empowered, on behalf of the Association to make and collect assessment and to lease, maintain, repair and replace the Common Elements and limited Common Elements of the Condominium. Funds for the payment of common expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses, as provided in the Declaration. Special assessments, should such be required by the Board of Directors, shall be levied in the same manner as hereinbefore provided for regular assessments, and shall be payable

in the manner determined by the Board of Directors. All funds due under these By-Laws, which are attached to the Declaration of Condominium to which these By-Laws are attached and said Declaration of Condominium, are common expenses of this Condominium.

(b) A copy of the proposed annual budget of common expenses shall be mailed to the Unit Owners not less than thirty (30) days prior to the meeting at which the budget will be considered, together with a Notice of that meeting. The Unit Owners shall be given written notice of the time and place at which the meeting of the Board of Directors shall be held to consider the proposed annual budget of common expenses, and such meeting shall be open to the Unit Owners. If a budget is adopted by the Board of Directors which requires assessment against the Unit Owners in any fiscal or calendar year exceeding 115% of such assessments for the preceding year, upon written application of 10% of the Unit Owners, a special meeting of the Unit Owners shall be held upon no less than ten (10) days written notice to each Unit Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Unit Owners may consider and enact a revision of the budget, or recall any and all members of the Board of Directors and elect their successors. In either case, unless these By-Laws shall require a larger vote, the revision of the budget or the recall of any and all members of the Board of Directors shall require a vote of not less than a majority of the whole number of votes of all Unit Owners. The Board of Directors may in any event propose a budget to the Unit Owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the Unit Owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be re-examined by the Unit Owners in the manner hereinabove set forth nor shall the Board of Directors be recalled under the terms of this Section. In determining whether assessments exceed 115% of similar assessments in prior years, there shall be excluded in the computation, any provision for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium property or in respect of anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis and there shall be excluded from such computation, assessment for betterments to the Condominium property if these By-Laws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the Board of Directors, provided, however, that so long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the Unit Owners. When the Board of Directors has determined the amount of any assessment, the Treasurer of the Association shall mail or present to each Unit Owner a statement of said Unit Owner's assessment. All assessments shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment made to him.

Section 5. Determination of Maintenance Fee:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sums necessary and adequate for the maintenance fee on Condominium Units committed to Interval Ownership. The maintenance fee on such Units shall include the items specified in the Declaration of Condominium to which these By-Laws are attached.

(b) When the Board of Directors has determined the amount of any maintenance fee, the Treasurer of the Association shall mail or present to each Owner of Unit Weeks within all Units committed to Interval Ownership a statement of said maintenance fee. All maintenance fees shall be payable to the Treasurer of the Association

and, upon receipt, said Treasurer shall give a receipt for each payment made to him, if requested by the Unit Owners.

Section 6. Application of Payments and Co-Mingling of Funds:
All sums collected by the Association from assessments and maintenance fees may be co-mingled in a single fund or divided into more than one fund, as determined by the Board of Directors of the Association. All assessment payments and maintenance fees by a Unit Owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances as provided herein and in the Declaration of Condominium and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7. Acceleration of Assessment Installments Upon Default:
If a Unit Owner shall be in default in the payment of an installment upon any assessment, the Board of Directors may accelerate the remaining monthly installments for the fiscal year upon Notice thereof to the Unit Owner and, thereupon, the unpaid balance of the assessment shall become due upon the date stated in the Notice, but not less than fifteen (15) days after delivery of or the mailing of such Notice to the Unit Owner.

Section 8. Audits: An audit of the accounts of the Association shall be made annually. Said audit shall be prepared by such accountant as the Board of Directors determines, and a copy of said report shall be available to the members of the Association in the office of said Association and with the Treasurer of the Association. Such report shall be available not later than three (3) months after the end of the year for which the report is made.

Section 9. Application of Surplus: Any payments or receipts to the Association, whether from Unit Owners or otherwise, paid during the year in excess of the operating expenses and other common expenses of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

ARTICLE VII. ADDITIONS OR ALTERATIONS

There shall be no additions or alterations to the Common Elements or limited Common Elements of the Condominium(s) which this Association operates and maintains except as specifically provided for in said Condominium's Declaration of Condominium.

ARTICLE VIII. COMPLIANCE AND DEFAULT

Section 1. Violations: In the event of a violation (other than the nonpayment of an assessment) by the Unit Owner in any of the provisions of the Declaration of Condominium, of these By-Laws, or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from date of Notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, of the By-Laws, or of the pertinent provisions of the Condominium Act, and the Association may then, at its option, have the following elections:

- (a) An action at law to recover for its damage, on behalf of the Association or on behalf of the other Unit Owners.
- (b) An action in equity to enforce performance on the part of the Unit Owner; or
- (c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specific item, which shall be a lien against said Unit with the same force and effect as if the charge were a part of the common expenses.

Section 2. Negligence or Carelessness of Unit Owner, Etc.: All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by any insurance company of its rights of subrogation. The expense for any maintenance, repair or replacement required, as provided in this Section, shall be charged to said Unit Owner as a specific item which shall be a lien against said Unit with the same force and effect as if the charge were a part of the common expenses.

Section 3. Costs and Attorneys' Fees: In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

Section 4. No Waiver of Rights: The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 5. Election of Remedies: All rights, remedies and privileges granted to the Association or Unit Owner, pursuant to any terms, provisions, covenants or conditions of the Condominium documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by Condominium documents, or at law or in equity.

Section 6. Units Committed to Interval Ownership: Any liens or sanctions against an Owner of Unit Weeks in a Unit committed to Interval Ownership for an alleged default as set forth in this Article VIII shall be limited to the Unit Weeks owned by such Owner and shall be of no force and effect as to any other Unit Weeks or Owner thereof. The term "Unit Owner" as used throughout this article shall be deemed to include Owners of Unit Weeks in Units committed to Interval Ownership.

ARTICLE IX. ACQUISITION OF UNITS ON FORECLOSURE

Section 1. Acquisition of Units on Foreclosure: At any foreclosure sale of a Unit, the Board of Directors may, with the authorization and approval by the affirmative vote of voting members casting not less than sixty percent (60%) of the total votes of the members present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association, or its designee, a Condominium parcel being foreclosed. The term "foreclosure", as used in this Section, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments.

The power of the Board of Directors to acquire a Condominium parcel at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the said Board of Directors or of the Association to do so at any foreclosure sale, the provisions hereof being permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. The Board of Directors shall not be required to obtain the approval of Unit Owners at the foreclosure sale of a Unit, due to the foreclosure of the Association's lien for assessments under the provisions of the Declaration of Condominium to which these By-Laws are attached notwithstanding the sum the Board of Directors determines to bid at such foreclosure sale.

Section 2. Transfer of Units: All Owners of Units or Unit Weeks in a Unit committed to Interval Ownership shall notify the Association, of any transfer, by sale or otherwise, of said Unit or Unit Week within ten (10) days of the date of same. Said Notice shall include such information and be in the form that the Association shall prescribe from time to time. The Association may send all necessary Notices to the person shown as Owner of said Unit or Unit Weeks in its records, and said Notice shall be binding as to any other Owner of said Unit or Unit Weeks where the Association has not been notified as provided herein.

ARTICLE X. AMENDMENTS TO THE BY-LAWS

The By-Laws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

(1) Notice of the meeting shall contain a statement of the proposed Amendment.

(2) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the voting members casting a majority of the total votes of the members of the Association.

(3) If the Amendment has not been approved by the unanimous vote of the Board of Directors, then the Amendment shall be approved by the affirmative vote of the voting members casting not less than three-fourths (3/4ths) of the total votes of the members of the Association; and,

(4) Said Amendment shall be recorded and certified as required by the Condominium Act.

(5) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval when required of the parties specified in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XI. NOTICES

Whatever Notices are required to be sent hereunder shall be delivered or sent in accordance with the applicable provisions for Notices as set forth in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XII. INDEMNIFICATIONS

The Association shall indemnify every Director and every Officer, his heirs, executors, and administrators, against all loss, cost and expense reasonably incurred by him in connection

with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XIII. LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Condominium shall not relieve or release any such former Owner or member from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former Owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

ARTICLE XIV. LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for injury or damage caused by a latent condition in the property, nor for injury or damage caused by the elements or by other Owners or persons.

ARTICLE XV. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Condominium Act, the Declaration of Condominium, or these By-Laws.

ARTICLE XVI. LIENS

Section 1. Protection of Property: All liens against a Condominium Unit, other than for mortgages, taxes or special assessments, shall be satisfied or otherwise removed within thirty (30) days of the date the lien attached. All taxes and special assessments upon a Condominium Unit shall be paid before becoming delinquent, as provided in these Condominium documents or by law, whichever is sooner.

Section 2. Notice of Lien: A Unit Owner shall give Notice to the Association of every lien upon his Unit, other than for mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

Section 3. Notice of Suit: Unit Owners shall give Notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property, such Notice to be given within five (5) days after the Unit Owner receives Notice thereof.

Section 4. Failure to Comply: Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

Section 5. Units Committed to Interval Ownership: In the case of a Unit committed to Interval Ownership, an Owner of Unit Weeks in such Unit shall be required to give Notices under Section 2 and Section 3 of this Article XVI only as to liens, suits, and proceedings affecting title to the Unit Weeks which he owns. Any lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, or against the Unit Weeks owned by him, shall be limited to the Unit Weeks owned by him and shall not encumber the property, real or personal, of any other Owner of Unit Weeks in said Unit.

ARTICLE XVII. RULES AND REGULATIONS

Section 1. The Board of Directors may, from time to time, adopt or amend previously adopted administrative Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Elements and limited Common Elements of the Condominiums and any facilities or services made available to the Unit Owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall from time to time be posted in a conspicuous place and/or copies of same shall be furnished each Unit Owner.

Section 2. As to Condominium Units: The Board of Directors may from time to time adopt or amend previously adopted Rules and Regulations governing and restricting the use and maintenance of the Condominium Unit(s) provided, however, that copies of such Rules and Regulations, prior to the time the same become effective, shall be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 3. Conflict: In the event of any conflict between the Rules and Regulations adopted, or from time to time amended, and the Condominium documents, or the Condominium Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter arise with respect to the interpretation of these By-Laws and the Declaration of Condominium, the provisions of said Declaration shall prevail.

The foregoing was adopted as the By-Laws of Kahlua Owners' Association, Inc., at the first meeting of the Board of Directors.

Approved:

Secretary

President

KAHLUA OWNERS' ASSOCIATION, INC.

ARTICLES OF INCORPORATION

We, the undersigned, hereby associate ourselves together for the purpose of forming a Non-Profit Corporation under the laws of the State of Florida, pursuant to Florida States 617 Et Seq., and hereby certify as follows:

ARTICLE I.

The name of this Corporation shall be:

KAHLUA OWNERS' ASSOCIATION, INC.

ARTICLE II.

The general purpose of this Non-Profit Corporation shall be as follows: To be the "Association" (as defined in the Condominium Act of the State of Florida, F.S. 718 Et Seq.), for the operation of the Condominium known as Kahlua Beach Club, a Condominium, at Fort Myers Beach, Florida, to be created pursuant to the provisions of the Condominium Act, and as such Association, to operate and administer said Condominium and carry out the functions and duties of said Condominium, as set forth in the Declaration of Condominium establishing said Condominium and Exhibits annexed thereto. The Corporation may also be the Association for the operation of additional Condominiums which may be created at Fort Myers Beach, Florida. The Board of Directors shall have the authority in their sole discretion to designate the above Corporation as the Association for additional Condominiums and, in such instances, the provisions hereafter in these Articles of Incorporation shall be interpreted in such a manner as to include such additional Condominiums.

ARTICLE III.

All persons who are Owners of Condominium Parcels within said Condominiums shall automatically be members of this Corporation. Such membership shall automatically terminate when such person is no longer

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EXHIBIT NO. 3
TO DECLARATION

Owner of a Condominium Parcel. Membership in the Corporation shall be limited to such Condominium Parcel Owners.

Persons who own interests in Condominium Parcels under a plan of Interval Ownership, as defined in the By-Laws of this Corporation, shall be members of this Corporation, their rights and duties to be as defined in the Declarations of Condominium.

Subject to the foregoing, admission to and termination of membership shall be governed by the Declaration of Condominium that shall be filed for said Condominium among the Public Records of Lee County, Florida.

ARTICLE IV.

This Corporation shall have perpetual existence.

ARTICLE V.

The names and residences of the subscribers to these Articles of Incorporation are as follows:

Charles A. Cutaia	- 4850 Estero Blvd., Ft. Myers Beach, Florida 33931
Daniel Reinfried	- 4850 Estero Blvd., Ft. Myers Beach, Florida 33931
Marvin Metheny	- 4850 Estero Blvd., Ft. Myers Beach, Florida 33931

ARTICLE VI.

Section 1. The affairs of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than the number specified in the By-Laws. The Directors, subsequent to the first Board of Directors, shall be elected at the annual meeting of the membership, for a term of one (1) year, or until their successors shall be elected and shall qualify. Provisions for such election, and provisions respecting the removal, disqualification and resignation of Directors and for filling vacancies on the Directorate, shall be established by the By-Laws.

Section 2. The principal Officers of the Corporation shall be: President; Vice-President; Secretary; Treasurer (the last two Officers

may be combined) who shall be elected from time to time, in the manner set forth in the By-Laws adopted by the Corporation.

ARTICLE VII.

The names of the Officers who are to serve until the first election of Officers, pursuant to the terms of the Declaration of Condominium and By-Laws, are as follows:

Charles A. Cutaia	- President
Daniel Reinfried	- Vice-President
Marvin Metheny	- Secretary/Treasurer

ARTICLE VIII.

The following persons shall constitute the first Board of Directors and shall serve until the first election of the Board of Directors at the first regular meeting of the membership:

Charles A. Cutaia
Daniel Reinfried
Marvin Metheny

ARTICLE IX.

The By-Laws of the Corporation shall initially be made and adopted by its first Board of Directors.

Prior to the time the property described in Article II hereinabove has been submitted to Condominium Ownership by the filing of the Declarations of Condominium, said first Board of Directors shall have full power to amend, alter or rescind said By-Laws by a majority vote.

After the property described in Article II hereinabove has been submitted to Condominium Ownership by filing of the Declaration of Condominium, the By-Laws may be amended, altered, supplemented or modified by the membership at the annual meeting, or at a duly convened special meeting of the membership, by vote, as follows:

- A. If the proposed change has been approved by the unanimous approval of the Board of Directors, then it shall require only a majority vote of the total membership to be adopted.

- B. If the proposed change has not been approved by the unanimous vote of the Board of Directors, then the proposed change must be approved by three-fourths (3/4ths) of the total vote of the membership.

ARTICLE X.

Amendments to these Articles of Incorporation may be proposed by any member or Director and shall be adopted in the same manner as is provided for the Amendment of the By-Laws as set forth in Article IX above. Said Amendment(s) shall be effective when a copy thereof, together with an attached Certificate of its approval by the membership, sealed with the Corporate Seal, signed by the Secretary or an Assistant Secretary, and executed and acknowledged by the President or Vice-President, has been filed with the Secretary of State, and all filing fees paid.

ARTICLE XI.

This Corporation shall have all of the powers set forth in Florida Statute 617.021, all of the powers set forth in the Condominium Act of the State of Florida, and all powers granted to it by the Declaration of Condominium and Exhibits annexed thereto, including the power to contract for the management of the Condominiums and recreational facilities.

ARTICLE XII.

There shall be no dividends paid to any of the members, nor shall any part of the income of the Corporation be distributed to its Board of Directors or Officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses, etc. The Corporation may pay compensation in a reasonable amount to its members, Directors and Officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members as is permitted by the Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Corporation shall issue no shares of stock of any kind or nature whatsoever. Membership in the Corporation and the transfer thereof, as well as the number of members, shall be upon such terms and conditions as provided for in the Declaration of Condominium and By-Laws. The voting rights of the Owners of Parcels in said Condominium property shall be as set forth in the Declarations of Condominium and/or By-Laws.

ARTICLE XIII.

The street address of the initial registered office of this Corporation is c/o Davis and Langer, P.A., 6075 Sunset Drive, Fourth Floor, South Miami, Florida 33143, and the name of the initial registered agent of this Corporation at that address is Mark G. Langer.

IN WITNESS WHEREOF, the Subscribers hereto have hereunto set their hands and seals this _____ day of _____, 197_.

(SEAL)

Charles A. Cutaia

(SEAL)

Daniel Reinfried

(SEAL)

Marvin Metheny

STATE OF FLORIDA)

COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared CHARLES A. CUTAIA, DANIEL REINFRIED, and MARVIN METHENY, who after being by me first duly sworn, acknowledged that they executed the foregoing Articles of Incorporation of KAHLUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, for the purposes therein expressed.

WITNESS my hand and Official Seal, at the State and County aforesaid, this _____ day of _____, 197_.

(SEAL)

Notary Public, State of Florida at Large

MANAGEMENT AGREEMENT
BETWEEN
KAHLUA OWNERS' ASSOCIATION, INC.
AND
KAHLUA PROPERTY MANAGEMENT, INC.

THIS AGREEMENT, made and entered into on the date last appearing in the body of this instrument, by and between the Florida Corporation whose name appears at the end of this Agreement as the Management Firm, hereinafter called the "Management Firm", and that certain Florida Corporation not for profit whose name appears at the end of this instrument as the Condominium Association, hereinafter called the "Association", which said terms shall be deemed to extend to and include the legal representatives, successors and assigns of the said parties hereto;

WITNESSETH:

THAT, WHEREAS, the Association is the Association responsible for the operation of that certain condominium to be known as Kahlua Beach Club, a Condominium, and said Association is desirous of entering into a Management Agreement for the management of said condominium, and,

WHEREAS, the Management Firm is desirous of furnishing such management services; and,

NOW, THEREFORE, for and in consideration of the mutual promises contained, it is agreed by and between the parties, as follows:

1. That the foregoing recitals are true and correct.
2. That the terms used in this Management Agreement shall be defined as said terms are defined and used in the Condominium Act, or in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4.
3. The Association does hereby employ the Management Firm as the exclusive Manager of the Condominium property and the Management Firm hereby accepts such employment.
- 4(A). The term of this Agreement shall commence as of the date hereof through December 31, 1979. Thereafter, it shall be automatically renewed for successive two (2) year periods until terminated at a duly authorized meeting of the owners by a majority of the votes of the owners, including proxies, assembled at such meeting, or by the Management Firm notifying the Association in writing that it will now renew this Agreement at such renewal date.
- 4(B). Notwithstanding the foregoing, the Association may terminate this Agreement, as provided under the provisions of F.S. 718.302 which provides that if the Association operates one (1) condominium and the unit owners other than the Developer have assumed control of the Association, or if unit owners other than the Developer own not less than 75 percent of the units in the condominium, any contract for maintenance, management or operation of the condominium may be cancelled by concurrence of the owners of not less than 75 percent of the units other than the units owned by the Developer. If a grant, reservation, or contract is so canceled and the unit owners other than the Developer have not assumed control of the Association, the Association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the units in the condominium other than the units owned by the Developer.

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EXHIBIT NO. 4
TO DECLARATION

5. The Management Firm, to the exclusion of all persons, including the Association and its members, shall have all the powers and duties of the Association as set forth in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4, and the By-Laws of the Association, (except such thereof as are specifically required to be exercised by its Directors or members) and shall perform by way of illustration and not of limitation, the following services:

(A) Cause to be hired, paid and supervised, all persons necessary to be employed in order to properly maintain and operate the Condominium, including a Manager, who, in each instance, shall be the employees of the Management Firm, as the Management Firm, in its absolute discretion shall determine, and cause to be discharged all persons unnecessary or undesirable.

(B) To maintain and repair the Condominium property and the common elements of said Condominium to the same extent that the Association is required to maintain and repair same, as provided in said Condominium's Declaration of Condominium and Exhibits attached thereto. For any one item of repair, replacement or refurbishing as to the Condominium, the expense incurred as to the Condominium as a whole, shall not exceed the sum of Two Thousand Five Hundred Dollars (\$2,500.00), unless specifically authorized by the Board of Directors of the Association, except, however, in the case of an emergency, the Management Firm is authorized to expend any sum necessary to protect and preserve the property.

(C) Take such action as may be necessary to comply with all laws, statutes, ordinances, rules and of all appropriate governmental authority, and the rules and regulations of the National Board of Fire Underwriters, or in the event it shall terminate its present functions, those of any other body exercising similar functions.

(D) To enter into contracts for garbage and trash removal, vermin extermination, and other services, and make all such contracts and purchases in either the Association's or Management Firm's name, as the Management Firm shall elect.

(E) To purchase equipment, tools, vehicles, appliances, goods, supplies and materials as shall be reasonably necessary to perform its duties, including the maintenance, upkeep, repair, replacement, refurbishing and preservation of the Condominium. Purchases shall be in the name the Management Firm, or the Association, as the Management Firm shall elect.

(F) Cause to be placed or kept in force all insurance required or permitted in the Declaration of Condominium; to act as Agent for the Association, each unit owner, and for each owner of any other insured interest; to adjust all claims arising under said insurance policies; to bring suit thereon and deliver release upon payment of claims; to otherwise exercise all of the rights, powers and privileges of the insured parties; to receive on behalf of the insured parties, all insurance proceeds, subject to the provisions of the Declaration of Condominium.

(G) Maintain the Association's financial record books, accounts and other records as provided by the Association's By-Laws and pursuant to the Condominium Act; issue Certificates of account to members, their mortgagees and lienors without liability for errors unless as a result of gross negligence. Such records shall be kept at the office of the Management Firm and shall be available for inspection by an expert employed by and at the cost and expense of the Association and at such reasonable time as the Management Firm shall agree to; however, said

request for inspection cannot be made more than once in any calendar year. Such expert may also conduct an external audit, provided the cost for same is paid by the Association, and said independent auditor, in any instance, must be acceptable to the Management firm whose acceptance shall not be unreasonably withheld. As a standard procedure, the Management Firm shall render to the Association a statement for each calendar year no later than the April 1st next thereafter. The Management Firm shall perform a continual internal audit of the Association's financial records for the purpose of verifying the same, but no independent or external audit shall be required of it. The consent of the Management Firm to an independent auditor shall not be unreasonably withheld.

(H) Maintain records sufficient to describe its services hereunder and such financial books and records sufficient in accordance with prevailing accounting standards to identify the source of all funds collected by it in its capacity as Management Firm, and the disbursement thereof. Such records shall be kept at the Office of the Management Firm, and shall be available for inspection by an expert employed by and at the cost and expense of the Association and at such reasonable time as the Management Firm may agree to; however, said request for inspection cannot be made more than once in any calendar year. The Management Firm shall perform a continual internal audit of the Management Firm's financial records relative to its services as Manager for the purpose of verifying same, but no independent or external audit shall be required of it.

(I) The Management Firm in its sole discretion shall determine the budget as to the Condominium for the term of the Management Agreement, subject, however, to the specific limitations thereof where otherwise provided. Upon said budget's being determined annually, the Management Firm shall submit annually to the Association the operating budget for the ensuing year, setting forth the anticipated income and expenses of the Condominium for the year, and said Management Firm shall specify therein each unit owner's monthly share thereof. Should an increase in assessments be required or a special assessment be required during the year, the same shall be determined and made by the Management Firm and the Association shall be advised thereof and as to the share thereof payable by each of the Association's members, as the case may be. The Management Firm shall collect the assessments based upon the foregoing. The assessments as to each member of the Association shall be made payable to the Management Firm, or such other firm or entity as the Management Firm shall direct; and the Management Firm shall have the right to designate such member or members of the Association, or the Association itself, as it determines, to collect said assessments on behalf of the Management Firm and deliver same to it. The Management Firm shall not be responsible for obtaining the best price available as to any service, material or purchase, but shall, with impunity, purchase or contract for same with such person or party as it deems advisable and in the best interests of the Association and the Management Firm, without the necessity of obtaining the best price. Where the Management Firm does not submit an operating budget for the ensuing year to the Association as herein set forth, the operating budget for the current year shall be deemed to apply to the ensuing year and, in such case, each unit owner's share of same shall continue in the same amount subject, however, to the right of the Management Firm to increase assessments during the year or levy a special assessment where it determines that same is necessary or advisable subject to the applicable provisions of the Declaration of Condominium.

(J) Have sole authority and responsibility to maintain and replace the personal property within units committed to interval ownership, and in such capacity to:

1. Determine the maintenance fee, proration of taxes, and other common expenses applicable to those condominium units committed to interval ownership, as defined in and provided for in the Declaration of Condominium. The Management Firm shall have sole discretion, while this Agreement remains in effect, for making determinations as to replacements of personal property located within such units, decor, and all other judgments relating to units committed to interval ownership; notwithstanding the foregoing, all replacements shall be such as to maintain the standard of quality of the furniture, other personal property and decor, as originally contained in such unit at the time it is committed to interval ownership.

2. It is understood by both parties that a portion of the maintenance fee will be set aside as a reserve for future replacements and repairs. The Management Firm shall have sole discretion as to the amounts of such reserves and application of same.

(K) Deposit all funds collected from the Association's members, or otherwise accruing to the Association, in a special bank account or accounts of the Management Firm in banks and/or savings and loan associations in the State of Florida, with suitable designation indicating their source, separate from or co-mingled with similar funds collected by the Management Firm on behalf of other condominiums or entities which the Management Firm manages.

(L) May cause a representative of its organization to attend meetings of the unit owners and of the Board of Directors of the Association; however, it is understood and agreed that the Minutes of all the Association's meetings, whether of unit owners or of the Board of Directors, shall be taken by the Association's Secretary, and possession of the Minutes Book shall be in the custody of said Secretary, who shall always be responsible for preparing and furnishing notices of all meetings to the required parties. The Management Firm shall have the right to determine the fiscal year and when it shall commence.

(M) Promulgate, adopt and amend Rules and Regulations as it deems advisable in its sole discretion for the use and occupancy of the Condominium's common elements, limited common elements and units therein, and to enforce same. The Management Firm, in its sole discretion, shall determine all activities and programs to be carried on as to same and shall employ the personnel required therefor as it determines in its sole discretion.

(N) The Management Firm shall cause such alterations and/or additions to the common elements or limited common elements of the Condominium property, to be made as authorized by the Board of Directors of the Association and its members where required, pursuant to and in accordance with said Condominium's Declaration of Condominium and Exhibits attached thereto. As to the foregoing, the Management Firm shall be paid for the cost of its personnel and overhead, materials and equipment in regard thereto, and any and all contractors, subcontractors or materialmen as are required therefor.

(O) Retain and employ such professionals and such other experts whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder, and to employ same on such basis as it deems most beneficial.

(P) Enter into Agreements upon such terms and conditions and for such purpose as the Management Firm determines in its sole discretion as to the common elements of and the Condominium, and by agreement grant concessions and licenses to persons to provide facilities and services as to and within the Condominium and cause coin vending machines and coin operated equipment and pay telephones to be installed within the Condominium and to purchase same on behalf of and

at the cost and expense of the Condominium Association, or rent same or enter into agreements regarding same; however, all income derived by the Management Firm from the foregoing shall inure to the benefit of the Condominium Association; and all expenses appertaining thereto shall likewise be borne by said Condominium Association. The parties hereto recognize that agreements, concessions and licenses may be entered into to provide facilities and services as specified herein for very nominal or no compensation whatsoever. The Management Firm may enter into same in its sole discretion, and it shall use its best judgment; however, it shall not be responsible for same nor the fact that a greater sum might have been obtained nor a shorter period contracted for.

(Q) Make and collect special assessments for such purposes and against such parties as the Management Firm determines, subject to the provisions of the Declaration of Condominium.

(R) Exercise such powers and rights delegated to it, if any, under the terms and provisions of the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and all Exhibits attached to said Declaration.

(S) If maintenance of the Condominium referred to in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4, or any portion thereof, including any unit, units and/or the common elements, is required due to loss by Act of God or other cause, which is other than normal wear and tear, and which loss is less than "major damage", as defined in the Condominium's Declaration of Condominium to which this Agreement is attached, then in such event, the Management Firm shall be authorized and empowered to determine, assess, charge and levy the costs of repairing and restoring such loss among the unit owners in such proportions as it deems advisable, pursuant to the Declaration of Condominium to which this Agreement is attached, notwithstanding the fact that said loss or damage was, or was not, covered by insurance, and said total assessment shall be equal to the cost of said repair which shall include the costs of the Management Firm's personnel and overhead, materials and equipment, and any and all other contractors, subcontractors, or materialmen as are required. Should the loss be covered by insurance, the proceeds thereof shall be applied as a credit against the total costs of said repair and restoration in such proportions as hereinbefore set forth in this paragraph. It shall be presumed that the first monies disbursed in payment of costs of repair and restoration, shall be from insurance proceeds, where such are received, and then from assessments collected, and, should there be a surplus of such funds, the said surplus shall be distributed to or on behalf of the unit owners, as provided in the aforesaid Declaration of Condominium.

6. Notwithstanding the delegation by the Association to the Management Firm of its power to determine and collect assessments during the term of this Agreement, the Association retains the power to make those assessments as are specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the By-Laws which are attached thereto as Exhibit No. 2.

7. The Management Firm shall apply assessments collected as it determines in its sole discretion as to those items specified in the By-Laws of the Association including the Management Firm's fee and its overhead and expenses, which shall be deemed common expenses. The Management Firm, during the term of this Agreement, may file a lien against a unit owner's Condominium parcel should he fail to pay his assessments or maintenance fee as required and provided in the Declaration of Condominium to which this Agreement is attached and Exhibits attached to said Declaration, and take such other action as provided

in said documents, either in its name or in the name of or as agent of the Association whose name appears at the end of this instrument. The Management Firm may compromise liens in such amount as it deems advisable in its sole discretion, and it may satisfy liens of record and render statements as to the current status of a unit owner's assessments. In the case of a unit committed to interval ownership, any lien against an owner of unit weeks in such unit, shall be limited to the unit weeks owned by the defaulting owner and shall, in no case, be filed so as to encumber the unit weeks owned by any other owner in such unit.

8. The Association shall aid and assist the Management Firm in any reasonable manner requested by the Management Firm as to the collection of assessments, and the said Association shall further aid and assist the Management Firm in any reasonable manner required by the Management Firm so as to simplify the method of collecting the assessments due from unit owners.

9. It is specifically understood that the Management Firm does not undertake to pay common expenses from its own funds and shall only be required to perform its services and make disbursements to the extent that, and so long as, payments received from assessments or other revenue, if any, of the Association whose name appears at the end of this instrument, are sufficient to pay the costs and expenses of such services and the amounts of such disbursements. If it shall appear to the Management Firm that the assessments and other revenue, if any, of the said Association and its members are insufficient, the Management Firm shall forthwith determine such additional assessment as is required and advise the said Association and its members.

10(A). It is specifically understood and agreed that the Management Firm shall perform all of the services required of it hereunder at no cost and expense whatsoever to itself, but solely at the cost and expense of the Association and its members. As compensation, fee or profit for its services hereunder, the Management Firm shall receive a net fee, free from all charges and expenses, of ten (10%) percent of the common expense assessment, or in the case of a unit committed to interval ownership, \$7.50 per unit week, such amount to be designated the "Management Fee". The Management Fee shall be taken into consideration in setting the common expense and maintenance fee assessments. The Management Firm's fee from each Condominium Unit or unit weeks shall commence as of the first day of the month following the date of a Deed from the Developer to the initial purchaser or on the first day of the month following the date of execution of a binding purchase contract for the purchase of a Condominium Unit or unit weeks. During the period of time that the Developer is the owner of a Condominium unit or unit weeks in a Condominium unit committed to interval ownership, it shall not be required to pay the Management Fee provided in this Agreement.

11. The Association shall not interfere nor permit, allow or cause any of the Officers, Directors or members to interfere with the Management Firm in the performance of its duties or the exercise of any of its powers hereunder.

12. The Management Firm shall not be liable to the Association and its members, for any loss or damage not caused by the Management Firm's own gross negligence or willful misconduct, and said Association and its members will and do hereby indemnify and save harmless the Management Firm from any such liability for damages, costs and expenses arising from injury to any person or property in, about and in connection with the Condominium specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, from any cause whatsoever, unless such injury shall be caused by said Management Firm's own gross negligence or willful misconduct.

13. The Association on behalf of its members, or the Management Firm, shall both have the right to assign this Agreement as herein set forth. The Association may assign its right, title and interest herein to another Condominium Association operating and existing under the laws of the State of Florida, and the Management Firm may assign its right, title and interest herein to another management firm operating and existing under the laws of the State of Florida. However, said Assignment shall not be valid unless and until the Assignee thereunder expressly assumes and agrees, in writing to perform each and every covenant and term of this Agreement. The said Agreement shall be duly recorded in the Public Records of the County wherein the Condominium is located and an executed duplicate of said Assignment shall be delivered to the other party of this Agreement by certified mail or its equivalent. The Management Firm may also sub-contract all/or portions of its duties and powers under this Management Agreement.

14. The Management Firm shall be authorized to assess a Condominium unit owner for those items of special assessments as set forth in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the Exhibits attached to said Declaration, and in this Agreement - i.e., maintenance, repairs or replacements caused by the negligence or misuse by a unit owner, his family, servants, guests or invitees, or lessees; or failure of a unit owner to maintain those portions of his Condominium unit and limited common elements assigned to his unit, as he is required to repair and maintain; or violation of the provisions of the aforesaid Declaration of Condominium and Exhibits attached thereto which require the removal of same by the Management Firm and/or which increase the costs of maintenance and/or repair upon the Management Firm, or increase insurance rates and premiums, etc.

15. The power and authority of the Association to amend the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the Exhibits attached to said Declaration, is subject to the specific provisos applicable thereto set forth in the aforesaid instruments.

16. Should any dispute arise as to the rights of any of the parties under this Agreement, including the powers and duties of the parties and all of the terms and conditions of this Agreement, and said dispute cannot be amicably settled and resolved between the parties, then either party shall have the right to submit the matter in controversy for arbitration to the Senior Judge of the Circuit Court in and for the County where the Condominium is located, and the decision of said Judge shall be final. The Court shall have the right to assess costs and attorneys' fees in such amount and against such party as it deems meet and proper under the circumstances.

17. No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same covenant.

18. Time is of the essence in every particular, and especially where the obligation to pay money is involved.

19. No modification, release or discharge or waiver of any provision hereof shall be of any force, effect or value, unless in writing, signed by the parties to this Agreement - i.e., the Management Firm and the Association or their respective successors or assigns.

20. This instrument, together with the Declaration of Condominium to which this Agreement is attached, and the Exhibits attached to said Declaration, including this Agreement, constitute the entire agreement between the parties hereto, as of the date of execution hereof, and neither has been induced by the other by representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein, which are not expressly contained therein.

21. The invalidity in whole or in part of any covenant, promise or undertaking, or any section, sub-section, sentence, clause, phrase or word, or of any provision of this Agreement or the Exhibits attached hereto, and the Declaration of Condominium to which this Agreement is attached and the Exhibits attached to said Declaration, shall not affect the validity of the remaining portions thereof. The provisions of this Agreement shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise the provisions of said Condominium Act shall prevail and shall be deemed incorporated herein.

22. The definitions of the words, terms, phrases, etc., as provided in Article I of the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, are incorporated herein by reference and made a part hereof, and unless the context otherwise requires, said definitions shall prevail.

23. The words, "Condominium Association", "member(s)", "unit owner(s)" and "parcel owner(s)", wherever and whenever used herein, shall include the singular and plural thereof, and the use of any gender shall include all genders, wherever the same shall be appropriate. The term, "Condominium parcel", or "Condominium unit", or "unit", or "parcel", or "unit weeks", or "unit committed to interval ownership", or "interval ownership", or "parcels" and the owners thereof shall be defined pursuant to the Declaration of Condominium to which this Agreement is attached, and same are Condominium parcels and/or units of such Condominium as is created by the aforesaid Declaration of Condominium, or ownership of parts of such parcels or units.

24. When either party hereto, and the Association's members, desire to or are required to give notice unto the other, or others, in connection with and according to the terms of this Agreement, such notice shall be given to the Association, its members, and the Management Firm, as provided in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4.

25. If the Association or its members, shall interfere with the Management Firm in the performance of its duties and exercise of its powers hereunder, or if the said Association shall fail to promptly do any of the things required of it hereunder, then the Management Firm - fifteen (15) days after having given written notice to said Association of said default by delivering said notice to any officer of the Association, or in their absence, to any member of the said Association, may declare this Agreement in default unless such default be cured by the said Association within fifteen (15) days after such notice. Upon default, the Management Firm may, in addition to any other remedy given it by agreement or in law or in equity, bring an action against the said Association and its members for damages and/or specific performance and/or such other rights and remedies as it may have, and the said Association and its members shall be liable for the Management Firm's reasonable attorneys' fees and costs

incurred thereby. All of such rights of the Management Firm upon default shall be cumulative and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

26. Failure by the Management Firm to substantially perform its duties and obligations under this Agreement for a continuous period of forty five (45) days after written notice of default from the Association specifying the default complained of shall be grounds for the said Association's cancellation of this Agreement.

27. If the Condominium specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4 shall be terminated, as is provided in its Declaration of Condominium, then each of the Condominium unit owners shall thereby become a tenant in common and shall, as to his separate interest, continue to be a party to this Agreement and bound by the provisions hereof, and the Management Firm shall manage such interest pursuant to the provisions of this Agreement as the nature of such interest and the context of this Agreement shall permit.

28. The Management Firm shall have the right in its sole discretion to suspend any unit owner and/or authorized user of the recreational facilities from the use of such recreational facilities for any infraction of the promulgated Rules and Regulations pertaining to said recreational facilities for a period not to exceed seven (7) days, for failure to abide by the Rules and Regulations promulgated from time to time for the use of such facilities, and during said period of suspension, there shall be no reduction in the assessments due and payable from said unit owner and/or authorized user. In the case of a unit committed in interval ownership, any such suspension shall be limited to the owner and/or authorized user committing the breach upon which such suspension is based.

29. Should a unit owner fail to pay an assessment within ten (10) days after its due date, the Management Firm may deny to the unit owner and/or the authorized user the use and enjoyment of the recreational facilities until such time as all assessments are paid. In the case of a unit committed to interval ownership, such denial shall be limited to the owner and/or authorized user of the particular unit weeks from which the delinquency arose.

30. Use of the recreational facilities shall be limited to owners of Condominium parcels and unit weeks in such parcels during the term of their ownership, in the Condominium to which this Agreement is attached as Exhibit No. 4 together with spouse and other members of said parcels owner's immediate family. The lessee of a Condominium unit or unit weeks in a condominium unit committed to interval ownership shall be entitled to the use of the facilities in the place of the unit owner. Owners of unit weeks in units committed to interval ownership, and their lessees and licensees, shall be restricted in their use of the recreational facilities, common elements, and limited common elements, to their periods of legal occupancy of said unit weeks.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and have caused these presents to be signed respectively by their proper Officer(s), and their respective Corporate Seals have been duly affixed, this _____ day of _____, 19__.

Signed, sealed and delivered
in the presence of:

KAHLUA PROPERTY MANAGEMENT, INC.

By: _____ (SEAL)
PRESIDENT

Attest: _____ (SEAL)
SECRETARY

"MANAGEMENT FIRM"

KAHLUA OWNERS' ASSOCIATION, INC.

By: _____ (SEAL)
PRESIDENT

Attest: _____ (SEAL)
SECRETARY

"ASSOCIATION"

OFF REC 1270 PG 388

STATE OF FLORIDA)
SS:
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared _____ and _____ to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary of KAHLUA PROPERTY MANAGEMENT, INC., a Florida Corporation, and they acknowledged before me that they executed such instrument as such Officers of said Corporation and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that same was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

(SEAL)
Notary Public, State of Florida
at Large

My Commission Expires:

STATE OF FLORIDA)
SS:
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared CHARLES A. CUTAIA and MARVIN METHENY to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary respectively of KAHLUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, and they severally acknowledged before me that they executed such instrument as such Officers of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Florida Corporation, and that same was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal, at the County and State aforesaid, this ____ day of _____, 19__.

(SEAL)
Notary Public, State of Florida
at Large

My Commission Expires:

OFF. 1270 PC 389
REC.

PERCENTAGE OF OWNERSHIP

EACH UNIT WITHIN THE CONDOMINIUM SHALL HAVE A 1/27TH INTEREST
IN AND TO THE COMMON ELEMENTS AND COMMON SURPLUS, AND SHALL
BE RESPONSIBLE FOR 1/27TH OF THE COMMON EXPENSES OF THE CONDO-
MINIUM.

EXHIBIT NO. 5
TO DECLARATION

PERCENTAGE INTEREST IN UNITS

Each Condominium unit is identified by number and is delineated on the Survey Exhibits collectively identified as Exhibit No. 1 to the Declaration of Condominium to which this Exhibit No. 6 is attached.

In the case of a unit committed to interval ownership, each owner of unit weeks in said unit will own in remainder a percentage share of the unit and the percentage interest assigned to the unit by Exhibit No. 5 hereof according to the following schedule:

<u>Week Numbers Owned</u>	<u>Percentage share in remainder for each week owned</u>
1 - 52	1.9165
53	0.3420

SEAL
CLERK OF COURT
MAY 3 1 33 PM '78
CLERK OF COURT
OFFICIAL
PROCEEDS
154 COURT FLORIDA
RECORDS DEPARTMENT

EXHIBIT NO. 6
TO DECLARATION

David H. Rogel
Shareholder
Board Certified Specialist, Condominium and
Planned Development Law
Phone: 305.260.1015 Fax: 305.442.2232
drogel@beckerlawyers.com



Becker & Poliakoff
2525 Ponce de Leon Blvd, Suite 825
Coral Gables, FL 33134

October 31, 2024

Via E-mail: jfrankel@fmbgov.com

Town of Fort Myers Beach
Judith Frankel, Principal Planner
Community Development
2731 Oak St.
Fort Myers Beach, FL 33931

**RE: 4950 Estero Blvd, Fort Myers Beach
Strap # 28-46-24-W4-02400.00CE
SEZ 20240194– Restoration of a swimming pool, shuffleboard court (1), chickee
huts (2), paver pool deck, and fences on side property lines and 4-foot aluminum
atop existing seawall for pool security. Pool equipment is proposed to be relocated
behind 1978 CCCL line.**

Dear Ms. Frankel:

This firm has the pleasure of representing Kahlua Owners' Association, Inc. ("Association"). They operate the timeshare condominium known as Kahlua Beach Club. We have been asked to address with the Town of Fort Myers Beach, certain requirements associated with a special exception relating to the rebuilding of the swimming pool which serves the condominium property which our client operates.

Initially, we have been asked to advise you and confirm that the Association conducted a meeting of the membership on or about February 23, 2024. That meeting was called for the purpose of determining whether the condominium should be terminated or rebuilt and an assessment made for the rebuilding process. The meeting and vote to rebuilt was noticed to every unit week interest in writing, and the rebuilding vote anticipated that rebuilding would include the rebuilding of the pool at its current location, as anticipated in the application for the special exception. The vote of the membership, in accordance with Article 16, Section 16.3 of the Declaration, as amended and restated, was in the affirmative in connection with rebuilding.

We acknowledge the requirements of Section 34-201(a)(1)b that the application or petition for a special exception must be made by not less than Seventy-five (75%) percent of timeshare condominium owners. The Association operates 1377 timeshare unit weeks. Of the 1377 timeshare unit weeks, 928-unit weeks interest not owned by the Association voted in favor of rebuilding. Under applicable condominium law, a unit owned by the Association is not allowed to vote, per se, on most matters, but the Association did recognize and direct that its unit weeks, totaling 110-unit weeks, would be cast in favor of rebuilding. Taken together, the Town should recognize that a total of 1038 unit support this application because it is the Association, acting on

Town of Fort Myers Beach
Community Development Department
October 31, 2024
Page 2

behalf of the membership as recognized by the vote to rebuild, that is making the application. With this recognition, in excess of Seventy-five (75%) percent of the voting interests voted in favor of rebuilding.

Also, in accordance with Section 34-201(a)(1)b.3, I certify that I have reviewed the Declaration of Condominium, Bylaws and other relevant legal documents and have concluded that the act of applying or petitioning to the town for the special exception violates none of the provisions therein, or any federal or state law regulating condominium and timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

To the extent that the information provided herein is not sufficient to advance the application for the public hearing, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'DHR', with a stylized flourish at the end.

David H. Rogel
For the Firm

DHR/lh
cc: Kahlua Owners' Association, Inc.

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Adams Gary/Tammy: 102/49	1	1			emd, lmovm, emd		
Allen Nathan/Tonya: 201/01, 205/01, 201/02, 203/02, 201/46, 201/47, 201/48, 201/49, 203/49, 306/49, 501/49, 201/50, 301/50, 501/50, 201/51, 201/52, 205/52	17	17			purchase from Bowler, Moffa		
Altmann Nancy: 405/13, 405/14	2	2		M	EM		
Anderson Danny/Gayla: 204/20	1	1					
Anderson Jack/ Jennifer: 106/30	1	1					
Arnold/Toffolo/Michael/Robin: 202/11	1	1		EM	EM		
B & T Group LLC (Stephan & Jamie Stasny): 204/12, 106/13	2	2		EM	EM		
Barkalow, Daniel/Katherine: 504/17, 405/18	2	2		M	Me verify unit weeks 2nd time, she had it backwards		
Barnes David/Natalie: 101/24	1	1					
Barnett Sheryl Lynn: 405/48, 405/49	2	2					
Bartek Joseph/Margaret: 201/14, 201/15, 201/16	3	3		M			
Bartel David/Elizabeth: 402/37	1	1		M			
Beeson Janet: 205/09, 205/10	2	2					
Beinfeld Ronda: 306/27, 306/28, 306/29	3	3		EM	EM, buying 204/26 from stephen king		
Bellew Brady/Melissa: 304/51	1	1		M	EM		
Bellew Rickie/Cynthia: 304/50, 202/51, 202/52	3	3		EM	deb separate ballot for 203/01 signed by James Thomas, listing James Thomas, Kathleen Thomas, Rickie Bellew, and Cynthia Bellew as joint owners, buying 506/02 from lara thise		
Bellew/Thomas Rickie/James: 203/01	1	1					
Berger Lorey: 101/09	1	1		M	EM verify unit weeks		
Berhow/Mewrin/Miller/Lois: 405/47, 502/48	2	2		M			
Berres Frederick/Barbara: 305/02, 201/03, 201/04, 505/05, 505/06	5	5		M			
Berres/Birmschein/Groth: 405/1, 405/02, 405/03, 405/04, 205/05, 405/05, 405/06, 405/07, 405/08	9	9		M			
Bertl Terry/Nancy: 106/39	1	1					
Biancardi Anne: 404/03, 404/04	2	2					
Biggs Kenneth: 304/05, 205/06	2	2			buying 501/07 & 501/08 from Canatta		
Bill, Benjamin/Joyce: 405/42, 405/43	2	2			verify unit weeks, emd		
Biskelonis Brian/Constance: 201/17,201/18, 306/18, 306/19	4	4		EM	EM		
Bissell Jeffrey/Terese: 304/26, 404/26, 405/27, 506/27, 404/28	5	5		M			
Blake Becky: 303/14, 504/15, 504/16	3	3		M	John - verify unit weeks		
Blazek Beatrice: 501/32	1	1					
Blazek Thomas/Nancy: 402/14, 101/15, 303/17, 303/18, 302/32, 405/32	6	6			dc said just came in 02/19/24? asked deb to contact 02/19/24		
Boka Michael/Stephanie: 202/33	1	1		EM	EM		
Bolon Kathryn: 305/38, 305/39	2	2			verify unit weeks		
Boroski Albert/Ann: 201/38	1	1			verify unit weeks, tt,sent us verify		
Bourland Karen/Andrew: 204/40, 205/40, 204/41, 204/42, 204/43	5	5		Prioity Mail	EM		
Bowler Victoria: 204/03,204/04,204/05,204/06	4	4					
Bowman Barbara: 401/40	1	1		M	em		
Boxell Robert/Sherri: 303/25, 303/26	2	2		M			
Brandl Donald/Diane Trustees: 502/05, 502/06, 502/07, 502/08	4	4		M			
Brankey Christopher/Karrie: 301/22	1	1			verify unit weeks		
Brankey Shane/Erin: 306/22	1	1		EM	EM verify unit weeks		
Brauer Gerald/Christine: 402/13	1	1		M			
Bringe Donald/Rita: 302/09	1	1					
Broda Marjorie: 301/33	1	1			verify unit weeks		
Broughton Robert: 206/46, 206/47	2	2		M			
Brown Barbara Sue: 402/22	1	1					

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Brown Gregory: 204/36, 204/37	2	2			verify unit weeks		
Brown Nancy: 205/15	1	1		EM	EM		
Bucholtz Neal R: 205/11, 205/12	2	2			John - verify unit weeks		
Bucholtz Tom/Shirley: 206/09, 206/10, 206/11, 206/12, 206/13, 206/14	6	6			John - verify unit weeks		
Burggraaff Douglas/Kristin: 303/09, 303/10	2	2			me em Wayne		
Burggraaff Wayne/Linda: 304/07, 304/08, 301/09, 301/10, 303/11, 202/12	6	6					
Bussey John/Kathy: 201/20	1	1			verify unit weeks, em'd		
Cabral Wendy: 501/34, 506/35	2	2		M	EM verify unit weeks		
Caccamise John/Tracy: 502/30	1	1		M			
Cahill James/Laura: 505/45	1	1			verify unit weeks		
Carroll Ryan/Melissa: 101/51, 101/52	2	2		M	EM		
Cassetty Rosemary: 506/16, 202/17	2	2		M			
Caughell Anthony/Jessica: 206/36	1	1					
Cavada George: 305/32, 304/33, 304/34	3	3		M	magnolia landing in person		
Cecala Maria & Hutchison Rosana: 505/32	1	1			John - verify unit weeks		
Cerione Jay/Gruetzmacher Kristen: 401/35, 401/36	2	2					
Chamberlain Robin: 302/36, 303/37	2	2					
Chiaro Gabe & Velma: 102/44, 102/45	2	2			gabe passed away		
Chiaruttini Margaret: 202/28, 206/29	2	2					
Chiavelli Mark/Keli: 205/45, 205/46	2	2					
Christine Lawrence Trust: 203/13	1	1					
Ciciretto Elizabeth: 503/31	1	1					
Clark Joseph/Teresa: 205/22	1	1					
Clark Raymond & Dicks Cheryl: 301/51, 301/52	2	2			John verify unit weeks		
Clasen Mary/Paul: 302/41	1	1		M			
Coady Scott/Cheryl: 502/09, 502/10, 502/11, 502/12	4	4			deb, recvd but needs verify		
Coleman Jeff/Penny: 201/09, 201/10, 201/11	3	3		EM	EM		
Coleman Patricia: 201/12, 201/13	2	2		EM	EM		
Combest Art: 102/22, 102/23	2	2			John verify unit weeks		
Connor Christine: 204/29	1	1					
Cook Carolyn: 205/07, 205/08	2	2			John verify unit weeks		
Cooke Claudia: 306/35	1	1		M			
Cosenza Michael/Kathy: 306/09, 306/10	2	2					
Costa Joseph/Verga Stephanie: 106/35, 502/36	2	2		M			
Cox Deborah/Les:101/34	1	1		EM	EM		
Craine/Murphy/Twitchell Martin/Caroline/Kathryn: 404/13	1	1					
Cravens Michael/Kristin: 403/47	1	1		EM	EM		
Crawford Michael/Marlene: 403/17, 403/18	2	2			John - verify unit weeks		
Creps Joy: 405/30, 405/31	2	2		EM	EM		
Cripe James/Nancy: 505/01, 505/02, 505/03, 506/04, 506/05, 506/06, 504/51, 504/52	8	8		EM	EM		
Crockett Charles/Penelope: 403/44, 403/45	2	2		M			
Crook Russell/Sheri: 403/29, 301/38	2	2					
Cruthoff Robert T: 406/17	1	1			verify unit weeks		
Curley/Lievois John/Elise: 503/08	1	1		M			
Curtis Marlene: 302/33, 302/34	2	2					
Daugherty Terry/Polly: 302/38, 302/39, 106/40	3	3			I sent verify em 02/16/24		
Davidson Stephen/Patricia: 102/36	1	1			deb - verify unit weeks em said she owns 102/35, and sold 102/36		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Davies William/Mary: 102/46, 302/47, 505/48, 505/49, 505/50	5	5			deb		
DellaMaddalena Nancy: 302/11	1	1		EM	EM Me em for verification		
Delzell Gary/Amy: 402/08, 402/09, 402/10, 402/11, 305/12, 305/13, 305/14, 305/15, 403/16, 405/37, 405/39	11	11		EM	EM		
DeRoma James/Dianne: 303/12	1	1			John - verify unit weeks		
Diebold Lynn: 301/13	1	1					
Dimartino Joseph/Esther: 301/37	1	1			verify unit weeks		
DiMasi Nicolas/Wilma: 101/44, 101/45, 101/46	3	3			john verify unit weeks, tt wilma, recvd verify		
Dobberstein Julie & Douglas: 506/09, 504/10, 506/10	3	3		EM	EM		
Dolman Eric/Anita: 502/51, 502/52	2	2		M			
Donald Greg/Cheryle: 305/18	1	1		M	verify unit weeks		
Douglas Marianne: 401/16, 401/17	2	2		EM	EM		
Elger Jerry/Monica: 301/36	1	1		M			
Elie Michelle: 203/34	1	1			verify unit weeks		
Elliott Greg: 402/36	1	1					
Escude (Phares) Susan: 501/33	1	1		M	verify unit weeks		
Estervill Miguel/Laura: 303/33	1	1		M			
Ewald David/Karen: 302/10, 304/11	2	2		EM	EM verify unit weeks		
Ewald Susan: 304/12, 304/13, 304/14, 404/42, 404/43	5	5		EM	EM verify unit weeks		
Fehseke Marguerite: 402/48, 402/49, 402/50	3	3		M	EM		
Ferrigno William/Regina: 401/32, 401/33	2	2					
Fil/Mathew&Finn/Kellia: 402/23	1	1					
Filz Susan/John: 304/48, 303/49, 303/50	3	3			emd		
Flowers Hubert/Penny: 402/01, 402/02, 204/51	3	3		EM	EM verify unit weeks		
Fox Robert: 304/1, 304/02, 304/03, 304/04	4	4		M	deb tt, did mail in yes vote		
Frank Sandra: 102/20, 204/21, 502/49	3	3					
Franks, Tom/Shannon: 302/42, 302/43	2	2					
Friedman Brian/Burt/Hope: 101/17, 302/27, 301/28, 301/29	4	4		EM	EM		
Friedman Brian: 101/18, 505/19, 301/20, 102/21, 401/26, 501/26, 501/27, 501/28	8	8		EM	EM		
Gabler Harvey/Mary: 303/51, 303/52	2	2			John verify unit weeks son scott		
Garman Lynn: 304/15, 304/16	2	2		M			
Garrison James/Tina: 406/01, 504/01, 406/02, 504/03	4	4			deb		
Geerholt Joseph/Kristy: 201/23, 301/23	2	2		EM	EM, em'd us verification		
Geriak John/Angelina: 404/27	1	1			John verify unit weeks em'd 02/15/24		
Getz Stacy/Jason: 506/36	1	1			John verify unit weeks		
Gilbert Sandra: 503/21, 505/21, 503/22, 205/26, 205/27, 505/46, 505/47	7	7			Me em'd to verify unit weeks, 22/505 s/b 21/505, all others are ok		
Gilbraith Julie: 101/16	1	1					
Giles David, Herli Gayle, 202/07, 202/08, 503/09, 503/10, 503/11	5	5			asked deb to contact, em'd yes but need ballot		
Glenn Gary/Deidre: 202/20	1	1			John verify unit weeks		
Gmurowski Arthur: 505/51, 505/52	2	2		M			
Gmurowski Romulald/Jolanta: 403/51, 403/52	2	2		M			
Goldstein Darren/Finneran Katie: 503/28	1	1		EM	EM		
Goldstein Ellen/Darren/Johnathon: 302/28	1	1		M			
Goldstein Jonathan: 303/28	1	1		M			
Gonzalez Claudio: 101/31	1	1		M			
Gonzalez-Crato Jeannette: 205/33	1	1					
Gooch Laura/Brett: 302/31	1	1		M			
Goostrey Daniel/Peggy Lee: 305/24, 305/25, 404/24, 404/25	4	4		EM	EM		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Gordon Brian/Elizabeth: 205/42	1	1			verify unit weeks		
Goth Leanne & Michael: 506/47, 506/48	2	2		EM	EM		
Graef/Kolaskinski Paul/Larry: 206/28	1	1					
Green Joan: 301/17	1	1					
Greene Bonita/McCartney Bryan: 502/15	1	1		EM	EM		
Greenwood Wayne/Patricia: 504/02, 202/03, 501/04, 506/52	4	4		EM	EM		
Guy Glenn/Jill: 405/17	1	1			John - verify unit weeks Im 02/15/24		
Hall David/Terry: 401/43	1	1		M			
Harris Charles/Barach Barbara: 205/35	1	1		M	John - verify unit weeks		
Harris Kenneth/Nancy: 406/15, 406/16	2	2		EM	EM		
Hartman Karen D.: 402/12, 403/13, 403/14	3	3		EM	Also mailed ballot, but that one didn't have unit #s on it		
Hartzell Neil: 101/32, 102/32, 202/32, 204/32, 306/32, 404/32	6	6		M	deb-julie passed away, one ballot for all 6 units signed by Neil, but Neil's name is not on 404/32, now recvd deed changing 404/32 to neil hartzell		
Hass James/Gina: 506/13, 506/14	2	2			John verify unit weeks		
Helman James & Stacy: 302/12, 303/41, 401/42	3	3			John - verify unit weeks		
Herrmann Richard/Jennifer: 102/30	1	1			John - verify unit weeks		
Herzer Gene/Marilyn: 403/48, 302/49	2	2			verify unit weeks		
Hicks David/Lorely: 302/35	1	1					
Hicks Gary/Linda: 402/24, 402/25, 402/26, 402/27	4	4			deb gary passed away		
Hicks Monica (Barnes): 106/32	1	1			verify unit weeks		
Higgins Deborah: 506/45	1	1			verify unit weeks		
Hirsch Wallace/Kate:405/09, 405/10, 501/11, 501/12	4	4		M	EM verify unit weeks		
Hirschman James: 204/15, 502/16	2	2					
Hitzeroth Wesley/Betty: 205/16	1	1			John - verify unit weeks		
Hughes Keith E: 406/22, 202/36, 202/37	3	3					
Humphries Steven/Deirdre: 506/18	1	1		M			
Hunter Scott/Regina: 102/13, 202/14, 202/15, 202/49, 202/50	5	5			asked deb to contact, J verify unit weeks		
Imsande Barry/Debra/Lauren: 203/03, 203/04	2	2		M			
Jaster Gregory (Cherie): 203/50, 402/51, 402/52	3	3		EM	EM, em'd us verification		
Jaster Jeff: 305/46, 305/47, 305/48, 305/49, 305/50, 405/50, 102/51, 305/51, 305/52	9	9			Deb Im 02/19/24, sent text, asked him to vote		
Jawroski Katerina: 302/21	1	1					
Johnson Jeff/Susan: 306/11, 306/12	2	2			John - verify unit weeks		
Jolliffe Doug / Patricia: 406/45	1	1			not buying from Dec		
Jostes Dennis/Linda: 304/06	1	1		EM	EM, I em'd 02/16/24 to verify unit weeks John was able to open ballot on his iphone, Linda will mail original 02/10/24 em her when recvd		
Joyce Edwin & Kristi: 306/24, 306/25	2	2					
Julian Janet: 306/41, 306/42, 403/42, 306/43	4	4		EM	EM		
Kaminsky Barbara: 301/46, 301/47	2	2					
Kapla Richard/Sarah: 504/45, 402/46, 402/47	3	3		M			
Kellogg Margaret: 402/07	1	1		M	02/21/24 they em'd to see if ballot recvd by usps. Replied and asked them to email ballot w/ u/w		
Kendall Halle: 503/19	1	1					
Kendall Linda: 101/19, 202/19	2	2					
Keskey/Wold William/KennyLow: 205/20, 205/21	2	2			verify unit weeks		
Kindred John & George Faith: 301/34	1	1		EM	EM		
King Nancy: 402/03, 402/04, 402/05, 402/06, 402/28	5	5			verify unit weeks		
Kirby Richard/Mary: 306/13, 306/14	2	2		M			
Kirby Timothy/Cindi: 502/13, 502/14	2	2		M	John, listed 506/13 and 506/14		
Kittle Terry/Cindy: 204/16, 204/17, 406/18	3	3		M	sellin all three to Raysin?		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Klein James/ Mary: 501/03, 101/04, 306/52	3	3	VERIFIED YES VOTES				
Kleinlaut Paul/Martha: 202/45, 202/46	2	2			verified names		
Kline Todd: 404/46, 404/47	2	2					
Kostka Dennis & Deborah: 406/12, 406/13, 406/14	3	3		M			
Kramer Jay/Aisar: 501/01, 501/02	2	2		EM	EM		
Kratt Rudy/Ursel: 305/37	1	1		M	needs signature, sending in mail		
Kuchinsky Lorraine: 503/44	1	1		M	John, only listed 44		
Kwechin/Federico Deborah/Marjorie: 301/32	1	1		M	John verify unit weeks wrong em 02/15/24		
Lackey Brian: 502/02, 305/03, 305/04, 504/05, 504/06, 304/43	6	6		EM	EM verify unit weeks		
Lackey Gary/Elizabeth: 403/01, 403/02, 403/03, 403/04, 201/05, 201/06	6	6		EM	EM		
Ladd Rick/Lissa: 101/10, 202/42	2	2		EM	EM		
Laffert Roland/Patricia: 203/16, 305/17	2	2		M	EM		
Lambremont Janice: 101/33, 102/34, 102/35	3	3		M			
Lamont Michelle: 406/04, 406/05	2	2			per em mailing ballot 02/14/24		
Lamson/Lizotte, Judith/Melissa: 206/19, 305/20	2	2		M	EM		
Larson Charles (Wendy Tomonovich): 202/48	1	1		EM	EM verify unit weeks		
LaSalvia III Anthony: 306/15, 305/16, 306/16	3	3		M			
LeMaire Louis/Joan: 402/29, 402/33	2	2			verify unit weeks		
Lessa Dominick/Blanton Susan: 301/21, 505/36	2	2			verify unit weeks		
Lessa Vincent/Miriam: 502/33, 101/41	2	2			verify unit weeks		
Lievois Joseph: 401/05, 504/07	2	2			John, voted on old BOD ballot, needs to send correct callot em'd		
Lievois Martin: 401/03, 401/04, 504/08	3	3		M			
Lievois Paul: 305/07, 401/08	2	2					
Lievois Thomas M: 401/06, 401/07	2	2					
Lincoln Keith/Susan/Dan/Sam: 403/23, 403/24, 304/25	3	3					
Lindgren Richard/Maureen: 205/44, 302/45, 204/46, 503/47	4	4			deb lmovm		
Lindgren/Marissa: 204/45	1	1					
Liszak-May Jacquelyn R: 101/47	1	1		EM	EM		
Lofing Traci: 101/28	1	1		M			
Long Elizabeth: 505/09	1	1		EM	EM		
Long Thomas: 505/10	1	1		M			
Long Tommy, Jr: 204/09	1	1					
Ludwig Ralph: 306/03, 306/04	2	2		EM	EM		
Ludwigson William/Karen: 302/13	1	1		M			
Luedke Mark/Michelle: 505/37, 505/38	2	2					
Luther William: 406/48	1	1			verify unit weeks, sent us em		
Lynch/Wendy: 302/23, 506/23	2	2					
Madden John/Tamie: 206/21, 102/48, 403/49	3	3		EM, M	EM		
Magnacca Allan: 302/46	1	1		EM	EM verify unit weeks		
Manos Jr Sam: 102/07, 203/25, 101/36, 101/37	4	4					
Manos Sam: 503/26, 503/27	2	2					
Marino Deborah: 403/25, 504/25, 506/26, 504/36	4	4			deb lmovm		
Marino Pearl: 506/24, 506/25	2	2					
Martinac James/Hill Lisa: 106/48, 106/49, 106/50	3	3			verify unit weeks		
Mathie Shannon & Sohpia: 101/22	1	1					
Maxwell Charles/Melissa: 404/01, 404/02, 502/03, 502/04, 403/50, 404/51, 404/52	7	7		EM	EM		
Maxwell Evan: 401/01, 301/49, 306/50, 401/50, 401/51, 401/52	6	6		EM	EM		
McAvoy James/Natalie: 506/49, 302/50	2	1		EM	EM bought 506/49 from Motto 03/04/24, adding one more YES vote. Motto did not vote.		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
McCann Russell/Susan: 303/36	1	1		M	verify unit weeks		
McCarty William/Viola: 206/48, 206/49	2	2		M			
McClain Michael/Daniel: 101/49, 202/25	2	2		M			
McDonald Bonnie/Cruthoff Todd: 503/17	1	1					
McFarren Randy: 102/08, 401/09, 401/10	3	3					
McGarvey Deborah & John: 403/28	1	1					
McGovney Scott/Cynthia:406/19, 401/20, 406/20	3	3					
McGuire Ramona: 406/03, 505/04	2	2		M			
McKeon Susan Marie: 205/31, 506/32	2	2					
McNeely Bruce/Donna: 401/48	1	1		EM	EM verify unit weeks		
Meissner, Raymond: 504/38	1	1		M			
Melson James/Judy: 201/26, 201/27	2	2					
Metz James/Linda: 401/44, 401/45, 501/46, 501/47	4	4			verify unit weeks		
Meyer Gregory/Gina: 206/01, 206/02, 202/21, 406/50, 206/51, 206/52	6	6			John verify unit weeks		
Meyer Joseph: 401/02	1	1					
Michon Katherine/Bruce 404/21	1	1		M			
Mielke/Southwick Wayne/Lynn: 505/22	1	1					
Miller Chatlotte: 302/18, 301/19	2	2		M			
Miller, Thomas: 102/18, 302/19	2	2					
Minniti Anthony: 401/30	1	1					
Mirabitur Tim/Rosemary: 505/40, 505/41	2	2			John verify unit weeks		
Moffa Robert/Sharon: 503/13, 504/13, 503/14, 205/48, 205/49, 406/49, 205/50 voted at meeting	7	7			Deb working with, waiting on hasn't paid		
Morgano Vito/Michelle: 402/17, 505/17, 204/18, 402/18, 505/18	5	5			John verify unit weeks		
Muinde Charles/Stacy: 504/09	1	1		M			
Mullucey Raging: 106/28	1	1			verify unit weeks		
Myers Michael/LeAnn: 203/26, 406/26	2	2					
Noack Lori 303/27	1	1		EM	EM		
Nocek Gregory/Cornelia: 403/36, 403/37	2	2			John verify unit weeks		
Norek Thomas: 203/48	1	1		M	verify unit weels		
North James/RuthAnn: 102/01, 102/02, 102/52	3	3		M			
Norton William 203/21	1	1					
O'Brien Sean: 403/27	1	1		M			
O'Halloran Roger/Judith: 203/24, 205/24, 102/29, 306/36	4	4			John verify unit weeks		
Okopny Stephen/Andrea: 203/51, 203/52	2	2			john has, correct		
Ouellette Francis/Lynne: 401/39	1	1		EM	EM verify unit weeks		
Page Robert/Mychalanne/Dillan: 204/49, 204/50	2	2					
Papes Laurie: 305/31, 306/31	2	2					
Paredes Manuel/Judith: 206/33	1	1					
Parker James/Ellen: 405/25	1	1			verify unit weeks+F535		
Pearce Ted & June: 203/18, 203/19	2	2			John verify unit weeks		
Pearce Tomas & Victoria: 306/23	1	1		M	EM		
Pearsall/Golitzen Mary Louise/Kathleen: 403/05, 403/06, 403/07, 403/08	4	4		M			
Perkins, Thomas: 505/08, 202/09, 202/10	3	3		M, M	EM		
Pers Stephanie/Helton Brenda: 205/03, 302/17 Helton's vote	2	2		EM	EM		
Pers Stephanie/Helton Brenda: 206/17, 206/18 Pers' vote	2	2		EM	EM		
Person Mark/Dawn: 106/24, 303/24, 106/25, 501/25, 106/33	5	5		EM	EM		
Peter Ramona Christine: 204/01, 204/02	2	2			verify unit weeks		

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Peters Brandon: 403/32	1	1					
Peters Brent/Sheri: 504/32	1	1		EM	EM		
Peters Matthew: 502/32	1	1					
Peterson Keith/Sharon: 406/40	1	1		EM	EM		
Pfeffer Carla & Kelly: 201/21, 201/22	2	2		EM	EM		
Phillips Helga: 504/18, 504/19, 503/20	3	3		M	EM bounced back		
Phillips, Gerald/Roth, Shirley: 201/36	1	1					
Philo Bradley R: 101/14	1	1					
Philo Deborah/Lasswell Kyle: 301/15, 301/41	2	2		M			
Philo Gary: 404/12, 401/13, 301/14	3	3		M			
Philo James/Cheryl-Lyn: 101/13, 401/14	2	2					
Philo Susan C: 404/11	1	1		M			
Piercy Garland/Nancy: 206/23, 505/24	2	2					
Pinkul Joe/Shirley: 502/21, 502/22	2	2			verify unit weeks		
Pizzonia Patrick: 101/02, 206/20, 106/36, 101/50	4	4			John verify unit weeks		
Planer Frederick/Kathleen: 506/17	1	1		M	John, white out and diff color pen, contact to confirm		
Poirier Susan: 404/15, 404/16	2	2		M			
Porter Jeff: 102/19	1	1		M			
Porter Michael: 102/24, 102/25, 302/25, 102/26	4	4		EM	EM		
Proctor Robert & Janet: 304/09, 304/10	2	2		EM	EM		
Quinn William/Jill: 503/43	1	1					
Randazzo, Cosmo/Amy{Amelia}: 404/07, 404/08	2	2			verify unit weeks em'd 02/15/24,will send us em		
Randazzo,Maria/Frank: 404/09, 404/10	2	2		EM	EM		
Raysin Matthew/Deanna: 106/16	1	1			em, buying 3 from kittle		
Reichert Gary/Bonnie: 301/48, verified vote at meeting	1	1			verify unit weeks, no em no ph#		
Reid Cynthia: 306/33, 306/34	2	2					
Rice James/Meta: 503/12	1	1		M			
Ring Craig/Jillian: 204/44	1	1					
Rivera/Torres Jennifer: 202/23, 405/23	2	2					
Roberts Patrick/Katherine: 301/26, 301/27	2	2		M			
Robinson Aeren/Coral: 102/28, 303/29	2	2		EM	EM		
Rogers Karen: 202/29, 202/30	2	2					
Root Lori/James 304/24	1	1			verify unit weeks		
Rosa Frank: 404/05, 404/06	2	2		EM	EM		
Rosenfeld Stephen/Rae: 506/28, 506/29	2	2			John verify unit weeks		
Ruvo/Rosa Richard/Mary Anne/Frank: 305/05, 305/06	2	2		EM	EM		
Saul Roger/Mary: 505/39, 502/40	2	2			verify unit weeks		
Sawyer Edward/ Rami: 101/5, 101/06, 101/07, 101/08, 403/09, 403/10, 403/11, 403/12, 404/23, 201/24	10	10		M			
Scanlon George/Patricia: 501/17, 501/18	2	2		M			
Schlesselman Loretta: 301/39	1	1			verify unit week, barbara ware tte		
Schlotterbeck Katherine/Jonas: 101/29	1	1		M			
Schlotterbeck Paul & Rebecca: 101/30	1	1					
Schomberg Chad/Gwen 306/17	1	1			John verify unit weeks em'd 02/15/24		
Schreiber David/Kate: 106/01, 106/51, 306/51, 106/52	4	4		EM	EM		
Schwede Jeffrey/Lauren: 504/44, 503/45, 503/50	3	3			verify unit weeks		
Schwede Jeffrey: 502/19	1	1			buying 501/05 and 501/06 from Donald Ira		
Scott Jane: 506/41	1	1		EM	EM		
Sesto Denise: 503/46, 205/47, 101/48	3	3		M			
Sharp Joan D: 506/50, 506/51	2	2					

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Shavlik Guy/Verna: 201/44	1	1		EM	EM verify unit weeks		
Sheaffer Deborah: 506/11, 506/12	2	2		EM	EM		
Sherman Bob & Carol:206/16	1	1		M			
Sherrow Galley Sharon Trustee: 301/11, 301/12, 303/13, 302/14, 302/15, 302/16	6	6		M	EM		
Shields Kathleen & Makenzie Poole Karim: 305/23, 405/40, 504/41	3	3					
Shull Linda: 106/05, 106/06	2	2			John verify unit weeks no good em		
Sieferd Dennis: 203/20	1	1			John verify unit weeks		
Smith Becky J: 304/20, 304/21, 502/43 voted at meeting	3	3					
Smith Carla: 503/18	1	1		EM	EM		
Smith Douglas: 502/44	1	1					
Smith Michael/Bonnie: 305/08, 305/09, 305/10, 101/11, 401/11, 401/12	6	6		EM	EM		
Smith Richard/Christine: 401/18, 401/19	2	2					
Snip, Christy: 505/29	1	1					
Snover John/Yolanda: 505/43, 505/44	2	2					
Sotomayor Javier & Monica: 504/33	1	1					
St. Pierre James/Barbara: 106/11, 106/12, 102/39	3	3		EM	EM verify unit weeks		
St. Pierre Jeffrey/Maura: 406/39	1	1			John verify unit weeks em'd 02/15/24		
Starkey Ivan/Tanya 404/36	1	1		EM	EM verify unit weeks		
Stewart Shirley: 406/24, 101/35	2	2		M	need to verify unit weeks		
Stimac Brenda: 201/40	1	1			John verify unit weeks em'd 02/15/24		
Stimac Stacie: 203/40	1	1			verify unit weeks		
Stueve Robert/Cynthia: 302/24, 501/24	2	2					
Sutton D: 503/48	1	1					
Sweatt Penelope: 106/20, 106/21, 506/20, 506/21	4	4		EM	EM		
Tagliente Albert/Patricia: 404/29	1	1			John verify unit weeks em'd 02/15/24		
Talcott Eugene/Vickie: 101/39, 101/40	2	2					
Terrasi Loretta: 503/23, 504/24	2	2		EM	EM needs verification, I em'd 02/16/24 check for completeness, mark sent email asking if ballot was ok		
Thise Nancy: 506/07, 506/08	2	2		EM & M	EM John verify unit weeks		
Thomas/Flowers James/Kathleen, Penny/Hubert: 204/52	1	1		EM	EM deb verify unit weeks		
Thompson Jane A. Revocable Trust: 403/15	1	1		M	Jane voted for 403/15 and 406/07		
Thompson William & Jane: 406/06, 406/07	2	2		M	William voted for 406/06		
Thursam Gary/Judy: 106/09, 106/10, 305/11, 306/39	4	4		M	EM		
Tippett Kelly/Janet: 402/19, 402/20	2	2		EM	EM		
Tomc John/Dorothy: 205/04	1	1			verify unit weeks		
Trumbull Melissa: 402/42, 402/43, 402/44, 402/45	4	4		M			
Tucker Mark/Bettina: 201/32	1	1					
Turner, Jhncie: 304/52	1	1			I em'd 02/20/24 to verify unit weeks		
Vanbuskirk Todd/Angela: 401/47	1	1					
Vanderploeg Charles/Connie: 303/07, 303/08	2	2					
Vena Jody: 203/23	1	1		M			
Veni Gaetano/Cheryl: 106/17, 205/17, 106/18, 202/18	4	4		EM	EM		
Veni Joseph: 502/18	1	1		M			
Verrengia Nicholas/Theresa: 501/36	1	1		M			
Von Hoff Burt/Kathleen: 206/37	1	1		M			
Wade Nicole Louise: 405/38	1	1					
Wadle Sylvia/Larry: 305/26, 305/27	2	2		EM	EM verify unit weeks		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Weber Carol: 201/30, 201/31	2	2		M			
Wegman Glenn/Jane: 505/30, 505/31	2	2					
Wegscheider Fred/Patricia: 106/03, 106/04	2	2					
Weibel Otto: 102/09, 102/10, 102/11, 102/12	4	4			deb just recvd ballot		
Wells Dakotah A: 304/32	1	1		EM	EM		
Wells Danny, Tracy & Catherine: 401/37, 401/38	2	2		M	verify unit/weeks no ph #, no em, ballot returned unable to forward		
Welter Julie: 303/47	1	1					
Wenzel, Brian & JoAnn: 503/01, 503/02, 503/03, 503/04, 504/04, 503/05, 503/06, 503/07	8	8		EM	EM		
Werner, James/Sandra: 404/49, 404/50	2	2		M	EM, also recv'd ballot via US mail		
Whelpley Thomas: 506/39	1	1					
Whipple Lance: 501/38	1	1					
White/Colleen: 403/19, 404/19, 403/33, 405/33	4	4		M			
Whitney Sarah: 501/13	1	1					
Wiedeke Linda: 405/11, 405/12	2	2		M	em		
Wiegel Corey/Jolene: 302/51, 302/52	2	2			resent em 030224 for verification of 2 weeks buying 202/05 & 202/06 fro Orth		
Wilde Robert & Tammera: 504/50, 501/51, 501/52	3	3		EM	EM		
Wilson Dale/Bette Jane: 202/01, 202/02, 206/03, 206/04, 206/05, 206/06, 206/07, 206/08	8	8			Daughter Nancy Papas Trustee		
Wilson Rodney/Debra: 301/01, 301/02, 301/03, 301/04, 301/05, 301/06, 301/07, 505/07, 301/08	9	9		M			
Wollett James/Phyllis: 306/05, 306/06, 306/07, 306/08	4	4		EM	EM		
Yasko Toni: 203/30, 203/31	2	2					
Young Wayne/Barbara: 303/39	1	1		M			
Zurawski Edward/Dianne: 505/16	1	1		EM	EM		
Zurweller Phillip/Gina: 106/19	1	1					
Beck Jill: 305/21, 202/22, 302/22	3		3		selling all three to chuck deborah higdon		
Bissell Thomas/Amy: 204/28, 401/28, 405/28, 505/28	4		4	EM	EM verify unit weeks		
Boldak Nicole (Rosa): 304/38	1		1	M			
Bramwell Virginia: 502/17	1		1	EM	EM verify unit weeks, giving 502/17 to jennifer barkalow guy		
Buehner Frank: 506/40	1		1				
Burnett Sandra Lee: 204/48, 302/48	2		2	M	John verify unit weeks		
Cahalan Thomas/VanAsten Lee: 506/19	1		1				
Casola, Marion/James: 501/39, 501/40, 501/41, 206/42	4		4		verify unit weeks		
Chandler John/Mary Ann: 203/45	1		1		verify unit weeks was ok, john to return to me		
Childs Susan/Simson Kim: 402/21	1		1				
Cole Carole:303/01, 303/02	2		2				
Cole Lawrence/Donna: 303/35	1		1				
Dasaro Angela: 303/31	1		1				
Dasaro Frank: 305/30	1		1		verify unit weeks		
Dasaro Joseph: 301/31	1		1		John - verify unit weeks		
Desmond James/Donna: 301/18, 305/36	2		2				
Donelan Norma: 502/29, 501/30, 403/34, 403/35 voted at meeting	4		4		deb lmovm daughter kathy asked them to vote		
Fishback Cheryl: 205/38	1		1	M			
Fisher Edmund/Diane: 501/14, 501/15, 501/16, 404/20	4		4		deb lmovm asked them to vote		
Goodenough Nicolas/Lynn: 402/39, 402/40, 502/41	3		3				
Guerin Patrice/Muriel Couvet: 405/44, 405/45, 405/46	3		3				
Hanrahan Sr Byron/Donna: 101/23	1		1	M			
Hassett,Jr Daniel/Maryanne: 402/30, 502/31	2		2	M			
Heinisch Danny & Kelly: 206/43	1		1				

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Hendrickson John: 405/22	1	VERIFIED NO VOTES	1		verify unit weeks		
Hill Michael: 303/20, 503/40	2		2	M			
Hinkle Gary: 501/19, 501/20	2		2		verify unit weeks		
Johnson Herbert/Lois: 303/38	1		1				
Kaszniak Raymond/Debra: 303/22, 304/23	2		2				
Kaszniak Shaun /Amanda: 502/23	1		1		John verify unit weeks		
Kay Victoria/DeFreese Isabelle: 505/23	1		1	EM	EM		
King Steven/Suzanne: 204/26, 102/27, 203/27, 204/27	4		4	EM	EM, deb verify unit weeks, sent em, selling 204/26 to Beinfeld ronda		
Koss Michael/Linda: 406/32, 406/33	2		2	M			
Kroening Michael & Nancy: 202/47	1		1	M	EM		
Krolak Debora/Clas Wanda: 101/20, 101/21, 405/36	3		3				
Krolak William & Nancy: 203/41, 305/41, 305/42	3		3		John has ballot, I sent email 02/16/24		
LaRose David/Candace: 202/34, 202/35	2		2	M			
LeBoeuf Michael/Janet: 504/22	1		1	M			
Lenfert Robert: 502/38, 502/39	2		2		verify unit weeks		
Leonard Dave/Mary Jo: 102/33, 402/34	2		2				
Liguori Thomas/Katherine: 403/38, 403/39	2		2	M			
Macdonald Margaret: 501/35	1		1				
Mace Marlene: 106/37	1		1		Em'd 02/18/24 to verify unit weeks, also wants to sell/deed back, is listed with RAL "offer"		
Mahoney James/Nella: 503/30	1		1	EM	EM		
Martin Virginia: 206/35	1		1	M			
McMaster Kathleen: 204/35	1		1		verify unit weeks		
Menke Family Trust: 203/09, 203/10	2		2	EM	EM		
Michaelson Eric/Barbara: 504/39	1		1				
Middleton, Patricia: 402/32	1		1		verify unit weeks		
Mildner Laura: 406/38	1		1				
Mitchell Gregory/Amy: 201/45	1		1	M			
Murray Damon: 404/34, 405/34	2		2	EM	EM		
Neama Ralph/Antoinette: 405/29	1		1	M			
Nicol Stephen/Thurmer Susan: 302/44	1		1		verify unit weeks		
Nuss Richard: 501/21, 501/22, 301/35	3		3	M			
Parham Milton/Diane: 505/27	1		1				
Phillips Karen/Kern Melvin: 302/37	1		1				
Preston Vicki: 206/22, 401/22	2		2	M	recvd email she hasn't recvd her packet, em'd one to her on 02/08/24		
Pszeniczny Carol: 203/17	1		1		didn't mark yes or no, verify unit weeks		
Rathjen Lars/Janice: 106/29	1		1		questions for bod no replies		
Richardson Shone/Renee: 205/30, 206/30	2		2	EM	EM verify unit weeks		
Rindfuss Joan: 504/29	1		1	M	verify unit weeks, sending em		
Santos Amanda/James: 304/17, 304/18	2		2	M			
Serratore Anthony: 406/37	1		1		John verify unit weeks		
Sharo Brad/Greg: 301/30	1		1	M			
Sharo Michael/Carole: 401/24, 401/25	2		2		John verify unit weeks I em'd 02/16/24		
Skehan David/Jo Anne: 504/26, 504/27, 504/28	3		3	M			
Smith Richard/Rosemary: 404/22	1		1	M			
Snyder Bruce/Lynn: 304/49	1		1		verify unit weeks		
Sommerer Carla: 503/32, 503/33, 503/34	3		3		verify unit weeks		
Stephenson Pamela: 303/34, 503/35	2		2		verify unit weeks		
Stockbridge David/Denise: 303/43, 202/44	2		2		need to verify unit weeks, deb tt dave, recvd verify		
Stone Valerie/Rivett Michael: 402/38	1		1	M			

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's	
			4 3 1 1 2 1 1 2 1 1 1 1 3 1 1		John - Thise had sent ballot registered mail but green card was still attached to envelope, let them know ballot received 1m & mailed green card back, selling 506/02 to Rick cindy bellew			
Thise Brian/Lara: 506/02, 506/03, 502/25, 502/26	4			M				
Thomas John/Suellen: 502/01, 506/01, 106/02	3							
Thurmer Susan/Nicol Stephen: 404/45	1			M		verify unit weeks		
Tippett Jeffrey/Janet: 302/20	1					verify unit weeks		
Toews, Tracy: 205/43, 406/42	2							
Trewyn, Nancy M: 404/38	1			M				
Vadala Gayle/Miller Karen/Mahoney Nella: 401/21	1			EM		EM		
Vanderbilt Barbara/Curewitz Richard: 205/13, 205/14	2					verify unit weeks		
Walden Lucretia A: 504/37	1							
Walter Carol: 501/48	1			EM		EM		
Ware Sarah: 303/42	1							
Weber James/Janet: 206/50	1					verify unit weeks		
Weinheimer Michael/Amanda: 306/44, 306/45, 306/46	3							
White Nancy: 303/48	1							
Wray Stanley: 305/01	1				1036	verify unit/weeks		
Beach Michael/Rebecca: 102/37	1	UNVERIFIED YES VOTES		M				
Buschman Kathy/Matthew/William: 304/36	1				deb - verify unit weeks 1m 02/15, deb tt son, sent em			
Chambers Joseph/Carole: 203/11, 203/12, 202/13	3				parents passed away, need deed from cheri chambers			
Dean Joann: 501/29	1				verify unit weeks, deb tt Julie, both parents passed away, no paperwork, will not be able to			
Gatt George/Patricia: 402/31	1				John verify unit weeks deb em'd, ph # out of service			
Giacherio Joseph/Barbara: 201/19	1				deb verify unit weeks, 1movm, no em			
Giegerich Carmen: 203/46, 504/47	2				verify unit weeks, deb tt carmen, sent her em			
Hicks Renee: 301/44, 301/45, 401/46	3				recvd 03/04/24, no ph #			
Kirchner/Iversen: 205/02	1			M	also listed wk 43? Per john purchased 501/43 from grafton req quit claim deed			
Laino/Hartzell: 203/32, 206/32	2		verified after deadline	M	verify unit weeks emd	2		
Malesky Kenneth/Dawn: 504/30, 204/31, 504/31	3				verify unit weeks			
Maynard David/Sharon: 205/18	1				verify unit weeks, phone just rang, no em			
McCormick Kyle/Linda:306/01,306/02,503/51,503/52	4				John verify unit weeks, deb 1m 02/15/24, will send us em			
Motto Frank: 506/49	0				03/04/24 sold to McAvoy			
Patrick/Rhodes, Elaine/Theresa: 206/38, 206/40, 206/41	3			M	verify unit weeks, 1movm, no em			
Richardson Dennis/Coleen: 106/31	1			M	verify unit weeks, no em, deb 1movm			
Socha Patricia: 203/05, 203/06, 203/07, 203/08, 204/13, 204/14	6			asked deb to contact 02/19/24, tt scott, sent him em	6			
Thursam Ed/Mary Kae: 204/10, 204/11	2		36	EM I em'd 02/20/24 to verify unit weeks, en, 1movm				
Booth Glenn/Carol: 306/20	1		UNVERIFIED NO VOTES		deb - verify unit weeks - email not deliverable to glenn.booth@us.knoecranes.com will call s			
Collins Paul/Vickie: 206/34	1			M	John verify unit weeks, deb tt paul, sent him em			
Klatt Constance: 203/47	1			M	verify unit weeks, sent ems			
Nelson Dolores: 102/47	1				verify unit weeks, emd, 1movm			
Ragonese Ann: 102/17	1				verify unit weeks, ann passed away, Marie Collinson has no deed, cannot vote, directed he			
Reisner Daniel/Linda: 404/44	1				recvd 03/04/24, no ph#		1	
Schwaeble Dale/Georgia: 202/16	1			M	verify unit weeks, no em, mailed her new ballot 02/21/24, wants to sell			
Vaughn John: 101/01, 205/51, 405/51, 405/52	4			11	verify unit weeks, sent em			
Ahlin Shirley/Morgan: 204/23, 303/23	2							
Arango, Mario: 202/26, 202/27	2							
Arneson Lukas: 402/15, 402/16	2							
Barber Dennis/Holly: 201/29	1							
Barber Dennis/Lindsay: 203/29, 405/24	2							
Berry Stephen/Sharon: 502/34, 502/35	2							

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Bolock Anthony/Jozefa: 205/28	1	UNRETURNED VOTES					
Brooks Robert: 304/28, 403/30, 403/31	3						
Burnett Marie: 404/48	1						
Burton John: 304/44, 304/45, 304/46, 304/47	4				deb sent em asked them to vote		
Cannata William/Michele: 501/07, 501/08	2				selling both units to Biggs		
Carpenter Edwin/Edwin S: 305/29	1						
Cheripka Michael: 106/22, 106/23	2						
Connor Jessica: 204/30	1						
Cook Kenneth/Lucille: 205/36, 205/41	2						
Coombs Selena: 201/25	1						
Cooper Susanne: 304/39	1				Transferring deed from Cooper/Chamberlain to Terry Daughtery per em 02/08/24 from Sue Cooper Polly Daughtery em'd also, let Polly know when we receive Sue's vote as transfer is not likely to be completed by 03/04/24		
Coridan Gilbert/Lynda: 201/07, 201/08	2						
Craine Robert/Colette: 404/14, 405/15, 405/16, 404/17	4				deb tt, asked them to vote		
Cress Thomas/Roma: 203/22	1						
Criner Richard/Mary: 504/20, 504/21	2						
Cullen Lora: 303/19	1						
Dalfonso Henry/Elaine: 203/15, 102/16	2						
Dasaro Anthony: 501/31	1						
Davidson Celine: 401/23, 501/23	2						
Davis Chad/Dawn: 401/29	1						
Dec David/Tanya: 306/21, 406/21, 406/46, 406/47	4				deb Jolliffee not buying will send in yes vote		
Decker Amy: 504/34	1						
Decker David: 404/18	1						
DeLaLastra Albert: 304/29, 304/30, 304/31	3						
Downs William: 401/27	1						
Duncan David/Cassaundra: 204/24	1						
Durand Melissa/Alexandra: 203/33	1						
Elmore Virginia: 303/45	1						
Fearon Brian/Mary: 405/19, 505/20, 203/37, 203/38	4				deb tt, thinking about it, asked them to vote		
Forrest David: 506/46	1						
Freudel Paula: 506/44	1				from higgins, need pprwrk em higgins		
Goll Frieda: 206/15	1						
Gonzalez Martha, Cristina, Daniel: 102/31	1						
Grafton Daniel/Cassandra: 501/43	1				sold to kirchner iversen john req quit claim deed		
Harasimiuk Zbigniew/Nella: 204/19, 205/29	2						
Heleniak Marie: 506/37, 204/38	2						
Henderson Theresa: 502/27	1						
Hirschman Robert/Joyce: 504/14, 303/15, 303/16	3						
Humphries Jr. Curtis/Helen: 305/33	1						
Ira Donald: 501/05, 501/06, 503/15, 503/16	4				selling 501/05 and 501/06 to Jeff Schwede, ballot returned not deliverable, john tt, Don said does not have anything to do with kahlua, would not give new address		
Ivey Kirk D: 406/28, 406/29	2						
Jankalski Jerald: 404/40	1				Stacey and james helman, stacys dad jerry jankalsky passed away, gave title co info		
Johnson Sam/Cynthia: 505/34	1						
Kiesel Esther: 406/27	1						
Kim Tamara: 205/32	1						
Komisarek Lynn:101/03,102/03,102/04,102/05,102/06	5				deb sent em,asked them to vote		
Kornak Eugene: 304/27	1						

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Landolina James/Michelle: 503/37	1						
Laukaitis Holly: 404/30, 406/30, 404/31, 506/31	4				deb did not call, hasn't paid		
Lemon Elizabeth 302/29, 302/30	2						
Lewis John/Mindy: 403/22	1						
Lindberg Carl/Lincoln Barbara: 506/33, 506/34	2						
Madigan Melody: 201/28	1						
Manos Tony: 405/26	1						
Marquardt, Cheryl: 306/26	1					1	
Marsden Michael/Karen: 302/01, 302/02, 302/03, 303/03, 302/04, 303/04, 302/05, 303/05, 302/06, 303/06, 106/07, 302/07, 106/08, 302/08	14				asked deb to contact 02/19/24 req they vote		
Martin Cindy: 304/35, 504/23	2						
McClain Drew & Manos Stacey: 205/25	1						
McDonald Samuel/Carolyn: 502/24	1						
Mcneilly Tracie: 503/36	1						
Melson Patrick/Tamara: 101/26, 101/27	2					2	
Miranda Carole: 504/40, 501/44, 501/45	3						
Morris Joemac: 504/35	1						
Norek George: 503/49	1						
Orth Robert & Judith: 202/04, 202/05, 202/06, 204/07, 204/08, 502/50	6				asked deb to contact 02/19/24, em'd ballot, req they vote		
Paul Kenneth/Nancy: 504/11, 504/12	2						
Pearce Jeffrey & Fairy: 301/24, 301/25	2						
Pentaude Betty: 106/26, 106/27, 201/35	3						
Quinn James/Katleen: 303/21	1						
Ratajski Gerald/Marian: 102/50	1						
Reinfried Family Partnership: 406/34, 405/35, 406/35	3						
Renner Timothy J: 503/29, 205/37	2				205/37 fro ruth patricia shaw		
Romano Mellisa H: 306/30, 506/30, 406/31	3						
Rossetti Alexander: 305/19	1						
Sarote Jill: 401/31	1						
Schlotterbeck Paul & Thomas: 303/30	1						
Shirley Margaret M: 204/22	1				ballot returned forward order expired		
Siebert Richard/Helen: 102/14, 106/14, 203/14	3						
Skaggs Stephen/Lisa: 403/26	1						
Soto Manuel/Mirta: 502/28	1						
St. Francis Foundation: 302/26	1						
Suvelza Marcia: 406/08, 406/09, 406/10, 406/11, 406/51, 406/52	6				asked deb to contact 02/19/24, req they vote		
Tipton Lawrence/Georgia: 204/47, 306/48	2						
Toews Kevin/Jinni Lee: 406/43, 406/44	2						
VanAsten Lee: 505/25	1						
Varga Deborah: 404/33	1						
Vecchiano Daniel: 503/41	1						
Vena, Thomas: 101/25	1						
Whitted Fred/Michelle: 201/34	1						
Willis Donald: 306/47	1						
Wolfe Russell/Debra: 406/25	1				36	Unverified Yes	
Wurtz Everett/Mary: 401/49	1				11	Unverified No	
comfirm quantity, find error if not 0	0				1036	All Votes Received & Verified w/Owner	
Total Unit/Weeks Eligible to Vote	1267	888	148	231	1083	All Votes Received Verified By Staff	

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
		70.1%	11.7%	18.2%	81.8%	% of All Votes Received	
		of 1,267	of 1,267	unreturned			
		YES	NO	/unverified			
Total Unit/Weeks @ KBC	1377			1377	Total Unit/Weeks @ KBC		
Total Kahlua Owned Unit/Weeks thru 12/31/23	-110			-110	Total Kahlua Owned Unit/Weeks thru 12/31/23		
Total Unit/Weeks Eligible to Vote	1267			1267	Total Unit/Weeks Eligible to Vote		
YES Percent Needed	50%			-5	Total Unit/Weeks Ballots Returned in Mail Undeliverable, No Forward Order, Could not find new address (IRA & SHIRLEY)		
50%	634			1262	ADJUSTED UNIT/WEEKS ELIGIBLE TO VOTE		
+1	1						
Total YES Votes Needed	635			888	YES VOTES VERIFIED WITH OWNERS		
				36	YES VOTES VERIFIED BY STAFF		
					YES VOTE ADJUSTMENT FOUND AFTER THE FACT, MCAVOY PURCHASED 506/49 FROM		
				1	MOTTO (RECORDED ON 03/04/24) PRIOR TO THE MEETING, MCAVOY VOTES YES		
				3	YES VOTES RECEIVED AFTER THE MEETING		
Foreclosures Completed in 2023							
Aiazone Todd: 201/41	1		73.5%	928	TOTAL YES VOTES		
Barton Jody: 203/42	1						
Bell Donna/Chumbley/Chumblet/Chumbley: 106/44, 106/45	2			148	NO VOTES VERIFIED WITH OWNERS		
Bell Donna: 102/40, 102/41, 102/42, 102/43	4			11	NO VOTES VERIFIED BY STAFF		
Boyer Connie: 502/20	1			0	NO VOTES RECEIVED AFTER THE MEETING		
Brown Douglas: 106/41, 106/42, 106/43	3		12.6%	159	TOTAL NO VOTES		
Cannata William/Michele: 501/09, 501/10, 505/11, 505/12, 505/13, 505/14	6						
Cecala Michael: 505/33	1		13.9%	175	TOTAL VOTES UNRETURNED		
Dempsey Jim/Michele: 305/43,305/44,305/45,504/46	4		86.1%	1087	TOTAL ELIGIBLE VOTES RETURNED		
Farah Nazir/Elizabeth: 502/37	1		100.0%	1262	TOTAL UNIT/WEEKS ELIGIBLE TO VOTE		
Fry Lorne: 304/41	1						
Geary Truman/Monique: 206/31	1						
Gershater James/Sandra: 305/22 note: Jim passed away	1						
Gilbeault Joline: 101/12	1						
Grafton James/Lynn: 201/42, 201/43	2						
Guelcher Dale/Laurie: 303/44	1						
Gurka Stella: 204/33, 204/34	2						
Isaac Raidys: 201/33, 202/31, 406/36	3						
Knoop Kenneth/Marlyse: 106/46, 106/47	2						
Landberg Dennis: 502/45, 502/46, 502/47, 504/48, 504/49	5						
Leclair Alfred: 203/43, 203/44	2						
Lefo Michael/ Becky: 305/28	1						
Maholovich Edward/Wendy: 505/26	1						
Meador Family Trust: 306/38	1						
Powell James: 505/15, 301/16	2						
Prichard Geoffrey: 504/43	1						
Purcell Kathleen/Thomas: 304/42, 506/43, 206/44, 206/45	4						
Ragland Anne: 204/25	1						
Sandra L. Gardner Trust Sandra Garnder TTE: 203/28	1						
Scratcher Alan R: 506/22	1						
Shuey Daniel/Betty: 402/35, 202/38	2						
Siebert Richard/Helen: 106/15, 506/15, 106/34, 305/34, 202/41	5						
Silverthorne David/Maureen: 301/42, 301/43	2						
Smith Russell P: 205/19, 403/21	2						
Srite Barbara: 405/20, 405/21	2						

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Terrasi Robert: 503/24, 503/25, 305/35, 404/37	4						
Thomas David/Diane/Kathleen: 101/42, 101/43	2						
Trumbull Jonathan: 401/15	1						
Vega Serina: 401/34	1						
Vermilya Carolyn: 206/24, 206/25, 206/26, 206/27	4						
Zapp Mark/Roberta Mee Keith/Carol: 102/15	1						
Kahlua Owned Unit/Weeks thru 12/31/22							
Kahlua Beach Club Owners: 304/19, 403/20, 304/22, 205/23, 406/23, 202/24, 303/32, 205/34, 203/35, 404/35, 505/35, 203/36, 201/37, 304/37, 306/37, 501/37, 503/38, 506/38, 404/39, 503/39, 202/40, 403/40, 202/43, 403/43, 303/46, 403/46	26						
TOTAL KAHLUA OWNED UNIT/WEEKS as of 12/31/23	110						

KAHLUA OWNERS' ASSOCIATION, INC.

LIMITED PROXY/BALLOT FORM

I hereby nominate and appoint Jeff Coleman, Vice-President of Kahlua Owners' Association, Inc. (the "Association"), as my proxyholder with powers of substitution for and in the name and place of I/we, the undersigned Owner(s) of record, to appear, represent and cast my vote (as indicated below) at the Meeting of the Owners of the Association to be held on Tuesday, March 5 2024 at 9:00 AM EST at DiamondHead Resort located at 2000 Estero Boulevard, Fort Myers Beach FL 33931, or via Zoom or other remote means and at any extension(s) and/or adjournment(s) thereof, according to the number of votes that I would be entitled to vote by signing below. I understand if I fail to designate a proxyholder or the designated proxyholder above does not attend the meeting, it will be presumed that the Secretary of the Association shall serve as my proxyholder. In the Secretary's absence, the President of the Association shall be my proxyholder, however, the proxyholder shall cast my vote as designated below but shall also have general powers to vote on other issues that might come up at the meeting.

IF I WANT KAHLUA BEACH CLUB TO CONTINUE OPERATING AS A TIMESHARE CONDOMINIUM, I UNDERSTAND THAT I MUST RETURN A "YES" VOTE. ANY UNRETURNED VOTES WILL HAVE THE SAME EFFECT AS A "NO" VOTE. A MAJORITY OF ALL ELIGIBLE UNIT WEEKS IS NEEDED TO CONTINUE THE TIMESHARE CONDOMINIUM. ALL BUILDING PERMITS TO REBUILD HAVE BEEN ISSUED AND REBUILDING IS SET TO COMMENCE ON/ABOUT MARCH 11, 2024, SUBJECT TO THE RESULTS OF THIS VOTE. THE PROJECT IS EXPECTED TO BE COMPLETED ON/ABOUT DECEMBER 31, 2024.

PLEASE NOTE: IF THE VOTE DOES NOT PASS, KAHLUA BEACH CLUB WILL BE TERMINATED. HOWEVER, THAT DOES NOT MEAN THE BOARD OF DIRECTORS IS AUTHORIZED TO SELL THE PROPERTY AND DISTRIBUTE THE PROCEEDS. INSTEAD, A COMPLEX, LENGTHY AND EXPENSIVE LEGAL PROCESS WILL BE REQUIRED PURSUANT TO THE FLORIDA STATUTES.

I HEREBY CAST MY VOTE AS FOLLOWS (put a mark in front of your selection):

_____ **YES**, I DESIRE TO CONTINUE KAHLUA BEACH CLUB AS A TIMESHARE CONDOMINIUM AND REBUILD

_____ **NO**, I DESIRE TO PERMANENTLY TERMINATE KAHLUA BEACH CLUB AS A TIMESHARE CONDOMINIUM

OWNER'S PRINTED NAME: _____

JOINT OWNERS PRINTED NAME(S) (IF APPLICABLE): _____

By signing below, I attest that: (i) I am the legal Owner of record of the unit week(s) below, (ii) I am one of two or more individual Owners of the unit week(s) below, or (iii) I am an officer, director, partner, or trustee of the entity or trust which owns the unit week(s) listed below.

Signature: _____ Date: _____

Total Weeks Owned: _____ (as listed below)

Unit Week(s) Owned: _____, _____, _____, _____, _____, _____, _____, _____,
_____, _____, _____, _____, _____, _____, _____, _____

PLEASE MAIL OR EMAIL THIS COMPLETED FORM IMMEDIATELY TO:
KAHLUA BEACH CLUB, 4950 ESTERO BLVD, FORT MYERS BEACH FL 33931
OR
KBEACHCLB@AOL.COM

THIS PROXY/BALLOT MUST BE RECEIVED BY KAHLUA BY MARCH 4, 2024
A SCANNED VERSION OF THIS FORM WILL BE CONSIDERED AN ORIGINAL
FOR THE PURPOSE OF THE ASSOCIATION'S GOVERNING DOCUMENTS

1. **Request:**

Meeting Date: December 2, 2024

First reading and public hearing of and ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH COMMONLY KNOWN AS THE NEPTUNE RESORT, TO ALLOW 148 LODGING UNITS AND ACCESSORY RETAIL AND RECREATIONAL USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on December 16, 2024 at 9:00 a.m.

Why the action is necessary:

The request must be approved through the Commercial Planned Development (CPD) process. The Town Council approves or denies CPDs.

What the action accomplishes:

Approval of the CPD will allow development of a 148 unit resort.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Community
Development, Planning
Manager

5. **Background:**

The Neighborhood Company, applicant for 2310 and 2316/2320 Estero Blvd, is requesting a rezoning for the portion of the property landward of the CCCL from Commercial Resort zoning to Commercial Planned Development to allow the development of a resort building with 148 lodging units, accessory retail uses, and recreational uses. The proposed development will be a total of 129,925 square feet with an FAR of 1.48. There are two access points on Estero Blvd and one point of only egress from Delmar Ave with a separate access to the dumpster enclosure on the east side of the property. The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from the base flood elevation (FDEP design flood elevation) to mean roof height The site previously contained a resort with 71 lodging units and accessory resort uses.

Attachments:

1. Ordinance 24-36 (ns)
2. TC Staff Report ns
3. Exhibit A to Ordinance - Master Concept Plan
4. Exhibit B to Ordinance Conditions and Schedule of Uses
5. Applicant's Narrative
6. Application

Financial Impact:

unknown

6. **Alternative Action**

Recommend approval with additional conditions

7. **Management Recommendations:**

Recommend denial

8. **Recommended Approval:**

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

Created/Initiated - 11/18/2024
Approved - 11/18/2024
Approved - 11/22/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

ORDINANCE 24-36

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH COMMONLY KNOWN AS THE NEPTUNE RESORT, TO ALLOW 148 LODGING UNITS AND ACCESSORY RETAIL AND RECREATIONAL USES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, CHG Neptune Acquisitions, LLC and The Neighborhood Company, owner and agents for the property owner, located at 2310 Estero Blvd. and 2316/ 2320 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE and 19-46-24-W3-0110A.0010 in the Town of Fort Myers Beach, filed applications to rezone the property from the Commercial Resort Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop 148 lodging units and accessory retail and recreational uses; and

WHEREAS, the subject property is a combination of three parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2024; and

WHEREAS, at the November 12, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) Sec. 34-85; and

WHEREAS, at the November 12, 2024 public hearing the LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions of the CPD by a 5-0 vote with members Boan and Eckmann absent; and

WHEREAS, on December 2, 2024 the Town Council held a first reading of the proposed

Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in an appropriate publication 10 days prior to the Town Council on December 16, 2024; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, Exhibit B is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the Commercial Resort Zoning District to CPD with MCP with certain deviations to the Land Development Code (LDC) in order to develop a resort with 148 lodging units and accessory retail and recreational uses, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Relief from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires a 250' separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).

Deviation #2

Relief from LDC Sec. 10-416(C)(2) – Landscaping of parking and vehicular use areas, which has specific tree and landscape island dimensional requirements to allow an alternate landscape betterment plan as allowed per LDC Sec. 10-419.

Deviation #3

Relief from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow reduced parking requirements as justified by the project's independent parking analysis.

Deviation #4

Relief from LDC Sec. 34-633, which includes covered parking in the floor area ratio (FAR) calculation to exclude the two stories of under-building parking from this hotel's FAR calculation.

Deviation #5

Relief from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 51 feet and a maximum of six (6) stories consisting of four (4) stories above two (2) levels of parking.

Deviation #6

Relief from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This deviation would allow a maximum equivalency factor of 6.2 resulting in a maximum of 148 resort hotel units.

Deviation #7

Relief from LDC Section 34-645(b) and Table 34-3, which allows for a Floor Area Ratio (FAR) maximum of 1.2 within the Commercial Resort (CR) zoning district, to allow for a maximum FAR of 1.5.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

- a. Minor ambiguities were resolved through the deviation process.
- b. The previous development on the subject property was destroyed by fire and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
- c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
- d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
- e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
- f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
- g. Urban services are available and adequate to serve the proposed use.
- h. Rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
- i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

- j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.
- l. The proposed use or mix of uses is appropriate at the subject location.
- m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.
- n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the seven requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

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

WHEREAS, the Town Council finds that this application to approve Ordinance 24-XX which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance no. 24-XX and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-XX is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or

statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of December 2024.

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

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

Attachments:

A – Master Concept Plan (MCP)

B – Conditions of Approval and Schedule of Uses



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Commercial Planned Development

CASE NUMBER: DCI Rezoning, 20230213

CASE NAME: 2310 and 2316/2320 Estero Blvd, rezone the portion of the property currently zoned Commercial Resort to Commercial Planned Development for the redevelopment of a resort including 148 lodging units and accessory retail use and recreational uses.

**TOWN COUNCIL
HEARING DATE:** December 2, 2024 at 9 AM

**LPA
HEARING DATE:** November 12, 2024 at 9 AM

**STAFF
RECOMMENDATION:** Denial without prejudice

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant: The Neighborhood Company

Owner: CHG Neptune Acquisitions, LLC

Request: Rezone the portion of the property zoned Commercial Resort to Commercial Planned Development for the redevelopment of a resort including 148 lodging units and accessory retail and recreational uses.

Subject property: See attached site plan

Physical Address: 2310 and 2316/2320 Estero Blvd

STRAP #: 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE and 19-46-24-W3-0110A.0010

FLU: Boulevard

Zoning: Commercial Resort

Adjacent zoning and land uses:

North: Commercial Boulevard/ Vacant Commercial

South: Environmentally Critical /Beach

East: Multi-Family Residential / Vacant Commercial

West: Multi-Family Residential / Single Family Residential and
vacant commercial

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for 2310 and 2316/2320 Estero Blvd, is requesting a rezoning for the portion of the property landward of the CCCL from Commercial Resort zoning to Commercial Planned Development to allow the development of a resort building with 148 lodging units, accessory retail uses, and recreational uses. The proposed development will be a total of 129,925 square feet with an FAR of 1.48. There are two access points on Estero Blvd and one point of only egress from Delmar Ave with a separate access to the dumpster enclosure on the east side of the property. The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from the base flood elevation (FDEP design flood elevation) to mean roof height. The site previously contained a resort with 71 lodging units and accessory resort uses.

The Commercial Resort zoning district permits resort use by right. However, the Applicant would need to request several variances for the proposed plan and therefore the applicant is requesting to rezone the property to CPD. Seven deviations are requested from the land development code requirements.

Analysis:

2310 and 2316/2320 Estero Blvd has supported a resort or an Inn with 71 units for many years. The previous development included one-three story building and two-two story buildings which were substantially damaged during Hurricane Ian. The previous buildings did not meet current flood requirements.

The property has the Future Land Use designation of Boulevard which allows a maximum density of 6 dwelling units per acre or 14 dwelling units on this 2.46-acre property. Application of the equivalency factors established in LDC Section 34-1803, would allow 35 lodging units with an area less than 450 square feet or 28 lodging units with an area between 450 and 750 square feet. The Town's buildback policy in Section 34-3238 would allow the Applicant to rebuild the previously existing 71 units with limitations on total square footage. The Applicant is proposing 148 lodging units and is therefore requesting a rezoning to CPD with a Master Concept Plan and seven deviations from the Town's Land Development Code.

The Boulevard Future Land Use designation allows a maximum of 1.5 FAR and CR zoning district permits a maximum FAR of 1.2. The proposed resort is 129,925 square feet with 1.48 FAR. The applicant is requesting a deviation to exclude the square footage for two-stories of car parking underneath the building.

The development proposes automobile 164 parking spaces, 138 delineated spaces and an additional 26 valet spaces when needed. Additionally, the plan includes 32 bicycle parking spaces and 16 public parking spaces along Delmar Ave. The code requires 1.5 parking spaces per unit greater than 450 square feet area and 1.2 parking space per unit less than 450 square feet in area, which would require 212 parking spaces. The code requires 2 parking spaces for every 1000 square feet of accessory retail and recreational uses, which would require a total of 8 parking spaces for 4,420 square foot accessory uses area. The total number of code required parking spaces is 220. The applicant is proposing eight four-space bike racks, which decreases the number of required spaces by one. With the reduction of one parking space, the Applicant is requesting a deviation for reduction in parking spaces by 55 spaces.

A 25-foot-wide view corridor and a 15-foot-wide Type C perimeter landscaping buffer is proposed along the east property line. As per LDC Section 10-416 (d), a Type C buffer includes a minimum of 5 trees, 18 shrubs and a minimum 6 feet high wall. All trees and shrubs required in the buffer must be placed on the residential side of the wall. This combination of trees, shrubs and the 6-foot-high wall of the 15-foot-wide landscape buffer might obstruct the view of the Gulf from the proposed 25-foot-view corridor. The Applicant is also proposing a 20-foot-wide view corridor on the west side of the property along Delmar Avenue.

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

Requested Deviations:

- 1) Relief from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires a 250' separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).**

Applicant Justification: LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Blvd. is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. Prior to Hurricane Ian, visitors entered and exited the Neptune Resort along Estero Blvd. through a curb cut which measured approximately 95 feet wide and contained 6 parking spaces at its north side.

The proposed site configuration as shown on the proposed MCP provides an improved traffic flow throughout the site with controlled access both entering and exiting the property. Visitors will enter the site through two dedicated accessways from Estero Blvd. The western primary access facilitates full turning movements

and a drive aisle with no parking spaces that will allow vehicles to move efficiently from Estero Blvd. into the property and provide for on-property stacking and vehicle maneuverability without impeding traffic flow on Estero Blvd. This accessway is approximately 140 feet from centerline to centerline from Delmar Ave. The second accessway is 85 feet east of the primary and provides for right-in/left-in and right-out only along Estero Blvd. This limited accessway will provide appropriate turning movements based on the lane configuration of Estero Blvd at this location and will reduce left out conflict points along Estero Blvd.

The project proposes an egress only accessway located on the western side of the property from the parking garage onto Delmar Ave. The exit onto Delmar Ave. will allow visitors to have a third alternative to exit onto Estero Blvd from an already existing roadway intersection.

The proposed improvements address operational and safety issues on the property and Estero Blvd. They will enhance functionality through the decreased width of the accessway and the relocation of parking to appropriate locations onsite, thus working toward achieving general consistency with intent of LDC Section 10-285 to provide as much connection separation as possible while protecting the health, safety and welfare of island residents and visitors.

Staff Comment: The property previously had one entrance from Estero and one from Delmar Ave, which appear to be consistent with the Town's regulation for 250 feet separation between the previous accessway and Delmar Ave and between the previous accessway and Mango Street. The proposed layout with two accesses from Estero Blvd is a design choice to support 148 lodging units and is not consistent with the Town's regulations. The Applicant will need to coordinate with Lee County to permit the second access from Estero Blvd.

2) Relief from LDC Sec. 10-416(C)(2) – Landscaping of parking and vehicular use areas, which has specific tree and landscape island dimensional requirements to allow an alternate landscape betterment plan as allowed per LDC Sec. 10-419.

Applicant Justification: The deviation from LDC Sec. 10-416(C)(2) is requested to allow the use of an alternate landscape betterment plan for the redevelopment of the site. The limited size of the property and the need to redevelop the site due to hurricane damages has created unique circumstances that limit the ability meet the strict tree and landscape island size requirements. There will be limited surface parking available with most of the proposed parking provided by two levels of garage parking under four levels of hotel.

The proposed surface parking will be heavily landscaped within appropriately located landscape islands and of adequate size to sustain the required trees and grass/ground cover/approved landscape materials. The intent of the finalized landscape betterment plan approved under the Development Order will be to provide additional landscaped open space areas within the frontage area of the project to help offset any potential landscape island size reduction. The alternate landscape betterment plan, as allowed per LDC Sec. 10-419, will meet the intent of LDC Sec. 10-416 (C)(2) and will not cause or result in any negative impacts to the

community's health, safety, and welfare.

Staff Comment: The proposed development exceeds the landscaping requirements of the Town's LDC for the total number of trees, native trees and shrubs required within the site and parking area. The Applicant is requesting a deviation to allow no internal landscaping islands for the parking area underneath the building, while compensating for the requirement in other parts of the property. Any development within the Town that meets the intent of the LDC and exceeds the minimum landscaping standards of the code, as per LDC 10-419, may be approved for an alternate landscape betterment plan. Staff recommends approval of this request.

3) Relief from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow reduced parking requirements as justified by the project's independent parking analysis.

Justification: *The requested deviation from LDC Sec. 34-1804(A) and Sec. 34-2020 is to allow for a reduction in the parking requirements by promoting and providing resort guests and visitors a variety of alternative modes of transportation options as well as utilizing the results of the independent parking analysis provided by TR Transportation Consultants, Inc. dated May 13, 2024. Under the strict regulations provided in the town's LDC, the proposed resort and accessory uses would require 220 parking spaces. The developer will provide, at a minimum, 138 delineated parking spaces with an additional 26 spaces that can be achieved via valet service stacking. Combined, the resort will be able to park 164 vehicles with an additional 16 spaces along Delmar dedicated for public use. The enclosed parking analysis memorandum dated May 13, 2024, finds the peak season parking demand to be 118 parking spaces. The proposed supply of a minimum of 164 parking spaces, inclusive of parking via valet service, will exceed anticipated demand based on the Institute of Transportation Engineer's (ITE) **Parking Generation Manual, 6th Edition**, which was published by ITE in October of 2023 as well as the **Urban Land Institutes – Shared Parking, 3rd Edition** manual and analysis spreadsheet.*

The alternative transportation mode options to be promoted and potentially provided to resort guests and visitors include using bicycles, golf carts, walking, transit and potentially land and water-based shuttle services. The developer intends to provide numerous bicycle racks within the adjacent Delmar Ave right-of-way, along the east side of the development as part of the new public beach access corridor, the surface parking area, and parking garage. Land Development Code Section 34-2020(c) allows for the reduction of one typical vehicle parking space for every 4 bicycle spaces provided. It is the intent of the developer to provide a minimum of 32 bicycle parking spaces throughout the development and adjacent public beach access, thus contributing to a reduction of 8 required vehicle parking spaces. The Neptune Resort will also make bicycles available to guests and visitors in order to further encourage this very popular alternative mode of transportation on the island. Adequate pedestrian connectivity will also

be designed at the time of development order approval and constructed to ensure easy access to the nearby trolley stops along Estero Blvd. as well as encouraging guests and visitors to walk to nearby destinations rather than driving and searching for parking. The project will also be incorporating golf cart parking and potential on-site rentals to support a reduction in the need to use and park vehicles on property or throughout the island. There is also an effort being considered by various transient lodging proprietors on the island to study and potentially implement, if feasible, a dedicated airport/island shuttle service as well as support a local water taxi/ferry service. The Neptune Resort's developer is supportive of this alternative transportation initiative and is committed to working to develop either a private or public/private partnership and fund their fair-share to ensure its success. All these alternative modes when successfully implemented will further reduce over parked developments and help alleviate traffic congestion on the island, and in turn reduce any associated negative impacts to the health, safety and welfare of the island's residents and visitors.

Staff Comment: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice as permitted by right under the Town's build back policy. This proposed reduction in parking spaces may lead to an undue burden on the parking and transportation facilities in the Town. The Applicant is encouraging alternate means of transportation at the same time and proposing 16 public parking spaces along Delmar Ave. A detailed review by Town's traffic consultant will be required at the Development Order phase.

4) Relief from LDC Sec. 34-633, which includes covered parking in the floor area ration (FAR) calculation to exclude the two stories of under-building parking from this hotel's FAR calculation.

Applicant Justification: A component of this planned development rezoning petition is a deviation request from LDC Sec. 34-633 that requires covered parking to be included in the FAR calculation. This deviation specifically requests that the proposed two stories of under-building (covered) parking not be calculated towards the maximum allowed FAR and the resulting gross floor area calculation. The maximum floor area ratio (FAR) proposed for the site is 1.48 which equates to approximately 129,925 SF of habitable gross floor area and is not inclusive of 2 levels of under-building parking. A maximum FAR of 1.5 is being requested through this CPD and deviation #7, in order to provide some leeway for changes that may be needed as the project progresses to final design and permitting.

Exceptional circumstances now exist due to the destruction caused by Hurricane Ian and the need to create a code compliant, more resilient, and sustainable resort that will contribute to the rebuilding of the island and strengthening its economic base. Other exceptional circumstances exist that support the need for the two levels of parking to be excluded from the FAR calculation. These include changes to FEMA standards and Florida Building Code regulations, the extreme costs of construction and the need to create and provide for a modern family friendly

resort with amenities for both visitors and island residents to enjoy. Current building code regulations and FEMA standards require the resort to be significantly elevated above the design flood elevation. As a result of the requirement to elevate the structure, a beneficial opportunity is presented to design the structure and utilize this open area for covered parking and other support facilities as allowed within the design flood elevation. When designing elevated structures to mitigate impacts of potential hurricane/flooding disaster on coastal communities, there is justification of providing the flexibility to not hinder the logical application of incorporating under-building (covered) parking and it not counting towards the gross floor area determined by the maximum FAR.

It is common to apply a FAR to only that portion of a development that contributes to much of the massing associated with usable and habitable space. It is also beneficial to encourage under-building (covered) parking to not encourage vast and expansive parking lots. The Neptune Resort is designed to provide much of the habitable gross floor area above the required design flood elevation and utilize covered parking for the majority of the required parking, thus helping to reduce impervious surfaces and reducing the impacts of stormwater runoff.

Based on the above stated justification, the granting of this deviation from LDC Sec. 34-633 will not be injurious to the neighborhood or negatively impact the overall health, safety, and welfare of the island.

Staff Comment: There has been some discussion in support of amendment to LDC Sec 34-633 to exclude a single story of parking from FAR calculations. However, further discussion is needed on this topic during the LDC update.

5) Relief from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 51 feet and a maximum of six (6) stories consisting of four (4) stories above two (2) levels of parking.

Applicant Justification: *The CPD property development regulations are to be consistent with the CR zoning district regulations, which limit the maximum height to 30 feet and 3 stories. The proposed project is requesting a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to the mid-point of the main roof. See Figure 1 below.*

The Town's comprehensive plan allows for additional heights beyond the limits provided in the CR zoning district on a case-by-case basis. As stated in the comprehensive plan, the request would be "approved, modified, or denied, based on the conformance of the specific proposal with all aspects of the comp plan,



Figure 1. Zoned Building Height

including land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf that could be provided in exchange for allowing the building to be taller." The previous development was constructed on the east property line which allowed no view corridor to the Gulf and the view corridor on the west was limited to the width of Delmar Ave. The building was seaward of the Coastal Construction Control Line which was established after the hotel was constructed in the 1960's.

The redesigned site places the building out of the Coastal Construction Control Line boundary and setback from the side property lines thus limiting the available footprint for the structure. This made it necessary to increase the height of the building to achieve the appropriate square footage necessary to create the quality resort desired. The redevelopment height allows additional view corridors, creates space for additional buffering against Cottage Avenue properties and increased setbacks with enhanced landscaping/pedestrian amenity nodes from and along Estero Boulevard while creating a more aesthetically pleasing development with updated architecture and varied rooflines.

As demonstrated in the photos below (Figure 2) the Neptune Resort is located adjacent to and near buildings which range from 3 stories up to 13 stories. Thus, the proposed height of 51 feet and 4 stories over 2 levels of parking garage is compatible and consistent with building heights within this area of the island.



Figure 2. Photos of adjacent building heights. (West – left and East – right)

The proposed height and redevelopment design provide the ability to create a more resilient development while correcting non-conformities which previously existed. The granting of this deviation request will not result in harm to the overall health, safety or welfare of island residents or guests.

Staff Comment: The properties to the north and east currently are developed as single-family residential and the properties on the west appear to be multi-family residential buildings ranging between two to four stories in height. The resort use has been in existence in this area for many years and is compatible with this neighborhood.

The Applicant is proposing a 25-foot-wide view corridor on the east and a 20-foot-wide view corridor on the west. The proposed 25-foot-wide view corridor contains a 15-foot-wide Type C perimeter landscaping buffer which might obstruct the view of the Gulf. The Applicant is also advocating that the proposed 20-foot-wide view corridor together with Delmar Ave will effectively create a 70-foot-wide view corridor on the west. Staff believes that rights-of-way do not count towards view corridors and the proposed Type C perimeter landscaping might obstruct view in the east view corridor. Staff does not find the proposed view corridors sufficient to allow additional height as permitted by the Town's Comprehensive Plan.

- 6) Relief from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This deviation would allow a maximum equivalency factor of 6.2 resulting in a maximum of 148 resort hotel units.**

Applicant Justification: The Neptune Resort property consists of 2.46± acres located within the Boulevard Future Land Use category. The property is comprised of a total of 24 platted lots – 10 lots within the W.W. Watson Subdivision and 14 lots within the Beach Estates Subdivision. Each platted lot would be permitted 1 unit by right, for a total of 24 dwelling units.

Per the equivalency factors outlined in LDC Sec. 34-1803(a)(1), the 24 residential units can be converted into guest units based at a ratio of 2.5 guest unit per residential unit. LDC Sec. 34-1803(a)(2), further allows these established ratios to

be exceeded under exceptional circumstances and when providing public benefit as part of the planned development process. The exceptional circumstances applicable to the Neptune Resort include the devastation sustained due to Hurricane Ian, the construction requirements mandated through the Florida Building Code and FEMA, the increased cost of construction, high interest rates and the shortages of materials and labor. Additionally, through the planned development process, the applicant is proposing the following public benefits that contribute to the project's consistency with LDC Sec. 34-1803(a)(2):

- *A gulf side neighborhood sit-down restaurant and tiki bar open to the public.*
- *A minimum 25' wide view corridor on the east side of the subject property.*
- *Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:*
 - o *Complementary enhanced landscaping and open space features;*
 - o *Additional public parking spaces (16) to be dedicated to the Town; and*
 - o *Expanded view corridor from Estero Boulevard.*
- *Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.*
- *Planting of shade trees and pedestrian amenity nodes along Estero Blvd.*
- *Restored dune habitat and native vegetation plantings*
- *Elimination of non-conformities*
- *Improved setbacks*
- *Elimination of structures beyond the CCCL*
- *Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.*
- *Development of a high-quality resort product with superior design and styling*
- *Provision of bicycle parking*
- *Provision of bicycles for guest to reduce vehicular traffic*
- *Fair share contribution toward mobility solutions to reduce traffic on the island*
- *Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children*
- *Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors*
- *Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island.*

The Neptune Resort is requesting 148 hotel units through this CPD. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 = 148 hotel units.

The deviation requesting an equivalency factor of 6.2 is justified as outlined above. Additionally, for comparison purposes, Margaritaville obtained a 9.1 equivalency ratio. Given the devastating hurricane, the unprecedented cost to rebuild, and the proposed public benefits proportionate with the size of the property and the scale of the request, this deviation is reasonable and will not adversely impact the

public's health, safety, and welfare.

Staff Comment: The property has the Future Land Use designation of Boulevard which allows a maximum density of 6 dwelling units per acre or 14 dwelling units on this 2.46-acre property. The property comprises of 24 platted lots, which may be built into 24 dwelling units using the Minimum Use Determination.

As per the equivalency factors established for the Town's Future Land Use districts in LDC Section 34-1803, 35 lodging units with an area less than 450 square feet and an equivalency factor of 2.5 or 28 units of area between 450 square feet to 750 square feet with an equivalency factor of 2 are permitted by right. The property supported 71 guest units prior to Hurricane Ian. Per the Town's Build back policy, the Applicant may build back the previously existing 71 units, however, the Applicant plans to build 148 lodging units with an equivalency factor of 6.2 and is therefore, requesting a deviation from LDC Sec. 34-1803(a)(1).

7) Relief from LDC Section 34-645(b) and Table 34-3, which allows for a Floor Area Ratio (FAR) maximum of 1.2 within the Commercial Resort (CR) zoning district, to allow for a maximum FAR of 1.5.

Justification: The property is located within the Boulevard Future Land Use designation which allows a maximum FAR of 1.5. Although the preliminary design for the resort shows an FAR of 1.48, a maximum FAR of 1.5 is requested to provide leeway for changes that may be needed as the project progresses to final design and permitting. As stated in the Comprehensive Plan an increase in FAR is permitted up to the allowance set within the specific future land use designation. The requested 1.5 FAR is equal to the maximum allowable FAR for the Boulevard Future Land Use designation as set within the Comprehensive Plan, which by comparison is far less than the 2.5 FAR allowed within the Pedestrian Commercial district that is a few hundred feet to the west of the Neptune property.

The increase in FAR is requested to allow the development of the type of resort desired by the community and consistent with today's market expectations. The Neptune Resort will offer high end guest amenities, such as an on-site restaurant open to the public, pools, pool bar, conference rooms, recreational areas, and open space. Additionally, the increased FAR is needed to address today's building codes, FEMA regulations, and updated hospitality standards that call for larger rooms, back of house and support facility areas.

The CPD allows applicants to request an FAR of up to 1.5 within the Boulevard FLU designation. In support of the CPD and the request to increase the FAR to 1.5, the applicant is proposing the following public benefits:

- *A gulf side neighborhood sit-down restaurant and tiki bar open to the public.*
- *A minimum 25' wide view corridor on the east side of the subject property.*
- *Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:*

- o Complementary enhanced landscaping and open space features;*
- o Additional public parking spaces (16) to be dedicated to the Town; and*
- o Expanded view corridor from Estero Boulevard.*

- *Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.*
 - *Planting of shade trees and pedestrian amenity nodes along Estero Blvd.*
 - *Restored dune habitat and native vegetation plantings*
 - *Elimination of non-conformities*
 - *Improved setbacks*
 - *Elimination of structures beyond the CCCL*
 - *Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.*
 - *Development of a high-quality resort product with superior design and styling*
 - *Provision of bicycle parking*
 - *Provision of bicycles for guest to reduce vehicular traffic*
 - *Fair share contribution toward mobility solutions to reduce traffic on the island*
 - *Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children*
 - *Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors*
 - *Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island*
- The requested deviation for increased FAR is consistent with the Comprehensive Plan and the Land Development Code and will not result in any negative impacts to the public's health, safety, and welfare.*

Staff Comment: Boulevard Future Land Use designation allows a maximum of 1.5 FAR and CR zoning district permits a maximum FAR of 1.2. The proposed resort is 129,925 square feet with 1.48 FAR excluding the square footage for two-story car parking underneath the building and requires a deviation.

Neighborhood Compatibility:

The property on the North is zoned Commercial Boulevard and the properties towards the east and west of the proposed development are zoned as multi-family residential. The properties to the north and east currently support single-family residential and the properties on the west appear to support multi-family residential buildings ranging between two to four stories in height. This resort use has been in existence in this area for many years and is compatible with this neighborhood.

The scale of the resort has changed and may be less compatible with the adjacent residential properties than the previous resort. However, the separation distance between the resort and the additional landscaping buffers may ameliorate the impacts of the scale.

Findings and Conclusions:

LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and

findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Staff response: No errors or ambiguities exist.

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

Staff response: The previous structure was destroyed by Hurricane Ian and the site is available for redevelopment. Additionally, the flood regulations do require a higher elevation for usable floor area, than was allowed when the original resort was developed.

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

Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

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

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Staff response: The use is a permitted use by right in Commercial Resort zoning. The Applicant is requesting a deviation of 0.3 FAR to allow a FAR of 1.5, the maximum allowed intensity of the Boulevard Future Land Use district. The new structure will be designed to meet current building and flood requirements, which is supported by the comprehensive plan. The proposed development does exceed the height recommended in the comprehensive plan.

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

Staff response: The proposed development will meet performance and locational standards set forth in 34-2031. There are no special location standards for resorts.

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

Staff response: The urban services exist in this location.

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

Staff response: The request will have no impact on environmentally critical areas and natural resources. The EC portion of the property is not being rezoned.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Staff response: The proposed use has been in existence in this location for many years. It is not anticipated to have any detrimental impact on existing or planned uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Staff response: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice the number permitted by right under the Town's build back policy. It appears that the proposed reduction may lead to an undue burden on the parking and transportation facilities in the Town. A detailed review of traffic impacts will determine impact fees during development of the property.

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

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Staff response: The proposed use for the CPD comply with the Comprehensive Plan.

(2) This chapter.

Staff response: The proposed use complies with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.

Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see [§ 34-216](#) of this chapter for additional findings.

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

Staff response: A resort is permitted use by right in Commercial Resort zoning district. The proposed use has existed in this location without creating a nuisance.

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

Staff response: Sufficient safeguards are provided for the public interest.

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

Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Staff response: Not applicable.

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

Staff response: The proposed use is similar to the previously existing development and is consistent with Policy 4-B-5 and 4-C3 of the Town's Comprehensive Plan.

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

Staff response: The proposed structure will be a six-story building (four stories of hotel over two stories of parking) and 51 feet above the base flood elevation, where a maximum height of three story or 30 feet high building is permitted in the CR zoning district. As per Policy 4-C-4 of the Town's Comp Plan, permanent view corridors to Gulf or Bay waters may be provided in exchange for allowing a building to be taller than three stories, including the ground story. The Applicant is however proposing a 25-foot-wide view corridor obstructed by a 15-foot-wide landscape buffer on the east. The Applicant is also proposing a 20-foot view corridor on the west.

The property on the east and west are zoned as multi-family residential. The properties to the east are developed as single-family residential and the properties on the west appear to support multi-family residential buildings ranging between two to four stories in height. Therefore, the requested building height is consistent with the neighborhood, but not consistent with the view corridors as specified in Policy 4-C-4 of the Town's Comprehensive Plan.

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

Staff response: Not applicable.

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

Staff response: Not applicable.

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

Staff response: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice the number permitted by-right under the Town's build back policy. The Applicant proposes 16 public parking

spaces on Delmar Ave and will encourage alternate modes of transportation on site.

There is a possibility that the proposed reduction in parking spaces may lead to a burden on the parking and transportation facilities in the Town.

Findings for Deviation Requests:

Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

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

Staff response: The requested deviations allow the development of the site with the design that the applicant has chosen.

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

Staff response: The proposed deviations are a result of design choice that might be underestimating the parking needs.

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

Staff response: The deviations are not a detriment to the public interest.

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

Staff response: The deviations are not consistent with the comprehensive plan.

III. RECOMMENDATION

Staff finds that the CPD with deviations does not meet the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends denial of DCI20230213.

On November 12, 2024, the LPA voted 5-0 in favor of approval with conditions of the requested CPD with deviations. Two members were absent.

IV. CONDITIONS OF APPROVAL

If the Town Council recommends approval for the rezoning, town's staff recommends the following conditions of approval:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Addresses 2310 and 2316/2320 Estero Blvd must be combined as a single parcel under one STRAP number.
4. Lee County must approve the permit for the second access from Estero Blvd.

5. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the owner, CHG Neptune Acquisitions, LLC.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. A parking agreement and a perpetual parking easement must be established with the Town for the proposed 16 public parking spots along Delmar Ave and street improvements prior to commencement of construction.
8. Failure to comply with any of the above-mentioned conditions of approval for the Special exception will render this approval null and void.

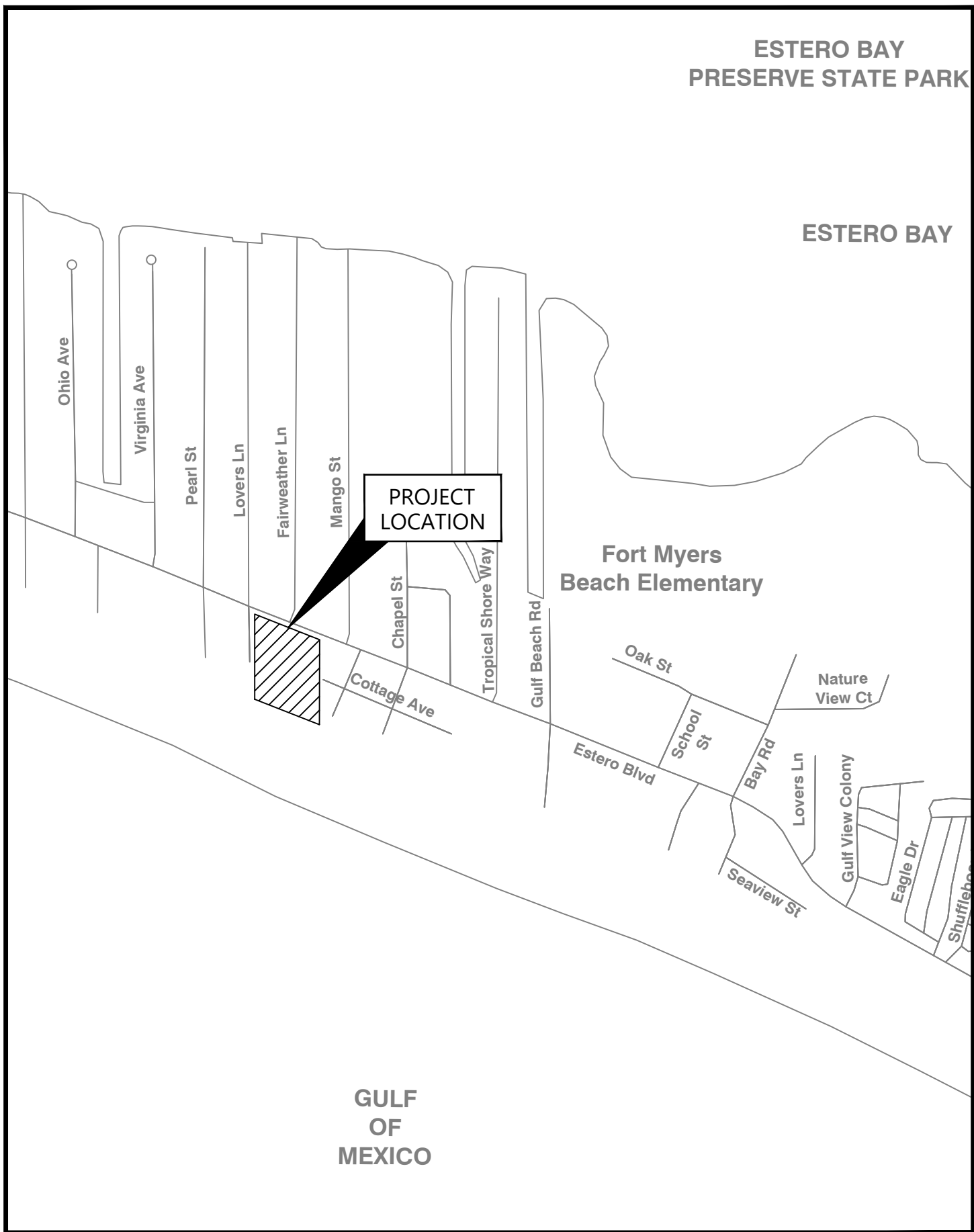
Staff Report Exhibits:

- A – Master Concept Plan
- B – Conditions and Schedule of Uses
- C – Applicant’s Narratie
- D – Complete Application

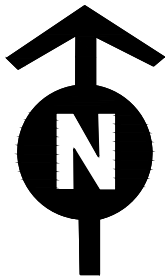
MASTER CONCEPT PLAN FOR

NEPTUNE RESORT CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.



SITE LOCATION MAP
N.T.S.

PREPARED BY:



5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

CHG NEPTUNE ACQUISITIONS, LLC

150 EAST BROAD ST, SUITE 800
COLUMBUS, OH 43215

CONTENTS		
SHEET NUMBER	SHEET DESCRIPTION	
1	COVER SHEET	
2	MASTER CONCEPT PLAN	
3	CONCEPT PARKING PLAN	
4	NOTES	
DATE:	PROJECT No.:	SHEET No.:
October, 2023	220050.01.01	1 OF 4

1. THIS MASTER CONCEPT PLAN (MCP) IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURES AND OTHER IMPROVEMENTS MAY VARY. FINAL DESIGN AND IMPROVEMENT **DETAILS** WILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
2. TOTAL LOT AREA IS 2.46 ACRES OF WHICH 2.01 ACRES IS LANDWARD OF THE 1978 CCCL.
3. WATER MANAGEMENT NEEDS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT TIME OF D.O.
4. THE PROJECT WILL BE DEVELOPED IN ONE PHASE.
5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 24 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
6. NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS THIS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT. NO PROTECTED SPECIES SURVEY IS REQUIRED PER APPROVED WAIVER.
7. PARKING ON DELMAR WILL BE IN COMPLIANCE WITH LDC SEC. 34-2011(3) REGULATION ON-STREET PARKING.
8. AT GRADE BEACH PATHWAYS AND DUNE WALKOVERS WILL BE LOCATED AT TIME OF D.O.
9. THE MAXIMUM OF 148 HOTEL UNITS IS PERMITTED PURSUANT TO LDC SECTION 34-1803, ALLOWABLE INTENSITY EQUIVALENCY TABLE, FOOTNOTE #2.

- MIN. REQUIRED: 0 SPACES
- MIN. PROVIDED: 6 SPACES

DEVELOPMENT STANDARDS	PRINCIPAL STRUCTURE	ACCESSORY STRUCTURE
MINIMUM FRONT YARD - FROM ESTERO BLVD	27 FEET	SPS
MINIMUM REAR YARD - FROM SOUTHERN BOUNDARY	62 FEET	SPS
MINIMUM SIDE YARD FROM DELMAR AVE	20 FEET OR 12 FEET FOR EXTERNAL STAIRCASE	SPS
MINIMUM SIDE YARD - FROM EASTERN BOUNDARY	25 FEET	SPS
MAXIMUM ZONED HEIGHT ¹	54 FEET	N/A
MAXIMUM ACTUAL HEIGHT ²	81 FEET	N/A
MAXIMUM STORIES	4 ABOVE 2 LEVELS OF PARKING	N/A
MAXIMUM FLOOR AREA RATIO ³	1.5	N/A

1. A DEVIATION FROM LDC SEC. 10-285, TABLE 10-1 – CONNECTION SEPARATION, WHICH REQUIRES A 250' SEPARATION BETWEEN STREET AND ACCESSWAYS, IN ORDER TO ALLOW DRIVEWAY SEPARATIONS AS DEPICTED ON THE MASTER CONCEPT PLAN (MCP).
2. A DEVIATION FROM LDC SEC. 10-416(C)(2) – LANDSCAPING OF PARKING AND VEHICULAR USE AREAS, WHICH HAS SPECIFIC TREE AND LANDSCAPE ISLAND DIMENSIONAL REQUIREMENTS TO ALLOW AN ALTERNATE LANDSCAPE BETTERMENT PLAN AS ALLOWED PER LDC SEC. 10-419.
3. A DEVIATION FROM LDC SEC. 34-1804(A) AND SEC. 34-2020, WHICH REGULATES PARKING FOR HOTELS/MOTELS AND OTHER ACCESSORY USES, TO ALLOW REDUCED PARKING REQUIREMENTS AS JUSTIFIED BY THE PROJECT'S INDEPENDENT PARKING ANALYSIS.
4. A DEVIATION FROM LDC SEC. 34-633, WHICH INCLUDES COVERED PARKING IN THE FLOOR AREA RATION (FAR) CALCULATION TO EXCLUDE THE TWO STORIES OF UNDER-BUILDING PARKING FROM THIS HOTEL'S FAR CALCULATION.
5. A DEVIATION FROM LDC DIVISION 4, TABLE 34-3 FOR THE CR ZONING DISTRICT WHICH LIMITS HEIGHT TO 30 FEET ZONED HEIGHT AND THREE (3) STORIES TO ALLOW A MAXIMUM ZONED HEIGHT OF 51 FEET AND A MAXIMUM OF SIX (6) STORIES CONSISTING OF FOUR (4) STORIES ABOVE TWO (2) LEVELS OF PARKING.
6. A DEVIATION FROM LDC SEC. 34-1803(A)(1), WHICH ALLOWS THE CONVERSION OF DWELLING UNITS TO HOTEL/MOTEL GUEST UNITS PER ESTABLISHED EQUIVALENCY FACTORS, IN ORDER TO EXCEED SAID FACTORS AS ALLOWED PER LDC SEC. 34-1803(A)(2). THIS DEVIATION WOULD ALLOW A MAXIMUM EQUIVALENCY FACTOR OF 6.2 RESULTING IN A MAXIMUM OF 148 RESORT HOTEL UNITS.
7. A DEVIATION FROM THE LDC SECTION 34-645(B) AND TABLE 34-3, WHICH ALLOWS FOR A FLOOR AREA RATIO (FAR) MAXIMUM OF 1.2 WITHIN THE COMMERCIAL RESORT (CR) ZONING DISTRICT, TO ALLOW FOR A MAXIMUM FAR OF 1.5.

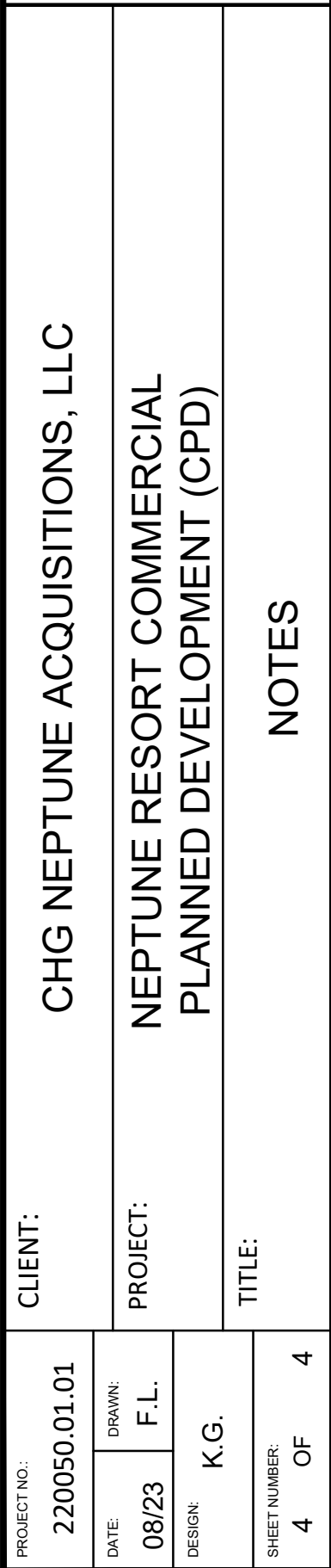


EXHIBIT A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230213 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Addresses 2310 and 2316/2320 Estero Blvd must be combined as a single parcel under one STRAP number.
4. An approval letter for the second access from Estero will be required prior to construction.
5. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the owner, CHG Neptune Acquisitions, LLC.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. A parking agreement and a perpetual parking easement must be established with the Town for the proposed 16 public parking spots along Delmar Ave and street improvements prior to commencement of construction.
8. No permanent or temporary structures are permitted within the 25-foot-wide view corridor on the East and within the 20-foot-wide view corridor on the West side of the property.
9. Failure to comply with any of the above-mentioned conditions of approval for the Special exception will render this approval null and void.

Schedule of Use

Lodging

- Hotel/ Motel (inclusive of Hotel Condominiums)
- Guest Units
- Resort

Lodging Accessory Uses

- On premises consumption of Alcohol beverages
- Resort accessory uses
- Personal services
- Recreational Facilities
- Pathways and dune walkovers

Accessory Retail use

- Accessory commercial uses
- Retail store

**THE NEPTUNE RESORT
COMMERCIAL PLANNED DEVELOPMENT (CPD) REZONING**

NARRATIVE

BACKGROUND & REQUEST

The subject property is located at 2310/2316/2320 Estero Boulevard, Fort Myers Beach, FL 33931. The property consists of 3 parcels (19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010; and 19-46-24-W3-04300.00CE) totaling 2.46+/- acres, situated south of Estero Boulevard, east of Delmar Avenue and west of Mango St (See Figure 1). The property has a Future Land Use (FLU) Designation of Boulevard and a zoning designation of Commercial Resort (CR). CHG Neptune Acquisitions, LLC (CHG), has owned the property since September 2021 and is the applicant for this rezoning request.



Figure 1. Location Map



The Neighborhood Company, on behalf of CHG Neptune Acquisitions, LLC, is submitting this Planned Development Rezone Application to request the following:

- Rezone the subject property from Commercial Resort (CR) to Commercial Planned Development (CPD) to allow the redevelopment of the prior Neptune Inn site with a 148-unit resort hotel, accessory retail and recreational uses, and a restaurant and tiki bar open to the public.

History of The Neptune Inn

In the 1960's, the subject property was developed as an "Old Florida" style motor inn (See Figure 2) known as the Neptune Inn. The inn consisted of 71 rooms/suites within three buildings and parking on the interior of the property. Most of the buildings were two stories in height. However, the beachfront portion of the building along Delmar Avenue was three stories. Amenities included two pools, shuffleboard courts, and shaded picnic areas.

The Neptune Inn had a long-standing history of providing a home away from home for vacationers, who returned year after year to enjoy the many qualities of Fort Myers Beach. The property was purchased in September of 2021 by CHG Neptune Acquisitions, LLC, which is a subsidiary of Continental Real Estate Companies. Although the inn was dated, the ownership valued the hotel's heritage and nostalgic charm. They intentionally decided not to completely redevelop the hotel, but rather update, refresh and renovate the existing hotel to better serve and meet the needs and wants of its loyal customers.



Figure 2. Vintage Neptune Inn



As a result of Hurricane Ian, the property and existing structures suffered extensive damage (See Figure 3). The ownership evaluated the opportunity to repair the hotel under the 50% Rule, but it was deemed unfeasible for numerous reasons including: long-term resiliency, FEMA and Florida Building Code requirements, site issues related to the Coastal Construction Control Line (CCCL), insurance obligations, the age and anticipated lifespan of existing structures, repair costs, and today's hospitality market and consumer expectations. Based on this detailed assessment, the property owners decided to redevelop the property with a brand-new beach resort that will respect the Neptune Inn's heritage while allowing for a prosperous and sustainable future. The proposed resort will remain family oriented but will offer the quality and modern amenities that today's consumers expect. The resort will be beautiful and resilient while also eliminating existing nonconformities and risks associated with older structures.



Figure 3. Post Hurricane Ian Photos

To redevelop the property and to eliminate existing nonconformities it is necessary to rezone the property from Commercial Resort (CR) to Commercial Planned Development. This request will not require a change to the Comprehensive Plan and the property's "Boulevard" Future Land Use Category.

PROPOSED USE/REDEVELOPMENT

The intent of the Commercial Resort (CR) zoning district is to designate suitable locations for hotels, motels, resorts, and related services. As stated in the Land Development Code (LDC), "... the Commercial Planned Development District (CPD) is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential or mixed-use in character and that complies with the Fort Myers Beach Comprehensive Plan, but which does not meet all of the specific requirements of a conventional or redevelopment zoning district." The proposed rezone from CR to CPD is being requested as a direct result of Hurricane Ian damage, meets the intent of the CPD, and provides the best vehicle for the property owner to build back better and stronger. The proposed CPD will enhance the property's resiliency, provide an outstanding product that meets today's consumer expectations, and will result in a project with multiple



benefits to the Town and its residents. Through the CPD rezoning process, the property owner is seeking to develop the site with a 148-unit resort, retail and recreational uses subordinate to the hotel use, and a restaurant and tiki bar that will be open to the public. The proposed resort will be built landward of the established 1978 Coastal Construction Control and will comply with all FEMA and Florida Building Code requirements.

Redevelopment, Resiliency and Economic Feasibility

Hurricane Ian devastated the Neptune Inn and its supporting infrastructure as it did to many hotels and resorts on the island. The Town of Fort Myers Beach, its residents, and businesses remain strong and are working tirelessly on the recovery and reconstruction of their island and its economy.

Prior to Hurricane Ian, Fort Myers Beach had a significant hotel inventory of approximately 2,156 rooms, which was below the peak inventory that existed prior to Hurricane Charley in 2004. Post Ian, the Lee County Visitor and Convention Bureau estimates that only 408 rooms are currently available for occupancy. This represents a decline of over 81% in available rooms. This significant reduction in hotel room supply significantly impacts the Town's economy and impedes the road to recovery. Tourism affects all facets of the local economy - it creates jobs and small business opportunities for local residents; it supports local bars, restaurants and entertainment venues; it contributes to the Town and County's tax base; and it provides the critical mass needed for certain business such as grocery stores and pharmacies to be viable and for services such as dentists, sports therapists, healthcare clinics and gyms to thrive. As such, it is vital that we rebuild the hotel stock and that we promote a strong tourism economy. Redevelopment and reconstruction of hotels and resorts will bring visitors back to the island, which in turn will help reopen and keep restaurants, bars, and retail stores thriving. In combination, all these key commercial uses will provide a strong economic engine for the Town.

It is going to take time to recover and there are still many challenges ahead. Fort Myers Beach will once again be the robust tourist destination it was before Hurricane Ian but challenges such as new FEMA and Florida Building Code regulations, the need to harden and construct resilient structures, and insurance changes will seriously affect the ability to rebuild. The high cost of construction, limited availability of labor, the need for modern amenities that meet today's consumer expectations, high interest rates, overall inflation and the significant risks associated with local tourism (i.e., red tide, COVID, major storms) seriously affect investment decisions and what type of hotel can be rebuilt. Smaller, ground level hotels can no longer be constructed due to current regulations, nor can they be rebuilt due to today's economic reality. As many island residents can attest to, the cost to rebuild on Fort Myers Beach has increased exponentially and this does not even factor in land costs. As such, it is not realistic to believe that hotels, motels, and resorts can



be rebuilt at the same size and with the same number of lodging units as before. In order to offset these high costs and to hedge against unforeseen risks, hotels will need to be bigger than they once were.

CHG has carefully analyzed and evaluated these challenges. While rebuilding is not a quick or easy task, they are committed to this Town and want to be a significant community partner, and an asset to the Town of Fort Myers Beach by paying homage to the history of the Neptune Inn by developing a new family-oriented resort. The new resort seeks to strike a balance between the need to address today's economic and regulatory realities and delivering a design that respects the surrounding context and community character. The new Neptune Resort will not only provide new hotel rooms to bolster the economy and replenish units lost since Hurricane Charley and Ian, but will also provide a new resort that provides public benefits and amenities that include:

- A gulf side neighborhood sit-down restaurant and tiki bar open to the public.
- A minimum 25' wide view corridor on the east side of the subject property.
- Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:
 - Complementary enhanced landscaping and open space features;
 - Additional public parking spaces (16) to be dedicated to the Town; and
 - Expanded view corridor from Estero Boulevard.
- Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.
- Planting of shade trees and pedestrian amenity nodes along Estero Blvd.
- Restored dune habitat and native vegetation plantings
- Elimination of non-conformities
- Improved setbacks
- Elimination of structures beyond the CCCL
- Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.
- Development of a high-quality resort product with superior design and styling
- Provision of bicycle parking



- Provision of bicycles for guest to reduce vehicular traffic
- Fair share contribution toward mobility solutions to reduce traffic on the island
- Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children
- Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors
- Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island

LOCATION, DESIGN ELEMENTS AND COMPATIBILITY

Location

The property is located within the Civic Complex area of Fort Myers Beach at the southeast corner of Estero Boulevard and Delmar Avenue and is approximately three quarters of a mile east/southeast of Times Square. This area of the island contains many of the community's key public facilities such as the historic elementary school, the public library, Town Hall, Bay Oaks Recreation Center, and the Matanzas Pass Preserve. Pre-lan, this neighborhood was home to a mix of institutional, residential, commercial, and lodging uses. As envisioned in the Comprehensive Plan, this area is truly the "Heart of the Island" in that it contains an eclectic mix of uses that serve visitors and residents alike. This segment of the island creates a transition zone between the downtown Core Area and the Quiet Center district. It provides a logical and functional transition between the more intense commercial, resort and entertainment uses downtown and the predominantly residential character of the Quiet Center. The Civic Complex is not as lively and "funky" as downtown but is sufficiently close to it and has the right balance of uses to appeal to both visitors and residents.

The Civic Complex is close enough to downtown and Time Square that it can be easily accessed by pedestrians and cyclists but is sufficiently removed from the entertainment center to create a markedly different district that has its very own character. The Civic Complex is a little more mellow than downtown but remains lively with a diverse mix of uses that include family resorts, neighborhood commercial uses, civic and recreational uses.



The Neptune Resort is located towards the northern end of the Civic Center district, along the gulf side of Estero Boulevard and in close proximity to other family-oriented resorts including the Diamond Head and the former Estero Island Beach Club. Visitors to the Neptune Resort will be able to reach Times Square via a short walk or bike ride while enjoying shops, restaurants or the beach along the way. There are trolley stops located nearby providing visitors with another option to travel about the island. The town is also bicycle friendly, allowing resort guests to visit other parts of the island without the use of a car. The Neptune Resort will provide dedicated public bicycle parking onsite and bicycles for resort guests so they can conveniently experience restaurants, shops, and entertainment throughout the island.

Surrounding Uses and Site Design

The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
NORTH	Boulevard	Commercial Boulevard	Estero Boulevard ROW and Vacant Commercial
SOUTH	Recreation	Waterfront	Beach
EAST	Boulevard	Commercial Resort & Residential	Vacant/Destroyed Commercial
WEST	Boulevard	Residential Multi-family	Residential & Vacant Commercial

The project has been designed to be a high quality and welcoming hotel resort that complements the surrounding community. The site design includes elements tailored to improve compatibility with neighboring properties, eliminate any existing nonconformities and provide amenities beneficial to resort guests and general public visiting the resort and beach. These elements include a structure that is setback farther from adjacent properties, Estero Boulevard and the CCCL; an entrance point off of Estero Boulevard to provide unimpeded vehicle movements into the property so as not to obstruct the flow of traffic along Estero Boulevard; dedicated and appropriately designed ingress and egress points; enhanced landscaping and pedestrian amenity areas along the Estero Boulevard frontage; an oversized sidewalk with benches and decorative hardscape; two enhanced view corridors (See Figure 4); additional public parking spaces along Delmar Avenue; bicycle parking; and a restaurant and tiki bar open to the public.

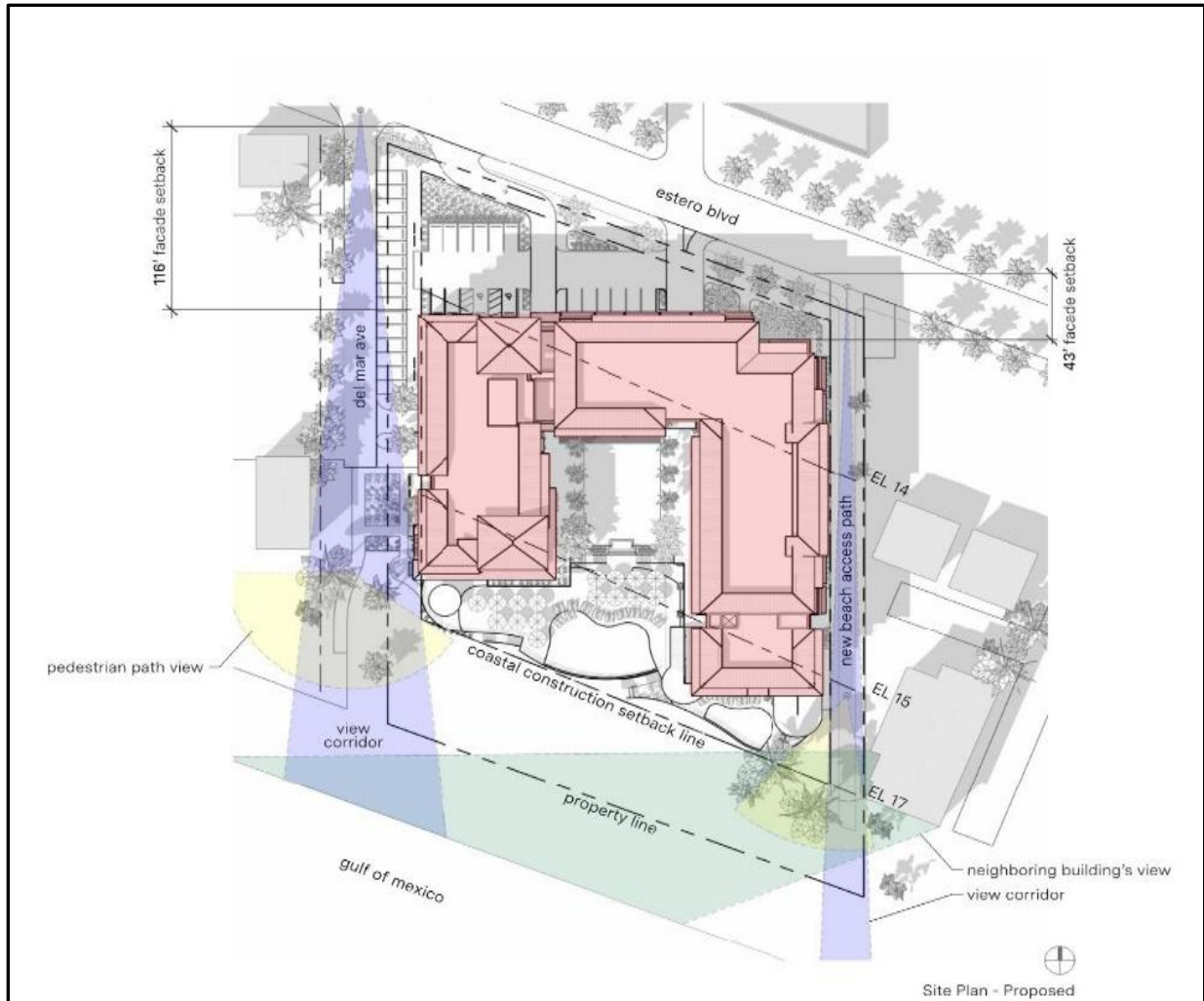


Figure 4. Overall Site Design Setbacks/View Corridors

Height

The Town's comprehensive plan allows for additional heights beyond the limits provided in the Commercial Resort (CR) zoning district on a case-by-case basis when utilizing the planned development rezoning process. As stated in the comprehensive plan, the request would be "approved, modified, or denied, based on the conformance of the specific proposal with all aspects of the comp plan, including land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf that could be provided in exchange for allowing the building to be taller."



The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to mid-point of the main roof. (See Figure 5a and the Height Exhibit included with the submittal). The allowance for additional height will result in a more attractive hotel, will help ensure its economic feasibility and will allow the Applicant to provide public benefits such as the additional view corridor, an enhanced corridor along Delmar, dedicated public parking and restaurant and tiki bar amenities which will serve the public and resort guests.

Hurricane Ian's destructive storm surge and flooding emphasizes the need for resilient construction that complies with FEMA standards and the Florida Building Code. As noted above, the project's zoned height is 51 feet, however the need to comply with FEMA and DEP's minimum design flood elevation adds height to the proposed resort and so does the varied rooflines which were included to provide visual interest and architectural embellishment. This results in a maximum actual height of 78 feet, 11 inches, measured from grade to the peak of the highest roof. Height measurements are presented in Figure 5a below and the Neptune Resort Height Exhibit included with the submittal.

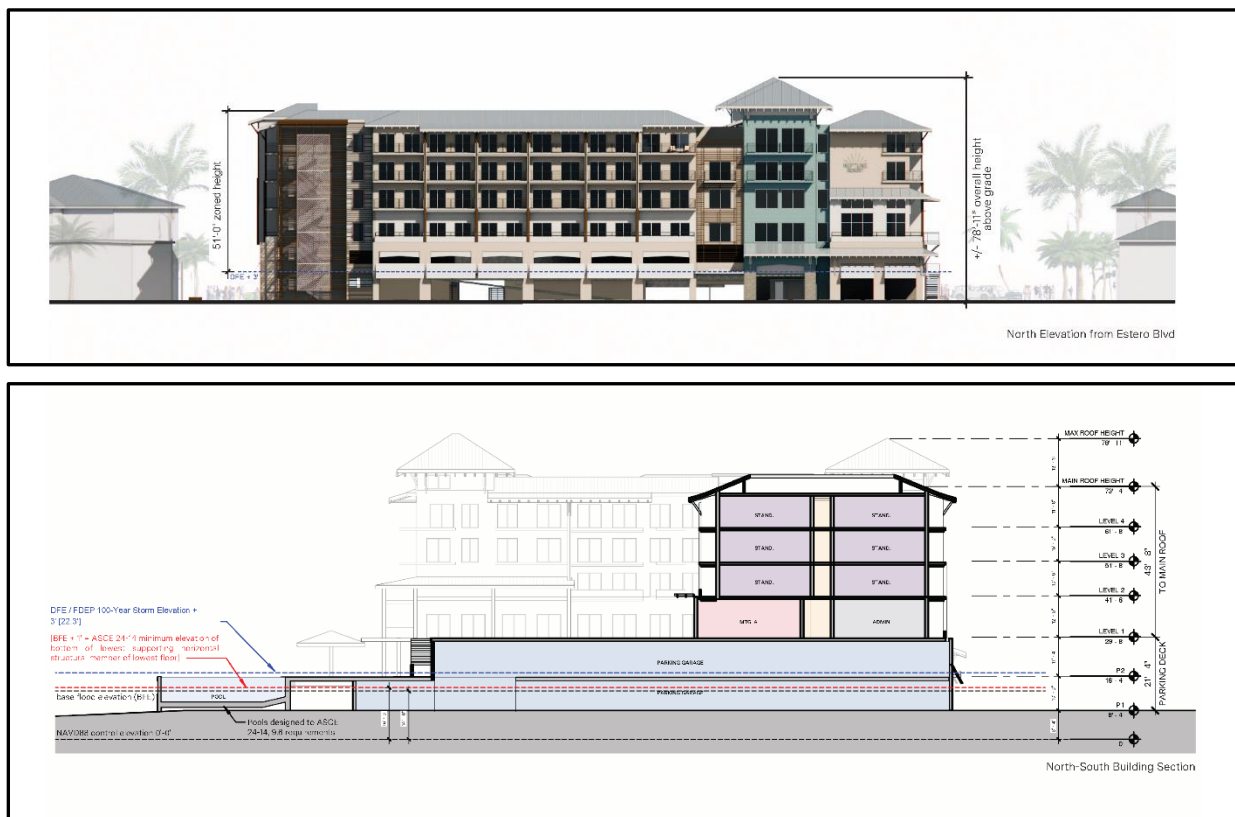


Figure 5a: Building Height and Building Cross-Section



A detailed treatment of the proposed height and how it is compatible with surrounding uses is provided below in the Comprehensive Plan Compliance section and more specifically in addressing Policy 4-C-4.



Figure 5b: Photos of adjacent building heights (West – left and East – right)

Setbacks & Buffers

The development proposes a minimum front yard setback from Estero Boulevard of 27 feet with increased front setbacks of 116 feet and 43 feet for the western and eastern corners respectively; a minimum side yard setback from Delmar Avenue of 20 feet, a minimum eastern side setback of 25 feet from the property line, and a minimum setback from the southern boundary of 62 feet. The proposed setbacks will alleviate the nonconformities which existed with the original development and allow for the addition of a view corridor on the eastern side of the property. The new site layout will also improve views of the beach for the properties to the east. This configuration will also eliminate the nonconforming structures built over the 1978 Coastal Construction Control Line.

Along the eastern boundary, a 15-foot, type “C” buffer, which will consist of vegetation and a wall is proposed where none previously existed. This will create separation and screening from adjacent properties and will provide a softer and aesthetically appealing separation from the structures to the east. While no buffers are required for the Estero Boulevard and Delmar Avenue sides of the property, the developer will provide enhanced landscaping per the planting plan provided to create a more inviting public realm and to provide shade for the pedestrian.



Density/Intensity

The Neptune Resort consists of ± 2.46 acres located within the Boulevard Future Land Use category. Due to the catastrophic damage caused by Hurricane Ian and the need to create a resilient luxury resort with amenities expected by today's consumers, building back the property as it existed is not feasible. Conditions have changed significantly since the original construction of the Neptune Inn. The cost of construction materials, the availability of labor, the construction requirements mandated by the Florida Building Code and FEMA regulations are some of the many challenges. Due to the exponential increase in construction cost and today's consumer preferences, additional hotel units and gross floor area are needed to justify this level of investment and deliver an economically feasible development that can thrive for years to come.

The subject property is comprised of a total of 24 platted lots – 10 lots within the W.W. Watson Subdivision and 14 lots within the Beach Estates Subdivision. Each platted lot would be permitted 1 unit by right, for a total of 24 dwelling units. Per the equivalency factors outlined in LDC Sec. 34-1803(a)(1), the 24 residential units can be converted into guest units based at a ratio of 2.5 guest unit per residential unit. LDC Sec. 34-1803(a)(2), further allows these established ratios to be exceeded under exceptional circumstances and when providing public benefit as part of the planned development process.

The exceptional circumstances applicable to the Neptune Resort include the devastation sustained due to Hurricane Ian, the construction requirements mandated through the Florida Building Code and FEMA, the increased cost of construction, high interest rates and the shortages of materials and labor. The applicant is proposing public benefits, as outlined previously on pages 5 and 6, that further contribute to the project's consistency with LDC Sec. 34-1803(a)(2). Recognizing the exceptional circumstances, proposed public benefits, and utilizing the underlying 24 "by-right" dwelling units for density conversion, the Neptune Resort is requesting 148 hotel units through this CPD rezone request. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 (requested equivalency factor – See Deviation #6) = 148 hotel units. For further details related to the proposed hotel/motel density conversion outlined above, see the "Narrative Supplement – Hotel/Motel Density & Allowable Intensity" document included with this submittal.

The floor area ratio (FAR) as conceptually established for the project is 1.48 or 129,925 SF (not inclusive of 2 levels of parking), which is detailed in the Neptune Resort FAR Exhibit as part of the application submittal. However, we are requesting a maximum FAR of 1.5 to provide some leeway for changes that may be needed as the project progresses to final design and permitting. Additionally, the increase in FAR is requested to allow the development of the type of resort desired by the community and consistent with today's market expectations. The Neptune Resort will offer high-end guest amenities, such as an on-site



restaurant open to the public, pools, pool bar, conference rooms, recreational areas, and open space. The increased FAR is also needed to address today's building codes, FEMA regulations, and updated hospitality standards that call for larger rooms, back of house and support facility areas. This proposed FAR is equal to the maximum FAR of 1.5 as allowed under the Boulevard Future Land Use category. Additionally, as part of this CPD rezoning petition are deviations from LDC Sec. 34-633 to exclude the two levels of under-building parking when calculating the FAR and a deviation from LDC Sec. 34-645(b) and Table 34-3 to exceed the maximum 1.2 FAR within the Commercial Resort zoning district.

Transportation and Parking

A traffic impact assessment has been performed by T.R. Transportation Consultants and concludes that with the proposed rezoning to CPD, the future redevelopment of this resort hotel with 148 units along with restaurant and tiki bar, open to the public, will not place an undue burden on the island's roadway network. The level of service analysis provided is based on data collected prior to Hurricane Ian and shows that Estero Boulevard was over capacity during season. Due to the destruction caused by the hurricane, and due to the significant amount of time it will take to rebuild and re-establish pre-storm population and traffic levels, this development will not create an undue burden on the island roads.

Parking for hotels within the Town of Fort Myers Beach is based on LDC Section 34-1804 which states, "the minimum requirement for off-street parking is 1.2 parking spaces for guest units up to 450 square feet and 1.5 spaces for each larger guest unit." Parking requirements for ancillary uses contained within the hotel are calculated based on their square footage and as outlined in LDC Section 34-2020. As demonstrated below the total number of spaces required per the LDC is 220.

Hotel Resort Parking Calculations			
Estimated Unit Size	Estimated # of Units	Required Spaces per Unit	
Less than 450 SF	36	1.2	43.2
Greater than 450 SF	112	1.5	168
		Hotel Only	211.2
Parking for Ancillary uses = 3.0 % of total SF			
Location	SF	Spaces per SF	
Interior	2,623	2 / 1000 SF	5.2
Exterior	1,048	2 / 1000 SF	2.1
Tiki	749	2 / 1000 SF	1.5
		Ancillary Uses	8.8
		Total for Hotel & Ancillary Uses	220



As we know, local land development codes tend to have conservative parking requirements that often lead to overparking. As such, parking requirements recommended by the Institute of Transportation Engineers (ITE) were also analyzed. Per the ITE Manual definitions, Resort Hotel (Land Use 330) specifically applies to the proposed project. As described in the ITE Manual, a Resort Hotel (Land Use 330) “is similar to a hotel (Land Use 310) in that it provides sleeping accommodation, full-service restaurants, cocktail lounges, retail shops and guest services. The primary difference is that a resort hotel caters to the tourist and vacation industry, often providing a wide variety of recreational facilities/programs...”. The attached memorandum from TR Transportation Consultants, Inc. dated May 13, 2024, further evaluates the parking demands based on the **Institute of Transportation Engineer’s (ITE) Parking Generation Manual, 6th Edition**, which was just published by ITE in October of 2023, and the **Urban Land Institute (ULI) Shared Parking, 3rd Edition** manual and spreadsheet, the Master Concept Plan and the requested parking deviation. The analysis finds that the maximum peak parking demand for the proposed Neptune Resort is 118 spaces. The on-site supply of a minimum of 138 delineated parking spaces with an additional 26 spaces that can be achieved via valet service stacking, for a total of 164 spaces will be sufficient.

Further, the Town’s LPA and Council have discussed strategies to reduce car trips and encourage visitors to leave their car at home. In an attempt to reduce parking space and support the Town’s desire to reduce car dependency, the project proposes a minimum of 164 resort parking spaces, inclusive of parking via valet service, and 16 public parking spaces along Delmar Avenue through a dedicated easement to the Town of Fort Myers Beach.

The developers propose to enhance the on-site vehicle parking by providing alternative transportation options such as bicycle parking for visitors, complimentary/rental bicycles for use by resort guests or the public, golf cart parking, pedestrian connectivity to and from the property to existing trolley stops and encourage guest to leave their cars at home by promoting alternative modes of transportation. The developers of the Neptune Resort are seasoned resort operators throughout the United States and based on their experience they feel confident that the proposed parking is adequate for the resort. Nonetheless, the Applicant commits to work with the Town and other local hotel proprietors in developing and promoting alternative modes of transportation and agrees to contribute their fair share to comprehensive transportation/parking solutions.

Compatibility

As presented above and further discussed in the Rezoning Approval Criteria below, careful consideration was given to designing a resort that fits into the fabric of Fort Myers Beach while remaining feasible from a regulatory and economic standpoint. By honoring the Neptune Inn’s heritage as a family-oriented hotel, and through the proposed setbacks, buffers, enhanced landscaping, moderate height and scale,



exceptional architecture, thoughtful site design, and public benefits, the proposed resort ensures compatibility with surrounding properties. The Neptune Resort has a long and beloved history on Fort Myers Beach and will continue to be an asset to the island for years to come by providing a family-oriented destination resort for visitors, by building a resort that is open to local residents, by providing public benefits and by being active participants in developing Town-wide mobility solutions and promoting the Beach School.

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REZONING APPROVAL CRITERIA

The proposed rezoning request from CR to CPD must be found consistent with the established rezoning criteria provided for in LDC Section 34-85 and Section 34-216 as well as post-disaster build back criteria in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan and LDC Section 34-3238. The following narrative demonstrates compliance with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code.

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**THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE
PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PHD FORM:**

A. COMPREHENSIVE PLAN AMENDMENTS

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

Mixed Use Districts Designation - Civic Center and Coconut Village RV Park Mixed-Use District



Figure 6. Proposed FLUM category

The applicant is aware that the Town of Fort Myers Beach has initiated an update to the Comprehensive Plan Future Land Use Element (FLUE) and Future Land Use Map (FLUM). This initiative was presented before the LPA on January 18, 2023 (Yellow Sheet #2023-895) and the Town Council on March 20, 2023. As of the date of this submittal, these updates are still in process. Should the proposed updates be approved, the subject property would be reclassified to the "Civic Center and Coconut Village RV Park Mixed-Use District" FLUM category (See Figure 6). At this time, the Applicant desires to move forward with this petition and intends to be consistent with the existing Boulevard FLUM designation, while also taking into consideration the current drafted language for the proposed Civic Center & Coconut Village RV Park Mixed-Use District category. Items included in the updated FLUE, which have been considered within this petition, include coordination regarding beach access improvements along with contributions to the public realm.



B. PHASING OF CONSTRUCTION

The development is to be constructed in a single phase.

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COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

OBJECTIVE 1-A ESTERO BOULEVARD: Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1: Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The developer has made a conscious and significant effort to create a resort that is attractive and provides additional functionality to the Estero Boulevard corridor. Through the addition and expansion of view corridors, enhanced streetscape along Estero Boulevard, creation of safe pedestrian walkways from Estero to the beach, and exceptional architectural design, the new Neptune Resort will embody the vision that is desired through the Comprehensive Plan's Community Design Element.

The project will be constructed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet, measured from design flood elevation plus 3 feet to mid-point of the main roof and an overall height above grade of approximately 78 feet – 11 inches (See Figure 5a above).

Through the use of architectural features and color, the building will be aesthetically pleasing and complementary to the surrounding area. The main building will have warm and colorful earthtones with more vibrant pops of color added through elements such as canopies and architectural features. The two-level parking garage is disguised through design elements such as awnings and the use of color and complimentary materials. The structure will have varying rooflines, oversized windows, balconies, and terraces to enhance the open feel of the design. See architectural renderings (Figure 7) on the following page.

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Figure 7: Architectural Renderings



The view corridors will be on both the east and west side of the resort. The eastern side of the resort will be set back from the property line to allow a minimum 25-foot view corridor on the subject property. The current building sits on the eastern property line and inhibits the neighboring residences' beach view. Additionally, there is no buffer between the uses. The increased setback will allow for the creation of enhanced landscaping and hardscaping as well as a buffer between the resort and the neighboring residences. This setback will also allow neighboring residences a less obstructed view of the beach.

The western side of the resort, along Delmar Avenue, will be set back approximately 20 feet from the property line. This proposed 20-foot setback and the Delmar Ave. right-of-way will provide approximately 70 feet of view corridor, as well as 16 public parking spaces, public bicycle parking and external access to the resort's restaurant. The developer will provide enhanced landscaping where permissible to create a welcoming environment for both island residents and visitors along Delmar Ave.

These two corridors will allow better views of the beach from Estero Boulevard for resort patrons and the public, thus creating a more attractive experience for visitors along Estero Boulevard.

The proposed development will incorporate items and amenities throughout the site to enhance the Boulevard character. These include the following:

- Public Access/Use
- Restaurant, tiki bar open to public
- Bicycles for guests
- Improved traffic flow, circulation and access through the appropriately designed access points along Estero Boulevard and the egress onto Delmar Avenue from the parking garage.
- Increasing sidewalk width, pedestrian amenity nodes, and providing shade through landscaping to beautify the public realm to create a more pedestrian friendly environment.
- Coastal Old Florida/Cracker architectural elements – siding, porches, metal roof etc.
- Elimination of nonconforming side setbacks
- Economic benefits will include the creation of jobs, additional funding for the town from the collection of taxes, i.e., Tourist Development Tax, sales tax and property taxes, and additional visitor spending at local shops, restaurants, etc.
- The developer will work with the school to increase student enrollment by informing employees that their children are eligible to attend the Beach School and through the coordination of work schedules for employees with children in the school.
- The new construction will meet modern construction requirements to harden and be more resilient.
- All new structures will be located landward of the Coastal Construction Control Line.



- As described above the redeveloped site will allow for an increase in setbacks and buffers, wider view corridors, more separation from adjoining properties and an additional view corridor on the eastern side of the property.
- Enhanced landscaping to create an aesthetically pleasing site.
- Dune restoration in coordination with the Town to prevent beach erosion and provide additional protection during storm events.
- The developer pledges to work with the Town on alternative modes of transportation such as shuttle and ferry.

Through the features described above and uses proposed, the development will enhance the appearance of Estero Boulevard and provide additional opportunities for both lodging and public use thus demonstrating consistency with the Community Design Element, Objective 1-A, Policy 1-A-1.

FUTURE LAND USE ELEMENT:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER: Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented “public realm” that allows people to move around without their cars even in the midst of peak-season congestion.

The devastation caused by Hurricane Ian has emphasized the need for more resilient structures on Fort Myers Beach. The Neptune Inn, though left standing, sustained significant damage and intends to redevelop into a more sustainable resort with additional public benefits. As expressed in Object 4-A, the desire is for the small-town character of Fort Myers Beach to be maintained while continuing the pedestrian-oriented “public realm” that encourages people to move around without their cars even in the midst of peak-season congestion. In planning the redevelopment of the property, the owners have considered what is needed in this area of the island for both visitors and residents to achieve this goal.

With the construction of a new building that meets Florida Building Code and FEMA standards, the site will be more resilient and able to withstand impacts from future hurricanes. Through the reconfiguration of the access to the property, widened sidewalks, hardscape enhancements, additional view corridor along the eastern portion of the property, enhanced landscaping and pedestrian amenities along Estero Boulevard and Delmar Avenue, public bicycle racks, and a restaurant and tiki bar open to the public, the Neptune Resort will contribute to Fort Myers Beach’s goal of being a healthy and vibrant “small town,” while capitalizing on the vitality and amenities available in this beach resort environment.



POLICY 4-A-1: Maintaining the town’s current “human scale” is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

The overall site, building placement, additional setback, height and massing were carefully designed to create a resort that approachable and human scale. While today’s construction requirements mandate stronger and taller structures especially in “V” zones, additional landscape and hardscape proposed along Estero Boulevard, Delmar Avenue, and the eastern view corridor soften the resorts massing and contribute to creating a human scale on FMB and along Estero Boulevard. The subject property is a perfect location for visitors to use as their home base as they explore all the island has to offer through walking and bicycling.

POLICY 4-A-6: The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment, when necessary, can increase both. Frequent beach access is essential to the town’s character and should be maintained and expanded where possible.

The proposed MCP provides a visual representation of the orientation of the building and its amenities which focus on the Gulf of Mexico overlooking the beach. The proposed on-street parking along Delmar Avenue increases access to the beach. The property owners have entered into a beach restoration and management easement agreement with the Town of Fort Myers Beach as evidenced by the enclosed agreement. This agreement demonstrates the property owners’ commitment to protecting and promoting beach access for all.

POLICY 4-A-9: Many amenities available to local residents are the result of the local tourist economy and would diminish if hotels and motels were displaced. Landowners may redevelop hotels and motels for other uses, but special incentives of this plan such as post-disaster and pre-disaster build back (Objectives 4-D and 4-E) only apply if the current use is maintained.

The proposed development shall support the Fort Myers Beach goals of keeping a healthy and vibrant “small town” atmosphere. This development is designed to not only benefit hotel guests, but to also provide enhancements that can be enjoyed by, and to benefit, the general public. The proposed development will provide health, safety and quality of life benefits to public by providing a restaurant and tiki bar which will be open to the public, additional public parking along Delmar Avenue, pedestrian mobility and connectivity along Estero Boulevard, beautification of the public realm through enhanced landscaping and hardscaping, and fair share contributions to mobility solutions such as a potential future water ferry and airport shuttle service, public parking for bicycles, bicycles for guests, along with the rebuilding of structures to be



compliant with today's Florida Building Code. The proposed structures shall be constructed in the "Coastal" vernacular to complement and further the town's desire to provide unique and attractive architecture. Through these proposed amenities, contributions, and architectural style, the development complies with Policy 4-A-1, 4-A-6, and 4-A-9.

POLICY 4-B-5 BOULEVARD: A mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanent. To obtain approval for a new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contributed to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process.

The proposed Neptune Resort redevelopment consists of hotel lodging units as well as a restaurant and tiki bar that are open to the public. The project will be sensitive to any existing or future residential uses by utilizing increased setbacks and extensive landscaping/buffering. The mixed-use resort will complement and benefit adjacent commercial uses. Additionally, the proposed Neptune Resort is contributing to the public realm by providing enhancement to the existing Delmar Avenue public beach access, creating a new view corridor along the eastern property boundary, and addressing improved landscaping/hardscape elements along Estero Boulevard. The Neptune Resort will also comply with all applicable design standards as required under the Land Development Code at the time of Development Order approval.

POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the "Pedestrian Commercial" category as high as 2.5, and in other categories as high as 1.5.

Under the provisions of Policy 4-C-2, "other" categories can achieve a Floor Area Ratio (FAR) of 1.5. A maximum FAR of 1.5 is proposed utilizing the Commercial Planned Development process to rezone the subject property from CR to CPD, which is consistent with Policy 4-C-2.



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.

The Neptune Resort proposes 4 stories of habitable hotel space above 2 levels of parking. This design results in a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to the mid-point of the main structural roof and a maximum actual height of 78 feet and 11 inches as measured from grade to the peak of the highest roof.

The existing Neptune Inn varies in height from 2 to 3 stories. The proposed Neptune Resort height is consistent with other adjacent multi-story buildings that vary in height from 3-13 stories. Directly adjacent to the east and west of the subject property are 3 story buildings. Farther to the west is the Surf Song Condominiums at five stories and the Diamond Head Resort at 13 stories. The proposed resort is not located in an area of the town that is specifically identified to strictly limit building heights. A proposed height of 4 habitable stories over 2 levels of parking is not synonymous to or considered to be a high-rise tower, but more consistent with other mid-level (4-5 story) multi-family/hotel condo developments throughout the island. The surrounding existing/planned commercial uses to the north will not be negatively impacted by the Neptune Resort. Allowing for increased heights beyond the typical limits, provides opportunities for architectural design alternatives and varied rooflines. Strictly limiting or restricting height often results in flat roofs or limited roofline variations that negatively impact a community's desired aesthetic.

Redeveloping the property requires compliance with the Florida Building Code and FEMA standards to ensure structures are more resilient and can withstand impacts from future storms. All newly constructed buildings on this property must be elevated so that the habitable space is above the design flood elevation



plus 3 feet (DFE)/FDEP 100-Year Storm elevation of 22.3 feet. Any habitable space must be at least 22.3 feet in elevation. This creates a significant amount of unutilized space under the building and presents an ideal location for covered parking (parking garage) and support facilities. Due to these requirements, it is impossible to redevelop the Neptune Resort as it existed prior to Hurricane Ian. Any new structure must be more resilient, stronger, and taller. Only one additional story of habitable space is proposed for this project; however, the ramifications of meeting modern building standards and FEMA requirements dictate much of the need for additional height.

Consistent with the planned development rezoning process, the Neptune Resort is providing public benefits by enhancing the view corridor along Delmar Avenue, providing public parking along Delmar Avenue, and providing a new 25-foot-wide view corridor along the eastern property line. The ability to provide for these view corridors, and additional public parking result from additional height and increasing side setbacks. Additionally, the project will be designed to eliminate the non-conforming encroachments over the Coastal Construction Control Line (CCCL) and side setbacks. The proposed buildings will be constructed landward of the current Coastal Construction Control Line, thereby bringing the site into compliance with the coastal construction regulations, setback requirements, and removing the existing nonconformity. These elements would not be easily achieved or feasible if not for the increasing the height of the proposed structure.

POLICY 4-C-6 – MOTEL DENSITIES The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.)

Consistent with and in support of this policy, LDC Sec. 34-1803 establishes equivalency factors for various Future Land Use categories. The equivalency factor for the Boulevard Future Land Use category and applicable to his property is as follows:

Comprehensive Plan Land Use Category	Equivalency Factors for Guest Units of Various Sizes (in square feet)		
	<450	450 to 750	750 to 1,000
Boulevard	2.5	2.0	1.5

Due to the catastrophic damage caused by Hurricane Ian and the need to create a resilient luxury resort with amenities expected by today's consumers, building back of the property as it existed is not feasible. Conditions have changed significantly since the original construction of the Neptune Inn. The cost of construction materials, the availability of labor, the construction requirements mandated by the Florida



Building Code and FEMA regulations are some of the many challenges. Due to the exponential increase in construction cost and today's consumer preferences, additional hotel units are needed to justify this level of investment and deliver an economically feasible development.

The only reasonable way to build back a better and more resilient Neptune Resort is through the proposed CPD rezoning process that will allow for increased hotel units and development flexibility. Through Policy 4-C-6 and the implementing regulations of LDC Sec. 34-1803(a)(2), hotel unit limits that are based on the established equivalency factors can be increased as a result of "exceptional circumstances" and the public benefits attributed to the project when approved as a deviation through the planned development rezoning process. The exceptional circumstances can be attributed mostly to the unprecedented impacts of Hurricane Ian, but also to the increasing impacts and risks to local tourism such as the nationwide COVID shutdown and regularly occurring red tide/algae blooms. Recognizing the exceptional circumstances, proposed public benefits as outlined throughout this narrative, and the deviation request (See Deviation #6) of utilizing the underlying 24 "by-right" dwelling units for density conversion, the Neptune Resort is requesting 148 hotel units through this CPD rezone request. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 (requested equivalency factor – See Deviation #6) = 148 hotel units.

OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT: Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.

Although the subject property is eligible to rebuild under Policy 4-D-1(i) which states "Buildings/development damaged less than 50% of their replacement cost (measured at the time of damage) can be rebuilt to their original condition, subject only to current building and life safety codes", the property owners have chosen to rebuild their site in compliance with the more stringent regulations as a measure of investment for the future.

Through the redevelopment of the site many non-conformities will be eliminated. The new construction will improve public health and safety by replacing the outdated structures with Florida Building Code and FEMA compliant structures, by removing existing structures seaward of the Coastal Construction Control Line and providing additional freeboard by elevation all habitable space above the minimum design elevation. As such, the proposed development will not only meet Object 4-D of the Comprehensive Plan but exceeds what is required through Policy 4-D-1(i).



POLICY 4-E-2 COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development.

Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions.

The redeveloped project site will remove all existing structures seaward of the 1978 CCCL and new building will be constructed landward of the 1978 CCCL. Thus, complying with Policy 4-E-2.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1: The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

The Coastal Management Element addresses special coastal management concerns which are specific to the Town of Fort Myers Beach and its need to protect resources, human life and property which are vulnerable to events such as hurricanes and flooding. The proposed development will be constructed in compliance with up-to-date Florida Building Codes, FEMA standards and landward of the 1978 Coastal Construction Control Line (CCCL), thus complying with GOAL 5 and Policy 5-A-1.



OBJECTIVE 5-D BEACHES AND DUNES: Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

POLICY 5-D-1: The town's policies on shoreline protection measures shall be as follows:

- ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected, and non-native exotics removed. Dune walkovers should be constructed where they do not exist, and existing structures should be maintained.

To facilitate the Beach recovery, the property owners have entered into an easement agreement with the Town of Fort Myers for the purpose of nourishing the beach, repairing the dune system, removing debris, and providing erosion control. Through these actions and proposed new construction, this project complies with Objective 5-D and Policy 5-D-1.

OBJECTIVE 5-E ACCESS TO THE WATER: Increase the number of well-maintained accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

The proposed improvements to the public beach access on Delmar included in the development plan will be an amenity to not only the hotel visitors but will also serve existing and future island residents. Through this provision, the developers will provide improvements to existing beach access and comply with Objective 5-E.

CONSERVATION ELEMENT:

POLICY 6-B-4 UPLAND HABITATS: Preserve all remaining coastal strand and hammocks, and improve the existing habitat through removal infestations of exotic plants and replanting with native species. When these habitats are in private ownership:

- ii. Beaches seaward of the 1978 Coastal Construction Control Line are designated on the Future Land Use Map as "Recreation" to preclude their use for further urban development.

The property owners have granted a Temporary Beach Management and Access Easement to the Town of Fort Myers Beach for dune restoration and beach renourishment to support the restoration and preservation of the dunes and beaches. No urban development will be permitted on the beaches seaward of the 1978 Coastal Construction Control Line consistent with Policy 6-B-4.



POLICY 6-E-4: The following activities are prohibited to protect dunes and beaches:

- iv. Any construction activity seaward of the Coastal Construction Control Line not specifically approved by the DEP.**

The proposed redevelopment of the site will remove all existing buildings that are within the 1978 CCCL. The proposed MCP shows that all new structures will be built out of the 1978 CCCL and through the granting of a temporary easement will support the beach/dune system repair and ongoing maintenance.

TRANSPORTATION ELEMENT:

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off island systems, and parking options matched to road capacity.

POLICY 7-A-2 PARKING: Even though existing parking lots are not used to capacity; parking is not abundant at Fort Myers Beach. The welcome rebirth of commercial activity near Times Square will increase the demand for parking. The Town of Fort Myers Beach will address parking shortages through the methods outlined in this plan.

The parking for the proposed development will be provided onsite. Parking space calculations are based on the number and size of hotel units and the accessory uses and square footage as outlined in the Land Development Code. The site, as conceptually designed, provides 164 spaces and 16 parking spaces along Delmar Avenue to be dedicated to the Town for public use. The resort will also provide bicycle parking racks for both the public and guests, as well as golf cart parking to encourage this alternative mode of transportation on the island.

POLICY 7-D-3 ALTERNATE TRAVEL MODES: The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.



The Town of Fort Myers Beach has completed extensive improvements to Estero Boulevard and through the Comprehensive Plan encourages a variety of travel modes to address traffic congestion caused by the influx of visitors drawn to the town every year. The developer has incorporated additional bike racks for public use and will be providing bicycles as an amenity for its guests as a way to encourage a less car centric experience for those on the island. The proposed development will also provide enhanced landscaping, pedestrian amenity areas and sidewalks both adjacent to and within the development to encourage walkability both on and off property.

The developers are willing to participate in and make appropriate contributions to programs which the town may set up to alleviate mobility challenges on the island during peak traffic times. Alternatives which have been discussed to date such as, but not limited to, shuttle service from local airports with central drop-off points for guests, a water taxi, a hidden-path system through Fort Myers Beach for bicycles and pedestrians and a trolley system for visitors with both on and off island locations are all options which may benefit the Town, its visitors and residents.

OBJECTIVE 7-I LEVEL-OF-SERVICE STANDARD: Maintain minimum acceptable levels of service for the transportation system.

POLICY 7-J-2 TRAFFIC IMPACT ANALYSIS: A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:

- i. **decrease the thresholds for requiring traffic impact analyses;**
- ii. **require them to study the cumulative impacts of potential development; and**
- iii. **use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.**

A traffic impact assessment has been performed by T.R. Transportation Consultants and concludes that the development of this 148-unit resort hotel along with restaurant and tiki bar, open to the public, will not place an undue burden on the island roadway network. The level of service information provided is based on data collected prior to Hurricane Ian and shows that Estero Boulevard was over capacity during season. Due to the destruction caused by the Hurricane, and the need for the Town to rebuild and re-establish its population, traffic levels that existed in peak season prior to the storm will not be reached for some time. The impact mitigation strategies such on-site bicycle spaces, golf cart parking and airport shuttle service all contribute to reducing the overall transportation related impacts from this redevelopment project.



UTILITIES ELEMENT:

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

Complying with GOAL 8 and Policy 8-A-1, the proposed development will connect to central water and sewer utilities.



C. DESIGN STANDARDS COMPLIANCE

The post-hurricane redevelopment of the Neptune Resort will be generally consistent with the overall purpose and intent of the commercial design standards provided under LDC Sections 34-991 through 34-997. The following outlines compliance with the specified design standards within the applicable LDC sections:

As demonstrated through the architectural elevations prepared by Meyers & Associates and included in this submittal, the Neptune Resort is designed in a contemporary coastal architectural style. The building features exterior walls with façade elements including balconies, railings, awnings, wood look architectural elements, and stucco finishes to achieve compliance with Sec. 34-994 and Sec. 34-995. The hipped roof will have tower features both at the front and rear of the buildings and will be constructed of metal to comply with Sec. 34-996. The u-shaped building will have an open area at the rear of the building containing an events plaza, two pools with deck area, open restaurant seating and a tiki bar. The pedestrian passage improvements proposed along Delmar Ave. include additional vehicle and bicycle parking as well as sidewalks on the property to provide safe, designated access for vehicular, bicycle and pedestrian traffic.

The redeveloped Neptune Resort achieves the goals set forth in the Comprehensive Plan and the Land Development Code by creating a development that will enhance the town's sense of place, implements the design concepts in the LDC and creates an attractive destination which will enhance the island and its property values.



D. DECISION MAKING COMPLIANCE

The following considerations from LDC Sec. 34-85 shall be considered by town council whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Commercial Resort to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Utilizing the proposed CPD rezone request, reductions or elimination of an existing non-conformities will be corrected as applicable.

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

The existing site was significantly damaged by Hurricane Ian and although the property owner could build back under the 50% threshold, they desire to redevelop the site to meet today's life-safety best practices, and Florida Building Code and FEMA standards, which are much more stringent than regulation which existed when the Neptune Inn was originally constructed. The Applicant's wish to improve the site will provide a better resort product for the island, will increase the ad valorem tax base as well as provide additional bicycle parking, employment opportunities, public restaurant choices and an additional view corridor for the Town of Fort Myers Beach, its citizens and visitors.

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

The proposed change will not have any impact on the intent of this chapter (LDC). The CPD will encourage and promote the redevelopment of a devastated popular and historic hotel/motel into a high-quality amenity-rich resort that will be a benefit to the island. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the redeveloped Neptune Resort will not negatively impact the community's health, safety, and general welfare.

(4) The testimony of any applicant.

The professional experts retained by the applicant to support this petition will provide testimony at both the Local Planning Agency (LPA) hearing and the Town Council hearing.



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

The Town staff will review the petition and provide a written report to be presented to the local planning agency at their appropriate public hearing. The petition along with the staff's report and the LPA recommendation will then be presented to the Town Council at the designated public hearing.

(6) *The testimony of the public.*

The public will be provided with the opportunity to present testimony to the LPA and Town Council.

(7) *Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.*

As evidenced throughout this narrative, the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

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

The request to rezone to a CPD is ideal for this location. The proposed CPD demonstrates sound planning principles and best management practices through redeveloping a resort use in a location proximate to the downtown core, with existing infrastructure, by providing an additional view corridor, enhanced landscaping, and additional buffering from adjacent properties. The property across Estero Boulevard is developed with commercial and retail uses and will provide a natural gradient in intensity of use from the proposed resort use on the subject property to the residences on the bay side of Estero Boulevard. The Commercial Resort zoning designation to the east and the Residential Multifamily to the west are compatible with the proposed development and will benefit from the improvements proposed to this site. The proposed resort with detailed development standards included in the CPD and the benefits outlined in this application will meet and exceed performance and locational standards.



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

All urban services were in place and utilized by the existing Neptune Inn and will remain in place to adequately serve the subject site. Additionally, adequate services were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian, but now approximately 400 hotel/motel units are online. This is a decline of almost 81%. 2020 Census data also shows that the overall permanent population in Fort Myers Beach has declined roughly 11% since the 1990 Census. The Town's population estimates associated with transient lodging also show a decline over the last 30 years and the percentage of the in-season population attributed transient lodging has declined from 24% to 18%.

- 1990 Peak Season Population Estimate – Lodging: 3,620 or 24% of the overall population.
- 2020 Peak Season Population Estimate – Lodging: 3,133 or 18% of the total population.

Based on the data outlined above, existing urban services are and will be available to support not only the proposed Neptune Resort but many other proposed projects that will assist in the rebuilding of Fort Myers Beach.

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

The proposed redevelopment will remove all existing structures beyond the 1978 Coastal Construction Control Line and will participate, as required, in the support of the beach renourishment/dune system repair and ongoing maintenance of the beaches. The proposed rezoning and subsequent redevelopment will ensure the protection and preservation of the beach/dune system.

(11) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The request is compatible with existing or planned commercial and multi-family uses adjacent to the subject redevelopment and will not cause damage, hazard, nuisance or other detriment to persons or property of Fort Myers Beach. A hotel/motel use was in existence prior to Hurricane Ian and the proposed improvements to the site create a new resort which is compatible with the surrounding uses. As discussed above, overall site design, setback, buffers, sand separation from adjacent properties will ensure compatibility.



(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Based on the TIS as prepared by TR Transportation, the proposed request will not place an undue burden upon existing transportation or other services and facilities and can be served by Estero Boulevard, which has the capacity to carry traffic generated by the development. Adequate transportation services, utilities and recreational facilities were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian. With now just over 400 hotel/motel units available for occupancy, there will continue to be available transportation capacity and level of service to not only support the proposed Neptune Resort, but many more future transient lodging units and other non-residential developments needed in the Town. Additionally, the Town is actively working to promote alternative modes of transportation and provide mobility solutions to mitigate peak seasonal traffic.

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

This request to rezone the subject property from Commercial Resort (CR) to Commercial Planned Development (CPD) will be presented at public hearings before the LPA and the Town Council consistent with LDC Sec. 34-216(a)(1). As demonstrated throughout this narrative and Exhibit A: "Review Criteria for Sec. 34-216(2)", the proposed CPD meets the following findings criteria under LDC Sec. 34-216(2):

- a. The proposed uses are appropriate to the location as they are compatible with surrounding uses and lodging in existence for years prior to Hurricane Ian.
- b. Sufficient safeguards are in place or will be provided through applicable special conditions within the rezoning approval document, to protect the public interest.
- c. Special conditions will be provided through the rezoning approval document as determined to be necessary.
- d. The proposed uses meet all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 1. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category. See Section "C" within the above narrative.
 2. Policy 4-C-4 on building heights taller than the standard height limit. See Section "C" within the above narrative.
 3. Policy 4-C-8 on density transfers. Not Applicable.



4. Policy 4-E-1 on pre-disaster build back. See Section “C” within the above narrative.
5. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts. See Section “C” within the above narrative.

CONCLUSION

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the CPD process, elimination of prior non-conformities, and compliance with today's Florida Building Codes and FEMA standards, the developer will provide a project that is better, safer and will provide multiple public benefits.



October 12, 2023

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

**Subject: The Neptune Resort Commercial Planned Development (CPD) - Submittal #1
Rezone from Commercial Resort (CR) to Commercial Planned Development (CPD)**

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, CHG Neptune Acquisitions, LLC, an Application for a Planned Development Rezone associated with the subject property located at 2310/2316/2320 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property to allow flexibility to redevelop the subject property and to build a transient lodging/resort with supporting commercial retail/services/restaurants.

Please find attached the following items to consistent with the application submittal requirement checklist:

1. Application Filing Fee
2. Application for Public Hearing
 - a. Additional Agent List
 - b. Approved Application Waiver for Submittal Requirements;(Exhibit 3-1)
 - c. List of Property Owners (Exhibit 5-1)
 - d. Explanatory Notes – Affidavit (Exhibit 5-3 Condominium)
 - e. Letter of Opinion (Exhibit 5-4)
 - f. Affidavit of Authorization & Letter of Authorization
 - g. Legal Description
 - h. Boundary Survey (Exhibit 6-2)
 - i. Area Location Map; (Exhibit 6-3)
 - j. Surrounding Property Owners List (Exhibit 6-6)
 - k. Surrounding Property Owners Map (Exhibit (6-7)
 - l. Surrounding Property Owners Mailing Labels
3. Supplement PH-D for a Planned Development
 - a. Request Narrative with Attachment(s)
 - b. Schedule of Deviations & Justifications
 - c. Master Concept Plan; PV & Felipe
 - d. Traffic Impact Statement
 - e. Architectural Elevations
 - f. Schedule of Uses
 - g. Development Standards

Page 1 of 2



4. Supplemental Information
 - a. Stormwater Narrative
 - b. Public Outreach Summary
 - c. Landscaping/Planting Plan -To be provided under separate cover.
 - d. Dune Easement Agreement
 - e. Parking Analysis – To be provided under separate cover TR Transportation

We look forward to your review and are available to answer questions related to this application.

Sincerely,

The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Mark A. Damante
Noel Davies
File: # 220056.01.02



Neptune Resort Planned Development (PD)
Planned Development Rezone
Filing Fee

Town Fee Schedule 2022:

- Planned Development Rezone Base Fee = \$8,000 + \$1,000/additional acre ($\$8,000 \times 1.46AC$) = \$9,460

TOTAL: \$9,460



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931
STRAP Number: 19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE
Applicant: CHG Neptune Acquisitions, LLC Phone: 614-507-2203
Contact Name: Mark Damante Phone: _____
Email: mdamante@continental-realestate.com Fax: _____
Current Zoning District: Commercial Resort (CR)
Future Land Use Map (FLUM) Category: Boulevard
FLUM Density Range: 6 du/acre Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

- ☐ Special Exception
☐ Variance
☐ Conventional Rezoning
☒ Planned Development ☒ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. Applicant*: CHG Neptune Acquisitions, LLC Phone: 614-507-2203
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 145 School St. Fort Myers Beach, FL 33931
Email: mdamante@continental-realestate.com Fax: _____
Contact Name: Mark Damante Phone: 614-507-2203



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|---|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☒ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Kenrick Gallander, AICP Phone: 850-803-5621
Address: 5618 Whispering Willow Way, Ft Myers, FL 33908
Email: kg@theneighborhood.company Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: See Attached Sheet for Additional Names Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☒ Planned Development
- ☒ Rezoning from CR to ☒ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: LDC Sec. 10-416 Description: See exhibit 3-1 for
complete waiver application package.

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Mark A. Damante swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Mark A. Damante
Printed Name

STATE OF OHIO COUNTY OF FRANKLIN

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR _____ online notarization, this 29 day of August, 2023, by _____, ☒ who is personally known to me OR ☐ who has produced _____ as identification.

Notary Public, State of Ohio
My Commission Expires 01-21-25



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

PART V

Property Ownership (Multiple Owners)

☒ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☒ Complete Disclosure of Interest Form (see below)
- ☒ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☒ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3 (Affidavit of mailing & meeting minutes)
- ☒ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

Joanne Leheney - 4716 Azalea Lane, Olmstead, Ohio 44070

Fractional Interest 9 of Unit 109N

Brian and Deborah Walsh

Fractional Interest 9 of Unit 115N

12510 Pinecrest Drive, Plymouth, Michigan, 48170

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is in the name of a ^{Limited Liability Company} ~~GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP~~,
list the names of the general and limited partners.

Name and Address

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215

Percentage of Ownership

Fee simple owner of all
units and fractional interests,
except as listed above

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not,
and whether a Corporation, Trustee, or Partnership, list the names of the contract
purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals
or officers, if a corporation, partnership, or trust.

Name

Address

For any changes of ownership or changes in contracts for purchase subsequent to the
date of the application, but prior to the date of final certificate of compliance, a
supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of
my knowledge and belief.

Signature

Printed Name



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE

Property Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 318+/- feet

Depth (please provide an average width if irregular in shape) 294.2+/- feet

Frontage on street: 318+/- feet. Frontage on waterbody: 318+/- feet

Total land area: 2.46+/- ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Southeast of the intersection of Delmar Ave and Estero Blvd.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density

☐ Marina

☐ Mixed Residential

☐ Recreation

☒ Boulevard

☐ Wetlands

☐ Pedestrian Commercial

☐ Platted Overlay



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



**The Neptune Resort Planned Development (PD)
A Commercial Planned Development**

ADDITIONAL AGENTS LIST

Attorney

Noel Davies
Davies Duke, PLLC
1415 Panther Lane, Suite 442
Naples, FL 34109
239-216-2792
Noel.davies@daivesduke.com

Environmental Consultant

Shane Johnson
Passarella & Associates, Inc.
13620 Metropolis Ave., Suite 200
Fort Myers, FL 33912
239-274-0067
Shanej@passarella.net

Stormwater Management

JR Evans Engineering
9351 Corkscrew Road, Suite 102
Estero, FL 33928
239-405-9148
239-288-2537 Fax

Traffic Consultant

Ted Treesch
TR Transportation Consultants Inc.
2726 Oak Ridge Ct., Suite 503
Fort Myers, FL 33901
TBT@trtrans.net

Elizabeth Fountain, P.E.
Elizabeth@jrevansengineering.com

Surveyor

Stephen E. Berry, L.S.
BBLS Surveyors Inc.
8860 Terrene Court
Bonita Springs, FL 34135
239-597-1315



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

☐ General Requirements
☐ DRI
☐ Planned Development
☐ Conventional Rezoning
☐ Special Exception
☐ Variance
☐ Appeal
☐ Other

Administrative Action

☐ General Requirements
☐ Planned Dev. Amendment
☐ Commercial Antenna
☐ Consumption on Premises
☐ Forced Relocation of a Business
☐ Interpretation of LDC
☐ Minimum Use Determination
☐ Setback Variance
☐ Other

Name of Project: Neptune Resort
Applicant: CHG Neptune Acquisitions, LLC
Strap Number: 119-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE
Street Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931
Phone Number: 850-803-5621
Email: mdamante@continental-realestate.com



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
LDC Sec. 10-473	Listed Species Survey

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

See attached Waiver Narrative.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

[Signature] Sept. 13, 2023
Signature Date

Director's Decision ☒ Approved ☐ Denied

Comments:

[Signature] 9/14/23
Signature Date

Revised 1/6/2017

Town of Fort Myers Beach
2525 Estero Blvd., Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Permits@FortMyersBeachFL.gov Fax: 239-765-0909

Page 2 of 2

SUBMIT



**The Neptune Resort Planned Development (PD)
A Commercial Planned Development**

Waiver Justification Narrative

The property located at 2310/2316/2320 Estero Blvd., Fort Myers Beach, FL 33931 is the subject property for the application to be submitted for a rezoning request from Commercial Resort (CR) to Commercial Planned Development (CPD). This rezone request is necessary to allow the redevelopment of the Neptune Resort site due to the destruction which was caused by Hurricane Ian in September 2022.

The Neighborhood Company, on behalf of our client, CHG Neptune Acquisitions, LLC is submitting this Waiver Request from LDC Sec. 10-473 which requires a Listed Species Survey to be completed and submitted with the rezone request application. This request is made due to the property being previously developed and no native vegetation exists on the property.

It should be noted that the property owners have signed the Town's Beach Renourishment Easement and it is our understanding that there will be dune restoration with that effort.

This waiver was previously discussed with Chadd Chustz, Town of Fort Myers Beach Environmental Project Manager. Per his email response dated August 3, 2023 (Exhibit A), he was agreeable to this waiver of submittal requirement request. This waiver is requested due to the fact that the property was previously developed, and the redevelopment will be within the limits of the previously developed site. Therefore, there is no listed species to impact on this site.

Laura Tefft

From: Chadd Chustz <Chadd@fmbgov.com>
Sent: Thursday, August 3, 2023 8:27 PM
To: Laura Tefft
Cc: Pat Vanasse; Ken Gallander; Stephen Poposki; Sarah Propst; Jason Smalley
Subject: RE: PD Rezone Application Question

Yes, I am comfortable waiving the listed species survey requirement for the Neptune Property at 2310 Estero Blvd.

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach

From: Laura Tefft <lt@theneighborhood.company>
Sent: Wednesday, August 2, 2023 12:00 PM
To: Chadd Chustz <Chadd@fmbgov.com>
Cc: Pat Vanasse <pv@theneighborhood.company>; Ken Gallander <kg@theneighborhood.company>
Subject: PD Rezone Application Question

Good A. ernoon Chad,

This is a follow up to my call this morning. We are working on the PD rezone application package for the Neptune Resort and wanted to know if a waiver request would be supported by staff for a listed species survey since the property was previously developed. The property is located at 2310 Estero Blvd.

Please feel free to contact me at 239-462-3452 when you are available to discuss this matter.

We look forward to speaking with you and appreciate your attention to this matter.

Sincerely,

Laura



THE NEIGHBORHOOD
COMPANY

-LAND PLANNING + DESIGN-

LAURA TEFFT, AICP

Land Use Planner
239.462.3452

www.theneighborhood.company

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.



**The Neptune Resort Planned Development (PD)
A Commercial Planned Development**

**Exhibit 5-1
Property Owners List**

19-46-24-W3-0110A.0010
CHG Neptune Acquisitions LLC
150 E. Broad St., STE 800
Columbus, OH 43215

19-46-24-W3-04300.00CE
Neptune Inn Condo Association Inc.
P. O. Box 508
Richmond, IL 60071

19-46-24-W3-0430N.0001
CHG Neptune Acquisitions LLC
150 E. Broad St., STE 800
Columbus, OH 43215

AFFIDAVIT OF MAILING

NOTICE OF APPLICATION FOR PUBLIC HEARING

STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

Noel J. Davies ("Affiant"), being duly sworn, deposes and says that:

1. That Affiant has knowledge of the facts set forth in this Affidavit.
2. That on the 19th day of September, 2023, Affiant did mail a Notice of Application for Public Hearing ("Notice"), a copy of which is attached hereto as **Exhibit "A"**.
3. The Notice was mailed to each addressee listed on **Exhibit "B"** by enclosing the same in an envelope and depositing it in an official depository under the exclusive care and custody of the United States Postal Service by regular and certified mail.

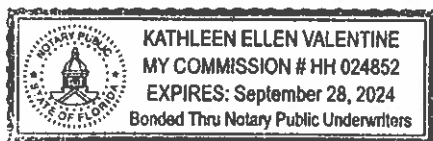


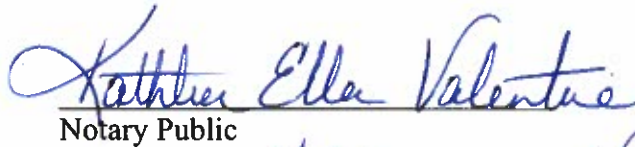
NOEL J. DAVIES

STATE OF FLORIDA)
) ss:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me by means of [☒] physical presence or [☐] online notarization, this 20th day of September, 2023, by Noel J. Davies. He [☒] is personally known to me or [☐] has produced a driver's license as identification.

Notary Seal:





Notary Public

Printed Name: Kathleen Ellen Valentine

My Commission Expires: 9/28/2024

EXHIBIT "A"

NOTICE OF APPLICATION OF PUBLIC HEARING

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
AND REGULAR U.S. MAIL

NOTICE OF APPLICATION FOR PUBLIC HEARING

As a fractional owner of a unit within The Neptune, a Condominium, you are entitled to receive the notice provided herein. Please be advised that a formal application for Public Hearing will be submitted to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for the following described property:

Site Address:	2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptune Inn)
STRAP Number:	19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE and 19-46-24-W3-0430N.0001
Applicant:	CHG Neptune Acquisitions, LLC
Current Zoning District:	Commercial Resort (CR)
Current Future Land Use	
Map (FLUM) Category:	Boulevard
Current FLUM Density Range:	6 du/acre
Action Requested:	Planned Development
Rezoning:	CR to Commercial PD

Below is a location map of the parcel:

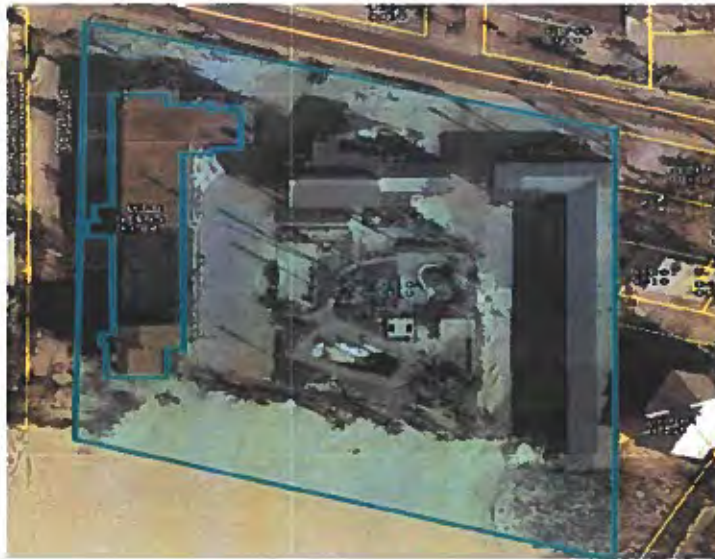


EXHIBIT "B"

LIST OF OWNERS

Joanne Leheney	and	Deborah Leheney
4716 Azalea Lane		28063 Andorra Drive
Olmstead, OH 44070		North Olmstead, OH 44070

Brian and Deborah Walsh
12510 Pinecrest Dr
Plymouth, MI 48170

THE NEPTUNE INN CONDOMINIUM ASSOCIATION, INC.
REGULAR BOARD MEETING MINUTES
Monday, September 18, 2023
Neptune Resort, 2310 Estero Blvd, Fort Myers Beach

The following are the minutes of the Board of Directors meeting for the Neptune Inn Condominium Association, Inc., a Florida corporation (hereafter “Association”) conducted pursuant to the By-Laws

1. Roll call made by Mark Damante on behalf of CHG Neptune Acquisitions
Present:
Adam Valente, Director
Mark Damante, Director
Adam Giere, Director
Sean Williams
Erin Atwood, General Manager of the Neptune Resort
2. Quorum of Association Members (representatives of CHG Neptune Acquisitions, LLC, holding 1728/1734 weeks ~99.65%)
Mark Damante certified a quorum of Association members was present
3. Quorum of Directors
Mark Damante certified all three Directors are present
4. Call to Order made by Mark Damante at 2:00 PM
5. Proof of Notice
Sean Williams produced evidence of proper notice sent via email on 9/14/23 to owners and posted on the property on 9/13/23 in accordance with FL statutes and recorded Condominium Documents (attached)
6. Consider and take action on submittal of formal application for Public Hearing to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptune Inn)
As counted by Sean Williams, CHG Neptune Acquisitions, LLC placed 1728 votes each for
Mark Damante
Adam Valente
Adam Giere
7. Adjournment
Mark Damante made a motion to adjourn the meeting. Adam Giere seconded the motion and it passed unanimously.

Matthew Bernholc

From: Erin Atwood <eatwood@springboardhospitality.com>
Sent: Wednesday, September 13, 2023 8:54 PM
To: Matthew Bernholc
Subject: Re: [External] Neptune Resort - Notice for Regular Meeting of Board of Directors

Hi Matt

Pls see the pic attached showing the sign posted.

If you need anything else pls let me know.

Erin

THE NEPTUNE INN CONDOMINIUM ASSOCIATION, INC.

Notice for the Regular Meeting of the Board of Directors

In-Person Attendance or via Teams Video Call
(Teams Meeting invite to follow via email. Login details attached)

Date: September 18, 2023
Time: 2:00 p.m. Eastern Time
Location: 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134

AGENDA

- A. Call to Order
- B. Establish Quorum
- C. Proof of Notice of Meeting
- D. New Business
 - a. Vote on withdrawal of formal application for Public Hearing to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for 3301 Bonita Beach Road, Suite 213, Bonita Springs, Florida 33931 (Neptune Inn)
- E. Adjourn

Respectfully submitted on behalf of The Neptune Inn Condominium Association

Location: Microsoft Teams Meeting
Start: Mon 9/18/2023 2:00 PM
End: Mon 9/18/2023 2:30 PM
Recurrence: (none)
Meeting Status: Meeting organizer

Microsoft Teams meeting

Join on your **computer, mobile app or room device**
[Click here to join the meeting](#)

Meeting ID: 270 541 254 859
Passcode: WwC4sk
[Download Teams](#) | [Join on the web](#)

Or call in (audio only)
+1 614-706-7664 802 083 947# United States, Columbus
Phone Conference ID: 802 083 947#
[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)





Sent from my iPhone

Matthew Bernholc

From: Matthew Bernholc
Sent: Thursday, September 14, 2023 1:30 PM
To: brian; Dwalsh34@hotmail.com
Cc: Mark Damante; Adam Valente; Adam Giere; 'Sean Williams'
Subject: THE NEPTUNE INN CONDOMINIUM ASSOCIATION - NOTICE OF BOARD OF DIRECTORS MEETING
Attachments: Neptune Resort - Notice for Regular Meeting of Board of Directors.pdf

Brian and Debbie,

Thank you for taking part in the Teams Meeting earlier today. As mentioned, we have scheduled an upcoming Regular Board Meeting of The Neptune Inn Condominium Association, Inc., which will be held on **September 18, 2023 at 2:00 p.m. Eastern Time at 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134** for the purpose of approving the submittal of an application for rezoning to the Town of Fort Myers Beach. A copy of the Meeting Notice is attached. Please let us know if you will be able to attend in person or via the Teams Meeting video call. The Teams Meeting invite will follow this email.

Thank you,

Matt Bernholc
Counsel
Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
mbernholc@continental-realestate.com
614-883-1005 (direct dial)

Matthew Bernholc

From: Matthew Bernholc
Sent: Thursday, September 14, 2023 1:30 PM
To: dleheney@gmail.com
Cc: Mark Damante; Adam Valente; Adam Giere; 'Sean Williams'
Subject: THE NEPTUNE INN CONDOMINIUM ASSOCIATION - NOTICE OF BOARD OF DIRECTORS MEETING
Attachments: Neptune Resort - Notice for Regular Meeting of Board of Directors.pdf

Joanne and Debbie:

I hope you are doing well. We are still awaiting your reply on scheduling an informal phone/Teams Meeting video call regarding future plans for The Neptune Resort. Please let us know your availability for the call as soon as possible. We have also scheduled an upcoming Regular Board Meeting of The Neptune Inn Condominium Association, Inc., which will be held on **September 18, 2023 at 2:00 p.m. Eastern Time at 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134** for the purpose of approving the submittal of an application for rezoning to the Town of Fort Myers Beach. A copy of the Meeting Notice is attached. Please let us know if you will be able to attend in person or via the Teams Meeting video call. The Teams Meeting invite will follow this email.

Thank you,

Matt Bernholc
Counsel
Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
mbernholc@continental-realestate.com
614-883-1005 (direct dial)

Noel J. Davies, Esq.
239.216.2792
Noel.Davies@DaviesDuke.com

September 19, 2023

Becky Vose
Vose Law Firm
Town of Fort Myers Beach Attorney
2525 Estero Boulevard
Fort Myers, Beach, FL 33931

Re: CHG Neptune Acquisitions, LLC – Application for Public Hearing - Rezoning

Dear Ms. Vose:

Please be advised that I represent CHG Neptune Acquisitions, LLC regarding their Application for Public Hearing pertaining to their request for rezoning from CR to Commercial PD. To the best of my knowledge, I am providing this letter of opinion in accordance with LDC Section 34-201(a)(1)b.3.

I have reviewed the following documents pertaining to The Neptune, a Condominium:

1. Declaration of Condominium;
2. Amendment to Declaration of Condominium, and
3. Second Amendment to Declaration of Condominium.

Based on my examination of the above documents, I conclude, to the best of my knowledge, that the act of applying or petitioning the Town of Fort Myers Beach violates none of the provisions therein, or any federal or state laws regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the Town of Fort Myers Beach would violate no such rights.

Sincerely,



Noel J. Davies, Esq.
DAVIES DUKE, PLLC



THE NEIGHBORHOOD
COMPANY

I Mark A. Damante, as Vice President of CHG Neptune Acquisitions, LLC owner of property located at 2310 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 19-46-24-W3-0110A.0010, hereby authorizes The Neighborhood Company to serve as owners' agent for the Town of Ft. Myers Beach Planned Development Rezone Application regarding the above-referenced property.

CHG Neptune Acquisitions, LLC.

By: [Signature]
Print Name: Mark A. Damante
Title: Vice President

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 29 day of August, 2023 by Mark A. Damante, as Vice President of CHG Neptune Acquisitions, LLC, on behalf of the company(s), who ☐ is personally known to me OR ☐ has produced a(n) driver's license as identification.

(NOTARY STAMP)

[Signature]
Notary Public, State of _____
Print Name: _____
My Commission Expires: _____



SHAYLA MOFFITT
Notary Public, State of Ohio
My Commission Expires 01-21-25



**NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone**

EXHIBIT 6-1: STRAP # & LEGAL DESCRIPTION

- **STRAP #:** 19-46-24-W3-0430N.0000, 19-46-24-W3-0110A.0010, & 19-46-24-W3-04300.00CE
- **LEGAL DESCRIPTION**

A PORTION OF LOTS 1-10, BLOCK A, W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND A PORTION OF LOTS 1 THROUGH 6 BLOCK B, AND LOTS 1 THROUGH 7 BLOCK A, BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES; THENCE RUN S00°01'41"E, ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 374.80 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES; THENCE RUN N68°38'37"W, ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION A DISTANCE OF 306.87 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION; THENCE RUN N22°01'41"W, ALONG THE WESTERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 375.05 FEET TO THE NORTHWESTERLY CORNER OF LOT 10, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION; THENCE RUN S68°36'00"E, ALONG THE NORTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION AND THE NORTHERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF

306.96 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 107,107 SQUARE FEET OR 2.46 ACRES OF LAND.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.



Notes

- 1 - This map is for reference only. Data provided are derived from multiple sources with varying levels of accuracy.
- 2 - Aerial flight date - Year 2022.



Neptune
Project Location

FILE NO:	220037.01.01
DRAWN BY:	F.L.
DESIGN BY:	P.V.
DATE:	FEBRUARY 2023

List Size: 150

OwnerName	OwnerName2	MailAddress	MailAddress2	MailCity	MailState	MailZip	MailCountry
CHG NEPTUNE ACQUISITIONS LLC	MARK A DAMANTE	150 E BROAD ST	STE 800	COLUMBUS	OH	43215	
2201 ESTERO LLC		8360 SW 112TH ST		MIAMI	FL	33156	
2201 ESTERO LLC		8360 SW 112 ST		MIAMI	FL	33156	
2201 ESTERO LLC		8360 SW 112 ST		MIAMI	FL	33156	
BROWN LENNDA JOE TR		16210 LARSEN AVE		GOWEN	MI	49326	
JMP&W LLC		7906 ARIEL WAY		MCLEAN	VA	22102	
KOSTER RODNEY & THERESE		880 3RD ST		FORT MYERS BEACH	FL	33931	
MATTHEWS JOHN MORRIS		221 S ADAMS ST		WEST CHESTER	PA	19382	
FERRARO KIM A +		800 BENJAMIN FRANKLIN DR #208		SARASOTA	FL	34236	
TOLLETTE JEFFREY R &		1959 135TH AVE NW		ANDOVER	MN	55304	
B + B CASH GROCERY STORES INC		PO BOX 1808 #78		TAMPA	FL	33601	
BC MASTERPIECE LLC		12601 LAS OLAS LANE # 123		FORT MYERS	FL	33919	
BIRKART HANS +		12601 LAS OLAS LN #123		FORT MYERS	FL	33919	
DEWESE BRUCE R +		14685 WESTON RD		WESTON	OH	43569	
WHITE SWAN INVESTMENTS LLC		148 BAYLOR AVE		HILLSDALE	NJ	7642	
COULTER BEAU & TRACY R		760 STONEGATE PASS		COLGATE	WI	53017	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
DYE GARY A & LOIS +		S53 W31115 OLD VILLAGE RD		MUKWONAGO	WI	53149	
DEWEY KEITH CARTER & AMANDA		118 FAIRWEATHER LN		FORT MYERS BEACH	FL	33931	
MAIER SIMEON E II		1999 92ND ST		CALEDONIA	MI	49316	
WOAD LLC		1999 92ND ST		CALEDONIA	MI	49316	
WD RETREAT LTD		330 LOUISIANA AVE		PERRYSBURG	OH	43551	
WD RETREAT LTD		330 LOUISIANA AVE		PERRYSBURG	OH	43551	
KATTA DAN II LLC		5040 SE BENT WOOD DR		STUART	FL	34997	
CHITTENDEN DALE R & JOANN TR		15925 138TH AVE		SPRING LAKE	MI	49456	
WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
NANKO RAYMOND S		919 WEST JACKSON ST		MUNCIE	IN	47305	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
THOMAS E SWANBECK PA		2450 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
EMPIRE HOLDING CORP TR		PO BOX 19492		INDIANAPOLIS	IN	46219	
EMPIRE HOLDING CORP TR	RAINBOW REALTY GROUP INC	6104 E 21ST ST		INDIANAPOLIS	IN	46219	
FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
TEZAK HELEN C TR		50 CHAPEL ST #4		FORT MYERS BEACH	FL	33931	
GOLDBERG GENNIE M TR		11793 ROYAL TEE CT		CAPE CORAL	FL	33991	
FMB COTTAGE LLC		2440 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
BONFIGLI ANDREW & SUSAN		2434 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
PAISLEY LLC		414 MARKET ST		IOWA CITY	IA	52245	
MCLAUGHLIN SAMUEL R &		4700 EDEN PARK DR		ZANESVILLE	OH	43701	
SCHLICHTE EDITH		61 MANGO ST		FORT MYERS BEACH	FL	33931	
CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
GERSTENHABER RAM TR	BEACH CONNECTION	2401 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
CZULEWICZ MARYLU TR		4281 ORANGE RIVER LOOP RD		FORT MYERS	FL	33905	
BOREK TINA D		1605 PENNSAUKEN ST		CINNAMINSON	NJ	8077	
MANGO STREET LLC		126 MANGO ST		FORT MYERS BEACH	FL	33931	
PAOLERCIO WILLIAM		2367 JIM HENRY RD		DANDRIDGE	TN	37725	
MERIDIAN ENTERPRISES II LLC		2248 OLD STATE RD		BEAUFORT	MO	63013	
BURNS PROPERTY MANAGEMENT LLC		536 SONOMA DR		BOLINGBROOK	IL	60490	
ROTH ALLAN T & RHONDA K		12232 JAY CIR NW		COON RAPIDS	MN	55448	
STALTER RICHARD		169 CHAPEL ST		FORT MYERS BEACH	FL	33931	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
MEEHAN PATRICIA LYNN		293 ELM ST W		SUDBURY	ON	P3C 1V6	CANADA
BIG MARLIN PROPERTIES LLC		4704 VINCENNES BLVD		CAPE CORAL	FL	33904	
PFAFFINGER HEDWIG TR	JAMES SCHULTZ	1030 SPINDLE HILL RD		WOLCOTT	CT	6716	
RYAN JAMES		139 CHAPEL ST		FORT MYERS BEACH	FL	33931	
CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
BESSEY JAMES D		2 BARTLETT RD		NANTUCKET	MA	2554	
TOMMAR INC		9616 ROUND LAKE BLVD		WHITE LAKE	MI	48386	
SOTO JESUS +		PO BOX 366265		BONITA SPRINGS	FL	34136	
WICKETT LLOYD A &		5647 SHADDELEE LN W		FORT MYERS	FL	33919	

WICKETT LLOYD A & ROTH ALLAN ROTH ALLAN T SEA BREEZE ESTATES CONDO ASSN 71 MANGO LLC 71 MANGO LLC NEPTUNE INN CONDO ASSN INC PALMA FRED JR & RHONDA + MAUGANS ALICE B MCMILLAN MICHAEL MORIONDO LARRY E TR LANGLEY COLIN M TR LANGLEY COLIN M & DIONE C TR HORKAN CHAD M TR PAREDERO CLEMENTE & MARY L NEAF JAMES C 2085 ESTERO LLC WILLIAMS JENNILEE R + ERICKSON CELIA MORLOCK WADE T & BUICE NANCY HURD TR PEARL STREET PROPERTY HOLDINGS JENKINS WAYNE + DIAMONDHEAD BEACH RESORT LLC 2001 ESTERO LLC NIESE LYNNE A SURFUS JOHN D ALFARO-MALDONADO LINDA 127 DELMAR LLC FRIEDRICH CHARLES DAVID + DELMAR BROTHERS LLC MARTIN RICHARD E & BAISCH GAYLE LYNN + CBD LLC SURF SONG CONDO ASSOC INC POLYNESIAN VACATION VILLAS CHG NEPTUNE ACQUISITIONS LLC BENNETT ROBERT W R DOUGLAS HOVENDEN TRUST + JOHNSON ROGER A TR KAUFMAN CHRISTINE V TR HILL DOUGLAS E & KAYLA K HAMILTON ROGER A & JANE M OLIVER KENT D & JO-ANN A MENDENHALL MURRAY J III & RAUSHEL JAN R TR WALCHLI JAMES FERGUS CHARLOTTE TR JACKSON JOHN K TR MIZEL WILLIAM C & THERESA L DUNDEE NICHOLAS J & LINDA M SURF SONG CARNEY LLC HAPKIEWICZ ANNIS M TR MIZEL WILLIAM C & THERESA L COURRIER DAWN LARAE RAVENSCROFT JEAN A TR KEITH THOMAS E & EILEEN M THREE SISTERS MANAGEMENT MAZER BERNARD A & DIANNE M TR WILLIAMS MARY J TR FRANTZ M RYAN & ERIKA E FRIEDMAN JEFFREY & DECONCINI CHRISTOPHER M TR SCHOLTZ STEPHEN A NELSON ROBERT A TR STENSRUDE LARRY C TR LYONS KRISTIN E RAGAN JOHN JONES FRANK TR SAVERY TIMOTHY LYDEN &	BLUE VISTA CAPITAL LLC	5647 SHADDELEE LN W 12232 JAY CIRCLE 12232 JAY CIRCLE 325 W LOCUST LN 15440 CATALPA COVE LANE 15440 CATALPA COVE LN PO BOX 508 139 S PARK BLVD 12890 SPENCER STREET 150 PEARL ST 15482 LAWRENCE 2130 130 PEARL ST 130 PEARL ST 1189 FOUR WINDS WAY 140 PEARL ST 125 PEARL ST 2001 ESTERO BLVD 1913 SE 12TH ST 131 PEARL ST 10317 SE 28TH PL 15174 PORTSIDE DR PO BOX 2611 829 NORWEST RD STE 421 2000 ESTERO BLVD 400 BAYLAND RD 13781 RD X PO BOX 2415 121 DELMAR AVE 7449 CEDAR RIDGE DR 114 FAIRBANKS ST 135 DELMAR AVE 11034 E KRAMER RD 1443 CLARET CT 414 E MARKET ST 2088 ESTERO BLVD UNIT 2H 2096 ESTERO BLVD 150 E BROAD ST 5889 WATSON RD 2088 ESTERO BLVD #2A 2088 ESTERO BLVD APT 2B 26442 BRICK LN 43 ONONDAGA ST 580 WRENCROFT CT 18900 NALLE RD 10407 WOODLAND RIDGE WEST 103 SOUTH DR 2088 ESTERO BLVD #3B 2088 ESTERO BLVD #3C 1400 N 100 E 2088 ESTERO BLVD UNIT 4B 2088 ESTERO BLVD #3F 2809 GREAT NORTHERN LOOP #100 2088 ESTERO BLVD # 4A 2088 ESTERO BLVD 4B 16005 25TH AVE N 69525 CHRISTIANN CREEK DR 5853 HACKER DR 3340 WELLINGTON BLVD W221S7455 CAROL DRIVE 11131 WOODS BAY LN 5480 LARISSA PL 2013 WILDERNESS TR 45281 RED PINE LOOP 124 KINGSWAY CRESCENT 1302 STANFIELD ST 2088 ESTERO BLVD UNIT 5G 2096 ESTERO BLVD #1 5600 REVERE RUN 2010 46TH AVE #2 406 SW 30TH AVE	STE 800	FORT MYERS FL 33919 COON RAPIDS MN 55448 COON RAPIDS MN 55448 KENNETT SQUARE PA 19348 FORT MYERS FL 33908 FORT MYERS FL 33908 RICHMOND IL 60071 GLEN ELLYN IL 60137 FORT MYERS FL 33908 FORT MYERS BEACH FL 33931 MOUNT VERNON MO 65712 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 HARTLAND WI 53029 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 CAPE CORAL FL 33990 FORT MYERS BEACH FL 33931 BEAUX ARTS WA 98004 FORT MYERS FL 33908 FORT MYERS BEACH FL 33931 KINGSTON ON K7P 2N3 CANADA FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 LEIPSIC OH 45856 FORT MYERS BEACH FL 33932 FORT MYERS BEACH FL 33931 PORTLAND MI 48875 SANTA CRUZ CA 95060 FORT MYERS BEACH FL 33931 BOWLING GREEN OH 43402 FORT MYERS FL 33919 IOWA CITY IA 52245 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 COLUMBUS OH 43215 EAU CLAIRE MI 49111 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 BONITA SPRINGS FL 34134 SKANEATELES NY 13152 LEBANON OH 45036 NORTH FORT MYERS FL 33917 FORT WAYNE IN 46804 AITKIN MN 56431 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 HARTFORD CITY IN 47348 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 MISSOULA MT 59808 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 PLYMOUTH MN 55447 EDWARDSBURG MI 49112 WEST BEND WI 53095 CRAWFORDSVILLE IN 47933 MUSKEGO WI 53150 INDIANAPOLIS IN 46236 CARMEL IN 46033 SPRINGFIELD IL 62711 PERHAM MN 56573 TORONTO ON M8X 2S2 CANADA SOUTH BEND IN 46617 FORT MYERS BEACH FL 33931 FORT MYERS BEACH FL 33931 CANFIELD OH 44406 GREELEY CO 80634 CAPE CORAL FL 33991
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MOGLIA SANDRA		17 DIVISION ST W APT 2		GREENWICH	CT	6830
DUNFEE ALLEN MARK & SUSAN M		402 SW 30TH AVE		CAPE CORAL	FL	33991
PARILLA DAVID R TR		1335 SANTOS RD		FORT MYERS BEACH	FL	33931
MALOTT PATRICK T		7840 MELBOURNE RD		SAGINAW	MI	48604
BERMEL STEVEN		900 PARK AVE		MUSCATINE	IA	52761
LEINDECKER ROBERT JOHN		6961 WILLOW HWY		GRAND LEDGE	MI	48837
STRONG DANIEL		3610 BAYNARD DR		PUNTA GORDA	FL	33950
GABRIEL RUSTIE L +		6961 WILLOW HWY		GRAND LEDGE	MI	48837
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
2000 ESTERO BOULEVARD	CORE HOTELS & RESORTS LLC	DIAMONDHEAD ISLAND BCH RESORT	2000 ESTERO BLVD	FORT MYERS BEACH	FL	33931



Exhibit 6-7
Surrounding Property Owners Map



2201 ESTERO LLC
8360 SW 112TH ST
MIAMI FL 33156

2201 ESTERO LLC
8360 SW 112 ST
MIAMI FL 33156

2201 ESTERO LLC
8360 SW 112 ST
MIAMI FL 33156

BROWN LENNDA JOE TR
16210 LARSEN AVE
GOWEN MI 49326

JMP&W LLC
7906 ARIEL WAY
MCLEAN VA 22102

KOSTER RODNEY & THERESE
880 3RD ST
FORT MYERS BEACH FL 33931

MATTHEWS JOHN MORRIS
221 S ADAMS ST
WEST CHESTER PA 19382

FERRARO KIM A +
800 BENJAMIN FRANKLIN DR #208
SARASOTA FL 34236

TOLLETTE JEFFREY R &
1959 135TH AVE NW
ANDOVER MN 55304

B + B CASH GROCERY STORES INC
PO BOX 1808 #78
TAMPA FL 33601

BC MASTERPIECE LLC
12601 LAS OLAS LANE # 123
FORT MYERS FL 33919

BIRKART HANS +
12601 LAS OLAS LN #123
FORT MYERS FL 33919

DEWESE BRUCE R +
14685 WESTON RD
WESTON OH 43569

WHITE SWAN INVESTMENTS LLC
148 BAYLOR AVE
HILLSDALE NJ 07642

COULTER BEAU & TRACY R
760 STONEGATE PASS
COLGATE WI 53017

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

DYE GARY A & LOIS +
S53 W31115 OLD VILLAGE RD
MUKWONAGO WI 53149

DEWEY KEITH CARTER & AMANDA
118 FAIRWEATHER LN
FORT MYERS BEACH FL 33931

MAIER SIMEON E II
1999 92ND ST
CALEDONIA MI 49316

WOAD LLC
1999 92ND ST
CALEDONIA MI 49316

WD RETREAT LTD
330 LOUISIANA AVE
PERRYSBURG OH 43551

WD RETREAT LTD
330 LOUISIANA AVE
PERRYSBURG OH 43551

KATTA DAN II LLC
5040 SE BENT WOOD DR
STUART FL 34997

CHITTENDEN DALE R & JOANN TR
15925 138TH AVE
SPRING LAKE MI 49456

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

NANKO RAYMOND S
919 WEST JACKSON ST
MUNCIE IN 47305

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

THOMAS E SWANBECK PA
2450 ESTERO BLVD
FORT MYERS BEACH FL 33931

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

EMPIRE HOLDING CORP TR
PO BOX 19492
INDIANAPOLIS IN 46219

EMPIRE HOLDING CORP TR
RAINBOW REALTY GROUP INC
6104 E 21ST ST
INDIANAPOLIS IN 46219

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

TEZAK HELEN C TR
50 CHAPEL ST #4
FORT MYERS BEACH FL 33931

GOLDBERG GENNIE M TR
11793 ROYAL TEE CT
CAPE CORAL FL 33991

FMB COTTAGE LLC
2440 COTTAGE AVE
FORT MYERS BEACH FL 33931

BONFIGLI ANDREW & SUSAN
2434 COTTAGE AVE
FORT MYERS BEACH FL 33931

PAISLEY LLC
414 MARKET ST
IOWA CITY IA 52245

MCLAUGHLIN SAMUEL R &
4700 EDEN PARK DR
ZANESVILLE OH 43701

SCHLICHTE EDITH
61 MANGO ST
FORT MYERS BEACH FL 33931

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

GERSTENHABER RAM TR
BEACH CONNECTION
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

CZULEWICZ MARYLU TR
4281 ORANGE RIVER LOOP RD
FORT MYERS FL 33905

BOREK TINA D
1605 PENNSAUKEN ST
CINNAMINSON NJ 08077

MANGO STREET LLC
126 MANGO ST
FORT MYERS BEACH FL 33931

PAOLERCIO WILLIAM
2367 JIM HENRY RD
DANDRIDGE TN 37725

MERIDIAN ENTERPRISES II LLC
2248 OLD STATE RD
BEAUFORT MO 63013

BURNS PROPERTY MANAGEMENT LLC
536 SONOMA DR
BOLINGBROOK IL 60490

ROTH ALLAN T & RHONDA K
12232 JAY CIR NW
COON RAPIDS MN 55448

STALTER RICHARD
169 CHAPEL ST
FORT MYERS BEACH FL 33931

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

MEEHAN PATRICIA LYNN
293 ELM ST W
SUDBURY ON P3C 1V6
CANADA

BIG MARLIN PROPERTIES LLC
4704 VINCENNES BLVD
CAPE CORAL FL 33904

PFÄFFINGER HEDWIG TR
JAMES SCHULTZ
1030 SPINDLE HILL RD
WOLCOTT CT 06716

RYAN JAMES
139 CHAPEL ST
FORT MYERS BEACH FL 33931

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

BESSEY JAMES D
2 BARTLETT RD
NANTUCKET MA 02554

TOMMAR INC
9616 ROUND LAKE BLVD
WHITE LAKE MI 48386

SOTO JESUS +
PO BOX 366265
BONITA SPRINGS FL 34136

WICKETT LLOYD A &
5647 SHADDELEE LN W
FORT MYERS FL 33919

WICKETT LLOYD A &
5647 SHADDELEE LN W
FORT MYERS FL 33919

ROTH ALLAN
12232 JAY CIRCLE
COON RAPIDS MN 55448

ROTH ALLAN T
12232 JAY CIRCLE
COON RAPIDS MN 55448

SEA BREEZE ESTATES CONDO ASSN
325 W LOCUST LN
KENNETT SQUARE PA 19348

71 MANGO LLC
15440 CATALPA COVE LANE
FORT MYERS FL 33908

71 MANGO LLC
15440 CATALPA COVE LN
FORT MYERS FL 33908

NEPTUNE INN CONDO ASSN INC
BLUE VISTA CAPITAL LLC
PO BOX 508
RICHMOND IL 60071

PALMA FRED JR & RHONDA +
139 S PARK BLVD
GLEN ELLYN IL 60137

MAUGANS ALICE B
12890 SPENCER STREET
FORT MYERS FL 33908

MCMILLAN MICHAEL
150 PEARL ST
FORT MYERS BEACH FL 33931

MORIONDO LARRY E TR
15482 LAWRENCE 2130
MOUNT VERNON MO 65712

LANGLEY COLIN M TR
130 PEARL ST
FORT MYERS BEACH FL 33931

LANGLEY COLIN M & DIONE C TR
130 PEARL ST
FORT MYERS BEACH FL 33931

HORKAN CHAD M TR
1189 FOUR WINDS WAY
HARTLAND WI 53029

PAREDERO CLEMENTE & MARY L
140 PEARL ST
FORT MYERS BEACH FL 33931

NEAF JAMES C
125 PEARL ST
FORT MYERS BEACH FL 33931

2085 ESTERO LLC
2001 ESTERO BLVD
FORT MYERS BEACH FL 33931

WILLIAMS JENNILEE R +
1913 SE 12TH ST
CAPE CORAL FL 33990

ERICKSON CELIA
131 PEARL ST
FORT MYERS BEACH FL 33931

MORLOCK WADE T &
10317 SE 28TH PL
BEAUX ARTS WA 98004

BUICE NANCY HURD TR
15174 PORTSIDE DR
FORT MYERS FL 33908

PEARL STREET PROPERTY HOLDINGS
PO BOX 2611
FORT MYERS BEACH FL 33931

JENKINS WAYNE +
829 NORWEST RD STE 421
KINGSTON ON K7P 2N3
CANADA

DIAMONDHEAD BEACH RESORT LLC
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931

2001 ESTERO LLC
400 BAYLAND RD
FORT MYERS BEACH FL 33931

NIESE LYNNE A
13781 RD X
LEIPSIC OH 45856

SURFUS JOHN D
PO BOX 2415
FORT MYERS BEACH FL 33932

ALFARO-MALDONADO LINDA
121 DELMAR AVE
FORT MYERS BEACH FL 33931

127 DELMAR LLC
7449 CEDAR RIDGE DR
PORTLAND MI 48875

FRIEDRICH CHARLES DAVID +
114 FAIRBANKS ST
SANTA CRUZ CA 95060

DELMAR BROTHERS LLC
135 DELMAR AVE
FORT MYERS BEACH FL 33931

MARTIN RICHARD E &
11034 E KRAMER RD
BOWLING GREEN OH 43402

BAISCH GAYLE LYNN +
1443 CLARET CT
FORT MYERS FL 33919

CBD LLC
414 E MARKET ST
IOWA CITY IA 52245

SURF SONG CONDO ASSOC INC
2088 ESTERO BLVD UNIT 2H
FORT MYERS BEACH FL 33931

POLYNESIAN VACATION VILLAS
2096 ESTERO BLVD
FORT MYERS BEACH FL 33931

CHG NEPTUNE ACQUISITIONS LLC
MARK A DAMANTE
150 E BROAD ST STE 800
COLUMBUS OH 43215

BENNETT ROBERT W
5889 WATSON RD
EAU CLAIRE MI 49111

R DOUGLAS HOVENDEN TRUST +
2088 ESTERO BLVD #2A
FORT MYERS BEACH FL 33931

JOHNSON ROGER A TR
2088 ESTERO BLVD APT 2B
FORT MYERS BEACH FL 33931

KAUFMAN CHRISTINE V TR
26442 BRICK LN
BONITA SPRINGS FL 34134

HILL DOUGLAS E & KAYLA K
43 ONONDAGA ST
SKANEATELES NY 13152

HAMILTON ROGER A & JANE M
580 WRENCROFT CT
LEBANON OH 45036

OLIVER KENT D & JO-ANN A
18900 NALLE RD
NORTH FORT MYERS FL 33917

MENDENHALL MURRAY J III &
10407 WOODLAND RIDGE WEST
FORT WAYNE IN 46804

RAUSHEL JAN R TR
103 SOUTH DR
AITKIN MN 56431

WALCHLI JAMES
2088 ESTERO BLVD #3B
FORT MYERS BEACH FL 33931

FERGUS CHARLOTTE TR
2088 ESTERO BLVD #3C
FORT MYERS BEACH FL 33931

JACKSON JOHN K TR
1400 N 100 E
HARTFORD CITY IN 47348

MIZEL WILLIAM C & THERESA L
2088 ESTERO BLVD UNIT 4B
FORT MYERS BEACH FL 33931

DUNDEE NICHOLAS J & LINDA M
2088 ESTERO BLVD #3F
FORT MYERS BEACH FL 33931

SURF SONG CARNEY LLC
2809 GREAT NORTHERN LOOP #100
MISSOULA MT 59808

HAPKIEWICZ ANNIS M TR
2088 ESTERO BLVD # 4A
FORT MYERS BEACH FL 33931

MIZEL WILLIAM C & THERESA L
2088 ESTERO BLVD 4B
FORT MYERS BEACH FL 33931

COURRIER DAWN LARAE
16005 25TH AVE N
PLYMOUTH MN 55447

RAVENSCROFT JEAN A TR
69525 CHRISTIANN CREEK DR
EDWARDSBURG MI 49112

KEITH THOMAS E & EILEEN M
5853 HACKER DR
WEST BEND WI 53095

THREE SISTERS MANAGEMENT
3340 WELLINGTON BLVD
CRAWFORDSVILLE IN 47933

MAZER BERNARD A & DIANNE M TR
W221S7455 CAROL DRIVE
MUSKEGO WI 53150

WILLIAMS MARY J TR
11131 WOODS BAY LN
INDIANAPOLIS IN 46236

FRANTZ M RYAN & ERIKA E
5480 LARISSA PL
CARMEL IN 46033

FRIEDMAN JEFFREY &
2013 WILDERNESS TR
SPRINGFIELD IL 62711

DECONCINI CHRISTOPHER M TR
45281 RED PINE LOOP
PERHAM MN 56573

SCHOLTZ STEPHEN A
124 KINGSWAY CRESCENT
TORONTO ON M8X 2S2
CANADA

NELSON ROBERT A TR
1302 STANFIELD ST
SOUTH BEND IN 46617

STENSRUDE LARRY C TR
2088 ESTERO BLVD UNIT 5G
FORT MYERS BEACH FL 33931

LYONS KRISTIN E
2096 ESTERO BLVD #1
FORT MYERS BEACH FL 33931

RAGAN JOHN
5600 REVERE RUN
CANFIELD OH 44406

JONES FRANK TR
2010 46TH AVE #2
GREELEY CO 80634

SAVERY TIMOTHY LYDEN &
406 SW 30TH AVE
CAPE CORAL FL 33991

MOGLIA SANDRA
17 DIVISION ST W APT 2
GREENWICH CT 06830

DUNFEE ALLEN MARK & SUSAN M
402 SW 30TH AVE
CAPE CORAL FL 33991

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

MALOTT PATRICK T
7840 MELBOURNE RD
SAGINAW MI 48604

BERMEL STEVEN
900 PARK AVE
MUSCATINE IA 52761

LEINDECKER ROBERT JOHN
6961 WILLOW HWY
GRAND LEDGE MI 48837

STRONG DANIEL
3610 BAYNARD DR
PUNTA GORDA FL 33950

GABRIEL RUSTIE L +
6961 WILLOW HWY
GRAND LEDGE MI 48837

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

2000 ESTERO BOULEVARD
CORE HOTELS & RESORTS LLC
DIAMONDHEAD ISLAND BCH RESORT
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
 \$2000.00 PD Amendment minor (< acre total property area)
 \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

Project Name: The Neptune Resort PD Rezone
Authorized Applicant: CHG Neptune Acquisitions, LLC
STRAP Number(s): 19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010;
19-46-24-W3-04300.00CE

Current Property Status: Damaged/Vacant
Current Zoning: CR
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ yes, ☐ no FLUM Density Range: 6 dwelling units per acre

Requested Action:

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

PART I Narrative Statements

A. Comprehensive Plan Amendments (check one)

☒	There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐	The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)
Please see attached Narrative.	

B. Phasing of Construction

☐	The development is to be constructed in a single phase.
☐	The development is to be constructed in phases as follows: (describe proposed phasing below)

C. Comprehensive Plan Compliance.

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

Please see attached Narrative.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

Please see attached Narrative.



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

Southeast of the intersection of Delmar Ave and Estero Blvd.

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

N/A

PART 2 Submittal Requirements

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

Required Items

- Public Hearing Request Form
- Supplement Form PH-D
- Master Concept Plan
- Traffic Impact Statement
- Architectural Elevations
- Schedule of Uses
- Fee in the amount of \$8000.00 up to 1 acre +1000.00 per additional acre
- \$2000.00 PD Amendment minor (< acre total property area)
- \$4000.00 PD Reinstatement or \$6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

TRAFFIC IMPACT STATEMENT

FOR

NEPTUNE RESORT REZONING

(PROJECT NO. F2308.31)

PREPARED BY:
TR Transportation Consultants, Inc.
Certificate of Authorization Number: 27003
2726 Oak Ridge Court, Suite 503
Fort Myers, Florida 33901-9356
(239) 278-3090

September 17, 2023

CONTENTS

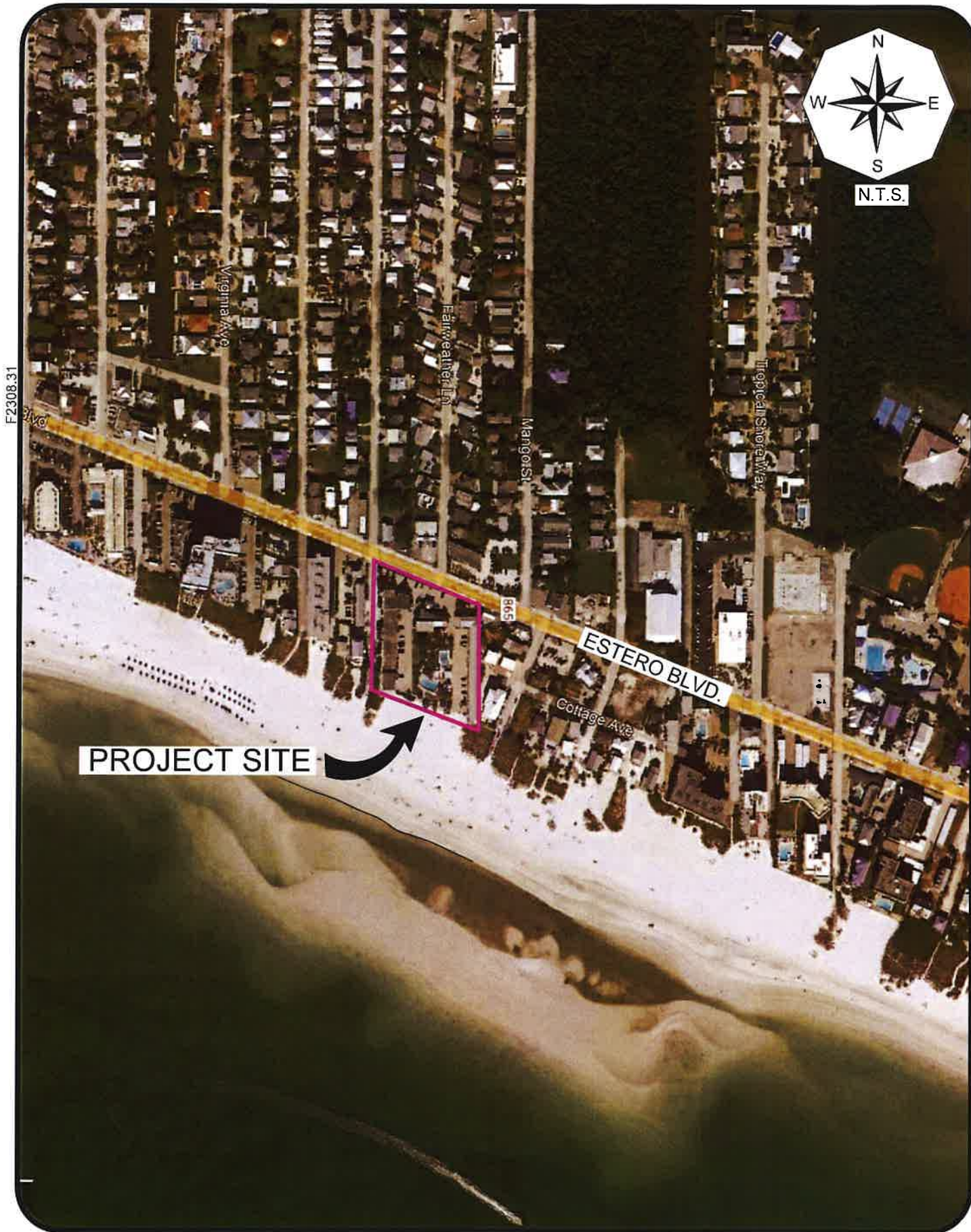
- I. INTRODUCTION
- II. EXISTING CONDITIONS
- III. PROPOSED ZONING
- IV. TRIP GENERATION
- V. TRIP DISTRIBUTION
- VI. LEVEL OF SERVICE ANALYSIS
- VII. CONCLUSION

I. INTRODUCTION

TR Transportation Consultants, Inc. has conducted a traffic impact statement to fulfill requirements set forth by the Town of Fort Myers Beach for projects seeking a zoning amendment approval. The subject site is located along the Gulf side of Estero Boulevard just to the south of Delmar Avenue in the Town of Fort Myers Beach in Lee County, Florida. **Figure 1** illustrates the approximate location of the subject site.

The analysis in this report will determine the impacts of rezoning approximately 2.3 acres from Commercial Resort (CR) to a Commercial Planned Development (CPD) zoning. The zoning will permit the Resort to be reconstructed after being heavily damaged in Hurricane Ian to include up to 140 hotel rooms, a restaurant and Tiki bar and other amenities on-site to support the Resort Hotel use.

The transportation related impacts of the proposed application will be evaluated based on the estimated build-out year of the project and the impacts the proposed development will have on the surrounding roadway infrastructure. Access to the subject site will continue to be provided to Estero Boulevard.



II. EXISTING CONDITIONS

The Neptune Resort is located on the Gulf side of Estero Boulevard. Prior to Hurricane Ian, the Resort contained a total of 71 rooms and was originally developed in the 1960's. The site is bordered by Del Mar Avenue on the west, Estero Boulevard on the north, residential uses to the east and the Gulf of Mexico to the south.

Estero Boulevard is a two-lane undivided Arterial roadway that borders the subject site. Estero Boulevard has a posted speed limit of 25 mph and is under the jurisdiction of the Lee County Department of Transportation. Estero Boulevard from Center Street to Big Carlos Pass has been designated as a "Constrained Roadway" by the Lee County Board of County Commissioners by Lee Plan Objective 37.2 and Policy 37.2.1, which indicates that due to scenic, historic, environmental, aesthetic, and right-of-way characteristics and considerations, a reduced peak hour Level of Service will be accepted on these roadways. A copy of Table 2(a) from the Lee Plan highlighting Estero Boulevard as well as the San Carlos Boulevard Bridge over Matanzas Pass as "Constrained Facilities" is included in the Appendix of this report for reference.

III. PROPOSED ZONING

The proposed request would amend the zoning from Commercial Resort (CR) to a Commercial Planned Development (CPD) on the 2.3 acre site to permit the site to be redeveloped with a Resort Hotel with a restaurant and associated amenities. Access to the site will continue to be provided to Estero Boulevard. **Table 1** summarizes the land uses that could be considered in the zoning application being requested to generate external vehicle trips.

Table 1
Neptune Resort Zoning Amendment
Land Uses

Use	Proposed
Resort Hotel	140 Rooms
Restaurants/Bar	6,000 Sq. Ft.

The floor area of the restaurant includes outdoor seating area

IV. TRIP GENERATION

The trip generation for the proposed uses within the development were determined by referencing the Institute of Transportation Engineer's (ITE) report, titled ***Trip Generation***, 11th Edition. Land Use Code 330 (Resort Hotel) was utilized for the trip generation purposes of the hotel rooms. Land Use Code 932 (High Turn-Over Sit-Down Restaurant) was utilized for trip generation of the restaurant use on-site. Trips were generated for the restaurant use since it will be open to the Public. It is anticipated that a certain number of restaurant guests will be the guests of the Resort, thus reducing the overall external trip generation of the restaurant use. However, for this analysis, it was assumed that there were no reductions due to this interaction to ensure a "worst case" analysis of the transportation related impacts. There will certainly be an interaction that will cause a reduction in the overall parking demand for these uses, which will be discussed under separate cover as part of this application. The trip generation equations for these land uses are included in the Appendix of this report for reference. **Table 2** outlines the anticipated weekday AM and PM peak hour trip generation based on these land use categories.

Table 2
Neptune Resort Zoning Amendment
Trip Generation

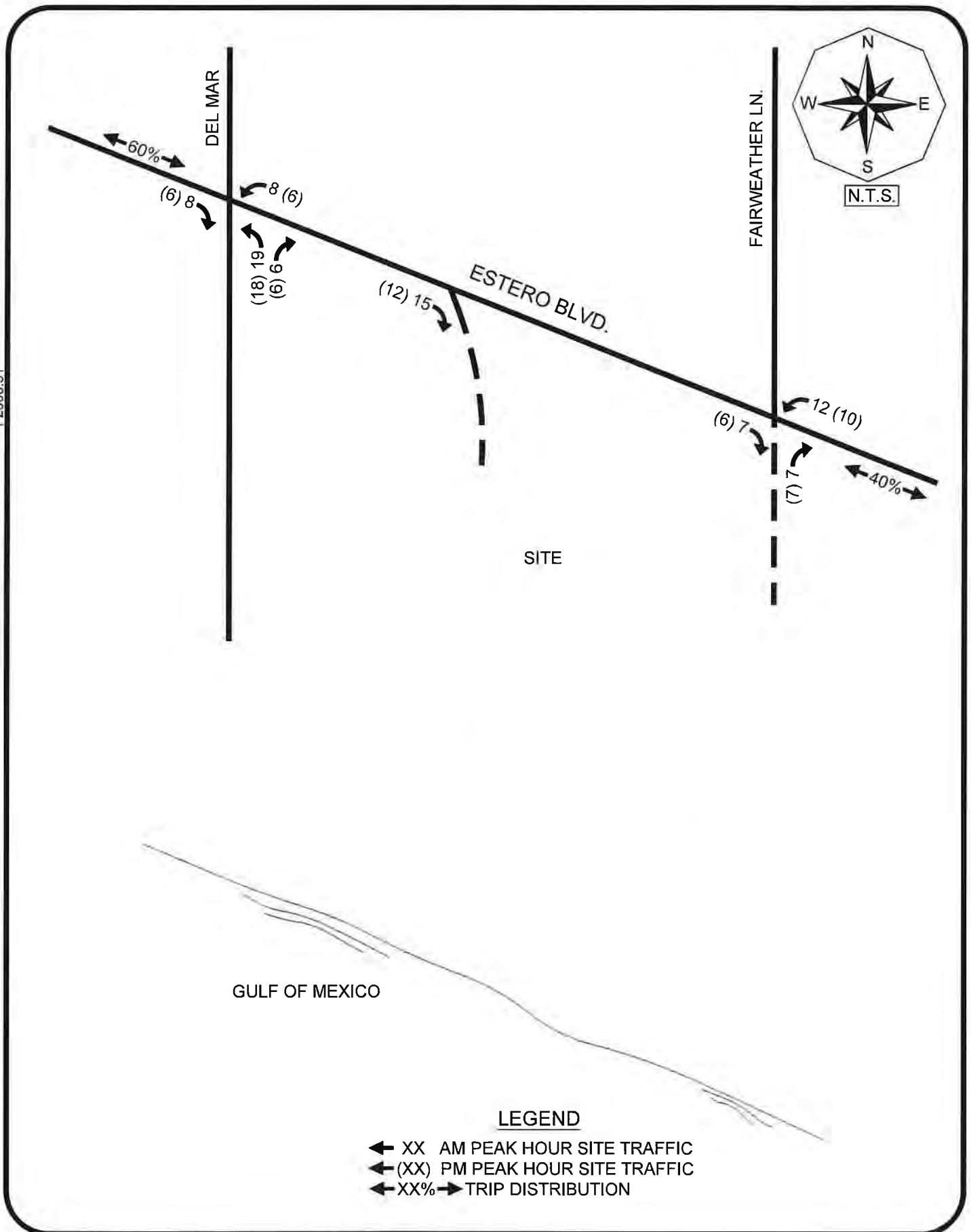
Land Use	Weekday AM Peak Hour			Weekday PM Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Resort Hotel (140 Rooms)	18	7	25	7	10	17	n/a
Restaurant (6,000 Sq. Ft.)	32	25	57	33	21	54	643
Total Trips	50	32	82	40	31	71	643

V. TRIP DISTRIBUTION

The trips the proposed development is anticipated to generate, as shown in Table 2, were assigned to the surrounding roadway network. The trips were assigned based upon the routes drivers are anticipated to utilize to approach the subject site. **Figure 2** illustrates the anticipated trip distribution. Also shown in Figure 2, is the site traffic assignment of the proposed development.

In order to determine which roadway segments surrounding the site will be significantly impacted, **Table 1A**, contained in the Appendix, was created. This table indicates which roadway links will experience a significant impact as a result of the added development traffic. Significant impact is defined as any roadway projected to experience greater than 10% of the Peak Hour – Peak Direction Level of Service “C” volumes.

The Level of Service Threshold volumes for each roadway link were taken from the Lee County Generalized Peak Hour Directional Service Volume table. This table is included in the Appendix of this report for reference. Based on the information contained within Table 1A, no roadway segment is shown to experience a significant impact due to the addition of the project traffic.



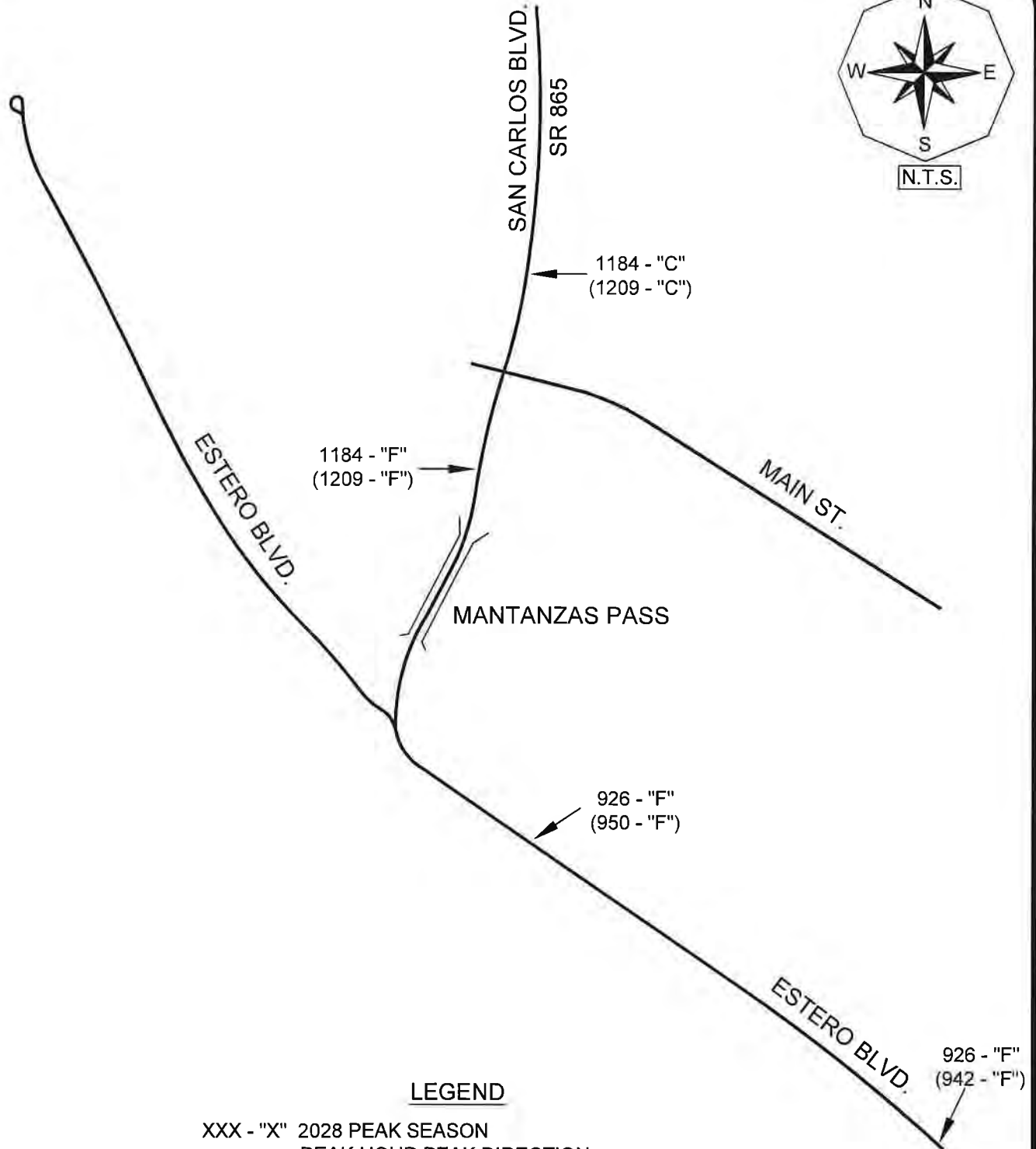
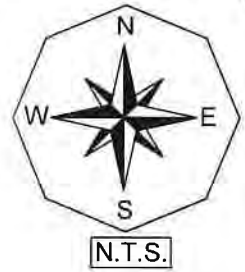
VI. LEVEL OF SERVICE ANALYSIS

The future Level of Service analysis was based on the development build-out horizon, which was selected as the year 2028. Based on this horizon year analysis, the surrounding roadway network was analyzed under 2028 traffic conditions. Even though historical growth patterns have illustrated that there has been very little traffic increase on Estero Boulevard in the past eight (8) years, a growth rate of 2% per year, compounded annually, was applied to the existing traffic conditions for the traffic volume reported by Lee County for Estero Boulevard. The existing traffic data for Estero Boulevard was obtained from the Lee County 2022 *Lee County Public Facilities Level of Service and Concurrency Report*. This data was collected pre-Hurricane Ian.

Table 2A in the Appendix of the report indicates the methodology utilized to obtain the year 2028 build-out traffic volumes as well as the growth rate utilized for each roadway segment analyzed. The data obtained from the 2022 Lee County resource is attached to the Appendix of this report for reference.

Figure 3 indicates the year 2028 peak hour – peak direction traffic volumes and Level of Service for the various roadway links within the study area. Noted on Figure 3 is the peak hour – peak direction volume and Level of Service of each link should no development occur on the subject site and the peak hour – peak direction volume and Level of Service for the weekday A.M and P.M. peak hours with the development traffic added to the roadways. Figure 3 is derived from Table 2A contained in the Appendix.

F2308.31



LEGEND

XXX - "X" 2028 PEAK SEASON
PEAK HOUR PEAK DIRECTION
BACKGROUND TRAFFIC AND
LEVEL OF SERVICE DESIGNATION

(XXX - "X") 2028 PEAK SEASON PEAK HOUR PEAK
DIRECTION BACKGROUND +
PROJECT TRAFFIC AND LEVEL OF
SERVICE DESIGNATION

It should be noted that Estero Boulevard west of San Carlos Boulevard as well as the Matanzas Bridge has been designated as a “Constrained Roadway” by the Lee County Board of County Commissioners pursuant to Lee Plan Policy 37.2.2 and Table 2(a). As expected, during peak season, Estero Boulevard adjacent to the site and San Carlos Boulevard over the Matanzas Pass Bridge are shown to operate at LOS “F” prior to any project trips being added to these segments.

The Lee County Department of Transportation has recently completed pedestrian and transit stop improvements to Estero Boulevard along the segment of Estero Boulevard adjacent to the site and FDOT has recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes over Matanzas Bridge and redesign the intersection of San Carlos Boulevard and Estero Boulevard, signaling the intersection and better accommodating pedestrian movements through this intersection. This project is scheduled to begin construction in the Spring of 2024.

Although not reflected in the trip generation calculation is the desire of the Resort as well to encourage guests to arrive by Shuttle and car service from the local airports. The hotel will encourage airport shuttle service and participate in any ferry service that may become available on the island. The location of the site is also within walking distance of Times Square, which will encourage guests to visit these areas on foot and not travel by vehicle. The site will also be designed with on-site bicycle parking as well as golf cart parking spaces to encourage other modes of transportation, which is consistent with the Town of Fort Myers Beach Comprehensive Plan.

VII. CONCLUSION

The proposed zoning amendment of the Neptune Resort to permit the development of up to 140 Resort Hotel rooms along with a restaurant ancillary uses that will be open to the public will not place an undue burden on the adjacent roadway network. The Level of Service information for Estero Boulevard shows that this roadway is already over capacity during season based on data collected prior to Hurricane Ian. It will take some time for the Beach to rebuild and re-establish the population and traffic levels that existed in the peak season prior to Hurricane Ian.

The Resort hotel is requesting to increase the number of rooms from the previously existing 71 rooms prior to Hurricane Ian to 140 rooms and allow for the additional amenities such as the restaurant and Tiki Bar to enhance the property and meet today's consumers expectations that will provide multiple benefits to the Town and its residents. On-site bicycle spaces and golf cart parking spaces will encourage guests to use alternative modes of transportation once on-site. Airport shuttle service will also be encouraged by the Management of the Resort, thus reducing the overall transportation related impacts of the use on the island roads.

APPENDIX

TABLES 1A & 2A

TABLE 1A
PEAK DIRECTION PROJECT TRAFFIC VS. 10% LOS C LINK VOLUMES
NEPTUNE RESORT REZONING

TOTAL AM PEAK HOUR PROJECT TRAFFIC =		82 VPH	IN=	50	OUT=	32						
TOTAL PM PEAK HOUR PROJECT TRAFFIC =		71 VPH	IN=	40	OUT=	31						
ROADWAY	SEGMENT	ROADWAY		LOS A	LOS B	LOS C	LOS D	LOS E	PERCENT			
		CLASS	VOLUME	VOLUME	VOLUME	VOLUME	VOLUME	VOLUME	TRAFFIC	PROJECT	TRAFFIC	PROJ/
Estero Blvd.	W. of Site	2LN	0	0	0	330	710	780	60%	30	9.1%	
	E. of Site	2LN	0	0	0	330	710	780	40%	20	6.1%	
Matanzas Pass Bridge San Carlos Blvd.	N. of Estero Blvd.	2LU	0	0	0	330	710	780	50%	25	7.6%	
	N. of Main St.	4LN	0	250	1,840	1,960	1,960	1,960	50%	25	1.4%	

* Level of Service thresholds were obtained from Lee County Generalized Peak Hour Directional Service Volume Table (April 2016)

TABLE 2A
LEE COUNTY TRAFFIC COUNTS AND CALCULATIONS
NEPTUNE RESORT REZONING

		Site #		K-Factor		D-Factor		I-Factor	
TOTAL PROJECT TRAFFIC AM =		82	VPH	IN =	50	OUT=	32	0.090	0.083
TOTAL PROJECT TRAFFIC PM =		71	VPH	IN=	40	OUT=	31	0.090	0.083
		2022		2028		2028		2028	
		PK HR		PK HR PK SEASON		PERCENT		BCKGRND	
		BASE YR		2016		ADT		YRS OF	
		ADT		ADT		ADT		GROWTH	
		RATE ¹		RATE ¹		RATE ¹		RATE ¹	
		PEAK DIR. ²		PEAK DIR. ²		PEAK DIR. ²		PEAK DIR. ²	
		VOLUME		VOLUME		VOLUME		VOLUME	
		LOS		LOS		LOS		LOS	
		TRAFFIC		TRAFFIC		TRAFFIC		TRAFFIC	
		AM PROJ		AM PROJ		AM PROJ		AM PROJ	
		PM PROJ		PM PROJ		PM PROJ		PM PROJ	
		BCKGRND		BCKGRND		BCKGRND		BCKGRND	
		+ PM PROJ		+ PM PROJ		+ PM PROJ		+ PM PROJ	
		VOLUME		VOLUME		VOLUME		VOLUME	
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		LOS		LOS		LOS		LOS	
		LOS		LOS		LOS		LOS	
		LOS		LOS		LOS</			

**LEE COUNTY PUBLIC FACILITIES
LEVEL OF SERVICE AND
CONCURRENCY REPORT**

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 2 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)														
Link No.	NAME	ROADWAY LINK		F. Class	ROAD TYPE	PERFORMANCE STANDARD		2021 100TH HIGHEST HOUR			FUTURE FORECAST (2026)			Notes
		FROM	TO			LOS	DIRECTIONAL CAPACITY	LOS	VOL	V/C	LOS	VOL	V/C	
04800	CEMETERY RD	BUCKINGHAM RD	HIGGINS AVE	Maj. Col	2LN	E	860	C	308	0.36	C	323	0.38	
04900	CHAMBERLIN PKWY	AIRPORT ENT	DANIELS PKWY	Maj. Col	4LN	E	1,790	C	105	0.06	C	150	0.08	Port Authority maintained
05000	COCONUT RD	WEST END	VIA VENETTO BLVD	Maj. Col	2LN	E	860	C	268	0.31	C	420	0.49	Estero maintains to east
05100	COLLEGE PKWY	MCGREGOR BLVD	WINKLER RD	P. Art	6LD	E	2,980	D	2,292	0.77	D	2,409	0.81	*
05200	COLLEGE PKWY	WINKLER RD	WHISKEY CREEK DR	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05300	COLLEGE PKWY	WHISKEY CREEK DR	SUMMERLIN RD	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05400	COLLEGE PKWY	SUMMERLIN RD	US 41	P. Art	6LD	E	2,980	D	1,898	0.64	D	1,995	0.67	
05500	COLONIAL BLVD	MCGREGOR BLVD	SUMMERLIN RD	P. Art	6LD	E	2,840	F	3,049	1.07	F	3,204	1.13	*
05600	COLONIAL BLVD	SUMMERLIN RD	US 41	P. Art	6LD	E	2,840	D	2,650	0.93	D	2,785	0.98	
06200	COLONIAL BLVD	DYNASTY DR	SR 82	P. Art	6LD	D	3,040	B	2,070	0.68	C	2,175	0.72	*
06300	COLUMBUS BLVD	SR 82	MILWAUKEE BLVD	Maj. Col	2LN	E	860	C	100	0.12	C	105	0.12	old count
06400	CONSTITUTION BLVD	US 41	CONSTITUTION CIR	Maj. Col	2LN	E	860	C	217	0.25	C	245	0.28	old count projection(2010)
06500	CORBETT RD	SR 78 (PINE ISLAND RD)	LITTLETON RD	Maj. Col	2LN	E	860	G	22	0.03	C	226	0.26	old count, added VA clinic(2009)
06600	CORKSCREW RD	US 41	THREE OAKS PKWY	P. Art	4LD	E	1,900	C	1,047	0.55	C	1,312	0.69	Galleria at Corkscrew
06700	CORKSCREW RD	THREE OAKS PKWY	W OF I-75	P. Art	4LD	E	1,900	F	2,129	1.12	F	2,368	1.25	Estero Crossing
06800	CORKSCREW RD	E OF I-75	BEN HILL GRIFFIN BLVD	P. Art	4LD	E	1,900	C	1,069	0.56	C	1,281	0.67	
06900	CORKSCREW RD	BEN HILL GRIFFIN BLVD	ALICO RD	P. Art	4LD	E	1,960	C	1,186	0.61	C	1,398	0.71	
07000	CORKSCREW RD	ALICO RD	COUNTY LINE	P. Art	2LN	E	1,140	C	464	0.41	F	1,244	1.09	EEPCO Study, The Place
07100	COUNTRY LAKES BLVD	LUCKETT RD	TICE ST	Maj. Col	2LN	E	860	C	143	0.17	C	293	0.34	old count projection(2010)
07200	CRYSTAL DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	360	0.42	C	379	0.44	
07300	CRYSTAL DR	METRO PKWY	PLANTATION RD	Maj. Col	2LN	E	860	C	242	0.28	C	254	0.30	
07400	CYPRESS LAKE DR	MCGREGOR BLVD	SOUTH POINT BLVD	P. Art	4LD	E	1,940	D	1,129	0.58	D	1,186	0.61	
07500	CYPRESS LAKE DR	SOUTH POINT BLVD	WINKLER RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07600	CYPRESS LAKE DR	WINKLER RD	SUMMERLIN RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07700	CYPRESS LAKE DR	SUMMERLIN RD	US 41	P. Art	6LD	E	2,940	D	2,085	0.71	D	2,191	0.75	
07800	DANIELS PKWY	US 41	METRO PKWY	Controlled xs	6LD	E	2,680	D	2,288	0.85	D	2,405	0.90	
07900	DANIELS PKWY	METRO PKWY	SIX MILE PKWY	Controlled xs	6LD	E	2,680	D	2,109	0.79	E	2,520	0.94	Constrained
08000	DANIELS PKWY	SIX MILE PKWY	PALOMINO LN	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,256	1.07	Constrained
08100	DANIELS PKWY	PALOMINO LN	I-75	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,137	1.03	Constrained
08200	DANIELS PKWY	I-75	TREELINE AVE	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08300	DANIELS PKWY	TREELINE AVE	CHAMBERLIN PKWY	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08400	DANIELS PKWY	CHAMBERLIN PKWY	GATEWAY BLVD	Controlled xs	6LD	E	3,260	B	2,765	0.85	B	2,906	0.89	
08500	DANIELS PKWY	GATEWAY BLVD	SR 82	Controlled xs	4LD	E	2,160	F	2,163	1.00	F	2,307	1.07	SKY Walk *
08600	DANLEY DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	255	0.30	C	286	0.33	
08700	DAVIS RD	MCGREGOR BLVD	IONA RD	Maj. Col	2LN	E	860	C	15	0.02	C	29	0.03	old count projection(2010)
08800	DEL PRADO BLVD	CAPE CORAL PKWY	SE 46TH ST	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
08900	DEL PRADO BLVD	SE 46TH ST	CORONADO PKWY	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
09000	DEL PRADO BLVD	CORONADO PKWY	CORNWALLIS PKWY	P. Art	6LD	E	2,660	D	1,869	0.70	D	1,964	0.74	
09100	DEL PRADO BLVD	CORNWALLIS PKWY	CORAL POINT DR	P. Art	6LD	E	2,660	D	2,565	0.96	F	2,696	1.01	
09200	DEL PRADO BLVD	CORAL POINT DR	HANCOCK B. PKWY	P. Art	6LD	E	2,800	D	1,997	0.71	D	2,098	0.75	
09300	DEL PRADO BLVD	HANCOCK B. PKWY	SR 78	P. Art	6LD	E	2,800	C	1,642	0.59	C	1,725	0.62	*
09400	DEL PRADO BLVD	US 41	SLATER RD	M. Art	2LN	E	860	C	489	0.57	D	742	0.86	Crane Landing
09700	EAST 21ST ST	JOEL BLVD	GRANT AVE	Min. Col	2LN	E	860	C	31	0.04	C	33	0.04	*
09800	ESTERO BLVD	BIG CARLOS PASS BRIDGE	PESCADORA AVE	M. Art	2LN	E	726	A	356	0.49	A	374	0.52	Constrained*
09900	ESTERO BLVD	PESCADORA AVE	VOORHIS ST	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10000	ESTERO BLVD	VOORHIS ST	TROPICAL SHORES WAY	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10100	ESTERO BLVD	TROPICAL SHORES WAY	CENTER ST	M. Art	2LN	E	671	F	716	1.07	F	779	1.16	Constrained, old count(2010)
00007	ESTERO PKWY	US 41	THREE OAKS PKWY	P. Art	4LD	E	2,000	B	861	0.43	B	1,154	0.58	Not County Maintd

County-Maintained Collector Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Arterial Roadway - Incorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Controlled Access Arterial Facility

County Maintained Expressway

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 5 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)														
Link No.	NAME	ROADWAY LINK		F. Class	ROAD TYPE	PERFORMANCE STANDARD		2021 100TH HIGHEST HOUR			FUTURE FORECAST (2026)			Notes
		FROM	TO			LOS	DIRECTIONAL CAPACITY	LOS	VOL	V/C	LOS	VOL	V/C	
19400	ORANGE RIVER BLVD	STALEY RD	BUCKINGHAM RD	Maj. Col	2LN	E	1,000	D	477	0.48	D	511	0.51	
19500	ORIOLE RD	SAN CARLOS BLVD	ALICO RD	Maj. Col	2LN	E	860	C	129	0.15	C	136	0.16	
19600	ORTIZ AVE	COLONIAL BLVD	SR 82	Controlled xs	2LN	E	900	B	716	0.80	B	753	0.84	
19700	ORTIZ AVE	SR 82	LUCKETT RD	P. Art	2LN	E	900	B	745	0.83	B	784	0.87	4 Ln design & ROW
19800	ORTIZ AVE	LUCKETT RD	SR 80	P. Art	2LN	E	900	B	309	0.34	B	325	0.36	4 Ln design & ROW
19900	PALM BEACH BLVD (SR 8)	PROSPECT AVE	ORTIZ AVE	State	4LD	D	2,100	C	1,089	0.52	C	1,240	0.59	
20000	PALM BEACH BLVD (SR 8)	ORTIZ AVE	I-75	State	6LD	D	3,171	C	1,242	0.39	C	1,391	0.44	
20100	PALM BEACH BLVD (SR 8)	I-75	SR 31	State	6LD	D	3,171	C	1,616	0.51	C	2,001	0.63	
20200	PALM BEACH BLVD (SR 8)	SR 31	BUCKINGHAM RD	State	4LD	D	2,100	D	2,043	0.97	F	2,495	1.19	
20300	PALM BEACH BLVD (SR 8)	BUCKINGHAM RD	WERNER DR	State	4LD	D	3,280	B	1,426	0.43	C	1,802	0.55	
20330	PALM BEACH BLVD (SR 8)	WERNER DR	JOEL BLVD	State	4LD	C	2,210	B	1,179	0.53	C	1,531	0.69	
20400	PALM BEACH BLVD (SR 8)	JOEL BLVD	HENDRY CO. LINE	State	4LD	C	2,210	B	1,053	0.48	B	1,343	0.61	
20500	PALOMINO LN	DANIELS PKWY	PENZANCE BLVD	Min. Col	2LN	E	860	C	380	0.44	C	403	0.47	
20600	PARK MEADOWS DR	SUMMERLIN RD	US 41	Maj. Col	2LN	E	860	C	205	0.24	C	216	0.25	
20800	PENZANCE BLVD	RANCHETTE RD	SIX MILE PKWY	Maj. Col	2LN	E	860	C	148	0.17	C	160	0.19	
20900	PINE ISLAND RD	STRINGFELLOW RD	BURNT STORE RD	P. Art	2LN	E	950	E	594	0.63	E	644	0.68	Constrained
21400	PINE ISLAND RD (SR 78)	CITY LIMITS E OF BARRETT RD	US 41	State	4LD	D	2,100	C	1,821	0.87	F	2,171	1.08	
21500	PINE ISLAND RD (SR 78)	US 41	BUS 41	State	4LD	D	2,100	C	1,590	0.76	C	1,754	0.84	
21600	PINE RIDGE RD	SAN CARLOS BLVD	SUMMERLIN RD	Maj. Col	2LN	E	860	C	515	0.60	D	587	0.68	*
21700	PINE RIDGE RD	SUMMERLIN RD	GLADIOLUS DR	Maj. Col	2LN	E	860	C	245	0.28	C	405	0.47	Heritage Isle*
21800	PINE RIDGE RD	GLADIOLUS DR	MCGREGOR BLVD	Maj. Col	2LN	E	860	C	245	0.28	C	257	0.30	
21900	PLANTATION RD	SIX MILE PKWY	DANIELS PKWY	M. Art	2LN	E	860	C	267	0.31	C	369	0.43	Intermed Park
22000	PLANTATION RD	DANIELS PKWY	IDLEWILD ST	M. Art	2LN	E	860	D	692	0.80	D	728	0.85	FDOT Metro Pkwy 6-laning
22050	PLANTATION RD	IDLEWILD ST	COLONIAL BLVD	M. Art	4LN	E	1,790	C	687	0.38	C	722	0.40	
22100	PONDELLA RD	SR 78	ORANGE GROVE BLVD	P. Art	4LD	E	1,890	B	1,012	0.54	B	1,063	0.56	*
22200	PONDELLA RD	ORANGE GROVE BLVD	US 41	P. Art	4LD	E	1,890	B	1,405	0.74	B	1,480	0.78	
22300	PONDELLA RD	US 41	BUS 41	P. Art	4LD	E	1,890	B	1,052	0.56	B	1,105	0.58	
22400	PRITCHETT PKWY	SR 78	RICH RD	Maj. Col	2LN	E	860	C	73	0.08	C	541	0.63	old count, Stoneybrook North(2009)
22500	RANCHETTE RD	PENZANCE BLVD	IDLEWILD ST	Maj. Col	2LN	E	860	C	93	0.11	C	98	0.11	
22600	RICH RD	SLATER RD	PRITCHETT PKWY	Maj. Col	2LN	E	860	C	55	0.05	C	62	0.07	old count projection(2009)
22700	RICHMOND AVE	LEELAND HEIGHTS	E 12TH ST	Maj. Col	2LN	E	860	C	82	0.10	C	94	0.11	
22800	RICHMOND AVE	E 12TH ST	GREENBRIAR BLVD	Maj. Col	2LN	E	860	C	82	0.10	C	86	0.10	
23230	SAN CARLOS BLVD	US 41	THREE OAKS PKWY	Maj. Col	2LN	E	860	C	481	0.47	C	422	0.49	*
23000	SAN CARLOS BLVD (SR 86)	MANTANZAS PASS B.	MAIN ST	State	2LD	D	970	F	1,051	1.08	F	1,176	1.21	Constrained
23100	SAN CARLOS BLVD (SR 86)	MAIN ST	SUMMERLIN RD	State	4LD	D	2,100	C	1,051	0.50	C	1,176	0.56	PD&E Study
23180	SAN CARLOS BLVD (SR 86)	SUMMERLIN RD	KELLY RD	State	2LD	D	970	C	772	0.80	C	795	0.82	
23200	SAN CARLOS BLVD (SR 86)	KELLY RD	GLADIOLUS DR	State	4LD	D	2,100	C	772	0.37	C	795	0.38	
23260	SANIBEL BLVD	US 41	LEE RD	Maj. Col	2LN	E	860	C	489	0.57	C	514	0.60	
23300	SANIBEL CAUSEWAY	SANIBEL SHORELINE	TOLL PLAZA	P. Art	2LN	E	1,140	E	987	0.87	E	1,037	0.91	
23400	SHELL POINT BLVD	MCGREGOR BLVD	PALM ACRES	Maj. Col	2LN	E	860	C	231	0.27	C	243	0.28	*
23600	SIX MILE CYPRESS	METRO PKWY	DANIELS PKWY	Controlled xs	4LD	E	2,000	B	1,371	0.69	B	1,441	0.72	Unincorporated LC
23700	SIX MILE CYPRESS	DANIELS PKWY	WINKLER EXT.	Controlled xs	4LD	E	1,900	B	951	0.50	B	1,154	0.61	Unincorporated LC
23800	SIX MILE CYPRESS	WINKLER EXT.	CHALLENGER BLVD	Controlled xs	4LD	E	1,900	B	1,061	0.56	B	1,115	0.59	Incorporated LC
23900	SIX MILE CYPRESS	CHALLENGER BLVD	COLONIAL BLVD	Controlled xs	6LD	E	2,860	A	1,061	0.37	A	1,115	0.39	Incorporated LC
23500	SIX MILE PKWY (SR 739)	US 41	METRO PKWY	State	4LD	D	2,100	C	1,941	0.92	F	2,243	1.07	
24000	SLATER RD	SR 78	NALLE GRADE RD	M. Art	2LN	E	1,010	C	376	0.37	C	395	0.39	*
24100	SOUTH POINTE BLVD	CYPRESS LAKE DR	COLLEGE PKWY	Maj. Col	2LD	E	910	D	602	0.66	D	633	0.70	*
24200	SR 31 (ARCADIA RD)	SR 80	SR 78	State	2LN	D	970	C	763	0.79	F	989	1.02	PD&E/SER Study

County-Maintained Collector Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Arterial Roadway - Incorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Controlled Access Arterial Facility

County Maintained Expressway

**LEE COUNTY GENERALIZED PEAK
HOUR DIRECTIONAL SERVICE
VOLUMES**

**Lee County
Generalized Peak Hour Directional Service Volumes
Urbanized Areas**

April 2016

c:\input5

Uninterrupted Flow Highway						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	130	420	850	1,210	1,640
2	Divided	1,060	1,810	2,560	3,240	3,590
3	Divided	1,600	2,720	3,840	4,860	5,380
Arterials						
Class I (40 mph or higher posted speed limit)						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	140	800	860	860
2	Divided	*	250	1,840	1,960	1,960
3	Divided	*	400	2,840	2,940	2,940
4	Divided	*	540	3,830	3,940	3,940
Class II (35 mph or slower posted speed limit)						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	*	330	710	780
2	Divided	*	*	710	1,590	1,660
3	Divided	*	*	1,150	2,450	2,500
4	Divided	*	*	1,580	3,310	3,340
Controlled Access Facilities						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	160	880	940	940
2	Divided	*	270	1,970	2,100	2,100
3	Divided	*	430	3,050	3,180	3,180
Collectors						
Level of Service						
Lane	Divided	A	B	C	D	E
1	Undivided	*	*	310	660	740
1	Divided	*	*	330	700	780
2	Undivided	*	*	730	1,440	1,520
2	Divided	*	*	770	1,510	1,600
Note: the service volumes for I-75 (freeway), bicycle mode, pedestrian mode, and bus mode should be from FDOT's most current version of LOS Handbook.						

TRAFFIC DATA
FDOT FLORIDA TRAFFIC ONLINE

FLORIDA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION STATISTICS OFFICE
2022 HISTORICAL AADT REPORT

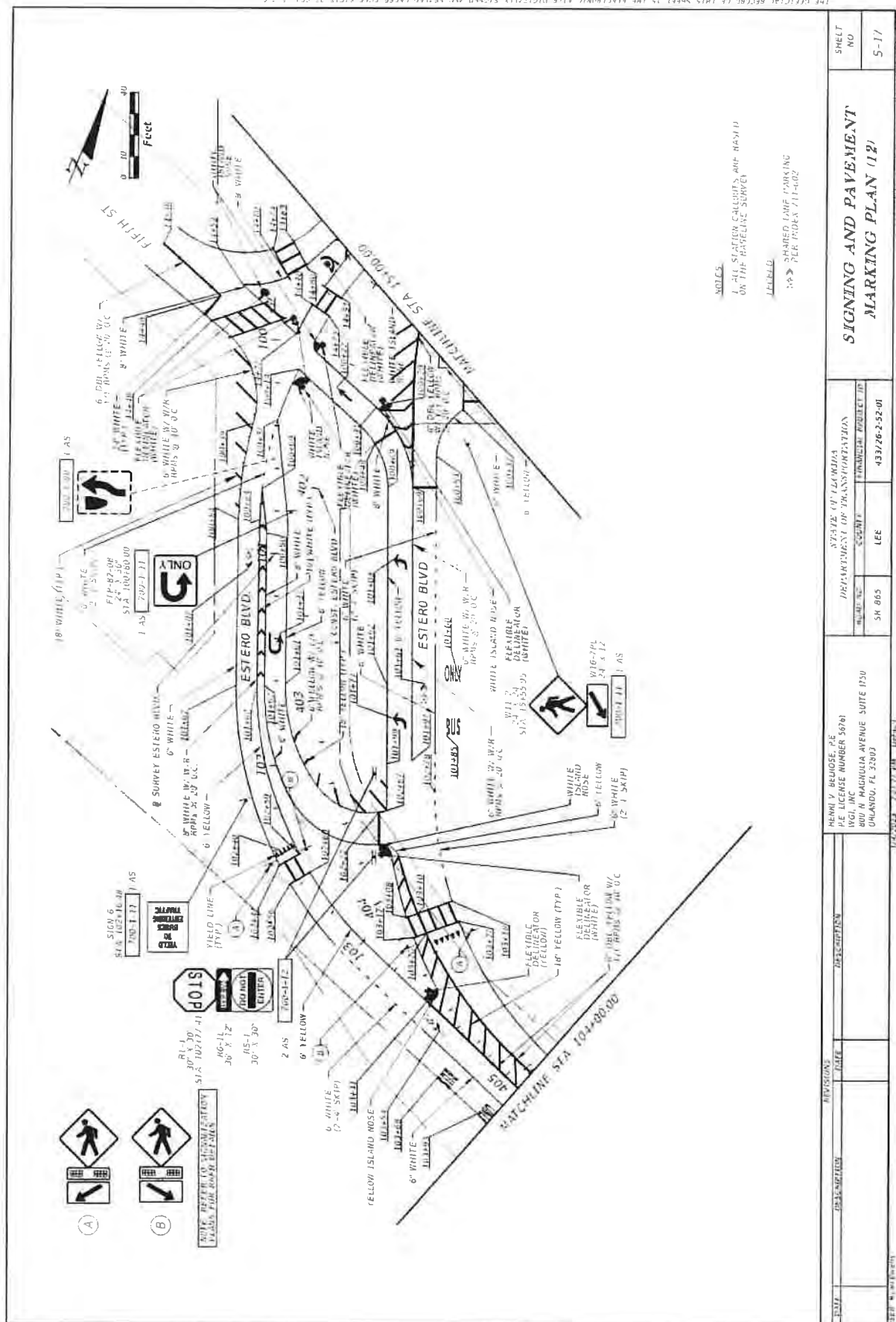
COUNTY: 13 - MANATEE

SITE: 5061 - SR789/LONGBOAT KEY, SW OF BINNACLE POINT DR

YEAR	AADT	DIRECTION 1	DIRECTION 2	*K FACTOR	D FACTOR	T FACTOR
2022	9900 C	N 4900	S 5000	9.00	57.20	5.00
2021	10600 C	N 5300	S 5300	9.00	60.50	3.70
2020	10800 E	N 0	S 0	9.00	59.30	4.00
2019	10500 C	N 0	S 0	9.00	59.60	5.20
2018	10200 C	N 5100	S 5100	9.00	53.20	4.70
2017	9700 C	N 4800	S 4900	9.00	52.70	5.30
2016	8300 F	N 4200	S 4100	9.00	52.90	5.30
2015	8300 C	N 4200	S 4100	9.00	52.90	5.30
2014	7400 C	N 3700	S 3700	9.00	53.30	5.20
2013	8600 F	N 4300	S 4300	9.00	53.50	3.60
2012	8600 C	N 4300	S 4300	9.00	53.90	3.60
2011	7500 F	N 3800	S 3700	9.00	54.50	6.80
2010	7500 C	N 3800	S 3700	10.78	55.28	6.80
2009	9200 C	N 4600	S 4600	11.40	53.60	4.00
2008	8000 C	N 4000	S 4000	12.25	52.91	7.30
2007	8500 C	N 4300	S 4200	12.15	51.63	5.80

AADT FLAGS: C = COMPUTED; E = MANUAL ESTIMATE; F = FIRST YEAR ESTIMATE
S = SECOND YEAR ESTIMATE; T = THIRD YEAR ESTIMATE; R = FOURTH YEAR ESTIMATE
V = FIFTH YEAR ESTIMATE; 6 = SIXTH YEAR ESTIMATE; X = UNKNOWN
*K FACTOR: STARTING WITH YEAR 2011 IS STANDARDK, PRIOR YEARS ARE K30 VALUES

**FDOT PLANS FOR
ESTERO BLVD. @ SAN CARLOS
BLVD.**



**FDOT WORK PROGRAM
SR 865 – SAN CARLOS BLVD.**

Selection Criteria	
District 01 Lee County	2024-2029 AD Category:Highways
Item Number:433726-2	

This site is maintained by the Office of Work Program and Budget, located at 605 Suwannee Street, MS 21, Tallahassee, Florida 32399.

[View Contact Information for Office of Work Program and Budget](#)

Application Home: Work Program

Office Home: Office of Work Program and Budget

**LEE COUNTY COMPREHENSIVE
PLAN
TABLE 2(a)**

TABLE 2(a)
CONSTRAINED STATE AND COUNTY ROADS

ROADWAY	SEGMENT	MAINTENANCE RESPONSIBILITY	CONSTRAINED CONDITIONS
Captiva Road	Blind Pass/ South Seas Plantation	County	ROW, Scenic, Aesthetic, Environmental
Daniels Parkway	Metro Parkway/ I-75	County	ROW
Estero Boulevard	Center Street/ Big Carlos Pass	County	ROW, Scenic, Aesthetic
Hickory Boulevard	Big Carlos Pass/ Bonita Beach Road	County	Scenic, Aesthetic, Environmental
McGregor Boulevard (SR 867)	Colonial Boulevard/ College Parkway	State	ROW, Scenic, Aesthetic, Historic, Environmental
Pine Island Road (Matlacha)	Shoreview Drive/ Little Pine Island	County	ROW, Scenic, Aesthetic, Historic, Environmental
San Carlos Boulevard (SR 865) (Matanzas Bridge)	Center Street/ Main Street	State	ROW, Scenic, Aesthetic, Environmental
US 41	South of Daniels Road/ North Airport Road	State	ROW
Gulf Boulevard	Boca Grande	County	Scenic, Aesthetic, Historic, Environmental
Stringfellow Road	8th Avenue/ Main Street	County	Environmental

TRIP GENERATION EQUATIONS

High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday

Setting/Location: General Urban/Suburban

Number of Studies: 50

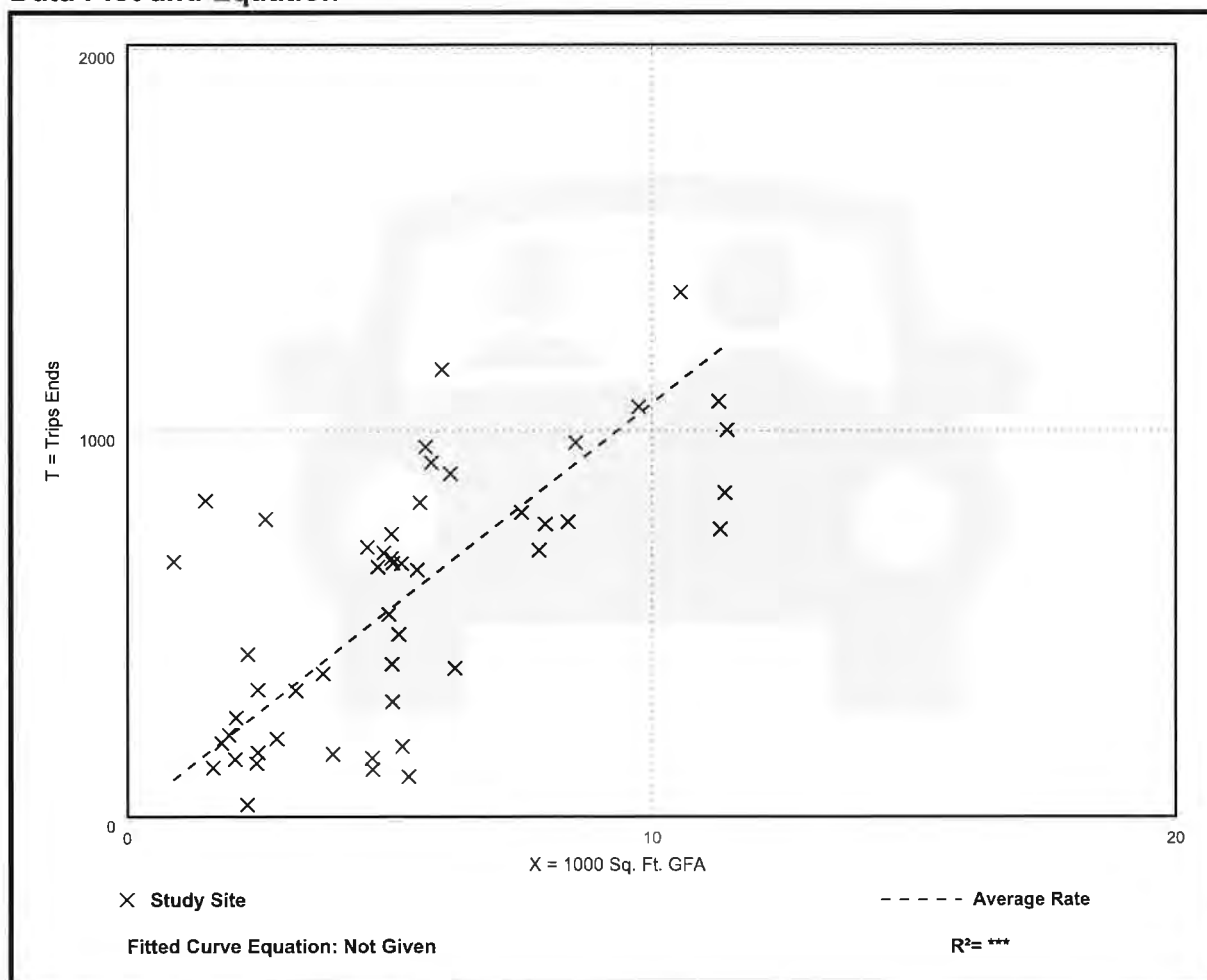
Avg. 1000 Sq. Ft. GFA: 5

Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
107.20	13.04 - 742.41	66.72

Data Plot and Equation



High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 37

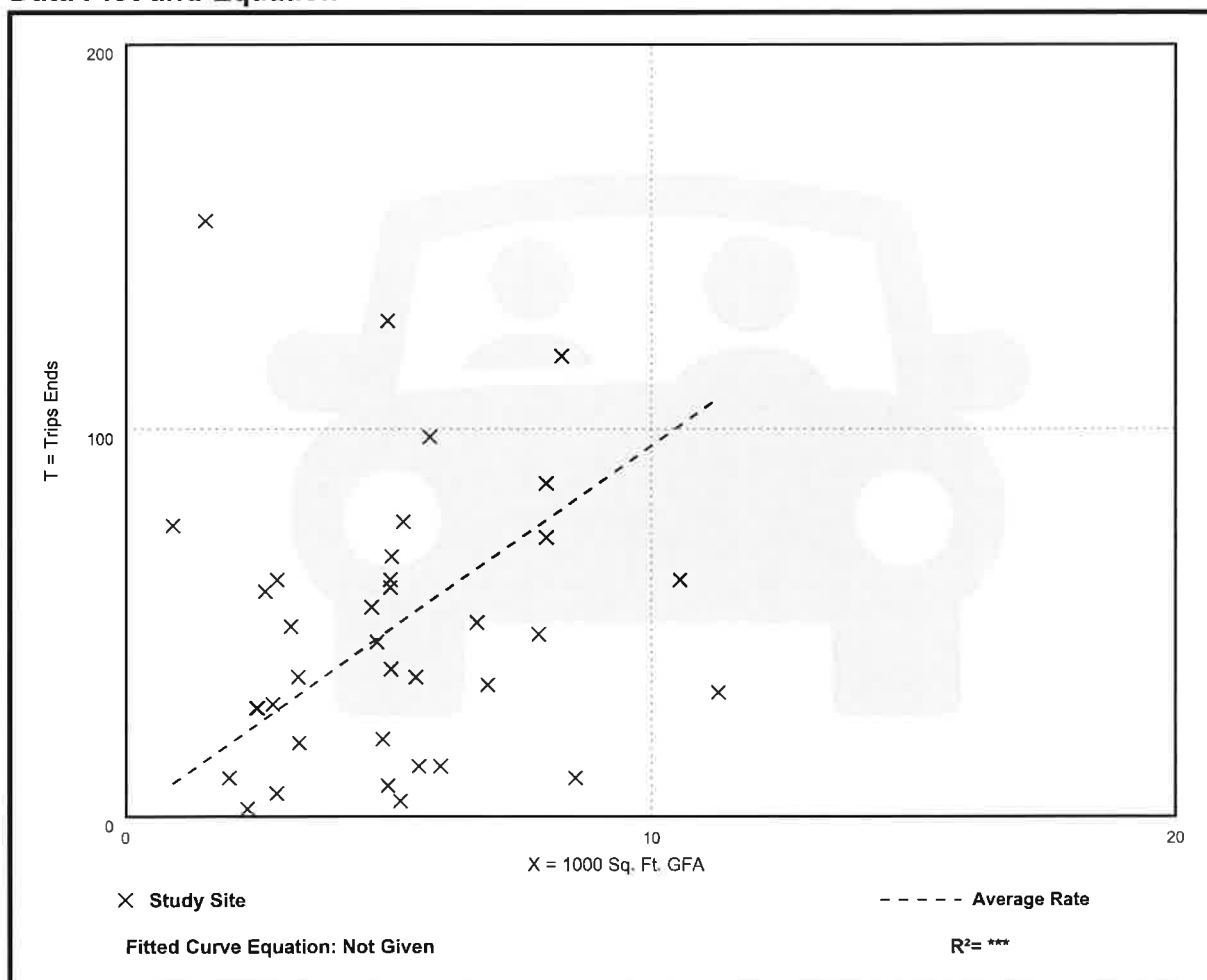
Avg. 1000 Sq. Ft. GFA: 5

Directional Distribution: 55% entering, 45% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
9.57	0.76 - 102.39	11.61

Data Plot and Equation



High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 104

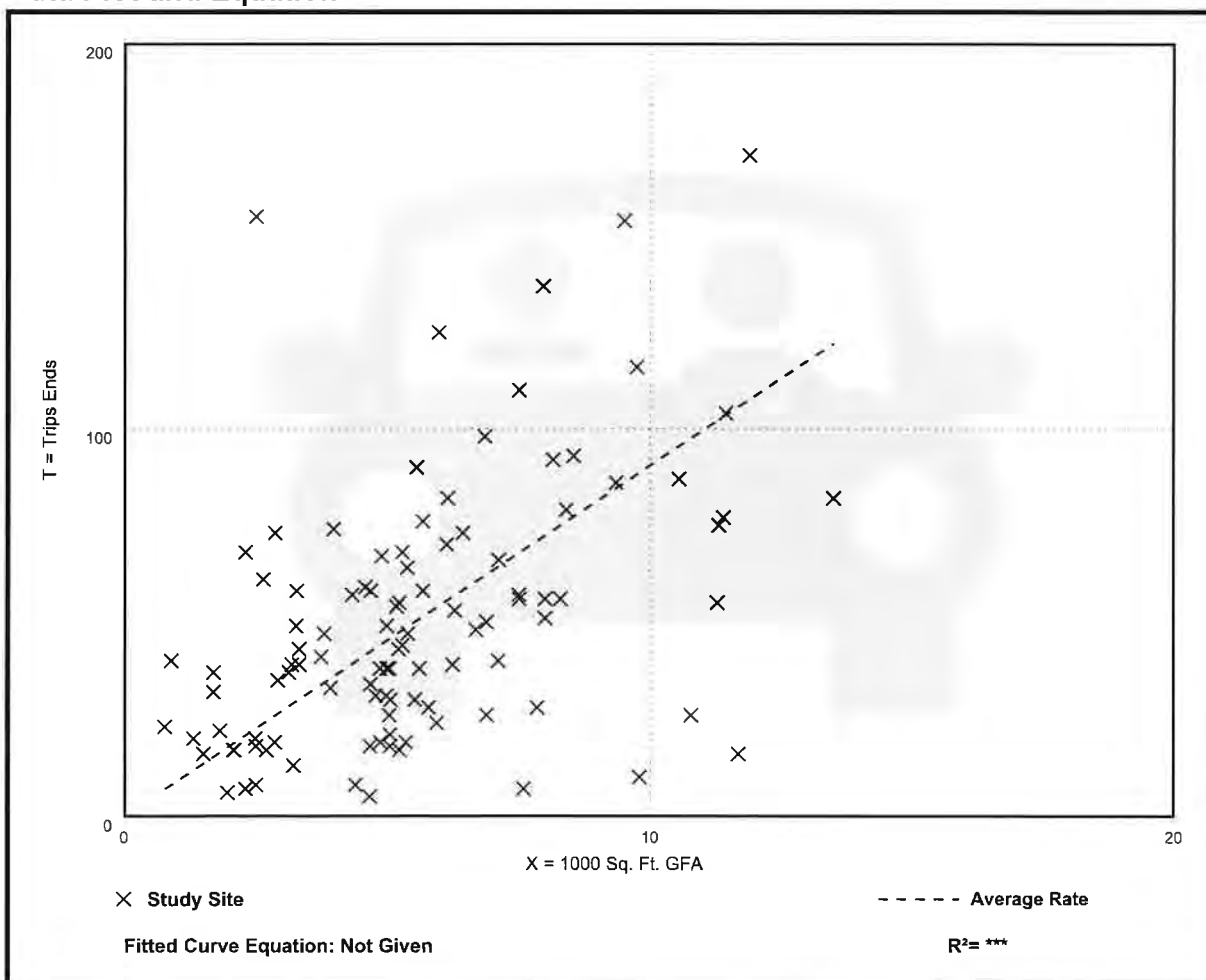
Avg. 1000 Sq. Ft. GFA: 6

Directional Distribution: 61% entering, 39% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
9.05	0.92 - 62.00	6.18

Data Plot and Equation



Resort Hotel (330)

Vehicle Trip Ends vs: Rooms

On a: Weekday,

Peak Hour of Adjacent Street Traffic,

One Hour Between 7 and 9 a.m.

Setting/Location: General Urban/Suburban

Number of Studies: 6

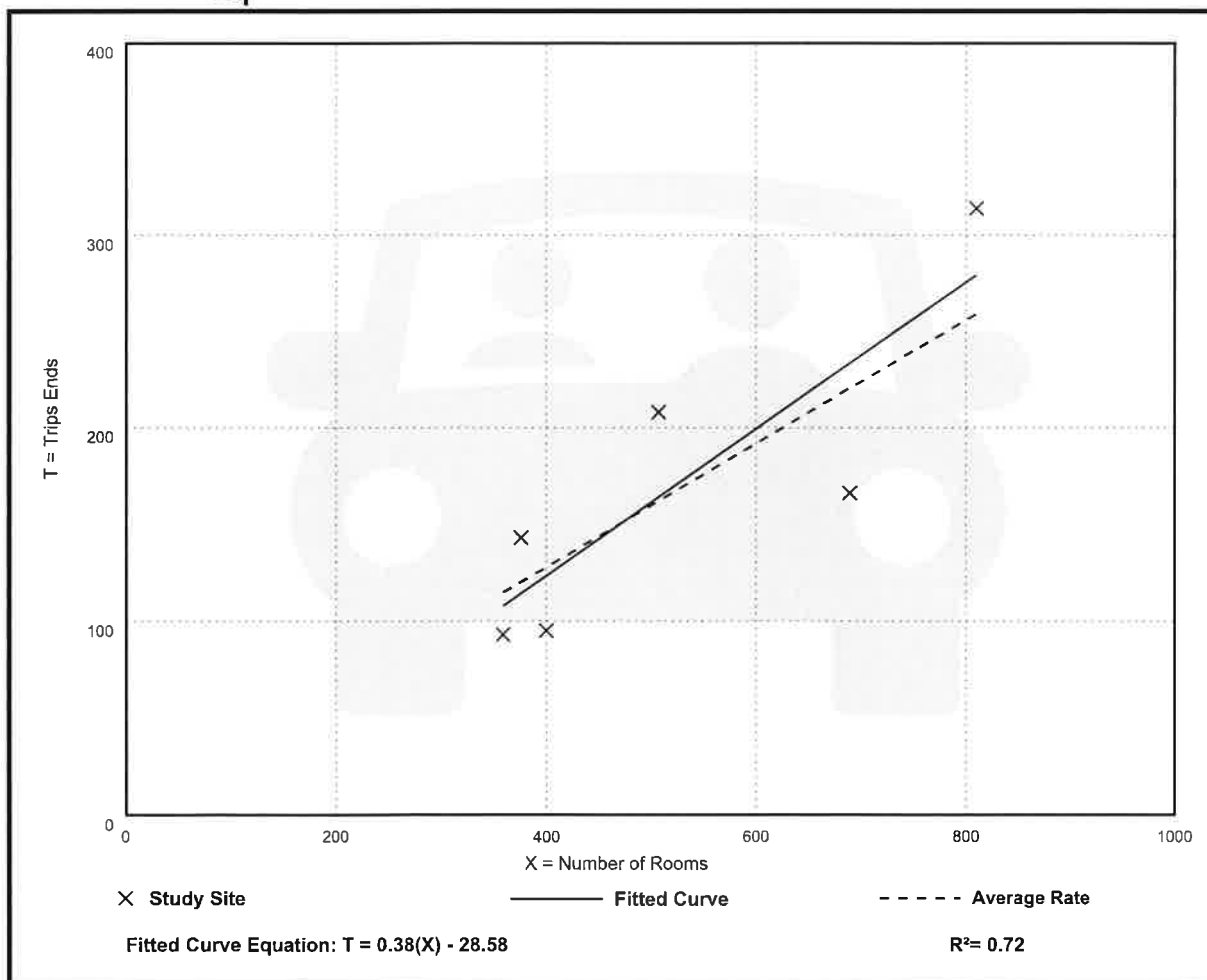
Avg. Num. of Rooms: 524

Directional Distribution: 72% entering, 28% exiting

Vehicle Trip Generation per Room

Average Rate	Range of Rates	Standard Deviation
0.32	0.24 - 0.41	0.08

Data Plot and Equation



Resort Hotel (330)

Vehicle Trip Ends vs: Rooms

On a: **Weekday,**

Peak Hour of Adjacent Street Traffic,

One Hour Between 4 and 6 p.m.

Setting/Location: General Urban/Suburban

Number of Studies: 9

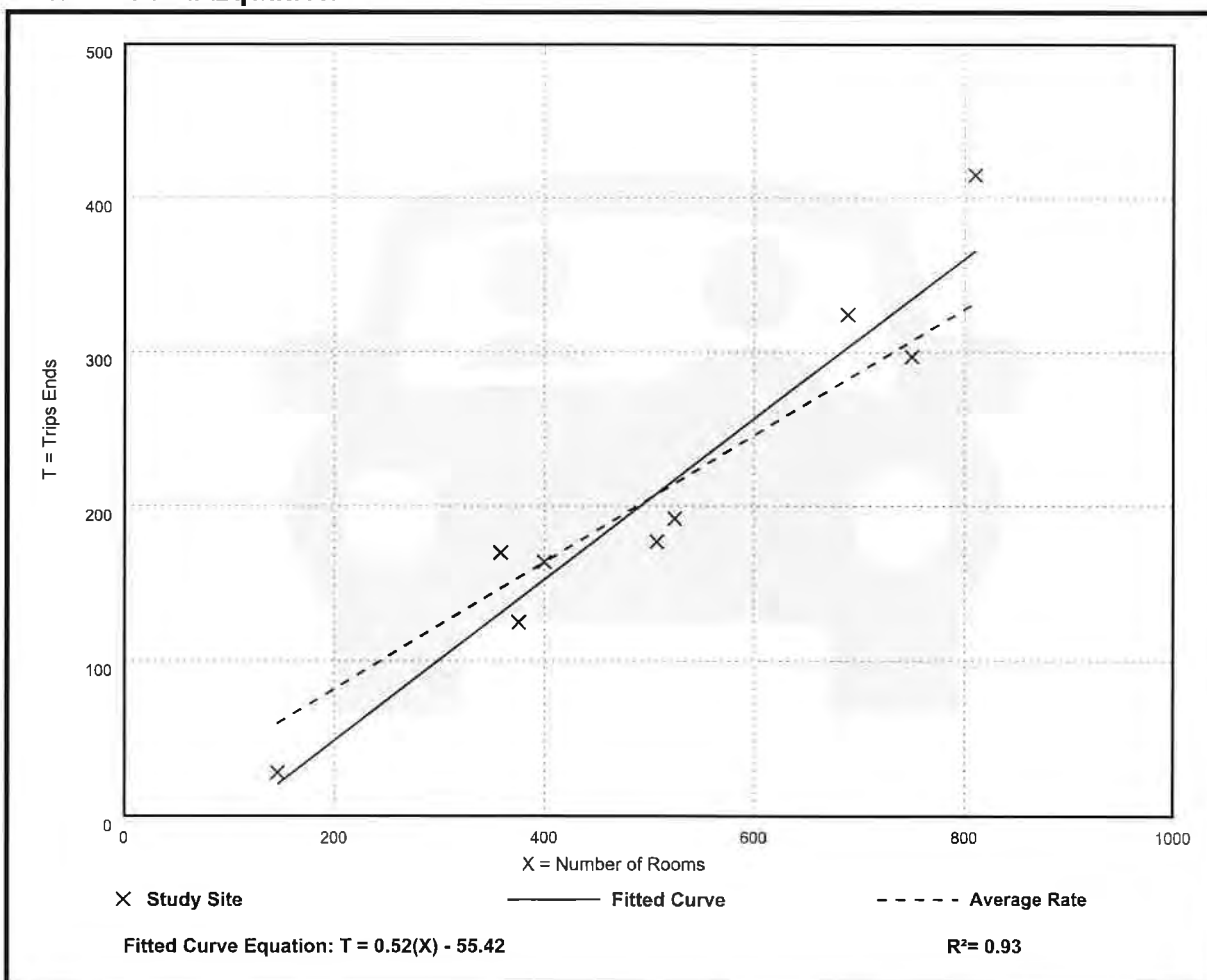
Avg. Num. of Rooms: 507

Directional Distribution: 43% entering, 57% exiting

Vehicle Trip Generation per Room

Average Rate	Range of Rates	Standard Deviation
0.41	0.19 - 0.51	0.08

Data Plot and Equation





NEPTUNE BEACH RESORT REDEVELOPMENT

**August 8th, 2023
5:00 - 6:30 p.m. at
DiamondHead
2000 Estero Blvd, FMB**

Join us!

**Meet the ownership and
redevelopment team.
See & discuss the proposed resort.**



MEMO

To: The Neptune Resort Team
From: Laura Tefft
cc:
Date: August 9, 2023
Subject: Summary of Questions from the Chamber of Commerce/Realtor Meeting

Please find below a summary of the questions which were posed by audience members during the Fort Myers Beach Chamber of Commerce/Realtor meeting which took place on August 8, 2023. I have provided a few of the replies in *italics*.

1. Do you have the anticipated seating county for the ballroom and restaurant?
2. Where will the public parking be located?
3. Are you willing to participate in a transit system with other local hotels to bring guests to your hotel?
4. Loved the new plan but will you be using the photo of the old Neptune Inn somewhere in the hotel?
5. Will there be rooms to accommodate larger families?
6. Will there be incentives for locals for both hotel and restaurant?
7. Only see steps at the rear of the building. Will there be handicap access at the rear of the building?
8. Does this project as presented today fit into the current LDC?
9. Do we have a list of public benefits that The Neptune Resort is proposing to provide?
10. Will slides of the renderings presented be available on a website?
11. What is the acreage of the site?
12. Workforce questions
 - a. How many employees do you anticipate?
 - b. What is the parking plan for employees?
13. When is cleanup of the site anticipated?
14. What are the plans for recruiting of workforce?
15. Suggestions presented- Beach School, start and ending times around school schedule.
16. Will there be timeshare units?



Sign-In Sheet

Public Information Meeting: The Neptune Resort
August 8, 2023 - 5:00pm

	Name	Street Address	City & Zip Code	Phone #	Email
1	MIKE MILLER	1290 Bahia Via	FMB	614-361-1982	MIKE@IDEAL-INVSTMENTS.COM
2	NEIL HOPWOOD	2000 ESTERO BLVD	FMB	239-765-7654	dhrcm@sunsetream.com
3	Bill Waichulis	275 Estero Blvd	33931	239-872-5914	Baichulis@Berkin.com
4	BEV & RICHARD LARSON	P.O. Box 4002 - FMB 7 and 16976 - 160 SAN CARLOS BLVD #288 Fort Myers, FL 33908	33932	239-281-7290	Bev1314@aol.com
5			33908		
6	Marie & Dan Hamulta	4300 Harbor Lane	33903	443-255-8475	info@nauticaltiki.com
7	ED RYAN		33913		
8	Danielle Rambur		33913		drambur@johnrowood.com
9	KAREN WOODSON	820 310 St	33931	612-802-8349	Kwoodson820@gmail.com
10	Tom & Karen Swambeck	4753 Estero Blvd #1103	33931	239-292-6285	Karen@TeamSwambeck.com
11	Annie Meehan	4745 Estero Blvd	33931	952-994-8356	Annie@AnnieMeehan.com
12	JACKI LISZAK	FMB chamber		954-415-2233	Jacki@FMBchamber.com
13	ERIKA ZSAK	FMB Chamber	33931	239-454-7500	ERIKA@FMBChamber.com
14	KAT KLAR	FMB REALTY	33931	561-346-6616	Kklar43@gmail.com
15	John Richard	FMB		239-565-9554	TWR2370@gmail.com
16	Melissa Allers	5485 Avenida Pescadora	33931	710-329-5435	zelanek@hotmail.com
17	David Cesaro	1170 Estero Blvd.	33931		David.Cesaro@T&E Hospitality.com
18	Jane Plummer	340 Fairweather	33931	239-851-9565	jhpreefer@aol.com
19	Dawn Miller	290 Bahia Via	33931	614-578-2588	hmm.bailey@gmail.com
20	JANE SHARPE	17811 SAN CARLOS BLVD	33981	239-400-7819	office@lucydesignsco.com
21					
22					
23					
24					
25					



THE NEPTUNE RESORT REDEVELOPMENT PLAN

PRESENTED TO:

THE FORT MYERS BEACH CHAMBER OF COMMERCE & ROYAL PALM COAST REALTOR ASSOCIATION

THE NEPTUNE RESORT



INTRODUCTIONS

Continental Hospitality Group

- Columbus, OH / hotel developer and owner of 15 high-quality lodging properties

Springboard Hospitality

- Los Angeles, CA operator of 43 desirable, eclectic, mostly independently-owned and non-branded hotels and resorts in the lower 48 states and Hawaii

Meyers & Associates

- Columbus, OH / architecture and interior design with specializations in a wide variety of hospitality projects, golf clubs, and high-end residential

The Neighborhood Company

- Fort Myers, FL / land planning and design

ABOUT THE NEPTUNE RESORT

- Built in the 1960s as a motor inn
- Large guestrooms encouraged families and weeklong stays
- Spacious outdoor amenity core with two pools, grills, and social gathering and activity zones
- Beloved for decades by significant repeat clientele looking for a relaxing, intimate, and quiet place to enjoy Fort Myers Beach, an unrivaled sunset, and the many dining and entertainment options on the island
- Common guest feedback:
 - **Positive:** the location, beautiful sunsets, multiple swimming pools, spacious amenity area, large guestrooms with kitchenettes, and family-friendly vibe
 - **Negative:** the rooms were quite dull in design; very outdated functionally with low ceilings, guestrooms didn't maximize views, not many balconies, and no elevators; and, no food and beverage on site.

OUR PROPERTY HISTORY & RECOVERY EFFORT

Our Property History

- Purchased in September 2021
- We purchased the property given our regard for the island, strong guest loyalty and consistent property performance
- Our intent was long-term ownership of the property and to maintain it well, not redevelop or expand the hotel
- The Hurricane has forced us to redevelop

Post-Storm Recovery Effort

- We are in front of you today after what has been a long journey in the aftermath of Hurricane Ian – to appropriately address many key factors in our redevelopment plan: associates, insurance, financial stakeholders, FEMA and other site requirements, community benefits, and local and macro market conditions
- The reality is that the Neptune can't be repaired or rebuilt as it was and it can't be in this situation again
- The Property will need to be built to FEMA and local codes and address project economic feasibility concerns to enable a financeable and insurable property that is successful for the community and property stakeholders for many decades to come

THE NEPTUNE RESORT FEASIBILITY

- We have spent much of the last 8 months trying to generate a plan to reconstruct the Neptune of 60 years to be a better version of itself: a very high-quality, approachable, and welcoming resort with a neighborhood feel and public amenities – that Fort Myers Beach residents and visitors alike will enjoy for the **next 60 years**
- However, the storm created a feasibility problem
- The redevelopment plan attempts to address feasibility with focus on the following critical ideas:
 1. The needs and wants of our previously loyal guests as well as prospective customers
 2. Provide community benefits such as more expansive view corridors, a neighborhood restaurant and bar, a new pedestrian beach access point, improved parking and traffic mitigation, and higher tax revenues
 3. Lasting quality and architecture to contribute to the uniqueness of Fort Myers Beach
 4. Adequate revenue sources necessary to attract capital to invest in the redevelopment. This revenue is a function of the number of guestrooms, amenity spaces, and F&B outlets programmed into the project
- We hope you like the plan and thank you for your support



The Neptune Resort

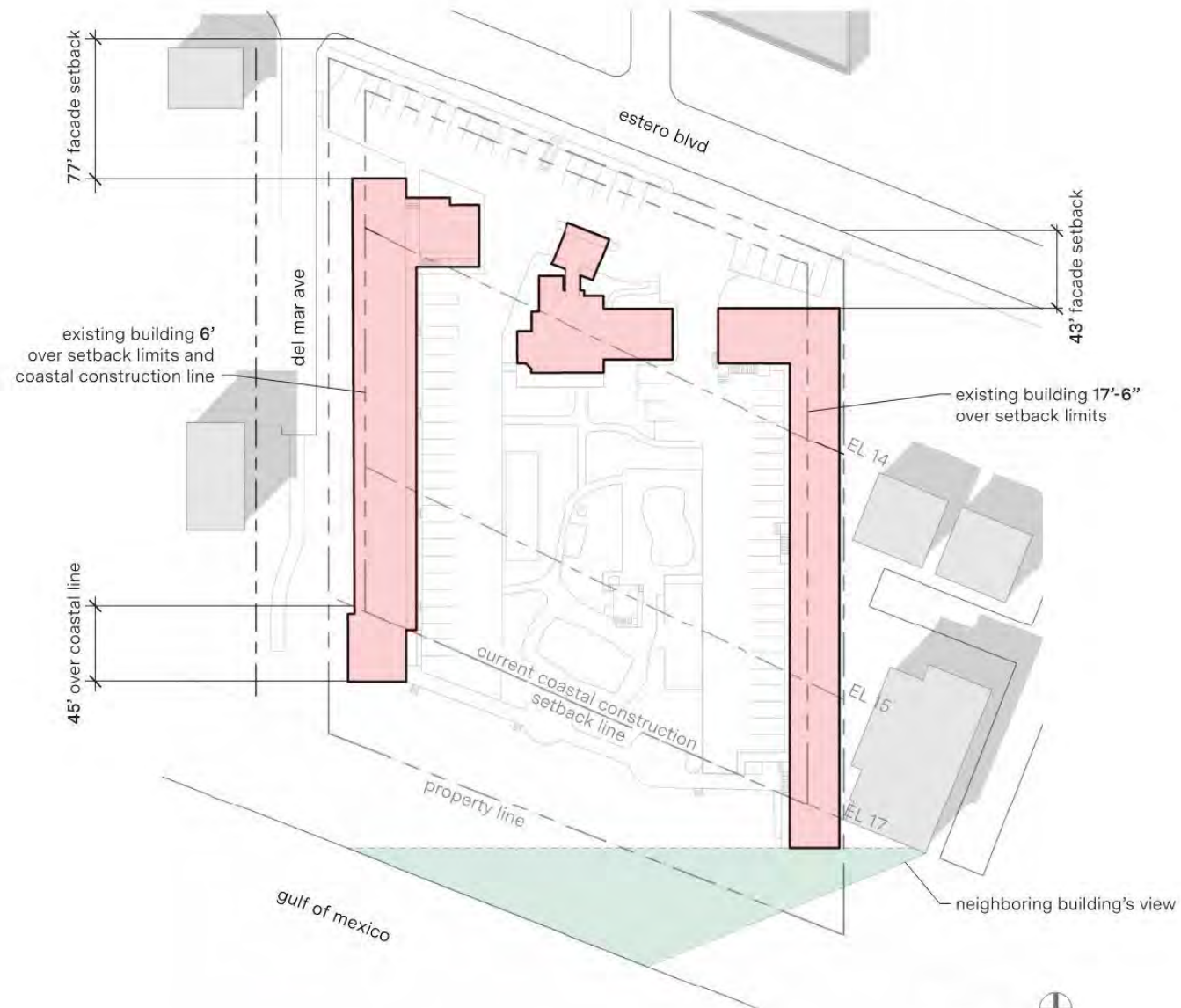
Fort Myers Beach, Florida

Community Presentation

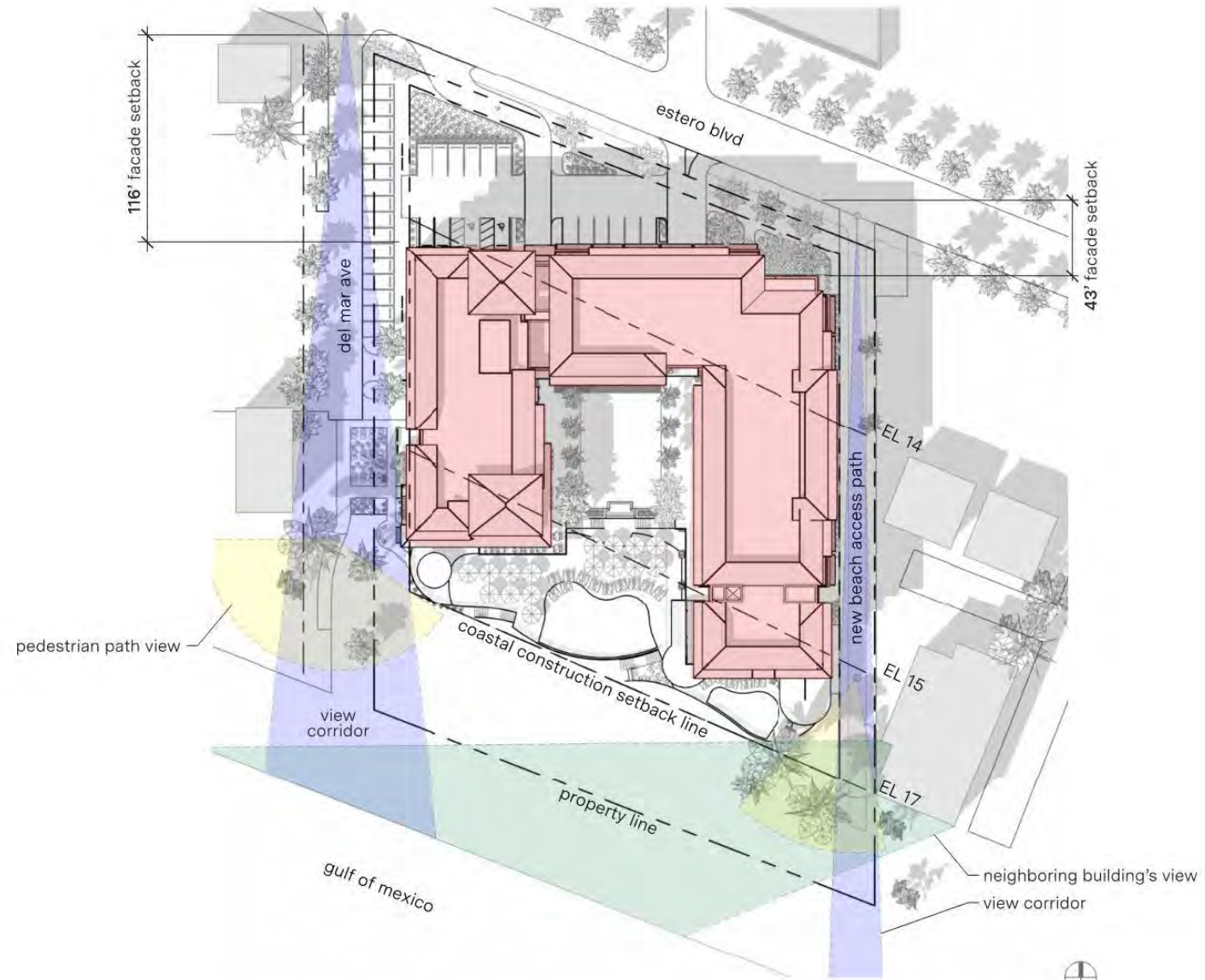
August 8, 2023







Site Plan - Existing



Site Plan - Proposed

Site & Context

Site Influences:

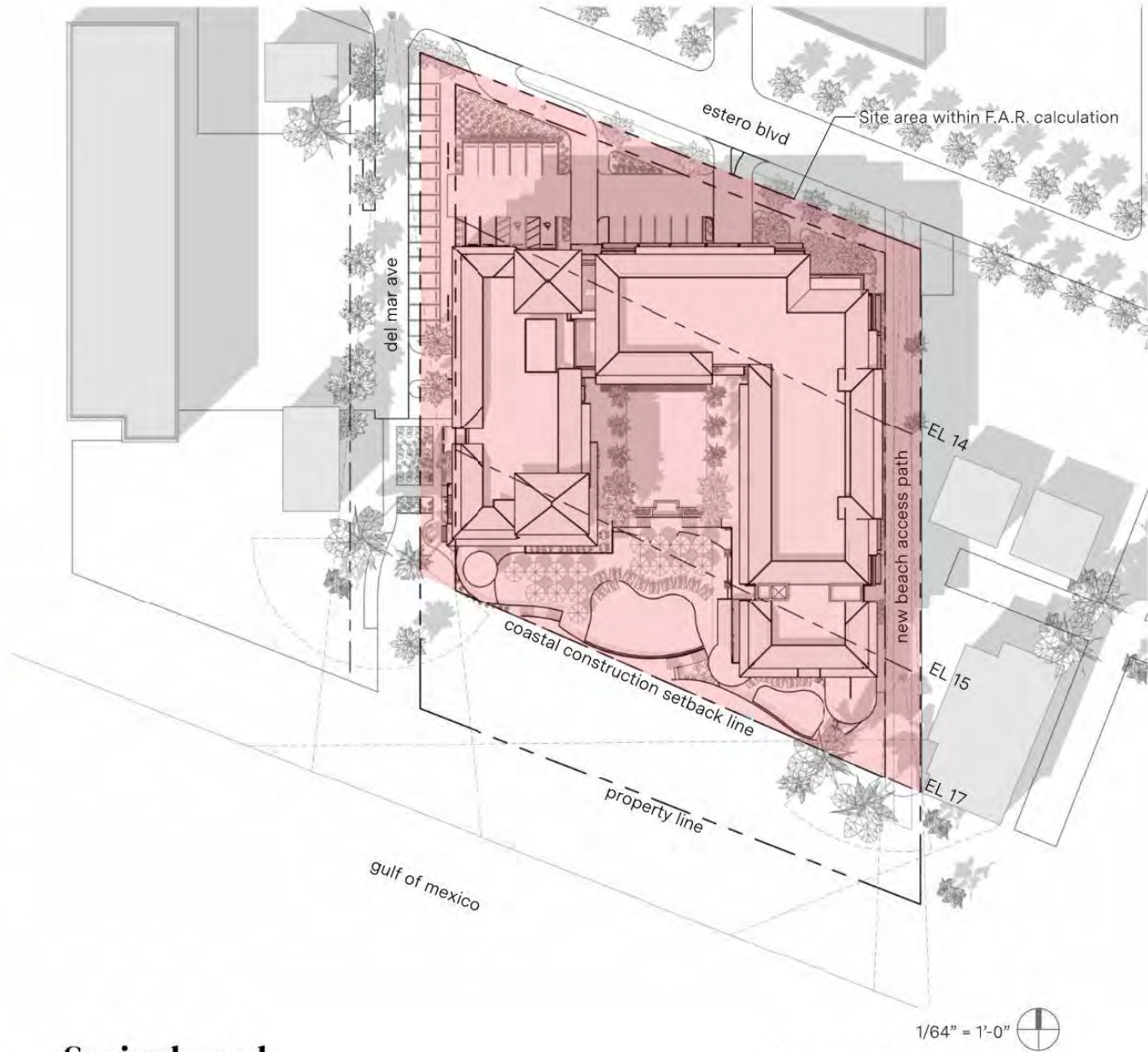
- Adjacent structures and preservation of views
- View corridor at Del Mar Ave.
- Flood zone elevations
- Setbacks & coastal construction line

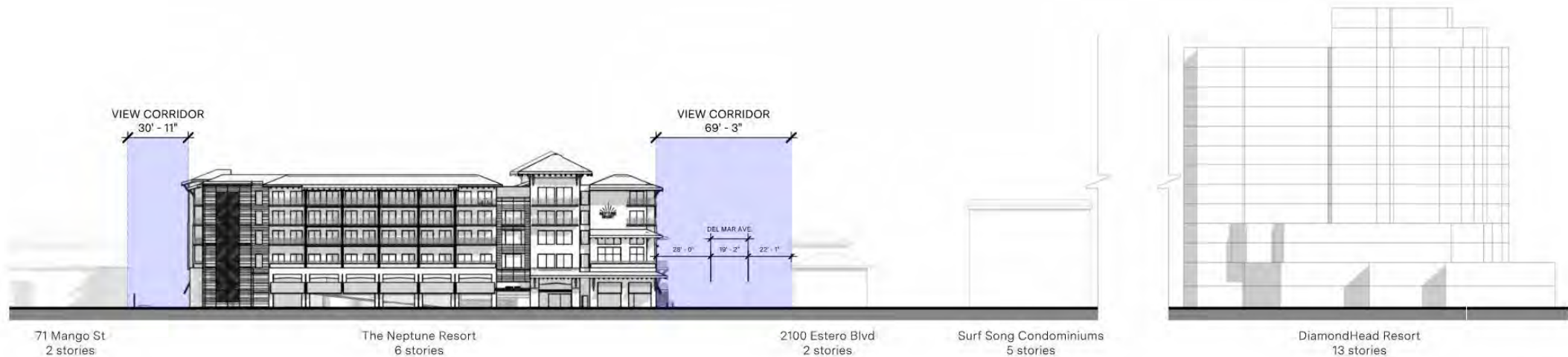


west context buildings



east context building





Estero Blvd Site Elevation

4 Stories (Over 2 parking levels)	±57'-6" Main Roof Height (Above BFE + 3' Freeboard)	1.48 F.A.R. Value (Excludes parking areas)
164 Onsite Parking Spaces	16 Public Parking Spaces (on Del Mar Ave)	140 Guestrooms





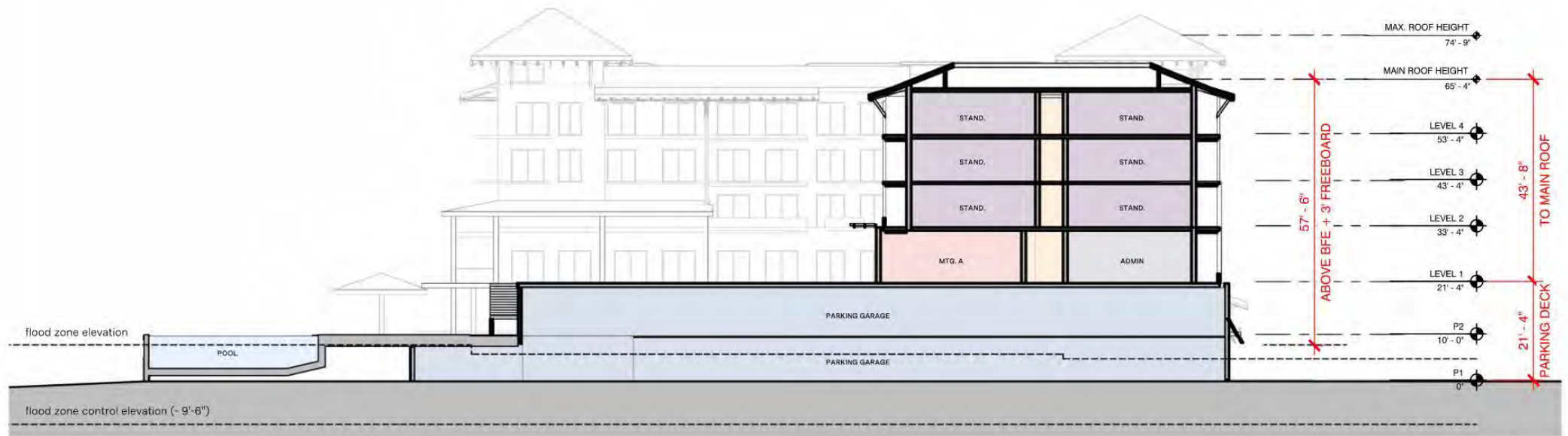
1/32" = 1'-0" 





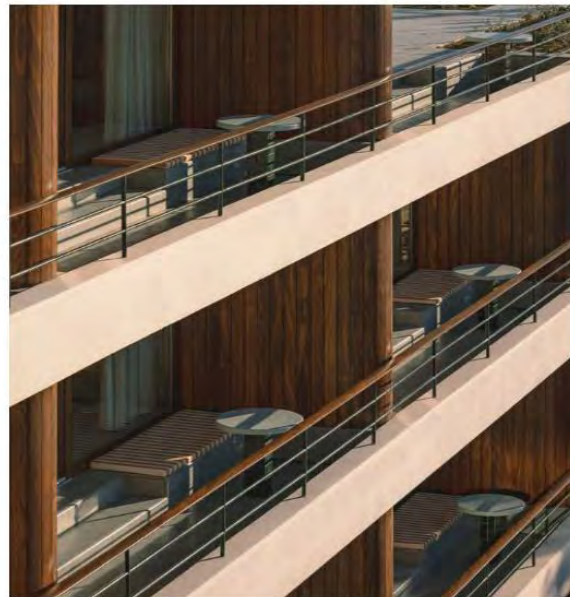
1/32" = 1'-0"





North-South Building Section

























Return original or certificated
document to: Town of Fort Myers
Beach
Department of Community
Services 2525 Estero Blvd
Fort Myers Beach, FL 33931

(above area for recording information)

TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT

THIS TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT (the "Easement") is given this 31st day of July, 20, by CHG Neptune Acquisitions, LLC, an Ohio limited liability company ("Grantor"), whose mailing address is 150 East Broad Street, Suite 800, Columbus, Ohio 43215, to the Town of Fort Myers Beach ("Grantee"). As used herein, the term "Grantor" shall include all heirs, successors, and assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

W I T N E S S E T H

WHEREAS, Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Grantor has agreed to grant and convey to Grantee, a non-exclusive temporary access easement over, upon, and across a portion of the Property for the specific and limited purposes set forth herein more specifically described in Exhibit "B" attached hereto and incorporated herein (the "Easement Land").

NOW, THEREFORE, in consideration of the sum of one dollar (\$1.00) provided to Grantor and the mutual covenants, promises, terms and conditions set forth herein, the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes an Easement for and in favor of Grantee for the limited purposes set forth herein, which shall run with the land and be binding upon the Grantor. The scope, nature, and character of this Easement shall be as follows:

1. Recitals. The recitals herein are true and correct and incorporated into and made a part of this Easement.

2. Purpose. It is the purpose of this Easement to grant a non-exclusive temporary easement over, on, upon, and across the Easement Land for the limited purposes of:

- a. Vehicular and pedestrian ingress and egress to and from certain real property and related appurtenances in the vicinity of the Property that is related to constructing, preserving, patrolling, operating, maintaining, repairing, rehabilitating, and replacing the beach and dune system and other erosion control and storm damage reduction measures.
- b. Depositing sand, accomplishing any alterations of contours on said land, constructing berms and dunes, planting and maintaining dune vegetation, nourishing and renourishing periodically, for moving, temporarily storing and removing equipment and supplies, erecting temporary structures (as used herein, "temporary structures" does not include buildings of any kind), and performing any work necessary and incident to the construction, periodic renourishment, maintenance, and implementation of the Grantee's beach renourishment plan or hurricane recovery project.
- c. Facilitating preservation of dunes and vegetation.
- d. Removing debris and obstructions within the limits of the easement.
- e. Further reserving to the Grantor, its successors and assigns all such rights and privileges as may be used and enjoyed without interfering or abridging the rights and easements hereby acquired; subject however to existing easements for public utilities and pipelines.

Such sand, dune, and berm work specified in this Section 2 to be completed by Grantee within the Easement Land and Additional Land shall collectively be referred to as "Grantee's Sand Work" and shall be constructed in conformance with the plans and specifications set forth on Exhibit D attached hereto and incorporated herein.

If the property in Exhibit "C" attached hereto and incorporated herein is not owned by Grantor, this Easement shall be interpreted to mean that the Grantor grants a temporary easement applicable to whatever interest the Grantor may possess in such property.

Access by Grantee to the Easement Land and the Additional Land shall be through the public street adjacent to the Property known as Delmar Avenue.

3. Limitations. None of the Easement rights granted hereunder are intended to be a dedication or gift to or for the public, nor give the Grantee the right to prohibit or restrict the Grantor and its successors and assigns from using and enjoying the portion of the land described in Exhibit "A" for recreational purposes in compliance with applicable federal, state, county and Town laws, ordinances, rules, and regulations.

4. Grantee's Liability. Grantee's liability is limited as provided in § 704.06(10), Fla. Stat. and § 768.28, Fla. Stat. Nothing herein shall constitute a waiver by Grantee of its sovereign immunity or the provisions of § 768.28, Fla. Stat. Additionally, Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep, or maintenance of

this Easement.

5. Duration. This Easement shall be for a fixed period and shall automatically terminate June 1, 2038, without the necessity of any further instrument of record.

6. Modification. This Easement may be amended, altered, released, or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County, Florida.

7. Title Warranties. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement. Grantor represents that execution and delivery of this Easement and performance of its obligations pursuant to this Easement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation, or ordinance to which Grantor is a party or by which Grantor or Grantor's assets or the Property is bound, or which otherwise affects the Property. Grantor shall indemnify, defend, and hold Grantee and its successors and assigns harmless from and against all claims, damages, liabilities, losses, costs, and expenses, including, without limitation, reasonable attorneys' fees arising from a breach of the representations, warranties, guarantees or covenants of Grantor contained in this Easement.

8. Authority. The undersigned person executing this Easement on behalf of Grantor represents and certifies that he or she is authorized to execute and deliver this Easement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that he or she is authorized to execute and deliver this Easement; and that all necessary action for the execution of this Easement has occurred.

9. Notices. All notices, demands and requests required or permitted to be given under this Easement must be in writing and addressed to the appropriate Party at the appropriate address as set forth below and shall be deemed given and received (i) when hand delivered to the intended recipient, by any means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via electronic mail at the intended recipient's email address set forth below (provided such email delivery and receipt is confirmed via return receipt of the noticing Party). The initial addresses of the Parties shall be:

If to Grantor:

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Adam D. Valente

Email: avalente@continental-realestate.com

With a copy to:

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Mark A. Damante
Email: mdamante@continental-realestate.com

If to Grantee:

Town of Fort Myers
Beach 2525 Estero
Blvd.
Fort Myers Beach, FL
33931 Attn: Town
Manager
Email: townmanager@fmbgov.com

A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Easement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Easement may be executed in counterparts, each of which when executed shall be deemed an original, and all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. If any Party is required to commence any action or proceeding against the other to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor. Furthermore, it is acknowledged that each party had the opportunity to consult with counsel in the preparation of and contributed equally to the terms and conditions of this Easement and, accordingly, the rule that an

instrument shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

16. Headings. The Section headings are included only for convenience and shall not be construed to modify or affect the covenants, terms, or provisions of any Section.

17. No Third-Party Rights. Nothing contained in this Easement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

18. Remedies Cumulative. The rights and remedies given in this Easement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Easement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Easement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Easement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS EASEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other actions, as such Party may reasonably require to conduct the intent of this Easement.

b. This Easement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Easement to be recorded in the Official Records of Lee County, Florida.

[Remainder of Page Intentionally Left Blank, Signature Page to Follow]

IN WITNESS WHEREOF, this Easement is entered into as of the date first set forth above.

GRANTOR:

CHG NEPTUNE ACQUISITIONS, LLC,
an Ohio limited liability company

By: [Signature]
Name: Mark A. Damante
Title: Vice President

WITNESSES:

[Signature]
Name: Matthew Bernhole

[Signature]
Name: Nannette C. Buel

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss.

The foregoing instrument was acknowledged before me this 31st day of July, 2023, by Mark A. Damante, Vice President of CHG Neptune Acquisitions, LLC, who is personally known to me.



NANNETTE C. BUEL
Notary Public, State of Ohio
My Commission Expires 10-07-24

[Signature]
Print or Stamp Name: Nannette C. Buel
Notary Public, State of Ohio at Large
Commission No.: _____
My Commission Expires: 10-07-24

GRANTEE:

WITNESSES:

Town of Fort Myers Beach, a Florida
municipal corporation

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

STATE OF FLORIDA

)

)

ss.

COUNTY OF LEE

)

The foregoing instrument was acknowledged before me this ____ day of _____ 20____, by _____ as _____ of the Town of Fort Myers, Beach, who (check one) ☐ is personally known to me or ☐ produced a valid _____ driver's license as identification.

Print or Stamp Name: _____

Notary Public, State of Florida at Large

Commission No.: _____

My Commission Expires: _____

EXHIBIT A

PROPERTY

Block "A" and "B", in that certain Subdivision known as BEACH ESTATES, according to the map or plat thereof on file and recorded in the Public Records of Lee County, Florida, in Plat Book 6, Page 68 together with that portion of the street or alley lying between said blocks vacated by order of the Board of County Commissioners of Lee County, Florida, together with all of Block "A", together with the vacated alley that formerly separated Lots 1 and 2 from Lot 3 all being in that certain subdivision known as W.W.WATSON'S SUBDIVISION, 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 5 at Page 67.

AND

All Units and Fractional Interests in The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Clerk's Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

Unit 109N, Fractional Interest 9, The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Instrument Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

Unit 115N, Fractional Interest 9, The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Instrument Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

EXHIBIT B
EASEMENT LAND

(See attached)

LINE	BEARING	DISTANCE
L1	S00°05'49"W	61.55'
L2	N00°03'39"E	74.78'

GENERAL NOTES

1. BEARINGS BASED ON A GRID BEARING OF S68°28'09"E ON THE SOUTH RIGHT OF WAY LINE OF ESTERO BOULEVARD.
2. ELEVATIONS AND DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
3. STATE PLANE COORDINATES BASED ON NORTH AMERICAN DATUM 1983, FLORIDA WEST ZONE.

PLEASE SEE ATTACHED LEGAL DESCRIPTION

**SKETCH OF DESCRIPTION
NOT A SURVEY**

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

Digitally signed by Richard J Ewing
DN: c=US, o=Florida,
dnQualifier=A01410C00000784C41
18C310004E891, cn=Richard J
Ewing
Date: 2023.07.20 07:46:16 -0400

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

COASTAL ENGINEERING CONSULTANTS, INC.
SHEET 1 OF 1
FILE NO. 23.001

COASTAL AND MARINE ENGINEERING, P.A.
SKETCH OF DESCRIPTION OF A PARCEL OF LAND LYING IN BLOCK A OF W.W. WATSON'S SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 AND BLOCKS A AND B OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FL

PHONE (239) 645-2324
FAX (239) 645-1113
WWW.COASTAL-ENGINEERING.COM
E-MAIL: info@cei.com

Exhibit B
Easement Land



Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

EASEMENT LAND

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN BLOCK A OF W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND BLOCKS A AND B OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES, RUN S00°05'49"W ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 313.30 FEET TO THE "FORMER" 1978 LEE COUNTY COASTAL CONSTRUCTION CONTROL LINE AS RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21 OF SAID PUBLIC RECORDS AND THE POINT OF BEGINNING;

THENCE CONTINUE S00°05'49"W FOR A DISTANCE OF 61.55 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES;

THENCE N68°29'32"W ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 306.73 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION;

THENCE N00°03'39"E ALONG THE WESTERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 74.78 FEET TO SAID CONSTRUCTION CONTROL LINE;

THENCE ALONG SAID LINE S66°13'54"E FOR A DISTANCE OF 311.85 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 19,464 SQUARE FEET OR 0.45 ACRES OF LAND.

BEARINGS BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA WEST ZONE.

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464



Digitally signed by Richard J Ewing
DN: c=US, o=Florida,
dnQualifier=A01410C0000184C411
8C310004EB91, cn=Richard J Ewing,
Date: 2023.07.20 07:48:28 -04'00'

RICHARD J. EWING, V.P.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

28421 Bonita Crossings Blvd., Bonita Springs, FL 34135
70726 Phone (239) 643-2324 • Fax (239) 643-1143

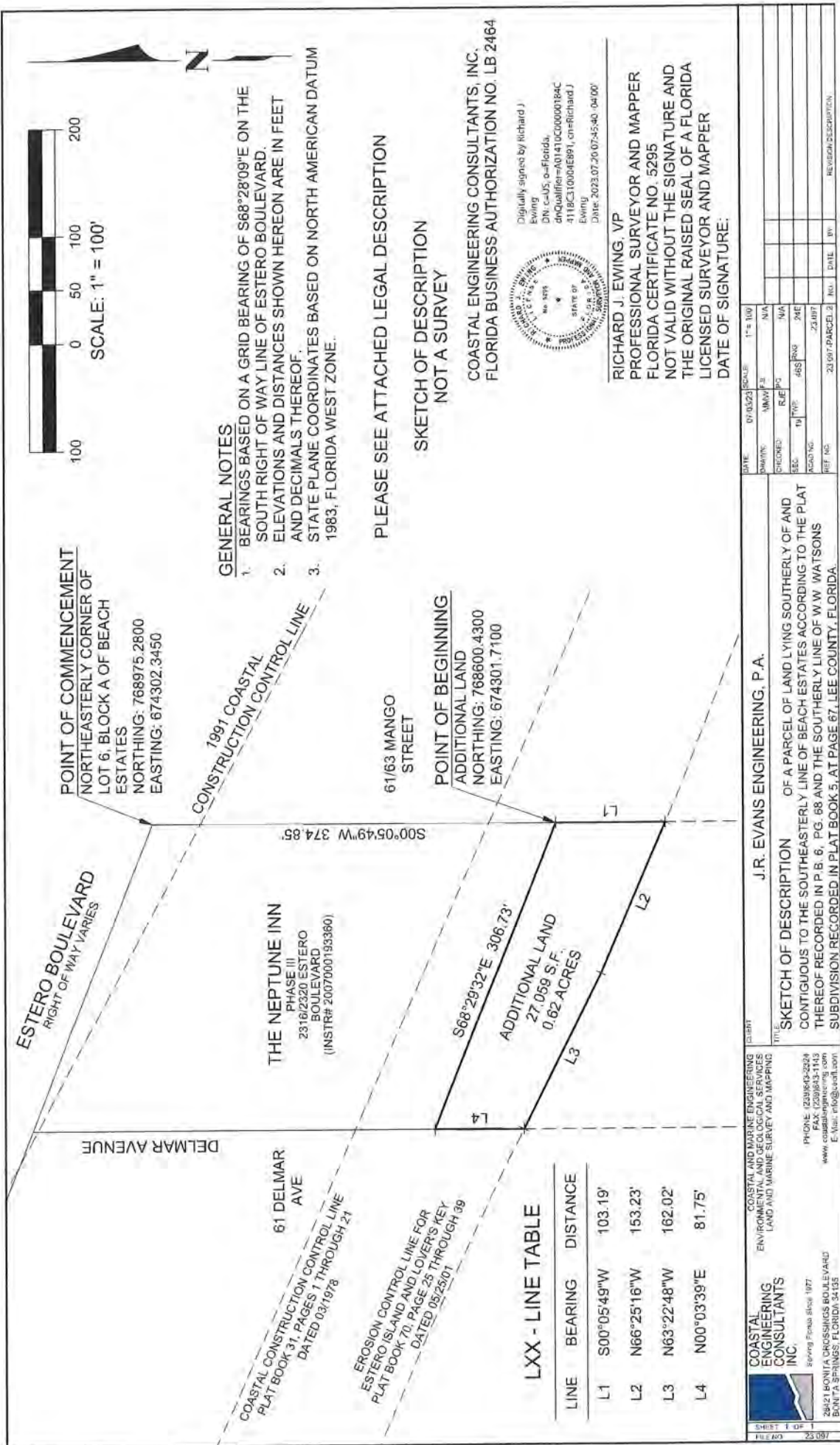
1211 North Range Ave., Suite E, Denham Springs, LA
Phone (225) 523-7403

E-mail: info@cecill.com

SERVING COASTAL COMMUNITIES SINCE 1977

EXHIBIT C
ADDITIONAL LAND

(See attached)





ADDITIONAL LAND

LEGAL DESCRIPTION

A PARCEL OF LAND LYING SOUTHERLY OF AND CONTIGUOUS TO THE SOUTHEASTERLY LINE OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 AND THE SOUTHERLY LINE OF W.W. WATSONS SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67, ALL OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES, RUN S00°05'49"W ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 374.85 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES AND THE POINT OF BEGINNING;

THENCE CONTINUE S00°05'49"W FOR A DISTANCE OF 103.19 FEET TO THE ESTERO ISLAND AND LOVERS KEY EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGES 25 THROUGH 39 OF SAID PUBLIC RECORDS;

THENCE ALONG SAID EROSION CONTROL LINE N66°25'16"W FOR A DISTANCE OF 153.23 FEET;

THENCE N63°22'48"W FOR A DISTANCE OF 162.02 FEET TO THE SOUTHERLY EXTENSION OF THE WESTERLY LINE OF BLOCK A SAID W.W. WATSONS SUBDIVISION;

THENCE ALONG SAID LINE N00°03'39"E FOR A DISTANCE OF 81.75 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A OF SAID W.W. WATSONS SUBDIVISION;

THENCE S68°29'32"E ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 306.73 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 27,059 SQUARE FEET OR 0.62 ACRES OF LAND.

BEARINGS BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA WEST ZONE.

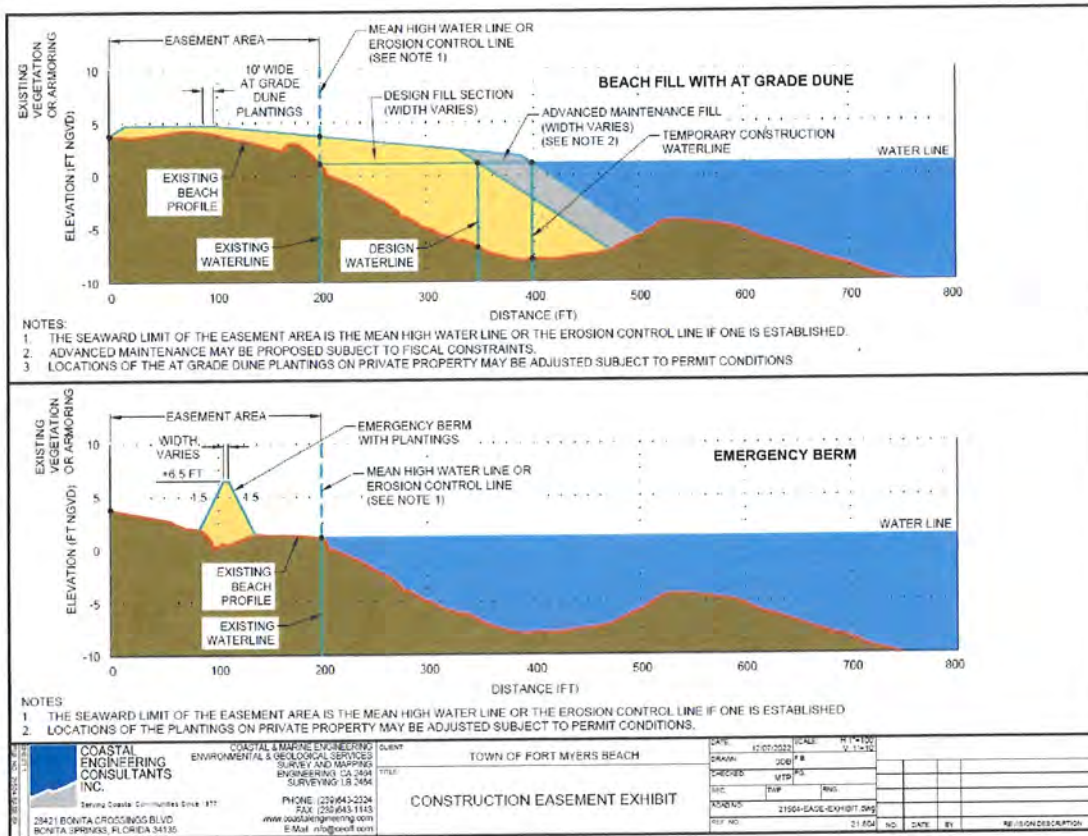
COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464



Digitally signed by Richard J Ewing
DN: c=US, o=Florida,
ou=Qualifier=A01410C00000184C411
8C310004E891, cn=Richard J Ewing
Date: 2023.07.20 07:47:23 -04'00'

RICHARD J. EWING, V.P.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

EXHIBIT D **GRANTEE'S SAND WORK**



1. **Request:**

Meeting Date: December 2, 2024

Additional public hearing for 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 home rule 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 home rule 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.

A first reading of the ordinance was held on October 28, 2024 with notice of a second reading on November 4, 2024. However, due to statutory advertising deadlines, publication of the required advertising was not possible. Consequently, an advertisement was published for second reading of the ordinance on the 5th day of November 2024, in excess of 10 days before the final public hearing on November 18, 2024. At the request of the applicant, the second hearing for adoption was continued to December 16, 2024 and notice for an additional public hearing on December 2, 2024 was published.

Attachments:

1. Development Agreement with Attached Exhibits 10.23.24 Dec TC
2. Ord. 24-34 Red Coconut for 12.2.24 ns (002)
3. Staff Report Extra TC
4. Exhibit 1 to Staff Report Comp Plan & LDC Excerpts
5. Exhibit 2 to Staff Report - Res 24-73, Development Agreement with Deviations Procedures
6. Applicant's Report
7. Project Narrative
8. Schedule of Deviations
9. Completed Application
10. Business Impact Estimate 10-22-24 mr
11. Affidavit of Publication Seagate
12. Notice of Public Hearing Seagate Development Agreement Ordinance 10-20-2024 NS

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 - 11/19/2024
Approved - 11/22/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

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 16th day of December ~~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 ~~s~~ and 10ft rear setbacks along the proposed Linear Park. The beach-facing property line for the beach club may be built to the 1978 CCCL.
- K. Single Family Lot Setbacks. 10 ft setbacks from the street right-of-way, 20 ft rear setback along the Matanzas Pass Preserve property line for the principal structure and 5 ft rear setback for accessory structures and 5 ft side setbacks.
- L. Other Permitted Uses. Other permitted uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided herein.
- M. Internal Traffic Circulation. Pedestrian travel is identified in the conceptual plan, a copy of which is attached as Exhibit B on Sheet 3 of the Conceptual Plans and Renderings dated the 4th of September 2024, which shows the proposed layout, streets, lots, green areas, bikeways, parks, public facilities, and other such amenities.
- N. Environmentally Sensitive Land. There are no environmentally sensitive lands on-site.

- O. Threatened and Endangered Species. There are no threatened or endangered species on-site.
- P. Conflicts. Any conflict between the matters set forth in this paragraph and paragraph 9 and other paragraphs in this Agreement shall be resolved in favor of the terms and conditions in this Paragraph and paragraph 9. Moreover, this Agreement identifies known instances in which the proposed redevelopment conflicts with the Town's existing Land Development Code. Any ambiguity with respect to whether this Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. Failure of this Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction. Any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended ("Deviations").

~~5. Consistency with Comprehensive Plan. The Town finds that the proposed development for the Property set forth above is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code as provided in this Agreement. Review and approval of this Agreement through the process outlined in Resolution 24-73 is commensurate and tantamount to approval through the Town's planned development rezoning process. Notwithstanding the foregoing, the deviations identified in paragraph 9 are approved.~~

56. Public Facilities. The following public facilities will serve the Proposed Development on the Property:

A. Potable Water:

Potable water will be supplied by Town of Fort Myers Beach and is presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project shall be based on its availability at the time of submission of a Development Order.

B. Sanitary Sewer:

Wastewater services will be provided solely by Lee County, which are presently adequate to serve the Proposed Development. Notwithstanding the foregoing, nothing in this Agreement shall

be interpreted nor is it the intent of the parties to create a reservation of capacity. Capacity for the project shall be based on availability at the time of submission of a Development Order.

C. Solid Waste:

Developer shall coordinate solid waste services with Lee County, the Town, or a third party service provider, adequate to serve the Proposed Development, prior to issuance of the development order. Notwithstanding the foregoing, this does not create a reservation of capacity. Capacity for the project shall be based on availability at the time of submission of a building permit.

D. Drainage:

Drainage will be in accordance with the applicable environmental resource permit ("ERP") to be issued by the South Florida Water Management District ("SFWMD") for the Property. Prior to issuance of the development order, if applicable, Developer shall provide plans related to storm water run-off into the Town's system to the Town.

E. Fire and Rescue

Fire control and rescue services will be provided by the Fort Myers Beach Fire Control District, and Emergency Medical Services will be provided by Lee County Emergency Medical Services. It is the responsibility of the developer to verify the adequacy of service available from the designated entities at the time of development order approval.

F. Transportation

Developer agrees to assist with installation and maintenance of a transit shelter and shall coordinate the availability of bus service and associated infrastructure with Lee Tran and Lee County School District prior to issuance of development order.

G. Public Schools.

Developer shall provide a letter of capacity from Lee County School District prior to issuance of development order. Impact fees may be required.

H. Recreation

Developer will record an easement

acceptable to the Town Attorney dedicating access to the parks for public usage.

In the event new or additional facilities are needed to serve the project, the Developer shall bear the burden of the cost of such facilities to be constructed and provide a schedule to the Town to assure that the public facilities and services shall be available concurrent with the impact of the development project.

76. Impact Fees. Impact fees, ~~if-when~~ adopted by Town Ordinance for all new development and change in use, shall be calculated at time of issuance of a development order and payment shall be required prior to building permit approval. Offsite impacts will be evaluated by the Town at the time of development order application.

87. Development Permits Needed for Proposed Development. A list of all known governmental permits needed for the Proposed Development is set forth below:

Town of Fort Myers Beach Development Order
Town of Fort Myers Beach Building Permit
South Florida Water Management District Environmental Resource Permit
South Florida Water Management District Water Use Permit (dewatering)
South Florida Water Management District Water Use Permit (irrigation)
FDEP Wastewater Permit
LCDOH Potable Water Permit

The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions. The Developer shall be responsible at its sole cost for obtaining any required approval and shall not in any manner obligate the Town or any other governmental agency to grant other required permit approvals. Any reliance on this Agreement or expenditures in pursuance of its terms or any rights accruing to the Developer shall not vest any development right in the Developer or the project to a continuation of this Agreement.

98. Developer Commitments and Obligations. For and in consideration of the benefits received pursuant to this Agreement, the Developer agrees to the following commitments, obligations and associated public benefits; which are deemed to be in the public interest:

- a. The Developer will not utilize the post disaster build-back provisions for 27 dwelling units an acre;
- b. Project density will be limited to 15 dwelling units per acre for a total density of 141 dwelling units consistent with the Village zoning district;

- c. All permitted density of the gulf side parcels (at least 21 units) (south of Estero Boulevard) will be transferred to the bay side parcels (north of Estero Boulevard) (these units are already included in the 141 units identified in paragraph 4(A));
- d. Development of the bay side parcels (north of Estero Boulevard) will be limited to single family and multi-family residential, approved commercial uses and public parks;
- e. Development of the gulf side parcels (south of Estero Boulevard) will be limited to a beach club that provides a private recreational facility and private membership organization significantly reducing the intensity of the previous development and potential disruption to the surrounding neighborhood than the permitted uses of the Village zoning district;
- f. Increase the view corridor to the Gulf from the required 50 feet to 240 feet;
- g. Establish an enhanced beach access with 10 foot pedestrian beach access point, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement;
- h. A private elevated pedestrian crossover above Estero Boulevard will be provided for future residents and guests to eliminate negative impacts to traffic flow;
- i. Establish a public park adjacent to Matanzas Pass Preserve, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming, infrastructure, and a maximum of 2 public parking spaces for this park;
- j. Establish a public park adjacent to the western property boundary and Estero Boulevard that incorporates the origination point for the linear park with multi-use path, consistent with Exhibit C at no cost to the Town and record a perpetual public access easement. The Developer will work with Town Staff to establish appropriate programming and infrastructure for this park;
- k. Implement the Hidden Paths infrastructure within the bay side property through:
 - a. A linear park interconnecting Estero Boulevard and Donora Boulevard;

- b. An east/west pedestrian and bicycle access connecting Donora Boulevard to the western property boundary;
 - c. Portions of the linear park and pedestrian/bicycle access may occur within the same easement;
 - d. Pedestrian connectivity to Matanzas Pass Preserve through the proposed park;
 - e. Pedestrian connectivity to the Gulf through the proposed park;
 - f. Site specific wayfinding signage along Estero and Donora Boulevards adjacent to the project limits for the linear park, beach access and Matanzas Pass access areas;
 - g. 4 informational and education panels regarding Matanzas Pass resources will be designed with Town Staff and erected prior to Temporary Certificate of Occupancy.
- l. Maintain a sidewalk along the north side of Estero Boulevard and provide a sidewalk along the south side of Estero Boulevard;
- m. Provide a sidewalk along Donora Boulevard;
- n. Along Estero and Donora Boulevards enhanced streetscaping with shade trees will be provided to improve the visual aesthetic for vehicular and pedestrian traffic;
- o. Required landscaping for the development will incorporate Florida Friendly plantings that do not require irrigation;
- p. Vehicular access to the property from Estero Boulevard will be limited to a single access for the north side and a single access for the south side to maintain traffic flow on Estero Boulevard;
- q. The residential multi-family units shall be accessible through a maximum of 2 ingress/egress points from Donora Boulevard and 1 ingress/egress from Estero Boulevard. Additional separate delivery, service, and solid waste pick up access points will be collocated on Donora Boulevard within the building footprint. 4 single family residential units shall be accessed through a new east/west local street extending from Donora Boulevard.~~Vehicular access to the property from Donora Boulevard will be limited to two access points for the multifamily residential units. Additional delivery and service points may be provided from Donora Boulevard for solid waste pickup and delivery for the building and for the restaurant to occur within the building footprint.;~~
- r. One Public Art installation (i.e. sculpture; mural) viewable from Donora Boulevard and location identified during the Development Order process will be installed prior to Certificate of Occupancy.

910.
Agreement:

Deviations. The following deviations are granted pursuant to this

- a. Deviation from LDC Section 34-693(h): Allowable height for the multi-family residential towers of the mixed use structure is increased to 15 stories over 2 stories of structured parking and 235 feet above base flood elevation on the North side of Estero Boulevard; and
- b. Deviation from LDC Section 34-693(e), (f), (g): Project buildings will not be subject to the “build to line” and “building frontage” along Estero and Donora Boulevards, providing a minimum 10 foot front setback and the rear setback will be reduced to 10 for the multi-family structure and 5 feet for accessory structures associated with the single family structures; and
- c. Deviation from LDC Section 34-693(m): The Developer is granted a deviation from the Commercial Design Standards and approval is granted for the architectural design depicted in the Conceptual Plans and Renderings attached hereto as “Exhibit B” And Pattern Book attached hereto as “Exhibit D”; and
- d. Deviation from LDC Section 34-693(c)(1) and (2): The Developer is granted a deviation from the street layout and approval is granted for the limited curb cuts and internal street layout depicted in the Master Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- e. Deviation from LDC Section 34-692(3)a.1.: The Developer is granted a deviation from the elements of Traditional Neighborhood Design that require interconnected streets, porches or balconies at the front of dwellings, primary entrance visibility from the street and car access from the rear to allow single family units, a mixed use building of multi-family and commercial restaurant and a beach club consistent with the Conceptual Plans and Renderings attached hereto as “Exhibit B”; and
- f. Deviation from LDC Section 34-693(i): Eliminate covered parking and parking decks from the calculation of Floor Area Ratio and increasing the maximum FAR to 1.5 which is equal to 616,156.2 square feet; and
- g. Deviation from LDC Section 34-693(l): Eliminate required commercial space to separate parking under a building and vehicular connection to a secondary street; and
- h. Deviation from LDC Section 34-631(b)(3): Eliminate the square

footage and screening requirements of mechanical structure appurtenances located above 11 stories.

140. Consistency with the Comprehensive Plan. The Proposed Development outlined in this Agreement is consistent with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code. The deviations approved as part of this Agreement are necessary for the zoning district or land use plan designations on the P property that is the subject of this Agreement. The Town's Comprehensive Plan allows the proposed project to be more than 2 stories above flood elevation in height as a matter of right. The Town's Comprehensive Plan also allows the height to be increased as provided in Policy 4-C-4 in redevelopment zoning districts (i.e Village zoning district) and in the event the increase is approved as part of a planned development rezoning. This Agreement has been reviewed and approved by the Town in a manner consistent with the procedures required of a planned development rezoning and this approval and procedure is deemed tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan as outlined in Resolution 24-73. Notwithstanding the foregoing, the deviations identified in paragraph 10 are approved.

121. Existing Ordinances. Any matter or thing required to be performed under existing ordinances of the Town shall not be otherwise amended, modified or waived, except as such modification, amendment or waiver is expressly provided for in herein.

123. Post Development Agreement Requirements. Prior to the issuance of any building permits being issued for the development the following must occur:

- a. All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town; and
- b. The proposed drainage plan for the proposed project shall have been approved by the South Florida Water Management District. If an interconnection is required to the Town's stormwater management system, approval by the Town will be necessary; and
- c. The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town; and
- d. The traffic impact and parking plans for the proposed project shall have been approved by the town; and

- e. All other town requirements necessary for the initial building permits to build the proposed project on the Land.
- f. The Town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the Town's requirements as to any Post-Development Agreement requirements..

143. Amendment and Termination.

- A. This Agreement may be amended or terminated with the Parties' mutual consent, in writing signed by both Parties.
- B. This Agreement may be amended administratively by Town staff and the Developer without the need for approval by Town Council to provide for changes to the site plan and/or the Conceptual Plans provided such changes do not include increased building intensity, density, increased height, reduction in open space, reduction in public benefits. ~~Density from other properties may be transferred for 8 additional single family units (to be located north of proposed Seahorse Street) and up to a maximum of 149 units.~~
- C. At Developer's option, Developer may terminate this Agreement at any time prior to the issuance by the Town of a building permit for any portion of the Proposed Development of the Property. Notwithstanding the foregoing, in the event of termination, Developer shall not leave any improvements in an unsafe condition.

145. Notices. All notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested to the following addresses, or to such other person or address as any Party may designate from time to time in writing:

If to the Developer: Matt Price
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

with a copy to: Tim Byal
Seagate Fort Myers Beach, LLC
9221 Interstate Commerce Drive
Fort Myers, FL 33913

If to the Town: Town Manager

with a copy to: Town Attorney

156. Remedies. Any material breach of this Agreement may be enforced by either party as against the other by appropriate action in law or equity filed in a court of competent jurisdiction; provided, however, no such action may be brought until the defaulting party has been given notice and ninety (90) days in which to cure the default. If the default cannot reasonably be cured within the ninety (90) day period, such period shall be extended if the cure is commenced within such ninety (90) days and the defaulting party is proceeding with due diligence for such period of time reasonably required to complete such cure.

176. Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Florida, and venue with respect to any litigation between the Parties related to this Agreement shall be exclusively in Lee County, Florida.

187. Enforcement. In the event the Developer, upon approval of the Development Agreement, fails to comply with the terms of this Agreement, the Town may bring an action in a court of law with competent jurisdiction to protect its rights and interests as provided herein. All associated reasonable costs and attorney's fees shall be reimbursed to the Town if an action at law is necessary regardless of whether the Town is the prevailing party thereunder. In no event shall the Town be liable for payment of the Developer's attorney fees.

198. Post Development Agreement Liability. The parties acknowledge that the Town shall not have any liability for any expenses or other damages that may be incurred as a result of denial of building permits due to the failure of the proposed development to meet the Town's requirements as to any Post-Development Agreement requirements.

1920. Severability. If any part, term, or provision of this Agreement is held to be illegal, void, or unenforceable, the remaining portions or provisions of this Agreement shall not be affected or impaired, each remaining provision shall remain in full force and effect, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

240. Entire Agreement; Termination of Prior Agreements. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, regarding the Proposed Development of the Property between the Parties.

221. Covenants Running with the Land and Successors and Assigns. The obligations imposed and entitlements created pursuant to this Agreement shall run with the property and bind Seagate's successors and assigns to the covenants as set forth in

this Agreement and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns. The obligations of the Developer may be assigned to one or more successor developers or, property owners associations, and the Developer shall thereafter be relieved of all obligations hereunder.

232. Effective Date and Duration. This Agreement will become effective upon full execution by both Parties and recording of the Agreement in the Public Records of Lee County pursuant to paragraph 25 below. The term of this Agreement shall begin upon its effective date and run for a period of ~~for~~ ten (10) years. In the event no building permits are issued to the Developer within ten (10) years of the effective date, the Agreement shall terminate. The term of the Agreement may be extended at the sole discretion of the Town Council and a finding that the Developer is unable to fulfill its obligations due to circumstances beyond its control. The development of the project may proceed in phases in any sequence within the stated term of this Agreement. Notwithstanding the provisions of this paragraph, unless terminated as provided herein, or pursuant to paragraph 13 above, the obligations imposed and entitlements created pursuant to this Agreement shall run with the property and shall be enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees, and assigns.

243. Recording of Agreement. This Agreement will be recorded by the Town in the Public Records of Lee County within fourteen (14) days of approval by the Town. The costs of recording this Agreement will be paid by the Developer.

254. Representation and Warranties. The parties make the following representations to each other as stated herein:

- A. The execution, delivery and performance of this Agreement by the Developer and a third party shall not violate any law, or the terms of any agreement by which they are bound.
- B. The Town and Seagate have the power and authority to enter into this Agreement, and to perform the development as set forth herein, and all the documents have been duly authorized, executed, and delivered and the transactions contemplated herein have been duly authorized.
- C. This Agreement constitutes a valid and legally binding obligation of the Developer and the Town after independent investigation by both of the information contained herein and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year written below.

WITNESSES:

SEAGATE FORT MYERS BEACH, LLC, a
Florida limited liability company

Print Name: _____

Print Name _____

By: _____

Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as _____ of Seagate Fort Myers, LLC, a Florida limited liability company, who is personally known to me or who produced _____ as identification.

Notary Public Signature

My Commission Expires:

Type/Print Notary Public Name

Commission No.: _____

**TOWN OF FORT MYERS
BEACH**

Dan Allers, Town Mayor

ATTEST

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

Exhibits:

- A. Legal Description and Sketch of the Property
- B. Conceptual Plans and Renderings dated the 4th day of September, 2024 (16 Pages)
- C. Public Easement Overlay dated the ____ day of September, 2024 (1 Page)
- D. Pattern Book dated the 4th day of September, 2024 (6 Pages)

Exhibit A

Legal Description and Sketch of the Property

DRAFT

NOTES:

- 1) BEARINGS SHOWN HEREON REFER TO STATE PLANE FLORIDA WEST 0902 WITH A BEARING OF S 0°28'13" W. ALONG THE WEST SECTION LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
- 2) THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.
- 3) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- 4) THIS PROPERTY IS LOCATED IN FLOOD ZONE AE & VE, HAVING A BASE FLOOD ELEVATION OF 11.0'-14.0' (NAVD 1988) PER F.I.R.M. 12071C 0508 G, MAP EFFECTIVE DATE 11/17/22.
- 5) DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
- 6) IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
- 7) LOT 45/47 LOT LINES FOR CASE SUBDIVISION SHOWN ARE GRAPHICAL REPRESENTATION AS PER RECORDED IN P.B.1 PG.58, AS AMENDED IN D.B.131 PG.300-304.
- 8) DNR COASTAL CONSTRUCTION SETBACK LINE SHOWN AS RECORDED IN PLAT BOOK 31 PAGES 1-18, DNR COASTAL CONSTRUCTION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 48 PAGES 15-34, M.H.W.L. & EROSION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 70 PAGES 25-39, RIGHT-OF-WAY ESTABLISHED FROM ESTERO BOULEVARD RIGHT-OF-WAY MAPS USING LOCAL CONTROL, CASE SUBDIVISION DIMENSIONS BASED ON DEED BOOK 131 PAGE 300.
- 9) FLOOD ZONE LOCATIONS ARE SCALED FROM THE CURRENT EXISTING MAPS PROVIDED BY FEMA AND ARE APPROXIMATE ONLY.

LEGEND

- ARV AIR RELEASE VALVE
B.C.C. BACK OF CURVE
C.R. CERTIFIED CORNER RECORD
CP CONCRETE PAD
C.W. CONCRETE WALL
C.P. CONCRETE POWER POLE
C.S.W. CONCRETE SIDEWALK
CLF CHAIN LINK FENCE
CB CATCH BASIN
(C) CALCULATED DIMENSION
C CENTERLINE
CO 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. 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
- 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 885 to the shoreline of the Gulf of Mexico) of CASE'S SUBDIVISION, according to the plat thereof recorded in Plat Book 1, at Page 58, as amended by plat and affidavit attached to Deed recorded in Deed Book 131, at Page 300, Public Records of Lee County, Florida.

ALSO, a parcel of land in Lots 45 and 47 of said CASE'S SUBDIVISION, described as follows: From the Northwest corner of Section 29, Township 46 South, Range 24 East, (also being the Northwest corner of said Lot 45) run East along the North line of said Section 29 and said Lot 45 for 350 feet to concrete monument and the Point of Beginning of the lands hereby described; from said Point of Beginning continue East along said North line for 344.22 feet to a concrete monument at a point 76.65 feet West of the Northwest corner of Lot 1, Block A, ZIMMER'S ADDITION TO SHELL MOUND PARK, as shown on a map or plat thereof recorded in Plat Book 11, at Page 54 of said Public Records; thence run Southeast on a straight line to the intersection of the West line and the North line of Donora Boulevard, as described in Deed recorded in Deed Book 290, at Page 53 of the Public Records, and as shown on said Plat of ZIMMER'S ADDITION, which point is also the Southwest corner of said Lot 1, Block A, of said ZIMMER'S ADDITION; thence run Southwest along said westerly line of Donora Boulevard for 677.54 feet; thence continue Southwest along said Westerly line of said Donora Boulevard and on a line perpendicular to the Northeast line of Estero Boulevard, to the Northeast right-of-way line of Estero Boulevard; thence run Northwest along said Northeast line of Estero Boulevard for 435 feet to a concrete monument, which monument is 250 feet, as measured along said Estero Boulevard, Southeast from the West line of said Section 29, thence run Northeast, along the Easterly boundary of the lands conveyed by Deed recorded in Deed Book 181, at Page 202, of said Public Records, for 824.57 feet to Point of Beginning.

ALSO, Lots 1 and 2, Block A, of that certain subdivision known as ZIMMER'S ADDITION TO SHELL MOUND PARK, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit court of Lee County, Florida, in Plat Book 11, at Page 54, together with a tract or parcel of land described as follows: Beginning at the Southwest corner of Lot 1, adjacent to Donora Boulevard, thence North 1°15' East along the westerly edge of Lot 1, Block A, ZIMMER'S ADDITION TO SHELL MOUND PARK, according to the map or plat thereof on file and recorded in Plat Book 11, at Page 54, Public Records of Lee County, Florida, a distance of 110 feet; thence West along the section line 76.65 feet to a concrete monument; thence Southeast to the Point of Beginning.

Parcel 3- Commencing at the Section corner common to Sections 19, 20, 29 and 30, Township 46 South, Range 24 East, Lee County, Florida; Thence South 00 degrees 28'13" West along the Section line common to Sections 29 and 30 for a distance of 742.72 feet to the Point of Beginning; Thence North 82 degrees 45'51" West for a distance of 89.16 feet to the Point of Beginning of Estero Sands a Condominium per Official Records Book 1450 Page 598; Thence North 03°31' East along the east line of said Estero Sands for a distance of 182.43 feet to a point on the Southerly right of way of Estero Blvd (SR 885); Thence South 57 degrees 28'50" East along said right of way for a distance of 25.32 feet to a point of intersection with the aforementioned section line and the Southerly right of way of Estero Blvd; Thence South 00 degrees 28'13" West along said section line for a distance of 199.81 feet to the Point of Beginning.

CERTIFIED TO:

Henderson Franklin Starnes & Holt, P.A.
Old Republic National Title Insurance Company
Seagate Fort Myers Beach, LLC
MIDFLORIDA Credit Union, Its SAA, ATIMA

BEARING DEVIATION NOTE

-PARCEL 2 BLOCK A, LOTS 1&2 DEVIATION FROM DEED TO STATE PLANE - 00°29'01"

SURVEY DATUM

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

TITLE COMMITMENT NOTES:

Lands shown hereon are based on File Number 30291.112 EPC, REV. 3, prepared on the 12th day of July, 2023 @11:00am, by Old Republic National Title Insurance Company reflecting the following:

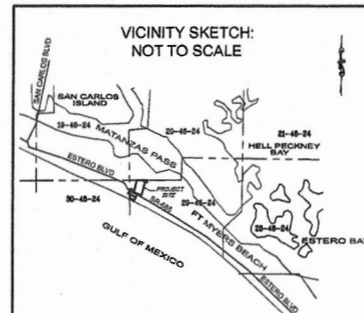
- Items 1 through 21 as shown on title opinion:
1. Non survey related item.
2. a-bke. Non survey related item.
3. Survey data has been shown to side in the verification of any encroachments encumbrances, violations, variations or adverse circumstances
4. All supplied easements have been shown on survey.
5. Intentionally Omitted.
6. Non survey related item.
7. Subject to lot lines, boundaries and road right of ways contained on the Plat of Case Subdivision, as recorded in Deed Book 131, Page 300, affected by the Final Judgment in Case No. 71-1392 recorded in O.R. Book 808, Page 373, later affirmed by the Second District Court of Appeal, said Final Judgment being re-recorded in O.R. Book 1131, Page 315, Public Records of Lee County, Florida.
8. Subject to dedications, restrictions, reservations, easements, and road right of ways contained on the Plat of Zimmer's Addition to Shell Mound Park, as recorded in Plat Book 11, Page 54, Public Records of Lee County, Florida. (as to Parcel 2) Easements have been plotted on said survey.
9. Subject to Walkway Easement over the Southeast 6 feet of the Northwest 34.13 feet of Lot 26 as described in that certain deed recorded in Deed Book 308, Page 607, Public Records of Lee County, Florida. (as to Parcel 2-Lot 26) Easement have been plotted on said survey.
10. Subject to terms and conditions of that Walkway Easement over the Northwest 6 feet of the Southeast 40.87 feet of Lot 26, contained in that certain deed recorded in Deed Book 308, Page 607, Public Records of Lee County, Florida. (as to Parcel 2-Lot 26) Easement have been plotted on said survey. Does not lie in subject Parcel 2.
11. Subject to Utility Easement given to Lee County, Political subdivision recorded in O.R. Book 1158, Page 1265-1268, Public Records of Lee County, Florida. (as to Parcel 2-Lot 2 Block A) Easements have been plotted on said survey.
12. Subject to Easement in favor of Florida Power and Light Company over the Northeast 10 feet of Lots 30 and 31 of Case's Subdivision, contained in instrument recorded in O.R. Book 2099, Page 1769, Public Records of Lee County, Florida. (as to Parcel 2), Easements have been plotted on said survey.
13. Subject Grant of Easement by and between Comcast of the South, Inc., and RED Coconut RV Park, recorded in Instrument Number 2011000260909, Public Records of Lee County, Florida. (as to Parcel 2), Easements have been plotted on said survey.
- 12-13. Non survey related item.
14. Riparian and littoral rights not determined with this survey.
15. Any artificially filled lands have not been determined for this survey.
16. Any portion of the Land created by accretion, avulsion, reliction or artificial means have not been determined for this survey.
17. Any public use lands have not been determined for this survey.
18. Any lands waterward of the mean high water line have not been determined for this survey.
19. Erosion Control Line identified in Plat Book 70, Page 25 Public Records of Lee County, Florida, has been plotted on said survey.
20. Subject Lee County Coastal Construction Control Line recorded in Plat Book 31-A Page 1; O.R. Book 2224, Page 1010 and Plat Book 48, Page 15, Public Records of Lee County, Florida. Has been plotted on said survey.
21. Non survey related item.

LINE TABLE

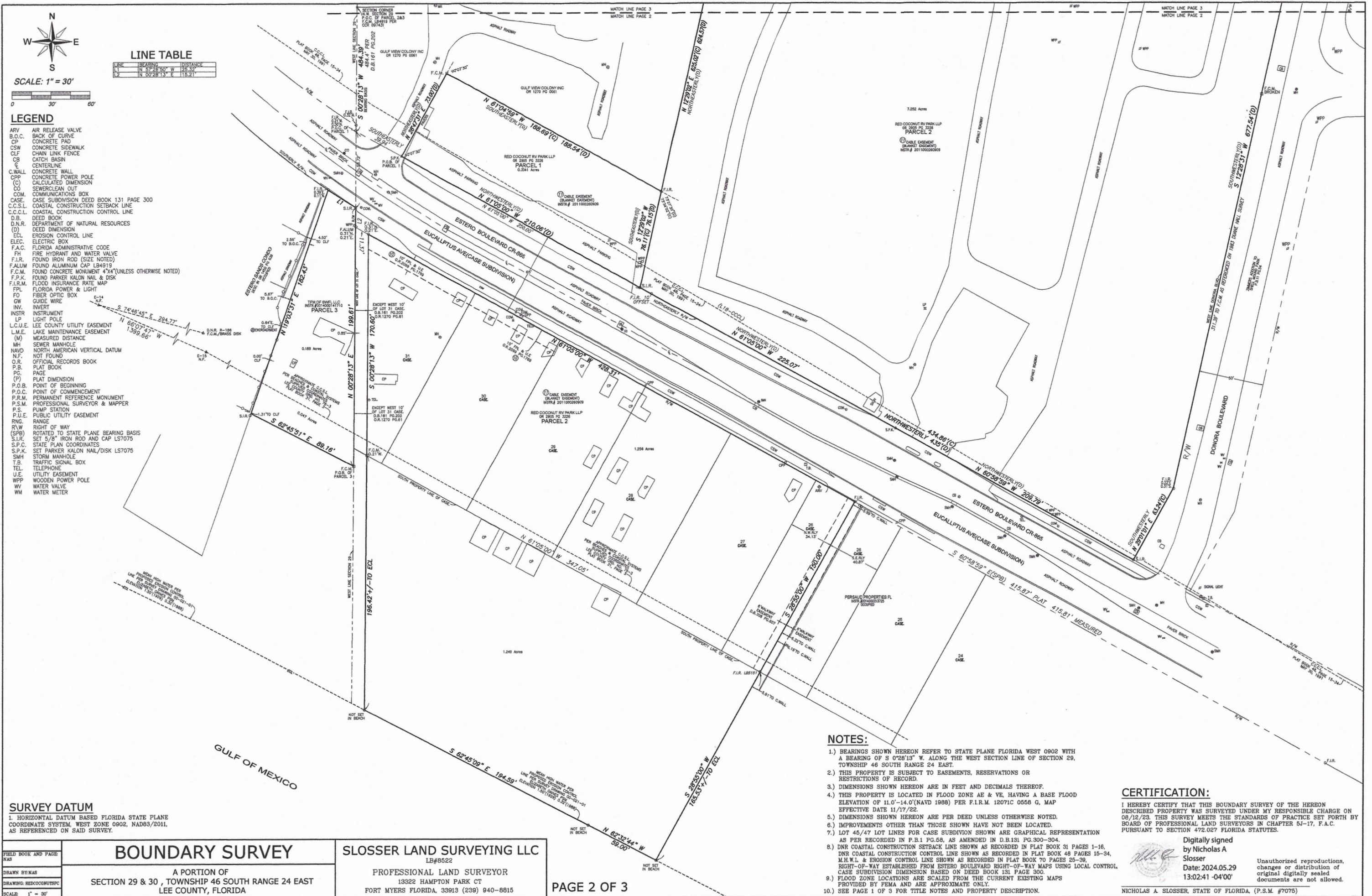
LINE	BEARING	DISTANCE
L1 (P)	N 82°45'51" W	89.16
L1 (P)	N 01°18' W	110.00
L2(R)	N 00°48'59" W	110.00
L3(R)	N 89°11'01" E	120.00
L3(P)	N 89°11'01" E	120.00
L4(R)	N 00°48'59" W	110.00
L4(C)	N 01°18' W	110.00
L4(P)	N 01°18' W	110.00
L5(P)	N 19°03'31" E	182.43
L6	S 00°28'13" W	199.81
L7	N 28°55'00" E	150.00
L8	S 29°01'01" W	83.24
L9	S 55°12'35" E	609.40
L10	S 77°05'14" W	853.58
L11	S 61°43'49" E	937.38
L12	S 67°18'08" E	418.71
L13	S 74°40'01" E	1061.70
L14	S 67°48'12" E	863.58
L15	N 47°59'46" W	27.80
L16	S 57°28'50" E	25.32
L17	S 81°53'45" E	1023.60
L18	N 59°19'38" W	981.41
L19	S 00°28'13" W	15.21
L20	S 57°28'50" E	25.32
L21(D)	SOUTHEASTERLY	76.15
L21	S 12°29'02" W	76.11(C)

VICINITY SKETCH:

NOT TO SCALE



Page 509 of 814



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
DRAWN BY: N.A.S.
DRAWING: REDCOCONUTSFC
SCALE: 1" = 30'

BOUNDARY SURVEY

A PORTION OF
SECTION 29 & 30, TOWNSHIP 46 SOUTH RANGE 24 EAST
LEE COUNTY, FLORIDA

SLOSSER LAND SURVEYING LLC

LB#8522
PROFESSIONAL LAND SURVEYOR
13322 HAMPTON PARK CT
FORT MYERS FLORIDA, 33913 (239) 940-8815

PAGE 2 OF 3

NOTES:

1. BEARINGS SHOWN HEREON REFER TO STATE PLANE FLORIDA WEST 0902 WITH A BEARING OF S 0°28'13" W. ALONG THE WEST SECTION LINE OF SECTION 29, TOWNSHIP 46 SOUTH RANGE 24 EAST.
2. THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.
3. DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
4. THIS PROPERTY IS LOCATED IN FLOOD ZONE AE & VE, HAVING A BASE FLOOD ELEVATION OF 11.0'-14.0'(NAVD 1988) PER F.I.R.M. 12071C 0558 G, MAP EFFECTIVE DATE 11/17/22.
5. DIMENSIONS SHOWN HEREON ARE PER DEED UNLESS OTHERWISE NOTED.
6. IMPROVEMENTS OTHER THAN THOSE SHOWN HAVE NOT BEEN LOCATED.
7. LOT 45/47 LOT LINES FOR CASE SUBDIVISION SHOWN ARE GRAPHICAL REPRESENTATION AS PER RECORDED IN P.B.1 PG.56, AS AMENDED IN D.B.131 PG.300-304.
8. DNR COASTAL CONSTRUCTION SETBACK LINE SHOWN AS RECORDED IN PLAT BOOK 31 PAGES 1-18, DNR COASTAL CONSTRUCTION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 48 PAGES 15-34, M.H.W.L. & EROSION CONTROL LINE SHOWN AS RECORDED IN PLAT BOOK 70 PAGES 25-39, RIGHT-OF-WAY ESTABLISHED FROM ESTERO BOULEVARD RIGHT-OF-WAY MAPS USING LOCAL CONTROL CASE SUBDIVISION DIMENSION BASED ON DEED BOOK 131 PAGE 300.
9. FLOOD ZONE LOCATIONS ARE SCALED FROM THE CURRENT EXISTING MAPS PROVIDED BY FEMA AND ARE APPROXIMATE ONLY.
10. SEE PAGE 1 OF 3 FOR TITLE NOTES AND PROPERTY DESCRIPTION.

CERTIFICATION:

I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY OF THE HEREON DESCRIBED PROPERTY WAS SURVEYED UNDER MY RESPONSIBLE CHARGE ON 06/12/23. THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 6J-17, F.A.C. PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

Digitally signed
by Nicholas A
Slosser
Date: 2024.05.29
13:02:41 -04'00'

Unauthorized reproductions,
changes or distribution of
original digitally sealed
documents are not allowed.

NICHOLAS A. SLOSSER, STATE OF FLORIDA. (P.S.M. #7076)

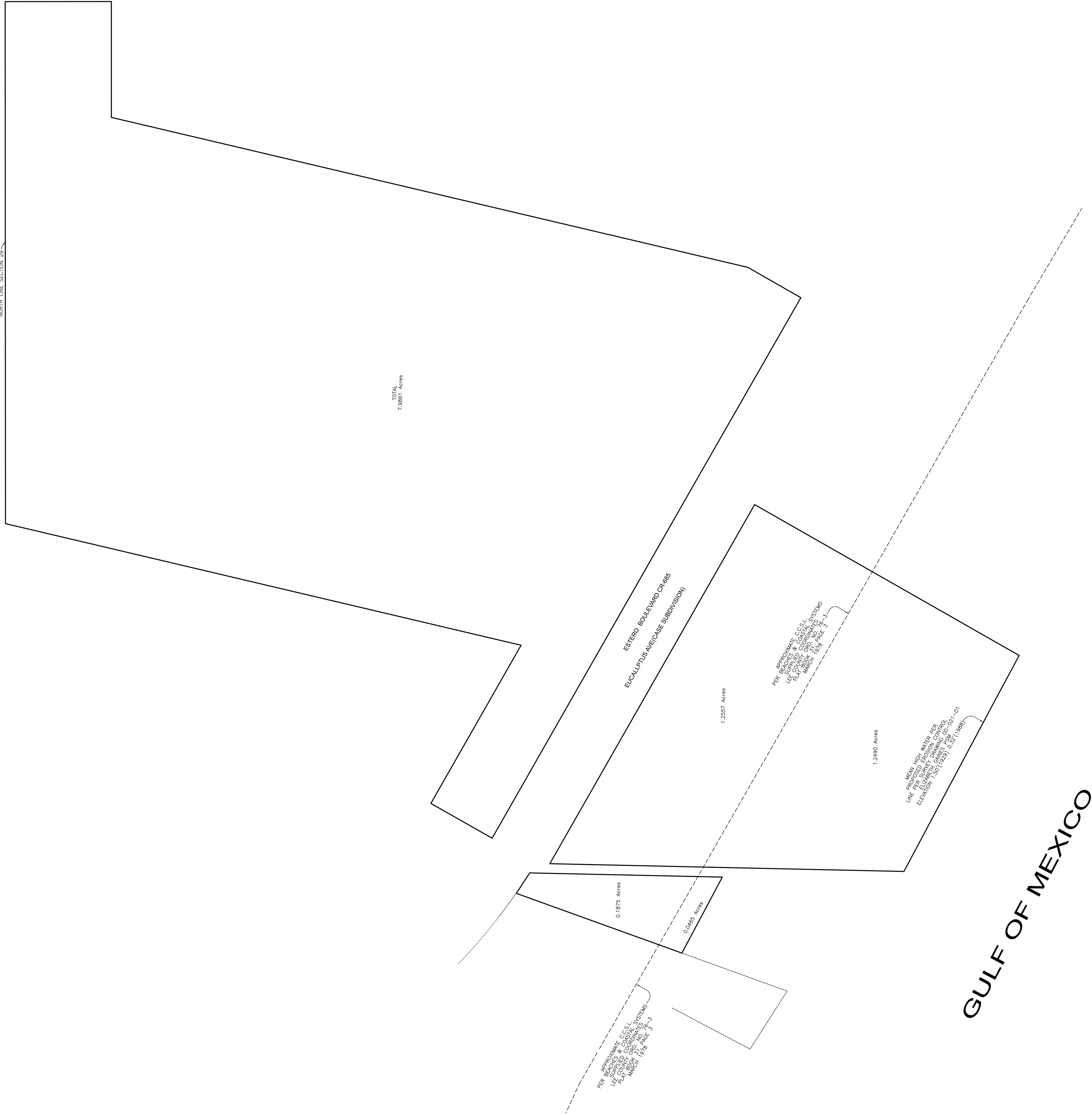


Exhibit B

**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







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

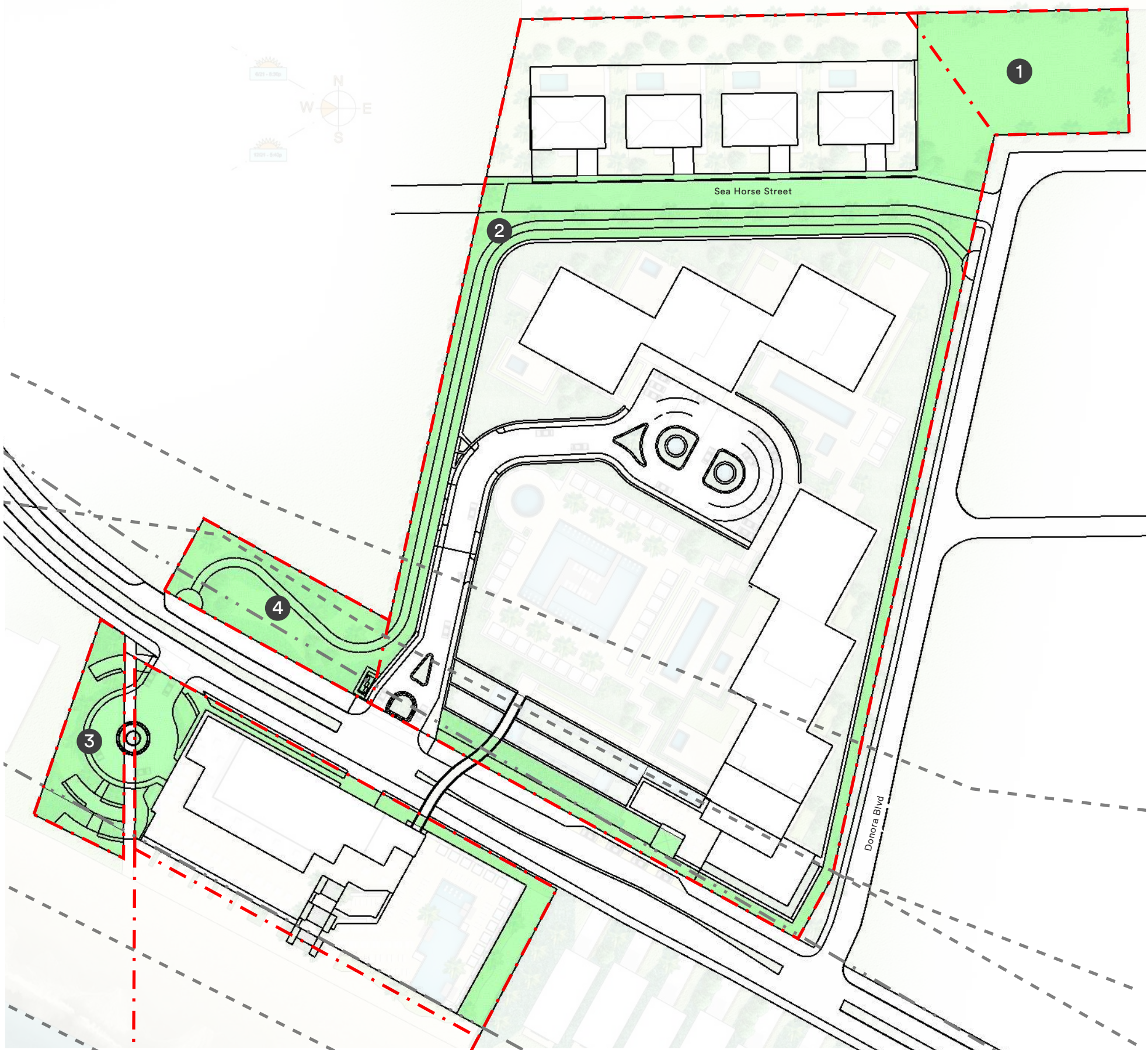
VIEW 12

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

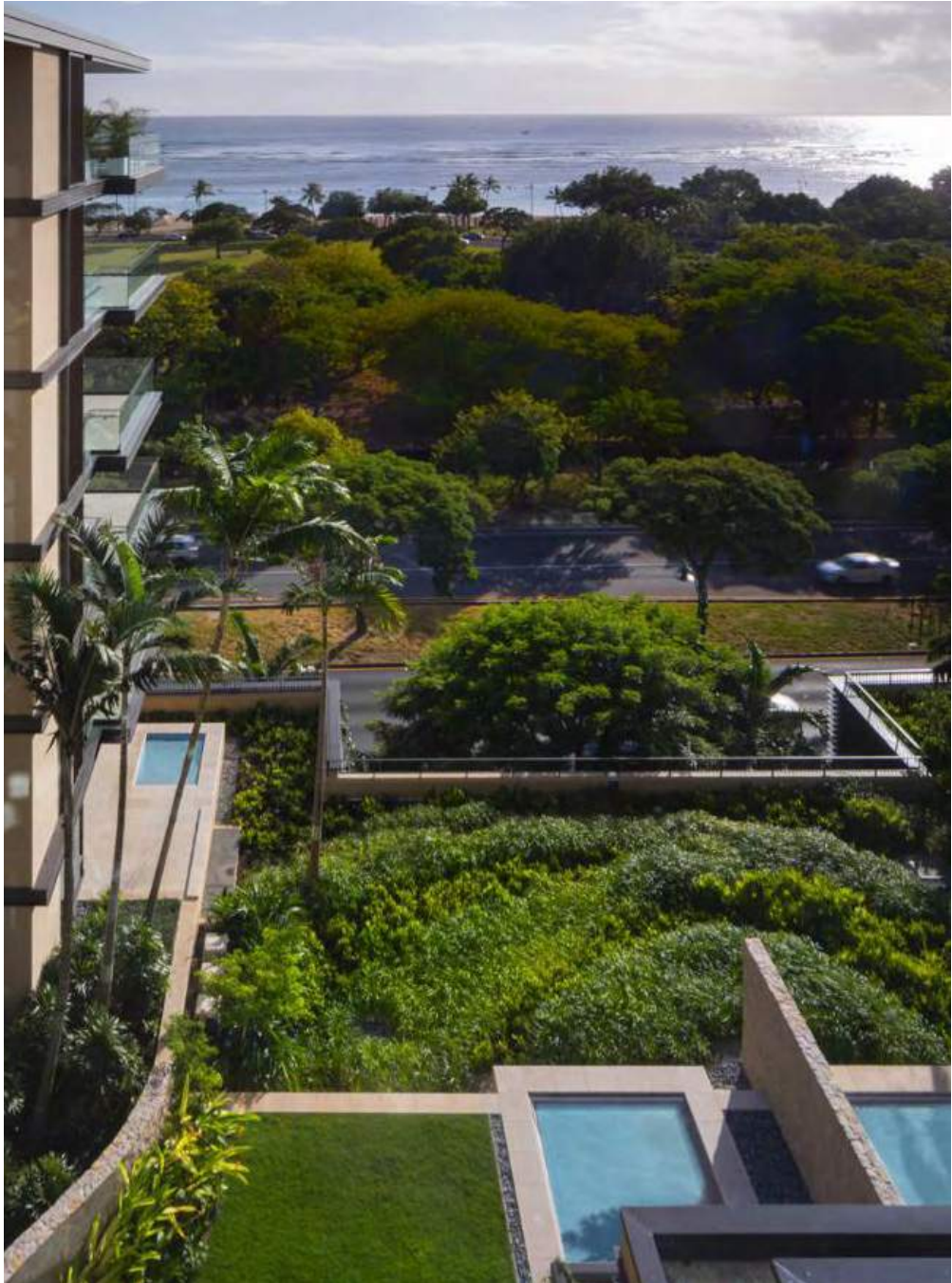
3001 Estero Blvd, Fort Myers Beach, FL

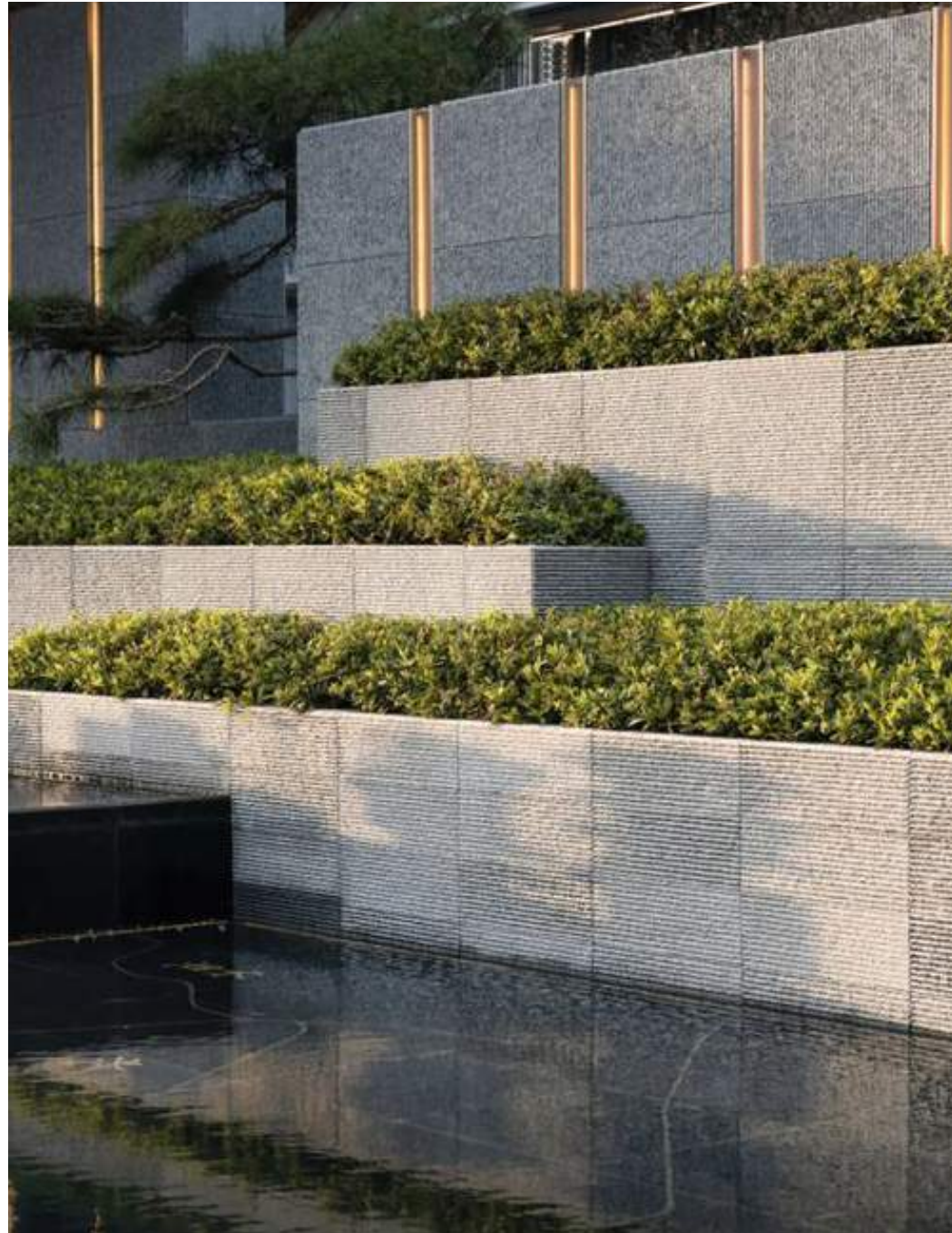
STEARNS WEAVER MILLER













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 by a vote of 4-2; 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 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, the Town Council voted to schedule the second reading and public hearing on the Ordinance on November 18, 2024; and

WHEREAS, at the request of the applicant, the second reading and public hearing was continued to December 16, 2024 and an additional public hearing was scheduled to be held on December 2, 2024 to allow for additional public comment;

WHEREAS, thereafter the Town Council held the second and final reading and public hearing on the Development Agreement on December 16, 2024; 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 additional public hearing and for the second reading and adoption public hearing of the Ordinance was published in the _____ on the ____ day of _____, 2024, and on the ____ day of December, 2024, both of which are 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.

Attachments:

Exhibit A – Home Rule Development Agreement

Exhibit B – Master Concept Plan with Pattern Book



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

ADDITIONAL TOWN

COUNCIL HEARING DATE: December 2, 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 for a restaurant 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. At the LPA meeting the commercial uses in the Development agreement were reduced to restaurant only. The applicant had agreed to the inclusion of other commercial personal services, such as hair and nail salons, a laundry service, daycare, 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 requested 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:

- 1 – Comprehensive Plan and LDC discussion of Red Coconut
- 2 – Resolution 24-73 Procedures for development agreements with deviations

Comprehensive Plan Objectives and Policies pertaining to Red Coconut

POLICY 3-A-5 Provide in the new Land Development Code a pre-approved option for the future redevelopment of the Red Coconut/Gulfview Colony properties consistent with the town’s vision of traditional neighborhoods — neighborhoods that recreate a small-town feel; which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the beach; and which offer a variety of housing types and opportunity for mixed uses.

POLICY 3-A-6 In accordance with Policies 4-E-1 and 4-F-2 of the Future Land Use Element, evaluate any alternative redevelopment concepts for any portion of the Gulfview Colony/ Red Coconut properties as to the following design principles:

- i. retains and/or creates water views through street layout, site design, and architectural design;
- ii. provides a variety of housing types rather than uniformity;
- iii. locates the more durable housing types and mix of uses along the Bay side of Estero Boulevard;
- iv. new streets create a highly connected network which includes mid-block paths or alleys;
- v. streets have sidewalks and street trees;
- vi. local streets are interconnected from Donora and Shell Mound through to the north.

POLICY 4-C-4 **BUILDING HEIGHTS:** The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

OBJECTIVE 4-F REDEVELOPMENT — Take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight by designing and implementing public improvements near Times Square to spur private redevelopment there, by supporting the conversion of the Villa Santini Plaza into a pedestrian precinct, by providing an opportunity for landowners to

Exhibit A – Comp Plan and LDC discussion of Red Coconut

replace vulnerable mobile homes and recreational vehicles with permanent structures in the Gulfview Colony/Red Coconut area, and by providing building code relief for historic buildings.

POLICY 4-F-2 SPECIFIC REDEVELOPMENT PLANS: This comprehensive plan anticipates substantial redevelopment over the coming years. Specific concepts have been developed for three specific areas:

iii. Gulfview Colony/Red Coconut – This area is shown as “Mixed Residential” and “Boulevard” on the Future Land Use Map. If landowners wish to redevelop part or all of this property, the following concepts are encouraged, and shall form the basis for a preapproved redevelopment option in the Land Development Code:

- a. traditional neighborhood design emphasizing porches on the front; primary entrances visible from the street; and cars to the rear (except for on-street parking);
- b. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
- c. low-rise townhouses or apartments allowed toward the center;
- d. walkable narrow streets with shade trees that double as view corridor to the Preserve and Gulf;
- e. substantial open space with views to be maintained from Estero Boulevard to the Gulf;
- f. mixed commercial and residential uses along the Bay side of Estero Boulevard;
- g. quiet internal street connections to the north and south;
- h. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre;
- i. provision for a publicly acquired access point to the Matanzas Pass Preserve. This redevelopment plan is described in Community Design Policies 3-A-5 and 3-A-6.

Different redevelopment concepts that are consistent with this comprehensive plan may also be proposed for any of these areas through the planned development rezoning process.

Land Development Code Sections referring to Red Coconut redevelopment

Sec. 34-691. - Purpose.

The purpose of the Village district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

...(2) As an alternative, the Village district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. - District map and applicability.

The area indicated on Figure 34-18 is the outer boundary of the Village district.

...(3) Transformation of existing mobile home and recreational vehicle parks. Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the Village district.

a. The following concepts are expected in this redevelopment process:

1. Traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
2. Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
3. Low-rise townhouses or apartments allowed elsewhere on the site;
4. Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
5. Open space that allows views to be maintained from Estero Boulevard to the Gulf;
6. Mixed commercial and residential uses along the bay side of Estero Boulevard;
7. Quiet internal street connections to the north and south;
8. Significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
9. A site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.

b. At the option of landowners in the Village district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 below, and generally in accordance with either of the conceptual site plans found in the community design element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 below shall have no effect.

RESOLUTION NUMBER 24-73

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA; MAKING FINDINGS; APPROVING AN ADMINISTRATIVE CODE SETTING FORTH PROCEDURES FOR THE APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, Sec. 2-96, “Applications for Development Agreements”, of the Town’s Land Development Code provides in pertinent part that:

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application.

WHEREAS, after discussion during public meetings before the members of the Fort Myers Beach Land Planning Agency and the Fort Myers Beach Town Counsel, and after allowing input from the public, an administrative code providing for the procedures to be followed for the application for, and the approval of, development agreements with deviations has been decided upon; and

WHEREAS, the Town Council has determined it is in the best interest of the Town of Fort Myers Beach and its residents and business owners to adopt this Resolution.

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

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

Section 2. The Town Council hereby adopts the attached Exhibit “A” as the Town of Fort Myers Beach Administrative Code Providing Procedures for Development Agreements with Deviations.

Section 3. This Resolution shall be effective immediately after the adoption by Resolution of the schedule of fees and charges which shall be imposed for the filing and processing of each application for a Development Agreement with Deviations.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Vice Mayor Atterholt, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 1st day of April 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Apr 12, 2024 14:28 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Apr 23, 2024 13:30 EDT)
Amy Baker, Town Clerk

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

Nancy Stuparich
Nancy Stuparich (Apr 25, 2024 21:28 EDT)
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 12th day of April 2024.

**TOWN OF FORT MYERS BEACH
ADMINISTRATIVE CODE PROVIDING
PROCEDURES FOR DEVELOPMENT AGREEMENTS WITH DEVIATIONS**

Pursuant to Section 2-100 and 2-96 of the Town's Land Development Code, the Town may enter into a Development Agreement with Deviations with a property owner. A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions ("deviations") from the Town's Land Development Code, and, if appropriate under the provisions of the Town's Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provided for in such Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan. Approval of a Development Agreement with Deviations shall be subject to the procedures set forth herein.

1. Development Agreement with Deviations Application Procedures.

The following information/exhibits shall be required with the application for a Development Agreement with Deviations (hereinafter "Development Agreement"):

1.1. Legal description and address of the parcel of land which will be the subject of the Development Agreement (hereinafter "Land").

1.2. The name, address and telephone number of the applicant and any attorney or agent who is or will be representing the applicant.

1.3. A title opinion from a Florida attorney (which opinion is in a form acceptable to and in favor of the town), which shall identify and provide the names, addresses and telephone numbers of all legal and equitable owners having interest in the Land, as well as all mortgage or lien holders, holders of easement interests, and other encumbrances, upon the Land. As of the date of recordation of any Development Agreement, the applicant shall be required by the town to update the foregoing information in this subparagraph to the date of recording of the Development Agreement.

1.4. An application signed by, or on behalf of, the owner and any lien holder(s) as to the Land subject to the Development Agreement, and if not signed by the owner a notarized consent signed by the owner authorizing the person to sign the application.

1.5. Payment of any required application fee as set by resolution of the town council.

1.6. A survey of the Land showing the approximate location of all environmentally sensitive lands, or lands subject to the jurisdiction of the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, the Southwest Florida Water Management District or Lee County, Florida.

1.7. A statement and finding demonstrating that the proposed Development Agreement will be consistent with the comprehensive plan of the town.

1.8. The desired duration of the Development Agreement shall not be less than the expected completion of the development on the Land.

1.9. Development uses and regulations currently legally permitted on the Land, including densities, intensities, heights of structures, and setbacks; and, if different, any of the same that are currently on the Land, or that were on the Land at any time in the last 24 months.

1.10. Development uses and regulations, including densities, intensities, heights of structures, and setbacks being requested on the Land.

1.11. A description of the public facilities which will provide services to support the development, the approximate date that new public facilities, if needed, will be constructed, and a schedule to assure that the public facilities and services will be available concurrent with the impacts of development.

1.12. A description of any current or proposed reservation or dedication of land for public purposes.

1.13. Any deed restrictions existing or being imposed upon the Land, and a description of any current or proposed reservation or dedication of land for public purposes.

1.14. The application must explicitly identify each instance of conflict with existing ordinances and expressly provide for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement listing all contemplated zoning districts or land use modifications or requests for more flexibility that will be required if the proposed Development Agreement were to be approved.

1.15. A sketch of site plan showing where buildings (with heights), structures, parking, and other features/amenities of the proposed development shall be located. If the Land is located on the water, any view corridors or public access location(s), if any, will be located.

1.16. A statement that a copy of the Development Agreement with Deviations Application has been furnished by First Class U.S. Mail to all property owners within 100 feet of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website, and a list of such property owners and addresses.

1.17. A concise and complete recital of the proposed contents of the Development Agreement using the Form of Development Agreement with Deviations attached as Ex. "A".

2. Development Agreement Minimum Content Requirements.

The following information shall be required within a Development Agreement.

2.1. A legal description of the land subject to the agreement and the identification of all persons having legal or equitable ownership therein.

2.2. The duration of the development agreement, which duration shall not be less than the anticipated time period needed to fully build out the development.

2.3. The development rights to be permitted on the land, and setting forth densities, intensities, building height(s), and setbacks. Uses of the land shall be those allowed in the underlying zoning district unless otherwise specifically provided, such as when a special exception is a part of the development agreement.

2.4. A description of the public facilities and services, including on-site improvements that will serve the proposed project, including designation of the entity or agency that shall be providing such facilities. Additionally, if new facilities are needed to serve the project, the date by which such facilities will be constructed and a schedule to assure that public facilities and services shall be available concurrent with the impact of the development project.

2.5. A description of any reservation or dedication of land for public purposes. The Development Agreement shall provide specifically how the land dedication obligation for the project, if any, is to be met. In the event that land or any interest herein is to be conveyed to the town or other entity in discharge of the foregoing, the Development Agreement shall provide that such conveyance or dedication will be by warranty deed or easement, or other instrument in form and substance acceptable to the town attorney, together with evidence of title in form acceptable to the town attorney prepared by an attorney who is a member of the Florida Bar, or a title company licensed in Florida, all depicting who is the owner in fee simple of the land subject to the conveyance or dedication, and the holders of any other interest or liens affecting said land.

2.6. A description of all local permits approved or needed to be approved for the development of the Land, specifically to include at least the following:

Any required submission to the Southwest Florida Regional Planning Council and any required permission of the State of Florida, Department of Environmental Regulation, the U.S. Corps of Army Engineers, the Southwest Florida Water Management District, the U.S. Environmental Protection Agency or any other required governmental permission. The Development Agreement shall specifically provide that said development permission will be obtained at the sole cost of the owner of the Land, and that any approvals previously given, including the Development Agreement, shall not in any manner obligate the town or any other governmental agency to grant other permit approvals. Under these conditions, action in reliance on the Development Agreement or expenditures in pursuance of its terms or any rights accruing to the project owner thereunder shall not vest any development rights in the owner of the Land or the project to a continuation of the Development Agreement.

2.7. A specific finding in the Development Agreement that the proposed project permitted or proposed is consistent with the town's Comprehensive Plan and Land Development Code, or that, if deviations are necessary for the zoning district or land use plan designations on the subject Land, such Development Agreement specifically lists such deviations in detail.

2.8. Statement in the Development Agreement showing how sidewalk and pedestrian travel is being addressed in a conceptual plan showing the proposed layout of streets, lots, green areas, conservation areas, bike ways, parks, public facilities and such other amenities.

2.9. A statement in the Development Agreement describing how environmentally sensitive land, if any, will be preserved and managed.

2.10. A statement in the Development Agreement describing how threatened or endangered species are being protected.

2.11. A statement in the Development Agreement explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control, or else all of the provisions of such conflicting ordinances shall control to the extent that the Development Agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a Development Agreement or an ordinance is to control shall be interpreted to favor the ordinance. A statement indicating that failure of the Development Agreement to address a particular permit condition, term or restriction shall not relieve the owner or developer of the necessity of complying with the laws governing said permitting requirements, conditions, terms or restriction.

2.12. A provision that any matter or action required under existing ordinances of the town shall not be otherwise amended, modified or waived, unless such modification, amendment or waiver is expressly provided for in the Development Agreement with specific reference to the Code provision so waived, modified or amended (“deviations”).

2.13. A statement whereby if the applicant, upon approval of the Development Agreement, fails to comply with the terms of the agreement, the town may bring an action in a court of law with competent jurisdiction to protect its rights and interests. All associated reasonable costs and attorney's fees shall be reimbursed to the town if an action at law is necessary regardless of whether the Town is the prevailing party

2.14 Post-Development Agreement requirements. An acknowledgement that prior to the issuance of any building permits being issued for the development that:

2.14.1 All existing and proposed utilities and the manner in which existing utilities will be extended to the site and/or expanded for the use of the development including water, sewer, gas, electricity, cable television, and other utilities shall have been approved by the Town;

2.14.2 The proposed drainage plan for the proposed project shall have been approved by the Town;

2.14.3 The proposed grading plan and elevation requirements of the town, including, but not limited to those related to the National Flood Insurance Program as applicable to the town shall have been approved by the town;

2.14.3. The traffic impact and parking plans as applicable to the town shall have been approved by the town; and

2.14.4 All other town requirements are met that are necessary for the initial building permits to build the project on the Land.

2.15. An acknowledgement that the town shall not have any liability whatsoever for any expenses or other damages that may be incurred as a result of denial of the Development Agreement or for denial of building permits due to the failure to meet the town's requirements as to any Post-Development Agreement requirements.

2.16. A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight.

2.17. A finding that the proposed Development Agreement is reasonable and not arbitrary and in the best interest of the town.

3. Development Agreement with Deviations Review Procedures.

The following regulations shall be followed during the review of a Development Agreement with Deviations.

3.1. Staff negotiation. The town manager or the town manager's designee (typically the town planner) shall review the proposed project and shall meet and hold preliminary nonbinding negotiations with the applicant regarding the appropriate terms and conditions on which said Land should be developed. At such time as a tentative agreement is reached as to the recommended terms and conditions of the development agreement, or the town manager or town manager's designee deems that no further negotiations would be useful because of the unlikely possibility of reaching a concurrence on the terms and conditions of a Development Agreement, the proposal shall be reduced to a nonbinding and unexecuted writing. Such tentative agreement, whether oral or written, shall not give rise to any development rights or equitably or legally vest any development rights in the owner of the Land or other substantially affected person.

3.2. Reduction of proposal to writing

3.2.1. In the event that the town manager or the town manager's designee and the applicant have negotiated the terms of a mutually acceptable, nonbinding and tentative Development Agreement, the terms of that Development Agreement shall be reduced to writing in a contractual form for review and for further discussion, consideration and approval or disapproval as provided herein. The Development Agreement may include a provision that authorizes administrative amendments to the site plan provided that height, density and intensity are not increased, and the plan remains consistent with the Town's Comprehensive Plan.

3.2.2. In the event that the town manager or town manager's designee and the applicant have been unable to negotiate a mutually satisfactory Development Agreement, within thirty (30) days of said determination by the town manager or the town manager's designee, the applicant may prepare a proposed Development Agreement consistent with all requirements hereof for review by the town's Local Planning Agency ("LPA").

3.2.3 It shall not be required for the town manager, or designee to make a recommendation as to whether the town council should approve or not approve a Development Agreement.

3.3. Public hearings

3.3.1. At such time as the Development Agreement has been reduced to written nonbinding contractual form, or the applicant has prepared a Development Agreement as set forth above in subsection 3.2, the town manager or town manager's designee shall transmit such Development Agreement to the LPA.

3.3.2. A public hearing shall be held by the LPA concerning said application, and the LPA shall issue a recommendation for approval or denial of the Development Agreement to the town council. Thereafter a public hearing shall be held by the town council as to the Development Agreement.

3.3.3. Notice of each of the public hearings shall be noticed on the town's website, and said notice shall be mailed to all property owners within a five hundred (500) foot radius of the boundaries of the Land at the addresses of such property owners found on the Lee County Property Appraiser website prior to the first public hearing. Said advertisement and notice of each of the two public hearings may be combined in one notice, but must include:

3.3.3.1. Location of the Land subject to the Development Agreement.

3.3.3.2. Proposed development's project land use, building intensities, estimated population and building heights.

3.3.3.3. Location where a copy of the proposed Development Agreement may be reviewed.

3.3.3.4. Date, time and place of the public hearing(s).,

3.3.3.5. At the public hearings and in compliance with any and all procedures established by law for the conduct of said hearings, the LPA and the Town Council shall accept any public comment on the terms of the Development Agreement. Following the town council public hearing, the town clerk shall immediately dispatch, postage prepaid by regular, first class, U.S. mail and in writing, a copy of the determination of the town council to the applicant, or anyone who has requested a copy advising them of the town council's decision. The determination shall state that the decision of the town council is final agency action.

4. Development Agreement Execution Procedures and Recording.

Development Agreements shall be executed as established below:

4.1. All Development Agreements shall be executed on behalf of the applicant by all persons having legal or equitable title in the Land subject to the Development Agreement, including the fee simple owner and any mortgagees or other lien holders or owners of other equitable interests in the Land, unless the town attorney approves the execution of the development agreement without the necessity of such joinder or subordination in that the substantial interests of the town will not be adversely affected thereby.

4.2 Development Agreements shall not be executed on behalf of the town and shall not be recorded unless and until all Post-Development Agreement requirements have been met as set forth in Sec. 2-14 above. The applicant shall bear the expense of recording the Development Agreement, which shall be recorded by the town clerk.

5. Amendment to Development Agreement.

5.1 Except for Administrative Amendments, if allowed in the Development Agreement, an amendment to a Development Agreement shall not occur unless and until there have been hearings thereon before the LPA and before the town council. Noticing of the LPA and town council hearings shall be in the same manner as for the original hearings for Development Agreements.



3001 Estero Boulevard
Applicant's Report
September 20, 2024

I. APPLICATION SUMMARY

Applicant/Owner: Seagate Fort Myers Beach, LLC

Request: Adoption of a Home Rule Development Agreement for a Site Plan with Deviations to redevelop 9.43 acres of a 10.72 acre Property spanning from Matanzas Pass Preserve to the Gulf of Mexico.

Subject Property: See attached Legal Description and Sketch (Exhibit A to Development Agreement)

Physical Address: 3001 Estero Boulevard

STRAP #s: 29-46-24-W1-00145.10000, 30-46-24-W2-00001.0000, 29-46-24-W1-00145.5000, 29-46-24-W1-0120A.0010

FLU: Boulevard & Mixed Residential

Zoning: Village

Adjacent zoning and land uses

North: Matanzas Pass Preserve

South: Environmentally Critical/Recreation Beach

East: Boulevard & Mixed Residential
Single and Multi-family Residential, Former Arts Complex, Former FMB
Fire Department Station

West: Boulevard & Mixed Residential/Village
Vacant, Former Gulfview Mobile Home Park

II. BACKGROUND & ANALYSIS

a. Framework

On April 1, 2024 the Town Council approved Ordinance 24-72, outlining procedures for Development Agreements (“DA”) with Deviations. These procedures establish:

“A Development Agreement with Deviations is a non-statutory development agreement that may allow for approval of amendments, modifications, variances or exceptions (“deviations”) from the Town’s Land Development Code, and, if appropriate under the provisions of the Town’s Comprehensive Plan, relief from the building height limitations in the Comprehensive Plan. Approval of a Development Agreement and the deviations provide for in such a Development Agreement shall be considered tantamount to and commensurate to a planned development for purposes of determining consistency with the Comprehensive Plan.”

As part of the DA process, a specific finding is required to be provided that the “proposed project permitted or proposed is consistent with the Town’s comprehensive plan and land development code or that if deviations are necessary for the zoning district or land use plan designations on the subject land, such Development Agreement specifically lists such deviations in detail.” Additionally, a statement is to be provided in the DA “explicitly identifying each instance of conflict with existing ordinances and expressly providing for the Development Agreement to control...”

Seagate Fort Myers Beach has submitted a DA to establish a conceptual site plan for the redevelopment of the Property and request deviations to promote the clustering of density, provision of public parks, recreation and beach access, and view corridors to the Gulf of Mexico. The DA identifies the anticipated uses, density, intensity, duration of the agreement, proposed public benefits, and the requested deviations. As exhibits to the DA, the applicant has provided:

- Exhibit A - Legal Description and Sketch for the portion of the Property landward of the 1978 CCCL line;
- Exhibit B - Conceptual Plans and Renderings;
- Exhibit C – Public Easement Areas;
- Exhibit D – Pattern Book.

With the exhibits, the DA establishes the conceptual parameters which will guide the review of the detailed plans and calculations to be submitted for the required Town of Fort Myers Beach Development Order (“DO”), South Florida Water Management District Environmental Resource Permit (“ERP”), and other permits. Construction is not permitted to begin until all permits are secured. Due to the number of subsequent permits necessary and coordination with outside agencies, the Applicant has proposed a 10-year timeline for the DA. This duration will provide enough time to obtain all necessary permit approvals, continue coordination with Lee County and

the Town to address dedication of required easements, park programming and public access, and unforeseen circumstances.

b. Property

Prior to Hurricane Ian, the Property was developed as an RV and mobile home park with supporting recreational amenities, owned/operated by the Myers Family since 1984 and accepted its first visitors in 1925.¹ The park's opening was approximately 12 years after construction of the first beach hotel and a year before the swing bridge connected Fort Myers Beach to mainland Lee County.² Due to the development pre-dating the incorporation of the Town of Fort Myers Beach ("Town") by over 73 years and a density of 27 RV/mobile homes per acre, the Property is located within a redevelopment area identified by the Comprehensive Plan³ and Land Development Code ("LDC").⁴ The intent of the redevelopment area is for the Town to "take positive steps to redevelop areas that are reaching obsolescence or beginning to show blight ... by providing an opportunity for landowners to replace vulnerable mobile homes and recreational vehicles with permanent structures in the ...Red Coconut area."⁷ Implementing this intent, Policies 3-A-5, 3-A-6 and 4-F-2 identify that redevelopment within the designated area is *encouraged* to incorporate specific design concepts into a pre-approved redevelopment option. (emphasis added) The Village district implements these policies by "...provid[ing] alternative futures for the Red Coconut...either a continuation of the current land uses or their transformation into a traditional neighborhood pattern."⁵ A DO can be obtained to redevelop property within the Village district consistent with the design criteria outlined in LDC Section 34-693 establishing allowable uses, street layout, view corridors, setbacks, etc. The DA process permits deviations to be requested from these design criteria.

c. Comprehensive Plan

The Town's comprehensive plan was adopted in 1999 and since that time, has not been fully evaluated for consistency with State building codes, coastal building regulations and the Federal floodplain requirements. Per the Future Land Use map, the Property is within three future land use ("FLU") designations, Boulevard, Mixed Residential and Recreation.

Boulevard – described by Policy 4-B-5 as a "...mixed use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages and mixed housing types." This designation occurs along the approximately 90-foot-deep portion of the Property fronting on the north side of Estero Boulevard and all of the parcels along the south side of Estero Boulevard. Consistent with this location, the proposed site plan locates the private recreational amenity, 2 publicly accessible

¹ Red Coconut | RV Park. <https://www.redcoconut.com>. Accessed April 28, 2024

² FMB Comprehensive Plan, Commercial Design Element, Page 3-3

³ FMB Comprehensive Plan, Policy 4-F-2

⁴ FMB LDC Section 34-691 et.al.

⁵ FMB LDC Sec 34-691

parks, terraced planters and water feature, and the 10,000 square foot restaurant within this FLU category.

Mixed Residential – described by Policy 4-B-4 as “...old subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks.” The portion of the Property between Matanzas Pass and the Boulevard FLU is considered Mixed Residential. Consistent with this location, the proposed site plan locates the multi-family and single-family residential units within this FLU category.

Recreation – the portion of the Property seaward of the 1978 Coastal Construction Control Line is within the Recreational FLU. Consistent with Policy 4-B-8, this portion of the Property is not proposed for development, is not included in the calculations related to density or intensity and is not included in the Legal Description attached to the Development Agreement.

The proposed uses and location are consistent with the underlying FLU categories for the Property.

Beyond the FLU categories, the comprehensive plan considers the “appropriate future uses in the event of a change in ownership or pans or a natural disaster” for the Property.⁶ Specifically, Policies 3-A-6, and 4-F-2 outline the *anticipated* redevelopment for the Gulfview Colony/Red Coconut. (emphasis added) Future Land Use Policy 4-F-2.iii identifies the design “concepts [that] are encouraged” to be included in the pre-approved redevelopment options Many of these design concepts are reiterated in LDC Section 34-692(3) as design “concepts [that] are *expected* in the redevelopment process.” The DA process permits deviations to be requested from the design criteria outlined in Section 34-692(3). In addition, Policy 3-A-5 describes a desire for neighborhoods “which are pedestrian and bicycle friendly with an internal circulation system that makes it possible to walk or bicycle to schools and services without always using Estero Boulevard; which retain the psychological connection and views to both the Bay and the Beach; and which offer a variety of housing types and opportunity for mixed uses.”

The 9.43 acres subject to the DA is only a portion of the redevelopment area described by the comprehensive plan, additional vacant acreage occurs immediately to the west and north of Estero Boulevard. As only a portion of the redevelopment area, the proposed plan provides 7 of the 9 design characteristics outlined in Policy 4-F-2. The remaining design characteristics have not been provided due to changes to the State building code, coastal construction regulations or Federal floodplain requirements, the transfer of density from the parcels south of Estero Boulevard to the parcels to the north, and the reduction of intensity on the parcels south of Estero Boulevard. The proposed design does provide opportunities for circulation without a vehicle and enhances the pedestrian realm while increasing public views of the Gulf and Matanzas Pass, meeting the intent

⁶ FMB Comprehensive Plan, Community Design Element, Page 3-8

of the redevelopment vision while adapting to the required State Building Code and Coastal Construction regulations as well as Federal Floodplain regulations.

The comprehensive plan also considers requests for additional height in Policy 4-C-4; which specifically indicates “different heights may be applied to officially designated redevelopment areas such as ... Red Coconut/Gulf View Colony.” As described above, Policy 4-F-2 identifies a redevelopment area for the Red Coconut/Gulf View Colony. Requests for additional height need to demonstrate consistency with the comprehensive plan and public benefits promoted by the site design due to the request, such as view corridors to the Gulf or Bay. Consistent with these policies, the proposed conceptual plan includes an increase in the permitted height for the mixed-use structure. The additional height enables the Gulf side parcel density to be transferred to the bay side portion of the Property and cluster most of the available density in a mixed-use structure on the bay side of Estero Boulevard. This density transfer also limits the intensity of the redevelopment of the gulf side parcels. As a result, the conceptual plans incorporate multiple public parks, 2 new view corridors to the Gulf, a new pedestrian beach access, and access and views to Mantanzas Pass Preserve are maintained to promote appropriate public benefits to support the requested height increase.

The proposed project is consistent with the Town's comprehensive plan, provides many of the design concepts encouraged and anticipated by Policies 3-A-5, 3-A-6, and 4-F-2, and establishes appropriate public benefits for the requested height increase consistent with Policy 4-C-4.

d. Village Zoning District

The Property is within a redevelopment zoning district known as the Village which implements Policies 3-A-5, 3-A-6, and 4-F-2 of the Town's Comprehensive Plan. The purpose of the Village district is “to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate.” The Village district “provide[s] alternative futures for the Red Coconut...allowing a transformation... into a more permanent and durable housing types in a traditional neighborhood pattern.”⁷ “A vision for this area...is a complete neighborhood with an internal circulation system making it possible to walk or ride bikes to school, recreation areas, and shopping without using Estero Boulevard.”⁸ The LDC outlines concepts expected to be provided across all properties in the Village district. The Property is only a portion of the Village district and provides 7 of the 9 criteria envisioned when the Village zoning district was established in 2003 by Ordinance 03-03.

- Detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;

⁷ FMB LDC Section 34-691

⁸ FMB Comprehensive Plan, Community Design Element, Page 3-8

- Walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
- Open space that allows views to be maintained from Estero Boulevard to the Gulf;
- Mixed commercial and residential uses along the bay side of Estero Boulevard;
- Quiet internal street connections to the north and south;
- Significantly reduced density...to a maximum level of 15 dwelling units to the acre; and
- A site design that accommodates a publicly acquired access point to Matanzas Pass Preserve.

The remaining 2 criteria, a traditional neighborhood development with ground floor gathering spaces and low-rise townhomes or apartments, cannot be provided with the changes made to the floodplain mapping and regulations from 2008 onward. Portions of the Property are included in the Velocity Zone and Coastal A Zone and Limit of Wave Action which require significant elevation of enclosed space and severely limit enclosures and improvements that can occur at ground level. Rather than structural gathering spaces, the proposed site design incorporates public parks and enhanced design features to activate the street front and promote pedestrian interconnectivity. The Village district requires compliance with the Commercial Design Standards which also support enclosed space and commercial display at the ground level. The Development Agreement includes conceptual renderings of the enhanced design concepts for the structures and a pattern book to guide the future detailed architectural elevations and floor plans to address needed flexibility from the Commercial Design Standards to accompany future permit applications.

As demonstrated by Exhibit B Conceptual Plans, Exhibit C Public Easement Areas, and Renderings, and Exhibit D Pattern Book the enhanced design features and public parks/gathering spaces incorporated into the overall concept is consistent with the “pre-approved redevelopment option” and with the approval of the DA can submit a DO application to implement the proposed redevelopment consistent with LDC Section 34-693.

e. Requested Development

The proposed development seeks to maintain the previous residential and commercial uses to promote a mixed-use development with single family and multi-family residential, restaurant, and private beach club. Before submitting the application and during the review process, stakeholder input was gathered by the Applicant. Several one-on-one meetings were conducted in the initial stages of the conceptual site design and led to the establishment of the linear park through the Property. The Applicant held an interview with Beach Talk Radio to solicit broad based input from the Town residents prior to submittal. A second interview with Beach Talk Radio was held after the initial review of the application and coincided with an invitation only in person meeting for property owners within 500 feet of the Property. Copies of the conceptual renderings were provided to Beach Talk Radio and posted to their social media pages and website. Additionally, the applicant established a website specific to the project to distribute updated conceptual plans before and after the in-person meeting with surrounding residents. As a result

of these open forum meetings and submitted comments, the number of access points along Donora Boulevard was reduced, opportunities for the Lee County School District to utilize the valet pull off locations were created, the landscaping and hardscaping elements adjacent to the new sidewalk along Donora Boulevard were enhanced, public parking was eliminated from the park adjacent to Matanzas Pass, and private membership opportunities were added to the Beach Club.

The maximum development parameters of the property will be 141 residential units and 616,156.2 square feet of commercial uses to promote a beach club, single and multi-family residential, and a commercial restaurant.

i. Beach Club

The gulf side parcels are proposed to be redeveloped with an approximately 29,000 square foot private beach club providing private recreational amenities to the residents and guests of the residential units and a membership organization for members of the public meeting the specific requirements of the club. Within the beach club, there is a private restaurant providing services to the residents, guests and members only along with outdoor terraces and a pool. A minimum of 25% of the membership will be reserved for public access, providing an opportunity for residents of the Town to utilize the facilities. The structure is 3 stories (including ground level parking) and will not exceed the 40-foot height maximum above base flood as permitted by the Village District. Height exceptions as permitted by LDC Section 34-631 may be requested at the time of final design. To ensure pedestrian activity to and from the beach club does not impede traffic flow along Estero Boulevard, a private pedestrian walk over is proposed to connect the Beach Club with the multi-family residential units. Vehicular access to the beach club is provided via a single access point from Estero Boulevard to the ground level parking under the structure. An additional 75 parking spaces will be provided across Estero Boulevard within the mixed-use building to further support the memberships proposed for the beach club.

ii. Public Beach Access & View Corridors to the Gulf of Mexico

On either side of the beach club structure are 120-foot view corridors maintaining a permanent view of the Gulf of Mexico from Estero Boulevard. On the west side of the beach club structure, the view corridor coincides with a new public park that includes a 10-foot-wide access to the sandy beach. There is a sidewalk along Estero Boulevard that will be repaired and maintained. The Applicant has requested a deviation to increase the setback for the beach club to promote the planting of enhanced landscaping with shade trees to improve the pedestrian environment down Estero Boulevard. The programmatic development of the park has not been finalized. The applicant has included language in the Development Agreement to require 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 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 a public hearing regarding an ordinance for the redevelopment of real property formerly known as the Red Coconut RV Park, as follows:
Monday, November 18, 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.



Interested parties may appear and be heard. If any person should choose to appeal a decision made at any of this public hearing, such person would need a record of the proceedings, and for that purpose may need to ensure that a verbatim record of the proceedings is made, which record indicates the testimony and evidence upon which the appeal is to be based. Copies of the full ordinance text are available at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM, 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



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

1. **Request:**

Meeting Date: December 2, 2024

Approval of an Interlocal Agreement Between the Town of Fort Myers Beach, Florida, and Lee County Tax Collector for the collection of non-ad valorem assessments related to demolition costs of unsafe buildings

Why the action is necessary:

Approval of this interlocal agreement between the Town and Lee County Tax Collector is necessary to ensure the Town can recover any costs associated with demolition of unsafe structures, including but not limited to the costs of the review of the property owners' appeals, by placing special non-ad valorem assessments on the tax rolls of the affected property owners commencing with 2024 tax year.

What the action accomplishes:

This interlocal agreement establishes a contractual relationship between the Town and Lee County Tax Collector, as required under Section 197.3632, Florida Statutes, which would allow the Town to collect any demolition related costs by placing them on the tax rolls of the affected property owners as special non-ad valorem assessments.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Interlocal Agreement

4. **Submitter of Information:**

5. **Background:**

Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provide for interlocal agreements between local governments on matters of mutual interest. Both parties to this proposed Interlocal Agreement are public agencies within the meaning of Chapter 163, Florida Statutes.

On November 18, 2024, the Town adopted Resolution 2024-251, which provides for the collection of unpaid non-ad valorem assessments associated with demolition of unsafe structures (the "Assessments"), on the property owners' tax bills, to be paid at the same time as ad valorem taxes are paid as authorized and set forth in Chapter 197, Florida Statutes. The Town wishes to levy non-ad valorem assessments associated with demolition of such unsafe structures on the 2024 Lee County tax roll and thereafter. To do that, the Town must enter into a written agreement with the Tax Collector for the collection of non-ad valorem assessments and reimbursement of necessary administrative costs incurred in implementing the uniform method of collection, as provided in Chapter 197, Florida Statutes before January 10, 2025.

Attachments:

1. FMB ILA with Lee County Tax Collector 11-21-24 mr

Financial Impact:

Benefit to the Town in recovering costs incurred in demolishing unsafe structure and handling the appeals of property owners, whose properties have been deemed unsafe by the Town Building Official.

6. **Alternative Action**

7. **Management Recommendations:**

Approve this interlocal agreement.

8. **Recommended Approval:**

Amy Baker, Town Clerk

Amy Baker, Town Clerk

nancy stuparich, Town Attorney

Amy Baker, Town Clerk

Andy Hyatt, Town Manager

Created/Initiated - 11/21/2024

Approved - 11/21/2024

Approved - 11/21/2024

Approved - 11/22/2024

Final Approval - 11/22/2024

**UNIFORM COLLECTION AGREEMENT BETWEEN LEE COUNTY TAX
COLLECTOR AND THE TOWN OF FORT MYERS BEACH, FLORIDA**

THIS INTERLOCAL AGREEMENT is made and entered into this ____ day of _____, 2024, by and between the Town of Fort Myers Beach, Florida (the "Authority" or "Town"), whose address is 2731 Oak Street, Fort Myers Beach, Florida 33931, and the Office of the Lee County Tax Collector, by and through the Honorable R. Noelle Branning, Lee County Tax Collector, whose address is Lee County Tax Collector's Office, 2480 Thompson Street, Ft. Myers, Florida 33901 ("Tax Collector").

R E C I T A L S:

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provide for interlocal agreements between local governments on matters of mutual interest; and

WHEREAS, both parties to this Agreement are public agencies within the meaning of Chapter 163, Florida Statutes; and

WHEREAS, the Town adopted Resolution 2024-251, on November 18, 2024, which provides for the collection of unpaid non-ad valorem assessments associated with demolition of unsafe structures (the "Assessments"), on the property owners' tax bills, to be paid at the same time as ad valorem taxes are paid as authorized and set forth in Chapter 197, Florida Statutes; and

WHEREAS, it is the intention of the Town to levy non-ad valorem assessments associated with demolition of such unsafe structures on the 2024 Lee County tax roll and thereafter; and

WHEREAS, Chapter 197, Florida Statutes, requires the Town to enter into a written agreement with the Tax Collector for the collection of non-ad valorem assessments and reimbursement of necessary administrative costs incurred in implementing the uniform method of collection provided for in Chapter 197; and

WHEREAS, the uniform method of collection of non-ad valorem assessments provides for the use of tax certificates and tax deeds as a means for the collection and enforcement against any delinquencies; and

WHEREAS, the uniform method of collection of non-ad valorem assessments provides for more efficiency of collection by virtue of the assessment being collected using the official tax notice issued by the Tax Collector; and

WHEREAS, use of the official tax notice provided by the Tax Collector to property owners will eliminate confusion and promote local government accountability; and

WHEREAS, the sole and exclusive responsibility to assess, to impose and to levy assessments and determine the legality of the non-ad valorem assessments remains in the sole discretion of the Town and no other person or entity or officer; and

WHEREAS, the purpose of this Agreement under Rule 12D-18, Florida Administrative Code, is to establish the terms and conditions under which the Tax Collector shall collect and enforce the collection of these Assessments, levied by Authority to include compensation by Authority to the Tax Collector for actual costs of collection pursuant to Section 197.3632(8)(c), Florida Statutes; payment by Authority of any costs involved in separate mailings because of non-merger of any non-ad valorem special assessment roll as certified by the Authority, or its designee, pursuant to Section 197.3632(7), Florida Statutes, and reimbursement by Authority for necessary administrative costs, including, but not limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming which attend all of the collection and enforcement duties imposed upon the Tax Collector by the uniform methodology, as provided in Section 197.3632(2), Florida Statutes.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Town and the Tax Collector agree as follows:

1. The Recitals set forth above are incorporated into this Agreement as if fully set forth herein.
2. The Authority shall meet all the requirements of Florida Statutes 197.3631 and 197.3632 and Florida Administrative Code (“FAC”) Rule 12D-18 for the implementation of the Authority's non-ad valorem assessment billing.
3. Upon the performance by the Authority of its requirements in compliance with the above statutes and this Agreement, the Tax Collector agrees to implement the Authority's non-ad valorem Assessments’ billing and collection.
4. The Authority further agrees that it shall provide to the Tax Collector compensation for the actual cost of collecting these non-ad valorem Assessments as provided in Florida Statutes (F.S. Section 197.3632(8)(c)). Since the actual costs of collection cannot be precisely determined, the parties agree that one **percent (1%) of total collections** will be considered the costs.
5. This Agreement shall be in effect for the tax year 2024 and subsequent years thereafter unless canceled by either the Authority or the Tax Collector by giving notice in writing to the other by January 10th of a tax year.
6. This Agreement may be modified by both parties in writing provided such modifications are agreed upon prior to any notice of termination.
7. This Agreement may be changed, modified, or amended in writing as necessary to conform with any new statutory requirements when and if enacted into law.

8. Subject to the provisions and limitations of Section 768.28, Florida Statutes, the Authority shall indemnify, defend, and hold harmless the Tax Collector, its agents, servants, and employees from and against any and all claims, liability, losses, or causes of action which may arise from any misconduct, improper action, negligent act, or omission of the Authority, its servants, or employees in the performance of services under this Agreement. The Authority acknowledges that the Tax Collector is entering this Agreement without any determination that the Authority is legally authorized or qualified to assess these non-ad valorem Assessments pursuant to Section 197.3632, Florida Statutes, determine the legality of the assessment, or determine the constitutionality of any lien resulting from non-payment of an assessment.

9. All notices or other communications hereunder shall be in writing and shall be deemed duly given if delivered in person or sent by certified mail return receipt requested and addressed as follows:

If to the Authority:

Town of Fort Myers Beach
Attn: Amy Baker, Town Clerk
2731 Oak Street
Fort Myers Beach, FL 33931

With a copy to XXX for "Authority":

Vose Law Firm, LLP
Attn: Nancy Stuparich
324 W. Morse Blvd.
Winter Park, FL 32789

If to the Tax Collector:

Honorable R. Noelle Branning
Lee County Tax Collector
2480 Thompson Street
Ft. Myers, Florida 33901

With a "copy to" for Tax Collector:

Attn: Orfelia M. Mayor, Esq.
Lee County Tax Collector
2480 Thompson Street
Ft. Myers, Florida 33901

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective duly authorized officers or representatives.

ATTEST:

**TOWN OF FORT MYERS BEACH,
FLORIDA**

Amy Baker, Town Clerk

Dan Allers, Town Mayor

Date: _____

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

Vose Law Firm, Town Attorney

ATTEST:

LEE COUNTY TAX COLLECTOR

Print Name: _____
Print Title: _____

Noelle Branning, Tax Collector

Date: _____

APPROVED AS TO FORM FOR THE RELIANCE OF THE TAX COLLECTOR:

By: _____
Print Name: Orfelia M. Mayor, Esq.
Print Title: Attorney for Tax Collector

ATTACHMENT “A”

TOWN OF FORT MYERS BEACH, FLORIDA

RESOLUTION NO. 2024-251

(Adopted 11/18/2024)

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA ADOPTING THE UNIFORM METHOD FOR THE LEVY, COLLECTION AND ENFORCEMENT OF NON-AD VALOREM ASSESSMENTS PURSUANT TO SECTION 197.3632, FLORIDA STATUTES FOR DEMOLITION OF UNSAFE STRUCTURES DETERMINED BY THE BUILDING OFFICIAL AND REMOVAL OF RESULTING DEBRIS, ANY TITLE SEARCH FEES, ANY AND ALL COSTS ASSOCIATED WITH APPELLATE REVIEW OF A PROPERTY OWNER’S APPEAL OF THE TOWN’S BUILDING OFFICIAL’S DETERMINATION DEEMING A STRUCTURE UNSAFE UNDER CHAPTER 34 OF THE TOWN’S LAND DEVELOPMENT CODE, AS AMENDED FROM TIME TO TIME, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2024 AND SUBSEQUENT FISCAL YEARS, WITHIN THE TERRITORIAL BOUNDARIES OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town Council (the “Council”) of Fort Myers Beach, Florida (the “Town”) is contemplating the imposition of special assessments for the provision of the costs of providing demolition of unsafe structures determined by the Town Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner’s appeal of the Town’s Building Official’s determination deeming a structure unsafe under Chapter 34 of the Town’s Land Development Code, as amended from time to time, for the fiscal year beginning on October 1, 2024 and subsequent fiscal years; and

WHEREAS, the Town Council intends to use the uniform method for collecting non-ad valorem special assessments for the cost of demolition of unsafe structures determined by the Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner’s appeal of the Town’s Building Official’s determination deeming a structure unsafe under Chapter 34 of the Town’s Land Development Code, as amended from time to time, because this method will allow such special assessments to be

collected annually commencing on October 1, 2024, in the same manner as provided for ad valorem taxes; and

WHEREAS, the Town Council duly advertised and held a public hearing prior to the adoption of this Resolution, proof of publication of such hearing being attached hereto as Exhibit “A”; 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:

Section 1. Commencing with the Fiscal Year beginning on October 1, 2024, and with the tax statement mailed for such Fiscal Year, the Town intends to use the uniform method of collecting non-ad valorem assessments authorized in Section 197.3632, Florida Statutes, as amended, for collecting non-ad valorem assessments for the cost of demolition of unsafe structures determined by the Building Official and removal of resulting debris, any title search fees, any and all costs associated with appellate review of a property owner’s appeal of the Town’s Building Official’s determination deeming a structure unsafe under Chapter 34 of the Town’s Land Development Code, as amended from time to time. Such non-ad valorem assessments shall be levied within the territorial boundaries of the Town, as further described in the Town Charter.

Section 2. Upon adoption, the Town Clerk is hereby directed to send a copy of this Resolution by United States mail to the Florida Department of Revenue, the Lee County Tax Collector, and the Lee County Property Appraiser by January 10, 2025.

Section 3. This Resolution shall be effective immediately upon adoption.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

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

ADOPTED this ____ day of _____ 2024, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

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

1. **Request:**

Meeting Date: December 2, 2024

FMB Women's Club is requesting approval of a special event permit to hold their Annual Christmas Tree Festival on Friday, December 13, 2024 and Saturday, December 14, 2024 from 1:00 p.m - 8:00 p.m. at Bay Oaks Recreational Center, to serve cocktails, have outdoor music and have a food truck on site.

Why the action is necessary:

What the action accomplishes:

Approves the event

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Frankie Kropacek, Operations &
Compliance Director

5. **Background:**

Description of Event: Friday December 13, 2024 and Saturday December 14, 2024
Friday and Saturday Indoor Christmas Tree Silent Auction (Auction to be held in Bay Oaks Gymnasium) ☐ Friday evening indoor Cocktail Party with music and 1 food truck onsite near the Bay Oaks Gymnasium entrance ☐ Saturday indoor Christmas Market and Bake Sale (both to be held in Gymnasium) ☐ Friday and Saturday Toy Drop benefiting the Beach Kids Foundation ☐ Saturday evening indoor Chili Cookoff and continued Bake Sale (Chili competitors will be in the Gymnasium ☐ Cocktail Bar will be available Friday night and Saturday, funds will be generated via tips. ☐ Free parking will be available at Bay Oaks on School Street.

Attachments:

1. 243069-2024 CTF Permit

Financial Impact:

6. **Alternative Action**

Do not approve the permit.

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/22/2024
Approved - 11/22/2024
Approved - 11/22/2024
Final Approval - 11/22/2024



Town of Fort Myers Beach

Special Event Application Checklist

2525 Estero Boulevard, Fort Myers Beach, Florida 33931

Tel: (239) 765-0202 Email: Specialevents@fmbgov.com

MZA

A **completed** application is to be turned in 45 days **prior** to the event or a \$5.00 per day cost will be added to the permit cost. You need to submit application to FMB Fire and LSCO.

MZA

All necessary department approvals – an application is not considered completed until all approvals have been turned in to Town Hall.

MZA

If Town Council action is required the **completed** application must be turned in 60 days prior to the event in order to get put on the Council agenda to be brought forth to Council, also any application turned in after the 60 days a 10% additional charge to the permit will be added.

MZA

Detailed description of entire event including set up and breakdown

MZA

Letters of permission if using someone else's property for event.

MZA

Site plan – marked off with placement of objects (chairs, tables, tents, etc.)

MZA

Parking Plan – if applicable

MZA

Liability Insurance (\$1 million each occurrence and \$2 million general aggregate) naming the Town of Fort Myers Beach as certificate holder

MZA

A copy of the 500 foot notification letter for any amplification along with the mailing list

You must initial & sign you have read and understand all requirements above.

Megan Zelenak Allers



Town of Fort Myers Beach

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

Name of event Fort Myers Beach Woman's Club Annual Christmas Tree Festival

Attach separate sheet of paper with detailed description of event

Date(s) and times of event Friday, Dec. 13th 4:30-8 & Saturday, Dec. 14th 1:00pm-8:30pm

Address of event: 2731 Oak Streer, Fort Myers Beach, Bay Oak Recreational Center

Expected # of participants/attendees 150-200 over 2 days

Sponsoring Organization Fort Myers Beach Woman's Club

Organization address P.O Box 2786 Fort Myers Beach, FL 33932

Contact Person/Phone# Megan Zelenak Allers

E-mail _zelenak@hotmail.com

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

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

How many Spaces? How many hours

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

Letters of Permission to use Property ☐ Y ☐

Letters of Permission to use Parking ☐ Y ☐ Parking Plan ☐ Y ☐

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

Requesting Water ☐ Y ☒ N ☐ Electric ☒ Y ☐ N ☐

Requires Council Approval:

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

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

Applicant Signature Megan Zelenak Allers

Printed Name Megan Zelenak Allers

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

Fort Myers Beach Womans Club Christmas Tree Festival 2024

Event will be held at 2731 Oak Street, Fort Myers Beach

Description of Event: Friday December 13, 2024 and Saturday December 14, 2024

- Friday and Saturday Indoor Christmas Tree Silent Auction (Auction to be held in Bay Oaks Gymnasium)
- Friday evening indoor Cocktail Party with music and 1 food truck onsite near the Bay Oaks Gymnasium entrance
- Saturday indoor Christmas Market and Bake Sale (both to be held in Gymnasium)
- Friday and Saturday Toy Drop benefiting the Beach Kids Foundation
- Saturday evening indoor Chili Cookoff and continued Bake Sale (Chili competitors will be in the Gymnasium)
- Cocktail Bar will be available Friday night and Saturday, funds will be generated via tips.
- Free parking will be available at Bay Oaks on School Street.

Set Up of Event – Tuesday December 7, 2024 through Thursday December 9 2024

- Tree Setup Tuesday 9am -1pm and 4p-7p
- Tree Setup Wednesday 9am-1pm and 4p-7p
- Event staging throughout the day on Thursday.
- Volunteers will remain on hand each day.

Set Up of Event – Friday December 13, 2024

- Event staging Friday during the day
- Food Truck onsite late Friday afternoon for event preparation
- Amplified Music setup late Friday afternoon for event preparation
- Event begins at 4:30 and goes until 8:30pm

Set Up of Event – Saturday December 14, 2024

- Individual 10x10 market spaces set up by vendors for Christmas Market Saturday morning for 1-6:30 event time.
- Chili Cookoff participants will set up late Saturday afternoon for a 4:30 start time. Chili Cookoff will take place from 4:30-8pm.

Breakdown of event – Sunday December 15, 2024

- All outdoor items – Décor and outdoor lighting will be removed Sunday morning.
- Remaining Trees will be picked up on Sunday.
- Volunteers will remain on hand until all clean up is completed.



(239) 765-0202

2731 Oak St, Fort Myers Beach, Florida 33931

www.fortmyersbeachfl.gov

November 7, 2024

To whom this may concern,

This letter serves as permission that the Town of Fort Myers Beach approves the Women's Club to utilize Bay Oaks Recreation Center on December 13 and December 14, 2024 for their annual tree festival.

Sincerely,

Jeff Hauge

Community Services Director

Town of Fort Myers Beach

2731 Oak Street

Fort Myers Beach, FL. 33931

Phone: (239) 765-0202



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/06/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Diaz Insurance Agency, INC 100 Island Cottage Way #200F St. Augustine FL 32080		CONTACT NAME: ADMIN USER PHONE (A/C, No, Ext): (239) 765-6571 FAX (A/C, No): (239) 765-5214 E-MAIL ADDRESS: diazinsurance@comcast.net	
INSURED Fort Myers Beach Womans Club 1 175 Sterling Ave Ft Myers Beach FL 33931		INSURER(S) AFFORDING COVERAGE INSURER A: United States Liability Insurance Co Inc INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 25895	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	x	x	NBP2558206	11/04/2024	11/04/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			N / A			PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Commercial Property			NBP2558206	11/04/2024	11/04/2025	BUSINESS INCOME \$50,000 PERSONAL PROPEF \$5,000 DEDUCT: \$1,000 EXCL wind/flood

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional Insureds must be venue managers or municipalities and are added with respect to our insured's operations only. Waiver of Subrogation (WOS) and Primary & Non-Contributory (PNC) wording applies only when coverage is purchased by the insured, required by written contract and as indicated below. This coverage is with respect to the Christmas Party to be held on 12/10/2024 - 12/15/2024 with 1000 attendees at Christmas Tree Festival 2755 Estero Blvd Fort Myers Beach, FL 33931. Additional Insureds include: Christmas Tree Festival 2755 Estero Blvd Fort Myers Beach, FL 33931; Town of Fort Myers Beach (WOS selected)

CERTIFICATE HOLDER**CANCELLATION**

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

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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KIDS
AREA (SAT.)

PAVILION

Back porch

RAFFLE WALL

VIP ROOM

VENTUR MARKET
(SAT. AM. & PM.)

CHILI TASTING
(SAT. P.M.)

ACCESS ROAD

FRONT ENTRANCE

X = TREES

Applicant to Complete:

Company managing trash removal: Standard Trash Collection _____

No. of dumpsters: N/A _____ Type of dumpsters: _____

Who is responsible for clean-up and payment: FMBWC _____

City right-of-way Parking Use: N/A _____ Number of spaces: _____

To be completed by Town Hall employees:

FMB Public Works:

Public Works remarks: _____

Approval: _____ Date: _____

FMB Environment Science: Tel (239)765-0202

FMB Environmental Sciences remarks: _____

Approval: _____ Date: _____

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

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

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

FOR MAJOR EVENTS ONLY CONTACT

Kelly Cramer

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

Email: kelly.cramer@floridadep.gov

Florida DEP remarks: N/A

Check list: Application _____ Site Plan _____ Description _____

Florida DEP approval: _____ Date: _____

Turtle Time Inc.: Eve Haverfield

Tel (239)481-5566 eve@turtletime.org

Turtle Season is May 1 through October 31

Turtle Time remarks: N/A

Turtle Time approval: _____ Date: _____

100 Voorhis Street • Fort Myers Beach, Florida 33931

Fire Guards: (how many?) N/A

Fee:

Flammable Vegetation: N/A

First Aid Equipment: Onsite

Fire Extinguishing Equipment: Onsite

Special Arrangements:

Approval Signature

Date

LEE COUNTY SHERIFF'S DEPT

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

15650 Pine Ridge Road, Fort Myers, FL 33908

Parking: Parking at Bay Oaks

Deputies (how many?) N/A

Traffic Control: N/A

Fees:

Special Arrangements:

Approval Signature

Date _____



October 28, 2024

500 Foot Notification of Event – December 13 & 14, 2024

To Neighboring Properties of 273 Oak Street., Fort Myers Beach, FL:

Please let this notice serve that we are holding our 6th Annual Christmas Tree Festival on Friday, December 8th from the hours of 4:30 p.m. – 8:30 p.m. and Saturday, December 9th from the hours of 1:00 p.m. – 8:00 p.m. at Bay Oaks Recreational Center, including the exterior pathway at the address stated above. This event will have amplified music, and will additionally be announcing raffle winners. The event will be held inside the Bay Oaks Gymnasium. This will be the 7th year of this event, and includes fundraising opportunities for numerous area nonprofit organizations (last year sixteen different organizations participated).

We will have food trucks (Friday Night), bar, tables and chairs. If you have any questions or concerns, please contact the Town Manager at 2525 Estero Blvd. Fort Myers Beach, FL 33931 by November 15, 2024. Parking will be available at Bay Oaks Campus on School Street.

Megan Allers
zelenak@hotmail.com
770.329.5435



STRAP	Folio	Owner Name	Site Address	Last Trans. Date	Last Trans. Amt	Just Value	Taxable Value
19-46-24-W3-0020D.0010	10227552	TOWN OF FORT MYERS BEACH	2731 OAK ST, FORT MYERS BEACH	1-1978	\$ 135,000	\$ 19,591,962	\$ 0

SK FMB GROUP LLC
17761 SAN CARLOS BLVD
FORT MYERS BEACH FL 33931

PRARAZ BUILDERS LLC
4110 CENTER POINTE DR #210
FORT MYERS FL 33916

LEE COUNTY
PO BOX 398
FORT MYERS FL 33902

SANIBEL CAPTIVA COMMUNITY BANK
9311 COLLEGE PKWY
FORT MYERS FL 33919

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

GULF BEACH LLC
100 GULF BEACH RD
FORT MYERS BEACH FL 33931

DJ AREND FARMS INC
15759 RD 138
PAULDING OH 45879

REEF OF FMB LLC
JARET BISHOP
2411 US RT 22 SW
WASHINGTON COURT HOUSE OH 43160

NECULA MONICA C
7335 HERITAGE PALMS ESTATES DR
FORT MYERS FL 33966

PG ASSOCIATES LLC
20130 LAKEVIEW CENTER PLZ #140
ASHBURN VA 20147

2633 ESTERO LLC
3269 BRIGHTON PLACE DR
LEXINGTON KY 40509

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

FOLLIARD PATRICK M & AMY
430 S RIVER RD
NAPERVILLE IL 60540

COTTAGES AT MYERSIDE LLC
145 SCHOOL ST
FORT MYERS BEACH FL 33931

COTTAGES AT MYERSIDE LLC
145 SCHOOL ST
FORT MYERS BEACH FL 33931

MYERSIDE LLC
145 SCHOOL ST
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

LEE COUNTY DIST SCHOOL BOARD
2855 COLONIAL BLVD
FORT MYERS FL 33966

BOARD OF TRUSTEES OF UNITED ME
450 MARTIN LUTHER KING JR AVE
LAKELAND FL 33815

BOARD OF TRUSTEES OF UNITED ME
450 MARTIN LUTHER KING JR AVE
LAKELAND FL 33815

FORT MYERS BEACH PUBLIC LIBRAR
2755 ESTERO BLVD
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

NUNAT NORTH LLC
44354 APACHE CIR
ASHBURN VA 20147

MCDONALD ALBERT LAWRENCE
6736 TOWNE LANE RD
MC LEAN VA 22101

BUCHHOLZ ELEANORE TR
13300 S CLEVELAND AVE 304
FORT MYERS FL 33907

SCHOOLER IMOGENE B TR
215 ANCHORAGE ST
FORT MYERS BEACH FL 33931

GILLAN JOSEPH A TR
150 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

JENSEN DAVID J & KRISTI E
PO BOX 91
BUCKHORN ON K0L 1J0
CANADA

DEER ANN E TR
636 NANAK CT
NAPERVILLE IL 60565

PRARAZ BUILDERS LLC
4110 CENTER POINTE DR #210
FORT MYERS FL 33916

WOODARD CLAY E & DEBRA A TR
6199 N LARSON RD
FOUNTAIN MI 49410

KORMOS GEORGE N & JEAN M
412 JEFFERSON CT
FORT MYERS BEACH FL 33931

BEAULIEU BETSY A
155 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

HOUSTON CAROLYN R
1104 KIMBERLY RD #112
BETTENDORF IA 52722

HANYO DONALD F & LORETTA
715 BUMBY ST E
LEHIGH ACRES FL 33974

TALBERT LOIS E L/E
141 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

LUCAS SYLVIA J L/E
145 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

GREFF KATHLEEN ANN & ROBERT
125 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

PRARAZ BUILDERS LLC
4110 CENTER POINTE DR #210
FORT MYERS FL 33916

COCHRAN STEVE A TR
39 W 300 BOLCUM RD
ST CHARLES IL 60175

QUINTON TIMOTHY M TR
2226 SR 2153
MORGANFIELD KY 42437

KIDD ANTON M & KIMBERLY A
1629 VICTORIA POINTE LN
WESTON FL 33327

ABDE LLC
7269 HENDRY CREEK DR
FORT MYERS FL 33908

RODWELL DOROTHY L
12770 WATERFORD CIR APT 138
FORT MYERS FL 33919

PASCOTTO LEA M
115 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

US BANK TRUST NA TR
FAY SERVICING LLC
PO BOX 815548
DALLAS TX 75381

TROPICAL SHORES 126 LLC
15250 SWEETWATER CT
FORT MYERS FL 33912

RASHID ZAHIR A
3900 MERIDIAN CIR
VERONA WI 53593

GILLAN ALLAN F
156 TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

FORT MYERS BEACH FIRE CONTROL
PO BOX 2880
FORT MYERS BEACH FL 33932

FORT MYERS BEACH FIRE CONTROL
PO BOX 2880
FORT MYERS BEACH FL 33932

TRIFECTA IMPLICATIONS LLC TR
ROBERT H BURLESON
507 W SUMNER ST #3
KISSIMMEE FL 34741

TRIFECTA IMPLICATIONS LLC TR
ROBERT H BURLESON
507 W SUMNER ST #3
KISSIMMEE FL 34741

MCDONALD ALBERT LAWRENCE
120 TROPICAL SHORE WAY
FORT MYERS BEACH FL 33931

PAPPAS GEORGE TR
28461 US 19 N
CLEARWATER FL 33761

UNIQUE DREAMS UNLIMITED LLC
5550 PROGRESS RD
INDIANAPOLIS IN 46241

PAPPAS GEORGE TR
28461 US 19 N
CLEARWATER FL 33761

TRIFECTA IMPLICATIONS LLC TR
ROBERT H BURLESON
507 W SUMNER ST #3
KISSIMMEE FL 34741

TRIFECTA IMPLICATIONS LLC TR
ROBERT H BURLESON
507 W SUMNER ST #3
KISSIMMEE FL 34741

TROPICAL SHORES HOMEOWNERS ASS
TROPICAL SHORES WAY
FORT MYERS BEACH FL 33931

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

TOWN OF FORT MYERS BEACH
2525 ESTERO BLVD
FORT MYERS BEACH FL 33931

AIZHU REAL ESTATE AND ART LLC
3312 AUGUSTA LN
ONALASKA WI 54650

AIZHU REAL ESTATE AND ART LLC
3312 AUGUSTA LN
ONALASKA WI 54650

JAMIESON JAMES J
13299 OAK HILL LOOP
FORT MYERS FL 33912

ESTERO BEACH CLUB CONDO ASSN
15751 SAN CAROLOS BLVD #8
FORT MYERS FL 33908

ESTERO BEACH CLUB EAST CONDO
ALLIANT PROPERTY MANAGEMENT
13831 VECTOR AVE
FORT MYERS FL 33907

ISLAND HOUSE BEACH CLUB ASSN
2560 ESTERO BLVD OFC
FORT MYERS BEACH FL 33931

PELICAN WATCH CONDO ASSOC
BOBACK COMMERCIAL GROUP
STE 203
10491 SIX MILE CYPRESS PKWY
FORT MYERS FL 33966

TROPICAL SHORES ASSN
2550 ESTERO BLVD
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO PKWY
FORT MYERS BEACH FL 33931

TOWN OF FORT MYERS BEACH
2525 ESTERO PKWY
FORT MYERS BEACH FL 33931

LEE COUNTY DIST SCHOOL BOARD
2855 COLONIAL BLVD
FORT MYERS FL 33966

LEE COUNTY DIST SCHOOL BOARD
2855 COLONIAL BLVD
FORT MYERS FL 33966

MAXWELL EMILY JANE
APT 6
1250 MYERLEE COUNTRY CLUB BLVD
FORT MYERS FL 33919

PITTENGER PHILIP J +
5081 OUTERVIEW DR
SPRINGFIELD OH 45502

SCHWAB STEPHEN & HOLLY
111 WATEREDGE LN
FREDERICKSBURG VA 22406

TURNER KENNETH A & SANDRA S
2709B DAY ISLAND BLVD W
UNIVERSITY PLACE WA 98466

BUBNIAK WILLIAM A
24 MEADOW LARK DR
COHOES NY 12047

MENA FAMILY TRUST +
4400 SW 133RD AVE
MIAMI FL 33175

JOHNSON MICHAEL A
71 SUNSET LN
SPRINGVILLE NY 14141

PRAULT VINCENT W &
10 THOMAS DR
NORMAL IL 61761

KONOPKA MARK A &
840 S MEDINA LINE RD
WADSWORTH OH 44281

2650 ESTERO 25 LLC
S73 W17240 LAKE DR
MUSKEGO WI 53150

HART KATHLEEN & ROBERT
705 BEACH CREEK
WILDWOOD NJ 08260

FLAHERTY MARTIN & DONNA
8953 S 87TH AVE
HICKORY HILLS IL 60457

VERRUSO CARMELO L TR
2650 ESTERO BLVD #33
FORT MYERS BEACH FL 33931

MORRIS DAVID A
4 BLUEBERRY PL
CHESHIRE CT 06410

MURPHY JOHN THOMAS & BIRDIE
49 CHADWIN DR
LINDSAY ON K9V 0E8
CANADA

FOSTER EDWINA G &
28 OCEAN AVE
PATCHOGUE NY 11772

BARBIERI MARIQUITA
7226 CLAYTON RD
SAINT LOUIS MO 63117

LAUCHNER JOEL K & WANDREA R
2650 ESTERO BLVD #43
FORT MYERS BEACH FL 33931

HOLLOWAY MICHELLE & JAMES
600 SE BRENTWOOD DR
WAUKEE IA 50263

EBCE 45 LLC
S73W17240 LAKE DR
MUSKEGO WI 53150

TODD JOSEPH K & SUSAN D
2650 ESTERO BLVD APT 51
FORT MYERS BEACH FL 33931

SUN SAND & SURF PROPERTIES LLC
601 E OGDEN AVE #510
MILWAUKEE WI 53202

STEPANIUK MARY C
2650 ESTERO BLVD #53
FORT MYERS BEACH FL 33931

MORAN PATRIC J & BEVERLY A
620 NORTH PARK BLVD
GLEN ELLYN IL 60137

WHITE JOHNIE C II &
376 ATWOOD DR
LEXINGTON KY 40515

TROPICAL SHORES LLC
5302 BROOKSIDE LN
WASHINGTON MI 48094

MAROTTA JAMES & LINDA
83 VAN DYKE RD
HOPEWELL NJ 08525

TROPICAL SHORES LLC
5302 BROOKSIDE LN
WASHINGTON MI 48094

TROPICAL SHORES LLC
5302 BROOKSIDE LN
WASHINGTON MI 48094





Fort Myers Beach Fire Control District

Life Safety Branch

100 Voorhis Street · Fort Myers Beach, Florida 33931

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

Special Events Application and Guidebook

Event Type:

☒ Small Outdoor/Indoor Event	☐ Large Outdoor/Indoor Event	☐ Firework Display	N/A
Date of Application: 10.28.24		Date of Event: 12.13.24 and 12.14.24	
Location: 2731 Oak Street, Fort Myers Beach FL 33931 - Bay Oaks Gymnasium			
Event Start Date/Time: 12.13.24 @ 4:30pm and 12.14.24 @ 1pm		Event End Date/Time: 12.13.24 @ 8pm and 12.14.24 @ 8:30pm	
Setup Date: 12.13.24	Setup Time: 12 pm	Inspection Time:	
Event Sponsor: Fort Myers Beach Womans Club			
Sponsor Contact: Megan Zelenak Allers		Sponsor Phone #: 770.329.5435	Sponsor Email: zelenak@hotmail.com
Anticipated Number of Attendees: 150-200		Anticipated Number of Event Workers: 10-15	
Will there be carnival or mechanical rides: No		Number of Stages: N/A	
Total Number of Vendors: 20 max on Saturday		Total Number of Hot Food Vendors: 1 Food Truck Friday Night	
Number of Tents larger than 20 x 20: N/A		Number of 10 x 10 Tents: N/A	

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

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

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

Applications shall include the following:

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

Megan Zelenak Allers	<i>Megan Zelenak Allers</i>
Submitting Party Name	Submitting Party Name (Sign)
(Print) Date: 10.28.24	

OUTDOOR FESTIVAL and SPECIAL EVENT GUIDEBOOK

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

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

The Event Sponsor shall:

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

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

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

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

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

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

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

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

Access through the event shall include the following:

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

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

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

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

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

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

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

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

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

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

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

TENTS, CANOPIES and TEMPORARY MEMBRANE STRUCTURES

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

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

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

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

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

1. Name of event, participants, and projected number of attendees.
2. Access and egress movement, including crowd density problems.
3. Medical emergency mitigation plan.
4. Fire hazards.
5. Permanent and temporary structural systems.
6. Severe weather mitigation plan.
7. Civil or other disturbances mitigation plan.
8. Mitigation plan for a hazardous material incident within or near the facility.
9. Relationships among facility management, event participants, emergency response agencies, and others that have a role in the events taking place in the facility.
- 10.

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

TENT INSPECTION CHECKLIST

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

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

HOT FOOD VENDOR REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

FLOAT INSPECTION CHECKLIST

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

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

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

PYROTECHNICS PERMIT APPLICATION

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

Date of Application: _____

Sponsoring Organization: _____

Phone/Emergency Contact Number: _____

Applicant/Company Name: _____

Phone/Emergency Contact Number: _____

Name and Address of technician: _____

Name(s) of assistants: _____

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

Date, Time and expected length of show: _____

Location of Display: _____

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

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

QTY	Size	Type	# of burst	Description of Display

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

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

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

ORDINANCE NO. 20-17

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

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

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

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

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

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

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

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

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

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

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

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

Chapter 22 - Special Events

Sec. 22-1. - Definitions.

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

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

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

Sec. 22-2. - Permit required.

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

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

The following do not require a special event permit:

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

Sec. 22-4. - Fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.

Sec. 22-78. - Recurring special events.

To qualify as a recurring event, the event must be the same type of event and must be held in the same location. Examples of a recurring event include, but are not limited to, farmers' markets, "sunset celebrations," and music or art themed events. Recurring special events are subject to the following requirements:

- (1) Each event must be held at the same location at the same time of day.
- (2) All dates for the recurring event must be listed on the original application.
- (3) Each individual event must be of the same genre with similar anticipated attendance.
- (4) A recurring special event may not occur more often than weekly over a period of one year based upon a single application.

Sec. 22-89. - Application requirements.

- (a) Any person or entity seeking issuance of a special event permit must file a written application with the town manager on forms provided by the town.
- (b) If any town council actions are required in connection with a planned special event, the application for the permit must be filed at least 60 days prior to the date of the planned event.

(c) Applications for special event permits that do not require town council action must be filed at least 15 days prior to date of the planned event.

(d) Incomplete applications will not be processed for approval.

(e) Applications received less than the specified days before the date of the planned event, may be accepted at the discretion of the town manager. If the late application is accepted, the town manager has the discretion to impose additional permit fees, as per the Town of Fort Myers Beach Fee Schedule, to facilitate timely review and approval.

(f) A complete permit application must include, but may not be limited to, the following:

(1) The name of the special event and its purpose in general terms.

(2) The name(s) of the person(s) or organization(s) sponsoring the special event, together with the addresses and telephone numbers of all such persons or organizations.

(3) The proposed date or dates of the special event.

(4) The expected number of persons who will attend the event.

a. Events with an anticipated attendance exceeding 500 people requires approval by the Town Council.

(5) The specific location(s) within the town where the special event is to be held. The applicant must submit a general site plan that identifies the area(s) of the property used for the event activities, any and all tents, canopies, recreational vehicles, or accessory structures that are to be utilized in connection with the special event activity. A parking plan must be included as part of the special event permit application. The location of any parking and accessory structures may not obstruct traffic or violate any applicable town, county or state laws.

(6) In instances where a proposed special event will be held within 500 feet of residential property and will include any amplified sound, the applicant shall provide notice to

such owners and advise them of the nature of the event and the dates and times when the event will be held. The 500 feet shall be measured from the perimeter of the site where the event will take place and for condominium properties, a single written notification to the condominium association will be sufficient. The notification shall advise the owner of their right to submit a letter of objection to the town manager, and shall include the date by which any such letter of objection must be submitted.

(7) Whether any street closings are requested and, if so, which streets and the times when they will be closed.

a. A request to close any streets requires approval by the Town Council.

(8) Whether any alcoholic beverages will be sold or served. If alcoholic beverages will be sold the applicant must obtain all necessary permits as described in section 22-67.

a. A request to waive the Town's open container regulations requires approval by the Town Council.

b. Any event four days or longer and where alcohol will be served requires approval by the Town Council.

(9) If any entertainment will be included, details as to the type of entertainment, times and location must be provided.

(10) Whether utility services such as electrical power or water will be required.

(11) ~~Whether the applicant is requesting have a banner hung in association with the event, see section 22-15. A proof of the proposed banner is required~~ All proposed signage shall be in compliance with Chapter 30 Signs of the Land Development Code. The applicant shall provide application for signs or shall propose signs exempt from the ordinance per LDC Sec 30-6.

(12) Proof indicating approval of the event from all applicable outside state and local agencies.

(13) In instances when the sound emanating from a proposed special event is anticipated to exceed the limits

established in ~~Code~~ Section 14-23 of the Fort Myers Beach Code of Ordinances, the applicant must provide proof of application for a waiver for relief from the maximum allowable noise levels in accordance with section 14-25 of the Fort Myers Beach Code of Ordinances. As part of the waiver application process, the applicant is required to provide notice to all property owners within 500 feet of the location of the proposed special event, advising them of the nature of the event and the dates and times when the event will be held. The 500 feet is measured from the perimeter of the site where the special event will take place; and for condominium properties, a single written notification to the condominium association is sufficient.

a. A request to waive the noise regulations requires approval by the Town Council.

~~(14) Proof of application for approval of any temporary use permits required in conjunction with the special event, see sections 34-3041—34-3051 of the Fort Myers Beach Land Development Code.~~

~~(154) An affidavit, signed by the applicant, that all the information provided in the application is a complete and accurate description of the proposed event and that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(16) An affidavit, signed by the applicant, that permission has been obtained from the owner of any land upon which the special event is to be held, unless the event is to be held exclusively on public property.~~

~~(175) The town manager has the authority to require any reasonable additional information from the applicant that the town manager deems necessary.~~

Sec. 22-~~910~~. - Review of application.

Upon receipt of an application that contains all of the items listed in section 22-~~89~~ and required application fees, the town manager will forward copies of the application to all affected town departments for their review.

(1) If the special event permit can be approved by the town manager administratively, the town manager will grant or deny an application for a special event permit within ten days of receipt of a complete application.

(2) Special event permits requiring town council action will be scheduled for consideration at the next regularly scheduled town council meeting.

(3) The town manager and town council have the right to place conditions on a special event permit to mitigate any anticipated adverse effects on nearby properties.

Sec. 22-~~10~~11. - Grounds for denial.

(a) The town manager or town council may deny an application for a special event permit if the applicant, or the person on whose behalf the application for a permit was made, has on a prior occasion made a material misrepresentation regarding the nature or scope of an event or activity previously permitted by a special event permit, or, who has previously violated the terms of a prior special event permit, issued to or on behalf of the applicant. An application for a special event permit may also be denied for any of the following reasons:

(1) The application for a special event permit (including any required attachments and submissions) is not fully completed and properly executed;

(2) The applicant has not tendered the required application fee, if any, with the application or has not tendered any other required fees, indemnification agreement, insurance certificate, or security deposit, if any, within the times prescribed by the town manager;

(3) The application contains a material falsehood or misrepresentation;

(4) The applicant or the person on whose behalf the application for the special event permit has been made has on prior occasions damaged town property and has not paid in full for such damage, or has other outstanding and unpaid debts to the town;

(5) A fully executed prior application for a special event permit for the same time and place has been received, and a

special event permit has or will be granted to the prior applicant, authorizing uses or activities which do not reasonably permit multiple occupancy of the area where the event is proposed to be held;

(6) The use or activity intended by the applicant will conflict with previously planned programs organized or conducted by a governmental agency and previously scheduled for the same time and place;

(7) The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the public;

(8) The applicant has not complied or cannot comply with applicable licensure requirements, laws, ordinances or regulation of the state, the county or the town concerning the sale or offering for sale of any goods or services; or

(9) The use or activity intended by the applicant is prohibited by state or federal law or by ordinances or regulations of the county or the town.

(b) If the special event application is denied, the applicant is not entitled to receive any reimbursement from the town for any costs incurred during the application process, including the application fee.

Sec. 22-~~11~~12. - Notification of denial and right of appeal.

(a) Any applicant who is denied a special event permit by the town manager will be notified in writing. Said notification will state the reasons for the denial and the right of appeal to the town council, and will be sent by registered mail to the applicant.

(b) The applicant will have ten days from receipt of the written notification of permit denial to request an appeal hearing before the town council. If the appeal cannot be heard by the town council prior to the date when the event is scheduled to be held, the filing of an appeal will not entitle the applicant to conduct the event on that date but, if the appeal is successful, the applicant may hold the event on a rescheduled date that is after the town council meeting at which the appeal was heard.

(c) An appeal of the decision of the town council may be made to the circuit court by filing a petition for writ of certiorari as

provided for under the Florida Rules of Appellate Procedure. A decision of the town council will be deemed to have been rendered on the date the town council votes to either grant or deny the appeal.

Sec. 22-~~12~~13. - Litter.

(a) Special event permit holders are responsible for ensuring that the area where the event is held is free of all litter and debris within 24 hours of the time the special event ends. Events that span more than a 24-hour period are responsible for removing all garbage and litter at the end of each day.

(b) In the event this section is not complied with, the town manager has the authority to contract with a cleaning service and the cost of the cleanup will be the responsibility of the permit holder and, if not promptly paid, may be deducted from any required security deposit (~~see section 22-14~~).

Sec. 22-~~13~~14. - Security for unpaid expenses.

The town manager may require the posting of a security deposit, or other form of security acceptable to the town, to ensure that any unpaid expenses or damages incurred as a result of the event are satisfied.

Sec. 22-~~14~~15. - Indemnification and liability insurance.

(a) Prior to the issuance of the special event permit, the applicant is required to execute an indemnification and hold harmless agreement in a form acceptable to the town attorney.

(b) Prior to the issuance of the special event permit, the applicant is required to obtain, at its sole expense, public liability insurance, with minimum limits as required by the town, that includes coverage for any town property utilized and naming the town as an additional insured.

~~Sec. 22-15. - Signage.~~

~~(a) All signage relating to special events must comply with LDC chapter 30.~~

~~(b) Banners across Town of Fort Myers Beach rights-of-way. Special event permit applicants may request to hang a banner advertising the special event across the Town of Fort Myers Beach right-of-way at the base of the Sky Bridge. All banners must be~~

~~approved by town manager. Banners may not contain any commercial information for the purpose of advertising anything other than the special event. Banners will not be approved until approval has been obtained for the associated special event. Banners are hung on a on a first come first served basis. Banners may hang for a period of two weeks prior to the event; provided, however, that the town manager may permit a banner to be hung for a period of up to four weeks if availability allows. All banners must have grommets that are no less than two feet apart on the top and bottom. Banners can be no larger than 16 feet in width and three feet high.~~

~~(e) For any special event where a requested road closure has the potential to affect a sizeable segment of the community, notice of such closure must be provided to the public at least five days prior to event if variable message signs are utilized or 14 days prior to an event if static signs are utilized. Type and placement of signs will be determined by public works director. The applicant is responsible for any fees associated with the static signs or variable message boards.~~

Sec. 22-16. - Revocation.

The town manager has the authority to revoke a special event permit issued pursuant to this chapter upon violation of any of the requirements contained in the permit or in this Code or the LDC.

Section 3. Section 6-366 of Chapter 6 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 6-366. - Location of construction near beaches.

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter

the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652 of this LDC). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51 of this LDC.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:

a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d), below.

b. Some temporary structures such as tents may be permitted through a ~~temporary use permit~~ for special events permit held on the beach, in accordance with ~~§ 14-11 of this LDC~~ Ch. 22 of the Code.

c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, Ch. 27, and § 34-3151 of this code.

Section 4. Section 14-11 of Chapter 14 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

~~Sec. 14-11. Special events on the beach.~~

~~(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.~~

~~(b) Special events on the beach are temporary, short term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include, but are not limited to: sporting events (e.g., volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g., weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.~~

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

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

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

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

~~(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.~~

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

~~a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 a.m. or before completion~~

~~of daily monitoring for turtle nesting activity by a FWC authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.~~

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

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

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

~~(6) The release of balloons is prohibited in accordance with F.S. § 372.995, except as permitted by that statute.~~

Section 5. Section 34-2 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-2. - Definitions

Garage sale or yard sale mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. ~~Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year.~~ See *Residential accessory use*.

Use, temporary means a use or activity ~~which~~ that is permitted only for a limited time, which will not inhibit the usual flow of pedestrian or vehicular travel on public rights-of-way, subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Section 6. Section 34-2441 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby repealed:

Sec. 34-2441. Special events defined.

~~A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society. See. 34-2442. Permits for special events.~~

~~(a) The Town of Fort Myers has established a permitting process for special events through Ordinances Nos. 98-01 and 00-16 and any future amendments.~~

~~(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.~~

~~(c) Special events on the beach shall also comply with § 14-11 of this code.~~

Section 7. Section 34-3041 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-3041. - Generally.

(a) *Purpose.* The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) *Permit required.* No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of § 34-3050 this chapter. ~~Some temporary uses may qualify as special events that are regulated by Ordinance No. 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code. Ch. 22.~~ A temporary use permit must be obtained for the following uses in compliance with these requirements:

(1) Christmas tree sales lots for up to 45 days prior to the holiday;

(2) Holiday, seasonal or annual sales lots for up to 30 days;

(3) Temporary promotional activities involving the sale and promotion of goods and services available at a business on the premises, subject to the following:

a. Activities that obstruct private parking or are held on the adjacent public sidewalk may be held for up to three consecutive days up to three times per calendar year.

b. Activities that do not obstruct parking and are held on private property may be held for up to ten consecutive days up to three times per calendar year.

c. Outdoor display of merchandise, not associated with a temporary promotional activity shall be in compliance with LDC Sec 34-678 Outdoor display and sales of merchandise and food.

~~(4) Garage sales or yard sales, with a maximum of two permits per parcel per year for a maximum of three consecutive days. Garage sale permits will be free of charge.~~

(5) Construction projects which require storage, parking areas, construction trailers, site screening and/or any other temporary activities during construction of the project and which terminate upon completion of the project.

(6) Temporary wireless communications facilities, as are necessary to meet demand, for up to six (6) months.

(7) One-day permits for consumption of alcohol on-premises associated with a temporary event.

(8) Other similar uses of a temporary nature.

(c) *Lighting.* No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) *Time limit.*

(1) All temporary uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:

a. ~~Except as provided for seasonal parking lots in §§ 34-2022 of this chapter and for other uses where specifically provided in §§ 34-3043 through 34-3048 of this chapter, the director may not authorize a temporary use for more than 30 days; and~~
If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

b. ~~If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.~~

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use more than three (3) times per year. ~~for a period of six months from the date of expiration of the previous temporary use permit.~~

(e) *Hours of operation.* Hours of operation shall be confined to those specified in the permit.

(f) *Cleanup.* The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ~~*Traffic control.* Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant. Signs. A sign permit may be required for any proposed signs.~~

(h) ~~*Damage to public right of way.* A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may be required to ensure the repair of any damage resulting to any public right of way as a result of the event. In lieu of. Any proposed use, which exceeds the criteria or regulations of this code subdivision, may apply for a Special Event permit.~~

Section 8. Sections 34-3042, 34-3043, 34-3044, 34-3045, 34-3046, 34-3047, 34-3048, and 34-3055 of Chapter 34 of the Town of Fort Myers Beach Land Development Code are hereby repealed:

~~**Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.**~~

(a) ~~Location of amusement devices and other structures. Refer to §§ 34-2142(a) and (b) above, for setback requirements.~~

(b) ~~Off-street parking. Refer to § 34-2020(d)(3)g. of this chapter for off-street parking requirements.~~

(c) ~~Hours of operation. The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.~~

(d) ~~Special event permit. In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's Special Events Ordinance No. 98-01, as amended (see also division 34 of this article). Ch. 22.~~

~~**Sec. 34-3043. Christmas tree sales.**~~

(a) ~~Christmas tree sales may be permitted in any commercial district, provided that:~~

(1) ~~No parking lot required for another use shall be used for display of trees; and~~

(2) ~~Temporary off street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.~~

(b) ~~The maximum length of time for display and open lot sales shall be 45 days.~~

~~Sec. 34-3044. Temporary contractor's office and equipment storage shed.~~

~~A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.~~

~~Sec. 34-3045. Alcoholic beverages.~~

~~Temporary one day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d) of this chapter.~~

~~Sec. 34-3046. Temporary use of mobile home.~~

(a) ~~Rehabilitation or construction of residence following disaster.~~

(1) ~~When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.~~

(2) ~~The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(b) Rehabilitation or construction of damaged business or commercial uses following disaster.~~

~~(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.~~

~~(2) The maximum duration of the temporary use is nine months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is six months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.~~

~~(e) Conditions for use.~~

~~(1) Required water and sanitary facilities must be provided.~~

~~(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.~~

~~**Sec. 34-3047. Temporary telephone distribution equipment.**~~

~~Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:~~

~~(1) The equipment is less than six feet in height and 300 cubic feet in volume; and~~

~~(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company.~~

~~Application for an extension shall be made at least 15 days prior to expiration of the original permit.~~

~~Sec. 34-3048. Ancillary temporary uses in parking lots.~~

~~(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 of this chapter):~~

- ~~(1) Seasonal promotions.~~
- ~~(2) Sidewalk or parking lot sales.~~
- ~~(3) Fairs and carnivals (see § 34-3042 of this chapter).~~
- ~~(4) Tent sales.~~
- ~~(5) Flea markets by nonprofit organizations.~~
- ~~(6) Welcome stations in accordance with § 34-3051 of this chapter.~~

~~(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.~~

~~Sec. 34-3055. Special events.~~

~~(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.~~

~~(b) See division 34 of this chapter for a summary of permitting rules for special events.~~

Section 9. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 10. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 11. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

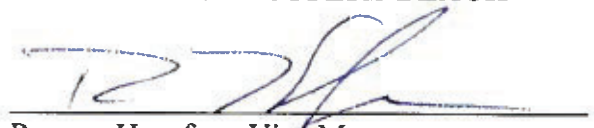
Section 12. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Council Member Allers, and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	Excused
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

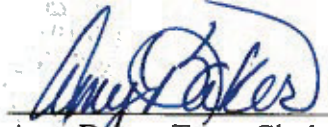
ADOPTED this 19th day of January, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



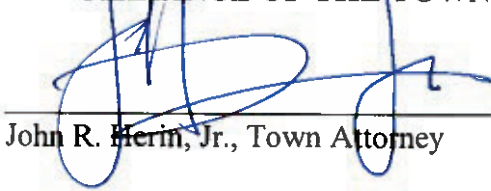
Rexann Hosafros, Vice Mayor

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 21 day of January, 2021.

1. **Request:**

Meeting Date: December 2, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING BUDGET ADJUSTMENT (#2) TO FUND NEW YEAR'S EVE FIREWORKS; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

It is necessary to provide funding for the fireworks display since it is uncertain whether there would be sufficient donations collected.

What the action accomplishes:

This action will ensure that the fireworks display will be funded.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The preliminary, unaudited financial statements indicated a savings of \$2,542,300 in the General Fund at the end of Fiscal Year 2024 resulting from less than budgeted expenditures.

The Town Council approved Resolution 24-252 on November 18, 2024, which authorized the transfer of \$2,000,000 of the preliminary savings to the Emergency Fund, leaving a balance of \$542,300 available for allocation.

The Town Council desires to provide fireworks for New Year's Eve, which will cost approximately \$80,000. Funding for fireworks was not included in the Fiscal Year 2025 budget. Since there is \$542,300 of savings from Fiscal Year 2024 still available for allocation, this resolution authorizes a budget adjustment for Fiscal Year 2025 in the amount of \$80,000 to draw upon those savings and allocate them to fund the New Year's Eve Fireworks display.

Attachments:

1. 24-282, Budget Amendment #2 - New Year's Eve Fireworks

Financial Impact:

The cost of the fireworks display is approximately \$80,000. There is approximately \$542,300 of unallocated savings remaining from Fiscal Year 2024 that is available for allocation.

6. **Alternative Action**

The Town Council may propose an alternative funding source.

7. **Management Recommendations:**

Management recommends approval of this budget adjustment.

8. **Recommended Approval:**

Joe Onzick, Finance Director
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 11/18/2024
Approved - 11/18/2024
Approved - 11/21/2024
Approved - 11/22/2024

RESOLUTION NUMBER 24-282

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING BUDGET ADJUSTMENT (#2) TO FUND NEW YEAR'S EVE FIREWORKS; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, the preliminary, unaudited financial statements indicated a savings of \$2,542,300 in the General Fund at the end of Fiscal Year 2024 resulting from less than budgeted expenditures; and

WHEREAS, Resolution 24-252 was approved by the Town Council on November 18, 2024 authorizing the transfer of \$2,000,000 of the preliminary savings to the Emergency Fund, leaving a balance of \$542,300 available for allocation; and

WHEREAS, the Town Council desires to provide a fireworks display for New Year's Eve that may be funded with \$80,000 of the available savings carried over from Fiscal Year 2024; and

WHEREAS, Section 200.065, Florida Statutes establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Section 166.241, Florida Statutes 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.

IT IS HEREBY RESOLVED by the Town Council of Fort Myers Beach, Florida as follows.

Section 1. The above recitals as set forth in the various "Whereas" clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2 The Town Council further finds that the related supplemental appropriation of funds is consistent with the requirements of Section 11.05(a) of Article XI of the Town Charter, and hereby approves, adopts and accepts the following budget amendment:

Budget Adjustment #2

10.50.572.38100	General Fund-Bay Oaks: Prior Year Carry Over	\$80,000
10.50.572.54915	General Fund-Bay Oaks: Special Events (Fireworks)	\$80,000

Section 3. This resolution is effective immediately upon adoption.

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

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

ADOPTED this ____ day of December 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:

Vose Law Firm, Town Attorneys

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

1. **Request:**

Meeting Date: December 2, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RATIFYING A RESEARCH AGREEMENT WITH THE UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES FOR STRATEGIC PLANNING SERVICES AS DESCRIBED IN A PROPOSAL UNANIMOUSLY APPROVED BY TOWN COUNCIL ON SEPTEMBER 9, 2024, IN AN AMOUNT NOT TO EXCEED \$225,427.60; AUTHORIZING THE USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS FOR THE PROJECT AND AUTHORIZING THE TOWN MANAGER OR MAYOR TO SIGN ANY AND ALL DOCUMENTS NEEDED TO IMPLEMENT THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

A resolution is necessary to formally approve expenditures greater than \$75,000 and its related funding sources.

What the action accomplishes:

This action formally approves expenditures greater than \$75,000 and its related funding sources.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Andy Hyatt, Town Manager

5. **Background:**

The Town Council has already approved the proposal and move forward with this project. This item ratifies the Town Manager's execution of the research agreement with the University of Florida Board of Trustees and authorizes the use of American Rescue Plan Act "ARPA" funding for the first two years of scheduled progress payments totaling \$178,794 and the use of savings carried forward from Fiscal Year 2024 to fund the last scheduled payment of \$46,634.

Attachments:

1. 24-248, Authorizing Strategic Planning Contract FINAL for TC
2. Crist_USF_TFMB_Strate_stamped (1) - signed
3. USF Research Agreement Standard Addendum
4. FMB Proposal FINAL

Financial Impact:

ARPA funding is available to fund the first two years of the scheduled progress payments totaling \$178,794. The remaining \$46,634 may be funded by savings carried forward from Fiscal Year 2024.

6. **Alternative Action**

The Town Council may choose to fund the strategic plan with a different funding source.

7. **Management Recommendations:**

Management recommends formal ratification of this agreement to satisfy the purchasing ordinance and to formally commit the funding sources.

8. **Recommended Approval:**

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

Created/Initiated - 11/22/2024
Approved - 11/22/2024
Approved - 11/22/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-248

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RATIFYING A RESEARCH AGREEMENT WITH THE UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES FOR STRATEGIC PLANNING SERVICES AS DESCRIBED IN A PROPOSAL UNANIMOUSLY APPROVED BY TOWN COUNCIL ON SEPTEMBER 9, 2024, IN AN AMOUNT NOT TO EXCEED \$225,427.60; AUTHORIZING THE USE OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS FOR THE PROJECT AND AUTHORIZING THE TOWN MANAGER OR MAYOR TO SIGN ANY AND ALL DOCUMENTS NEEDED TO IMPLEMENT THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.-

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

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

WHEREAS, the Town Manager has entered into a research agreement with the University of South Florida Board of Trustees for strategic planning services for the Town; and

WHEREAS, the Town Council unanimously approved the proposal submitted to the Town for these services on September 9, 2024 in the amount not to exceed \$225,427.60; and

WHEREAS, the University of South Florida Board of Trustees has prepared the research agreement for these services based upon their proposal; and

WHEREAS, the first two years of expense of these services can be covered by remaining American Rescue Plan Act “ARPA” funds if an agreement is executed before the end of the calendar year; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to ratify the Town Manager’s execution of the research agreement and utilize funds available from ARPA to continue the strategic planning process for the Town.

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

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

Section 2. The Town Council hereby ratifies a research agreement with the University of South Florida Board of Trustees for strategic planning services for the Town based on the Town Council approved proposal on September 9, 2024 in the amount not to exceed \$225,427.60, with the first two years of scheduled payments totaling \$178,794 to be funded by ARPA funds and the last payment to be funded by savings carried forward from Fiscal Year 2024 A copy of the agreement and its attached are affixed to this Resolution as Exhibit A.

Section 3. The Town Manager or Mayor are authorized to execute any documentation related to and necessary for implementation of this agreement.

Section 3. This Resolution shall become effective immediately upon its adoption.

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

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

ADOPTED this 2nd day of December 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 December 2024.

**RESEARCH AGREEMENT
BY AND BETWEEN**

THE TOWN OF FORT MYERS BEACH

AND

THE UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES

THIS RESEARCH AGREEMENT IS MADE AND ENTERED INTO BY AND BETWEEN the Town of Fort Myers Beach, a Florida municipality having a place of business located at 2731 Oak St., Fort Myers Beach, FL 33931 ("**Sponsor**"), and The University of South Florida Board of Trustees, a public body corporate for the University of South Florida ("**University**"), for support to the project entitled "Fort Myers Beach Strategic Planning". For consideration of the mutual promises, covenants, and obligations contained herein, **Sponsor** hereby retains the **University** to undertake certain activities described in Attachment 1. The parties agree as follows:

I. PERIOD OF PERFORMANCE

The period of performance under this Agreement begins upon the date of last signature below ("Effective Date") and ends two years and six months from the Effective Date. The contract term may be extended by mutual written agreement of the parties.

II. WORK PLAN / PROJECT ADMINISTRATION

The **University** shall perform the activities described in Attachment 1 and will comply with all statutory requirements and applicable regulations. The project will be conducted under the direction of the **University** "Project Director" (see below). The representatives of the parties are:

University Representatives:

The **University** Project Director:

Angela Crist
Florida Institute of Government, Director
University of South Florida
4202 East Fowler Avenue, CHE205
Tampa, FL 33620-9951
(813) 974-2346
Email address: acrist@usf.edu

The **University** Administrative Contact:

Daniel Garber
Sr. Sponsored Research Admin.
Sponsored Research
Research & Innovation
University of South Florida
3702 Spectrum Blvd, Suite 165
Tampa, FL 33612-9445
Email: dlgarber@usf.edu
CC: awards-rsch@usf.edu

Sponsor Representatives:

Project Director:

Andy Hyatt, Town Manager
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Administrative Contact:

Jason Freeman, Legislative Liaison
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931
jasonF@fmbgov.com

III. ALLOCATION OF FUNDS

Sponsor agrees to compensate the **University** on a fixed price basis, as per Attachment 2, for an amount of **\$225,428.00 USD**. It is further agreed that all invoices should contain an original signature of an authorized official of the **University** and should be sent to **Sponsor's** Project Director for approval (see Article II for the address). Payments shall be remitted to:

University of South Florida
Attention: USF Business Payments - PS
P.O. Box 737443
Dallas, TX 75373-7443

IV. PAYMENT RESPONSIBILITIES

Sponsor shall issue payment in U.S. dollars within 30 days after receipt of an invoice and receipt of supporting documentation in accordance with the terms and conditions of this Agreement.

V. INDEPENDENT CONTRACTOR

The relationship of the parties is that of mutually independent contractors. Each party and its officers, employees, agents, subcontractors, or other contractors shall not be deemed by virtue of this Agreement to be the officers, agents, or employees of the other party.

VI. LIABILITY

Sponsor will be responsible for any loss, claim, or demand arising from any injuries or damages directly resulting from **Sponsor's** negligence or willful misconduct; failure to comply with applicable government requirements; or breach of this Agreement. **University** agrees, to the extent of its waiver of sovereign immunity under §768.28, Florida Statutes to be responsible for actual damages that are attributable to the negligent acts or omissions of **University** and its officers, agents, and employees acting within the scope of their employment by **University**. This statement shall not be construed or interpreted as consent by **University** to be sued or as a waiver of **University's** sovereign immunity under §768.28, Florida Statutes.

VII. TERMINATION

This Agreement may be canceled by either party upon no less than thirty (30) days written notice, with or without cause; notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. In case of cancellation, only the percent of satisfactory progress actually achieved as of the date of termination, plus any non-cancellable obligations, will be due and payable to the **University**.

In the event that **University's** project director becomes unable or unwilling to continue the project activities, and a mutually acceptable substitute is not available, **Sponsor** has the option to terminate this Agreement.

VIII. PUBLICITY

Neither party shall use the name of the other party, or its employees in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. **University** is required by §1004.22, Florida Statutes, to make available, upon request, the title and description of a research project, the name of the researcher (**University** Project Director), and the amount and source of funding provided for the project.

IX. CONFIDENTIALITY

During the term of this Agreement, it may be necessary for either party to disclose to the other information or data that is confidential and proprietary to that party. All such confidential information will be clearly marked or identified as confidential at the time of disclosure or, if given orally, will be reduced to writing within 30 days. Each party agrees to hold confidential information it receives from the other party in confidence for at least

five years from the date the confidential information is either returned or destroyed as requested by the disclosing party.

The parties will take reasonable precautions to avoid disclosure, publication or dissemination of such confidential information and to use such confidential information only in connection with the project. No obligation of confidentiality applies to any information which was already in the receiving party's possession prior to its receipt from the disclosing party; is or becomes publicly known or available through no breach of this Agreement by the receiving party; is acquired by the receiving party from a third party without notice or restrictions of confidentiality; is independently developed by the receiving party's personnel to whom the providing party's confidential information had not been disclosed; or is required to be disclosed by law or governmental regulation, in which case both parties will work together in order to comply with such requirement.

X. PUBLICATIONS

Sponsor recognizes that under **University** policy, the results of the project must be publishable and agrees that the **University** Project Director or **University** employees engaged in the project shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing. Prior to any publication or presentation, **Sponsor** reserves the right to review the publication or presentation to restrict any unwanted and/or unintended transmission of protected intellectual property. **Sponsor** reserves the right to use the data collected in marketing materials following consultation of the **University** to ensure accuracy of information

XI. INTELLECTUAL PROPERTY

University agrees that the **University** Project Director will promptly disclose all intellectual property ("IP") generated during the course of this Agreement to **University** Patents & Licensing in accordance with USF System Policy 0-300 on Inventions and Works, and Patents & Licensing will promptly disclose the IP to **Sponsor**.

University owns IP that is conceived or made by **University** Project Director or any other **University** employee. **Sponsor** owns all IP that is conceived or made by employees of **Sponsor**. **University** and **Sponsor** jointly own IP that is conceived or made by employees of **University** or **Sponsor**.

Any background IP and technologies of **Sponsor**, the **University**, the University Project Director or other **University** employee existing prior to the execution of this Agreement are their own separate property, respectively, and are not affected by this Agreement.

XII. GOVERNING LAW

Florida law shall govern the enforcement and interpretation of this Agreement without regard to its conflict of laws provisions.

XIII. INSURANCE

University is a self-insured state university and maintains comprehensive general liability, including medical professional liability, protection coverage of \$200,000 per person, \$300,000 per occurrence, in accordance with §768.28, and either §1004.24, or Chapter 284, Part II, Florida Statutes. **University** maintains workers' compensation insurance in full compliance with Florida law. **University** will provide a certificate of liability protection to **Sponsor** upon request.

Sponsor shall maintain insurance in the types and amount which are standard in its industry.

XIV. DELEGATION OF AUTHORITY

This Agreement is valid and enforceable only upon being signed by persons authorized to bind the **Sponsor** and **University**, and by all persons required by Florida law or **University** policy to sign an agreement of this nature in order to bind the **University**.

XV. PROTECTION OF HUMAN SUBJECTS AND VERTEBRATE ANIMALS

The **University** bears full responsibility for the proper and safe performance of research involving its use of human subjects under this Agreement. If human subjects are used, their rights and welfare will be protected under 45 CFR Part 46, "Protection of Human Subjects," and the **University** will send a copy of current IRB approval to **Sponsor**.

The **University** bears full responsibility for the proper and safe performance of Research involving the use of vertebrate animals under this Agreement. If any vertebrate animals are used, they will be protected under 9 CFR Chapter 1, Subchapter A, Parts 1, 2, and 3, "Animal Welfare", and the **University** will send a copy of current IACUC approval to the **Sponsor**.

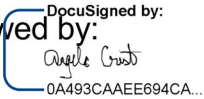
XVI. EXPORT CONTROL

Both parties will comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, and all embargoes and/or other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls (OFAC). Should **Sponsor** intend to distribute export controlled technical data or software to **University**, **Sponsor** must provide the **University** Export Control Officer with the appropriate export control designation for such technical data (e.g., ECCN or Munitions List Category) in advance. **University** reserves the right to elect not to receive such export controlled technical data. Approval from **University** Export Control Officer is required prior to acceptance of export controlled technical data. Notification of intended release of technical data from **Sponsor** to **University** can be made via exportcontrol@usf.edu.

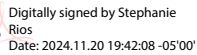
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this agreement, which includes Attachments 1 and 2 to be executed by their undersigned duly authorized officials.

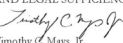
**University of South Florida
Board of Trustees**, a public body corporate

Reviewed by: 0A493CAAE694CA...

Angela Crist, MPA
University Project Director

SIGNED BY:
Stephanie Rios Date: 2024.11.20 19:42:08 -05'00'

Stephanie Rios,
Director, Sponsored Research
USF Research & Innovation

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Timothy C. Mays, Jr.
USF ATTORNEY

Town of Fort Myers Beach


[Signature of Authorized Representative]
Name: Andrew Hyatt
Title: Town Manager

ATTACHMENT 1
SCOPE OF WORK

Angela Crist, MPA
Principal Investigator



the John Scott Dailey
**FLORIDA
INSTITUTE OF
GOVERNMENT**
at the University of South Florida

**We specialize in realizing and
implementing big ideas in
the public sector.**



PROPOSAL FOR A STRATEGIC PLANNING PROCESS

August 11, 2024

Prepared For:

Andy Hyatt, Town Manager
Jason Freeman, MPA, CMC
Legislative Liaison/Deputy Clerk
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL. 33931
JasonF@fmbgov.com



**UNIVERSITY of
SOUTH FLORIDA**

In partnership with:



Expert facilitators in strategic collaboration

Prepared By:

Angela Crist, Director
USF Florida Institute of Government
4202 E Fowler Ave, SOC107
Tampa, FL 33620
acrist@usf.edu

ANTICIPATED SCOPE OF WORK

OUR UNDERSTANDING OF YOUR NEED

It is our understanding that Fort Myers Beach is interested in engaging the residents and leadership in a long-term, comprehensive strategic planning process.

The USF Florida Institute of Government in partnership with the SPC Collaborative Labs will conduct a series of exercises as part of a strategic planning process. The overarching purpose of this project is to assist the Town in better understanding the various stakeholders and opinions in their community. Information gleaned from this project will be used to update/create a new comprehensive strategic plan for the Town.

This project will benefit the Town in the following ways:

- Develop a better understanding of the collective Vision and Priorities for the Town
- Data collected will be able to assist the Town with informed resource allocation and development of a comprehensive strategic plan in the future
- Collaborating with USF and SPC provides the Town unbiased data from an outside organization that has a credible reputation researching data as well as working with local government

Specifically, the methodology will include an:

1. Increased sense of unity among stakeholders and community members through building a shared community identity
2. Increased consensus-building and decision-making skills to address community issues
3. Increased leadership and collaboration skills to accomplish community goals
4. Increased ability to effectively plan future community change and development initiatives

The Project Team is recommending a Phased Approach that will engage the Town, Community, Commission, Leadership and Staff in an iterative process that will ensure maximum engagement opportunities resulting in a collaborative approach to creating a long-term strategic plan that will serve Fort Myers Beach for years to come.

Phase 1

1.1 Kick Off and Work Plan Refinement – Town Manager and Leadership Team

The USF team in partnership with SPC Collaborative Labs will meet with Town senior staff to formally initiate the process, review and refine the work plan and scope, identify key stakeholders for initial interviews, and identify key background information for the team to review. Aspects of the work plan that may be refined include the sequence of the activities described below, the relative emphasis on meetings/group discussions and communication mechanisms for input, and the overall timeline of the project.

1.2 Town Council: Kick-Off, Setting Expectations and Teambuilding

The USF team in partnership with SPC Collaborative Labs will facilitate a one-day workshop with Town leadership to share the action steps for the strategic planning process, discuss Council member expectations and participation as well as review the relevant requirements of the Sunshine Law. The specific agenda will be determined in consultation with the Town Manager.

1.3 Communications Outreach

The USF team will work with Town staff throughout the process to develop or prepare strategic planning process content for use within the Town's current social-media and/or web presence.

1.4 Individual/Group Stakeholder Interviews

The USF team will meet with 20-25 key individual, business and organization stakeholders identified by Town staff as having particular insight into issues facing the Town or into the views and opinions of segments of the Town community. Staff and elected officials will be asked to identify an initial set of interviewees, and others may be suggested by those interviewed or residents. Insights and information gained in these interviews will be used, without attribution (anonymously), to help develop starting points for discussions at the Community Forums and for potential social media outreach.

1.5 Resident Feedback Survey

The USF team will work with staff to develop a Town-wide, web-based citizen survey. Initial questions for the survey will be developed in collaboration with staff. Additional questions may be identified by participants in the stakeholder interviews.

The USF team will analyze, group and summarize the feedback survey into a report which will be presented to Fort Myers Beach leadership team. A version of the survey results will also be posted to the Town's website.

1.6 Community Focus Group Forum 1 (3 hours)

This Community Forum will invite stakeholders including residents, businesses, and other groups affiliated with the Fort Myers Beach community. The USF team in partnership with SPC Collaborative Labs will invite elected officials, but request elected officials to listen and observe, but not participate. This Forum will:

- ask participants to identify characteristics of Fort Myers Beach that they value most and do not want to change, and issues affecting Fort Myers Beach that the Town will need to address
- begin to discuss participants' desires for the future of the Town and Town government, including a potential vision statement, and possible goals, objectives or recommendations related to the vision and issues
- Discuss priorities

The USF team in partnership with SPC Collaborative Labs will develop workshop materials for the Forum. The USF team will also prepare a Forum Summary outlining activities and conclusions at the Forum, as well as suggestions for Town communication.

1.7 Community Focus Group Forum 2 (3 hours)

Community Forum II will allow participants to:

- Review draft vision, objectives and recommendations
- Review input received through resident survey and social media since Forum 1
- Discuss and refine the draft vision, goals, objectives, and recommendations
- Test the degree of support or consensus for the vision, goals, objectives, and recommendations
- Discuss priorities

The USF team in partnership with SPC Collaborative Labs will develop workshop materials for Forum II based on discussions at Forum I, including the draft vision, objectives, and recommendations. The team will also prepare a written and visual Forum Summary outlining activities and conclusions at the Forum, as well as suggestions for social media communication.

1.8 Employee Survey

To foster employee engagement, and assess employee readiness for change, the USF team will work with staff to develop a Town-wide, web-based employee survey. Employee feedback would be anonymous, with a goal of 100% employee participation/input. Survey questions would focus on:

- identifying internal and external strengths, weaknesses, opportunities and threats (SWOT) that are influencing Fort Myers Beach
- how the Town's current plans, policies and processes will shape future outcomes
- suggestions for improving organizational effectiveness
- overall employee engagement and readiness for change
- employee desires for the future of Atlantis government as an organization and as a workplace

Initial questions for the survey will be developed in collaboration with staff. This survey would include a mechanism for full employee participation, rather than a statistically representative sampling of employee opinion. The USF team will analyze, group and summarize the employee survey into two reports: one detailed report for leadership, and one abbreviated report which will be shared with all employees to foster engagement and buy-in.

1.9 Employee Focus Group Forum (3 hours)

This Employee Forum will invite a representative sampling of employees across all departments, and all levels, of the organization.

- debrief the employee survey results
- prioritize the SWOT analysis results from the employee survey

The USF team will develop workshop materials for the Employee Forum. The USF team in partnership with SPC Collaborative Labs will prepare an Employee Forum Summary outlining activities and conclusions at the Forum.

1.10 Report to Council

The USF team in partnership with SPC Collaborative Labs will prepare a presentation and report of Phase 1: Deliverables 1.1 – 1.9. This presentation will outline activities and conclusions, solicit comments on the overarching vision and goals resulting from the Community Forum, and solicit Council approval to proceed to Phase Two of the Strategic Planning Process.

Phase 2

2.1 Leadership Forum I (4 hours)

Leadership Forum I will include Leadership across each department and Town Council.

- debrief the citizen forum/survey results
- debrief the employee forum results
- debrief initial citizen and employee desires for the future of the Town, including potential goals, objectives and recommendations related to the vision
- develop mission, vision, values, and strategic SMART goals for the Town government as an organization

The USF team in partnership with SPC Collaborative Labs will develop workshop materials for Leadership Forum I. The team will prepare a Forum Summary Report outlining activities and conclusions at the Forum.

2.2 Town Manager & Executive Leadership Planning Meeting I (3 hours) virtual

The USF team will meet with the Town Manager and Leadership Team to review the information-to-date and begin to finalize the language for the goals, objectives, and action items. This information will then be used for the Draft Final Report.

2.3 Leadership Forum II (3 hours)

Leadership Forum II will include Leadership across each department and Town Council.

- Review/finalize mission, vision, values, and strategic SMART goals
- Develop champions, objectives, implementation plans and timelines for each goal
- Determine a schedule for monitoring (accountability checkpoints) for each goal

The USF team will develop workshop materials for Leadership Forum II. The team will prepare a Leadership Forum II Summary Report outlining activities and conclusions at the Forum, as well as recommendations for long-term success of the strategic plan.

2.4 Town Manager & Executive Leadership Planning Meeting II (3 hours) virtual

The USF team and in partnership with SPC Collaborative Labs will meet with the Town Manager and Leadership Team to review the information to-date and begin to finalize the language for the goals, objectives, and action items. This information will then be used for the Draft Final Report.

2.5 DRAFT Final Report: Town Manager and Executive Leadership Team

The USF team in partnership with SPC Collaborative Labs will prepare a Draft Strategic Plan which will include:

- An organizational overview
- A definition and purpose of the Strategic Plan
- A written summary of the process used in the completion and assembly of the plan
- An establishment of the Town's mission, vision and values statements
- A list of stakeholder priorities for Town goals and objectives, including those of elected officials, employees, residents, businesses, and of any other significant groups
- A description of SMART goals and objectives for the Town
- Recommendations for the long-term success of the strategic plan
- Raw data obtained from the assembly of the plan
- Other information as deemed necessary by the USF team

Following the Deliverable 2.4, the USF team in partnership with SPC Collaborative Labs will present the final draft report to the Town Manager and Executive Leadership for review and comment.

2.6 Presentation of Final Report to Council

The USF team in partnership with SPC Collaborative Labs will collaborate with Town staff to present the report to the Council. The USF team in partnership with SPC Collaborative Labs will answer questions and/or clarify the report and implementation strategies.

Phase 3

3.1 Implementation Planning

As part of this process, the USF team in partnership with SPC Collaborative Labs will work with the Council and Town Manager to design the “Roadmap” for how to accomplish the goals and objectives while considering accountability strategies, budget alignment and a cultural change management process.

3.2 Strategies for Supporting the Implementation Plan

As part of this process, the USF team in partnership with SPC Collaborative Labs will work with the Council and Town Manager to ensure the five key components needed to support the implementation plan are in place: people, resources, structure, systems, and culture. This will also include an agreed upon dashboard tool and process for the Implementation Plan Facilitation.

3.3 Implementation Plan Facilitation (Quarterly for 1 year)

The completed Strategic Plan is a living document and should function as the main thrust of Fort Myers Beach in goal achievement. The Collaborative Labs team at SPC in partnership with the USF team will facilitate Implementation Workshops on a quarterly basis for a year to assess progress made to date and recalibrate plan to align with goals as needed.

ANTICIPATED TIMELINE

The timeline may be adjusted at the discretion of Town Staff. The total project duration would be approximately 24 to 36 months to complete the scope of services from execution of a signed contract. Note: This outline is tentative and will be refined based on initial consultation with Town Leadership and Staff. It is intended to serve as a starting point for discussions to develop a final design.

Phase One

1.1 Kick Off and Work Plan Refinement	October 2024
1.2 Town Council: Kick-Off, Setting Expectations & Teambuilding	November 2024
1.3 Communications Outreach	October 2024 - Ongoing
1.4 Individual/Group Stakeholder Interviews	January 2025
1.5 Resident Feedback Survey	February 2025
1.6 Community Focus Group Forum I (3 hours)	March 2025
1.7 Community Focus Group Forum II (3 hours)	April 2025
1.8 Employee Survey	March 2025
1.9 Employee Focus Group Forum (3 hours)	May 2025
1.10 Report to Council	June 2025

Phase Two

2.1 Leadership Forum I (4 hours) off-site	August 2025
2.2 Town Manager & Executive Leadership Planning Meeting	September 2025
2.3 Leadership Forum II (3 hours) off-site	October 2025
2.4 Town Manager & Executive Leadership Planning Meeting	November 2025
2.5 Draft Final Report Review	December 2025
2.6 Final Report to Council	January 2026

Phase Three

3.1 Implementation Planning	January 2026
3.2 Strategies for supporting the implementation plan	March 2026
3.3 Implementation plan facilitation	March 2027

ESTIMATED INVESTMENT

The USF Florida Institute of Government and the SPC Collaborative Labs recommend a discussion on the proposed scope of work prior to submitting a formal cost for services. It is important the Town agrees to the anticipated deliverables, methodology and timeline preceding development of the final costs.

Based on the scope and expected deliverables, the estimated costs to complete the proposed Strategic Planning Process is \$225,427.60 for the above-mentioned tasks. The final cost is inclusive of travel, printing, publishing, and ADA document remediation.

PHASE	TIMELINE	COST
Phases 1	October 2024-June 2025	\$115,972.20
Phases 2	August 2025-January 2026	\$62,821.20
Phases 3	March 2026- March 2027	\$46,634.20

ANTICIPATED CHALLENGES AND SOLUTIONS

Coordinating between organizational and community-wide process components

While the strategic planning process methodology focuses primarily on a vision, goals, and objectives for the Town as an organization, it also highlights the importance of developing these within the context of a broader community-wide conversation about the character and future of the Town itself. Activities addressing each of these components will have to be carefully sequenced and coordinated to ensure that the community-wide context is established at a point in the process and in a way that allows the activities focused on Town government to be fully informed and supported by that context.

Effectively integrating employee input with leadership direction

Employee input is often critical to understanding how an organization works and the challenges it faces. At the same time, it is important for employees and senior staff to develop a shared understanding, and level of comfort with, how that input will be used in the process. Careful framing and facilitation of the employee and leadership conversations described above can help ensure a productive role for this input.

Integrating input received through different channels

The scope of work in this proposal contemplates soliciting input from all stakeholders through a variety of modes: interviews, focus groups, community meetings, surveys, and social media. To maximize participant satisfaction with the process, it will be important that the full range of this input is available to participants and understood by them when they need it.

Transparency and responsiveness

The process outlined in this proposal includes many activities and conversations and will ideally result in products that guide Town government operations for a significant time to come. Because of this, it will be critical that residents and other stakeholders understand the range of input received and conversations conducted in the process, and how the results are based on that input and those conversations.

ADDITIONAL INFORMATION

Our team of experts in Statistics and Data Analysis, Survey Development, Human Resource and Project Management, as well as strategic planning for local governments come from both the University of South Florida School of Public Affairs and St. Petersburg College Collaborative Labs may include:

Angela Crist, MPA, serves as the Director of the USF FIOG. Ms. Crist has a proven track record as a high energy, results driven leader recognized for innovative strategies and tactics. Her excellent problem solving and customer-oriented focus have created value and managed client expectations to obtain mutual benefit. With over 15 years of experience, Angela has built and led new departments or groups with related staff training and mentoring to attain long-term business goals. She has consistently achieved positive results by motivating and leading organizations to identify, develop and capitalize on business opportunities by forging alliances across organizational boundaries. Her professional affiliations include Florida Village and County Management Association, Florida League of Cities, Florida Association of Counties, USF Alumni Association, USF Area Community Civic Association, and Leadership Tampa Bay Alumni Association.

John L. Daly, PhD, is Associate Professor of Public Administration and past Founding Director of the School of Public Affairs at the University of South Florida. His research interests include human resource management and public policy issues facing local government. He also is a specialist of governance and public policy challenges facing southern African nations. John has received two Fulbright Scholar grants to the Kingdom of Swaziland. He first served as a consultant to the Kingdom of Swaziland's government (1998-99). His second Fulbright grant allowed him to join the University of Swaziland faculty (2005-06). Most recently, John was selected as the 2014 recipient of the International Village/County Management Association's Academic Award in Memory of Stephen B. Sweeney. This honor was presented to him at the 100th ICMA Conference in Charlotte, NC, in September 2014. John is the author of two books, *Training in Developing Nations* (2005, M.E. Sharpe/Routledge) and *Human Resource Management in the Public Sector: Policies and Practices*, (2012, M. E. Sharpe/Routledge). Dr. Daly has extensive experience providing consulting services to Florida municipal governments, primarily in the areas of human resource management and organizational development.

Tina Fischer serves as the Director and facilitator for the SPC Collaborative Labs. Tina has over 25 years leading process improvement, corporate training, strategic planning, and facilitation. In addition to facilitating, she manages the operations of Collaborative Labs to ensure successful outcomes for clients. Tina's previous experience as a computer consultant had her traveling across the United States helping Fortune 500 clients implement new computer systems. Through this experience, her propensity for efficiency developed. She specialized in workflow management, process improvement, effective team communication, policy and procedure documentation, training, and quality control. Tina received her Bachelor of Science in Electrical Engineering from Florida State University. She was also an adjunct math professor for St. Petersburg College. Her love of teaching and ability to simplify the complex is apparent during client engagements.

Andrea Henning, MEd, serves as the Executive Director and facilitator for the SPC Collaborative Labs. Andrea has over 30 years leading strategic planning, corporate training, and leadership development, including the launch of the Collaborative Labs over 17 years ago. She has facilitated over 3000 regional, national, and international engagements. Prior to the Labs, Andrea led corporate training and organizational development for companies including: Chrysler, GE, and Universal Studios. She managed projects at Paradigm Learning for Frito-Lay, Pepsi, Capital One, and Kimberly-Clark. Andrea is a certified Co-Active Coach. Her education includes a BA from Wheaton College, a M.Ed., and post-graduate work in Educational Psychology from the University of Toledo.

Jonathan Massie serves as the Visual Illustrator for the SPC Collaborative Labs. Jonathan is Collaborative Lab's extraordinary artist. He interprets our workshop discussions into compelling illustrations that depict their shared vision and strategy. Jonathan has completed over 3,000 illustrations to date. These illustrations capture participants' stories in a unique way that are used beyond the workshop into strategy implementation. Jonathan has a Bachelor of Fine Arts from Virginia Commonwealth University. He began his career creating graphic design and managing art departments for newspapers such as the Chicago Sun Times, Cincinnati Enquirer, Detroit Free Press, and Baltimore Sun. Over the past 20 years, 10 of which have been with the Labs, Jonathan has focused on designing business illustrations for nonprofit, government, and commercial clients. His talents span various media including pen, marker, computer graphics and video production.

Stephen Neely, PhD, is an assistant professor in Public Administration at the University of South Florida's School of Public Affairs. He has an earned PhD in Public Administration from North Carolina State University, as well as two master's degrees in social and public policy Analysis as well as Business Administration. His specialties include research methods, survey administration, and data analysis, and he has previously conducted survey research in partnership with agencies/organizations such as the Florida Village/County Management Association, the Florida Center for Cybersecurity, and the Village of Zephyrhills, Florida.

Robyn Odegard, MA, serves as the Learning and Development Facilitator with the Florida Institute of Government at USF. In this role, she serves as project manager, program manager, and research administrator. Robyn holds certifications as a Certified Associate in Project Management (CAPM) from the Project Management Institute and CRA USF-ADVANCED certification from USF Research and Innovation. She received her MA in Political Science from the University of South Florida.

PJ Petrick serves as the Project Technologist for the SPC Collaborative Labs. PJ manages and assists with facilitating all the technology needs of the collaborative engagements at Collaborative Labs. Specializing in guiding participants through using the Collaborative Labs cutting edge technology, PJ uses a hands-on approach to ensure that session goals are met in the most efficient manner. PJ has over 16 years' experience in the business and management information systems industry. He has managed technology in over 3000 collaborative events. He was the planner and leader of the St. Petersburg College's technology instillation team. He has also owned and managed small businesses over the last 10 years. PJ received a Bachelor of Science from the University of Central Florida and holds an A+ certification in technology.

BRIEF DESCRIPTION OF ORGANIZATIONS

PRIMARY LEAD AGENCY

The John Scott Dailey Florida Institute of Government (FIOG) was created by the Florida Legislature in 1980 and subsequently designated as a Type I Institute by the Florida Board of Regents. The institute fulfills its statewide mission through a consortium of six (6) affiliate program offices located at the Florida State University, the University of Florida, the University of South Florida, the University of Central Florida, Florida Atlantic University, and Florida Gulf Coast University.

The FIOG at USF works directly with all USF faculty, staff, and practitioner's university-wide to bring their expertise to our clients. All our USF faculty, staff and practitioners are highly qualified and provide top notch services in a variety of critical areas including developing and implementing training and research programs, services, and grant and contract administration activities involving federal, state, and local governments, non-profit organizations, and the private sector.

In January 2013, the School of Public Affairs (SPA) at the University of South Florida (USF) was created to merge the graduate programs in Urban and Regional Planning and Public Administration, as well as the John Scott Dailey Florida Institute of Government. The faculty consists of an interdisciplinary group of scholars and former practitioners who share a common commitment to student learning, top-notch scholarship and applied community engagement.

The School's John Scott Dailey Florida Institute of Government (FIOG) provides training and technical assistance to local and state government officials, volunteers, and the general public on a wide range of topics, such as team building, strategic planning, goal setting and effective communication. FIOG partners University professionals from a variety of disciplines with organizational leaders charged with solving specific local issues to identify, evaluate and implement effective solutions. For the purposes of this project.

CO-LEAD AGENCY

Collaborative Labs at St. Petersburg College, founded in 2004, specializes in the design, facilitation, and documentation of highly interactive and dynamic facilitated planning engagements whether in-person, mobile, virtual or hybrid.

Strategic planning services are designed to produce maximum benefits in minimal time for clients. At Collaborative Labs, strategic visioning is the specialty. With more than 17 years of redefining strategic planning services and collaborative problem solving the extensive roster of satisfied clients is a testament to the value-added partnerships and lasting results. Their unique approach to strategic planning services is unparalleled in the industry from understanding how to leverage team strengths, enhancing individual performance to aligning business solutions with corporate goals. Expert facilitators empower participants to resolve conflicts and competing priorities through collaboration, and pinpoint overlapping areas of responsibility to help employees avoid duplication of effort and prevent deliverables from slipping through the cracks.

Importantly, Collaborative Labs is known for ensuring that all your stakeholders have an equal voice in the strategic-planning process. This is critical to the success of your endeavor and produces significantly better results than top-down planning. When individual team members are actively involved in contributing to business solutions, they feel more invested in the outcomes and take greater pride in organizational achievements – further enhancing your potential for success.

OUR SERVICE CAPABILITIES

The John Scott Dailey Florida Institute of Government (FIOG at USF) works directly with all USF faculty, staff, and practitioner's university-wide to bring their expertise to our clients. As part of a regional structure for enhanced relationships, FIOG serves government and non-profit entities within a 9- county region including Hardee, Hernando, Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota.

With over 25 years of experience in the local community, the Florida Institute of Government at the University of South Florida has a vast history of helping government and non-profit entities through visioning and strategic planning processes, offering, and coordinating trainings, technical assistance, and applied research projects for the local community. Since 1995, the institute has conducted approximately 24,793 workshops and conferences statewide in Florida—an average of 2,749 per year. Also, during this same time, approximately 580,685 participants, the large majority of whom represent officials and employees from local government in Florida, have attended programs resulting in over 2.6 million professional contact hours. The institute has also conducted an estimated 1,190 technical assistance and applied research projects, an average of 119 annually.

Collaborative Labs at St. Petersburg College, through an engaging, collaborative process and interactive technology (brainstorming and polling technology), are able to bring stakeholders together and help them achieve consensus on a shared strategic vision, priorities and accountability. The customized programs are designed to foster creative business solutions that create successful outcomes. The real value of the services provided lies not only within the expert facilitation and collaborative technology, but also in the ability to leverage those resources to provide a practical and actionable roadmap for success. A Real-Time Record™ is made available within two to three business days to allow the client to start right away on the outcomes of the engagement.

The Collaborative Labs at St. Petersburg College have facilitated over 3,000 engagements for business and organizations within government, municipality, profit, and non-profits. These engagements have taken place in person at their 10,000 square foot state-of-the-art technology labs, mobile throughout the United States and virtual.

ATTACHMENT 2

METHOD OF PAYMENT

Sponsor agrees to compensate the **University** on a fixed price basis for an amount not to exceed **\$225,428.00 USD**. **University** shall submit invoices according to the following schedule. Payment shall be made within 30 days of approved invoice.

\$ 90,171.20 due upon execution of this Agreement.

\$ 90,171.20 due one year from the Effective Date.

\$ 45,085.60 due two years from the Effective Date.

In the event that unobligated funds remain at the conclusion of the project, unobligated funds shall remain with the **Sponsor**.

Checks shall be made payable to the University of South Florida and sent to the address listed in Article 3 of this Agreement.

Certificate Of Completion

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Daniel Garber

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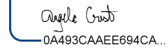
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Director

University of South Florida

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Final Audit Report2024-11-22

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TOWN OF FORT MYERS BEACH, FLORIDA
STANDARD CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this ____ day of _____, 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and The University of South Florida Board of Trustees, hereinafter referred to as “Contractor”, concerning that certain agreement dated the 22nd day of November, 2024 (“Agreement”).

WITNESSETH:

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

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

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

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

WHEREAS, Section 287.133 and 287.135, Fla. Stat., provides restrictions on local governments contracting with companies that are on certain Scrutinized Companies lists or convicted vendor list; and

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

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

WHEREAS, Section 787.06(13), Florida Statutes provides that when a contract is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an

officer or a representative of the nongovernmental entity under penalty of perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in such statute;

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

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

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

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

**TOWN HALL
2731 OAK STREET
FORT MYERS BEACH, FL. 33931**

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

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

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

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

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

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

9. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement.

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

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

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

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

14. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

15. No coercion for labor or services. The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

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

A. None.

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

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 15 above and that the facts stated in it are true.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM

Town Attorney



the John Scott Dailey
**FLORIDA
INSTITUTE OF
GOVERNMENT**
at the University of South Florida

**We specialize in realizing and
implementing big ideas in
the public sector.**



PROPOSAL FOR A STRATEGIC PLANNING PROCESS

August 11, 2024

Prepared For:

Andy Hyatt, Town Manager
Jason Freeman, MPA, CMC
Legislative Liaison/Deputy Clerk
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL. 33931
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UNIVERSITY of
SOUTH FLORIDA

In partnership with:



Expert facilitators in strategic collaboration

Prepared By:

Angela Crist, Director
USF Florida Institute of Government
4202 E Fowler Ave, SOC107
Tampa, FL 33620
acrist@usf.edu

ANTICIPATED SCOPE OF WORK

OUR UNDERSTANDING OF YOUR NEED

It is our understanding that Fort Myers Beach is interested in engaging the residents and leadership in a long-term, comprehensive strategic planning process.

The USF Florida Institute of Government in partnership with the SPC Collaborative Labs will conduct a series of exercises as part of a strategic planning process. The overarching purpose of this project is to assist the Town in better understanding the various stakeholders and opinions in their community. Information gleaned from this project will be used to update/create a new comprehensive strategic plan for the Town.

This project will benefit the Town in the following ways:

- Develop a better understanding of the collective Vision and Priorities for the Town
- Data collected will be able to assist the Town with informed resource allocation and development of a comprehensive strategic plan in the future
- Collaborating with USF and SPC provides the Town unbiased data from an outside organization that has a credible reputation researching data as well as working with local government

Specifically, the methodology will include an:

1. Increased sense of unity among stakeholders and community members through building a shared community identity
2. Increased consensus-building and decision-making skills to address community issues
3. Increased leadership and collaboration skills to accomplish community goals
4. Increased ability to effectively plan future community change and development initiatives

The Project Team is recommending a Phased Approach that will engage the Town, Community, Commission, Leadership and Staff in an iterative process that will ensure maximum engagement opportunities resulting in a collaborative approach to creating a long-term strategic plan that will serve Fort Myers Beach for years to come.

Phase 1

1.1 Kick Off and Work Plan Refinement – Town Manager and Leadership Team

The USF team in partnership with SPC Collaborative Labs will meet with Town senior staff to formally initiate the process, review and refine the work plan and scope, identify key stakeholders for initial interviews, and identify key background information for the team to review. Aspects of the work plan that may be refined include the sequence of the activities described below, the relative emphasis on meetings/group discussions and communication mechanisms for input, and the overall timeline of the project.

1.2 Town Council: Kick-Off, Setting Expectations and Teambuilding

The USF team in partnership with SPC Collaborative Labs will facilitate a one-day workshop with Town leadership to share the action steps for the strategic planning process, discuss Council member expectations and participation as well as review the relevant requirements of the Sunshine Law. The specific agenda will be determined in consultation with the Town Manager.

1.3 Communications Outreach

The USF team will work with Town staff throughout the process to develop or prepare strategic planning process content for use within the Town's current social-media and/or web presence.

1.4 Individual/Group Stakeholder Interviews

The USF team will meet with 20-25 key individual, business and organization stakeholders identified by Town staff as having particular insight into issues facing the Town or into the views and opinions of segments of the Town community. Staff and elected officials will be asked to identify an initial set of interviewees, and others may be suggested by those interviewed or residents. Insights and information gained in these interviews will be used, without attribution (anonymously), to help develop starting points for discussions at the Community Forums and for potential social media outreach.

1.5 Resident Feedback Survey

The USF team will work with staff to develop a Town-wide, web-based citizen survey. Initial questions for the survey will be developed in collaboration with staff. Additional questions may be identified by participants in the stakeholder interviews.

The USF team will analyze, group and summarize the feedback survey into a report which will be presented to Fort Myers Beach leadership team. A version of the survey results will also be posted to the Town's website.

1.6 Community Focus Group Forum 1 (3 hours)

This Community Forum will invite stakeholders including residents, businesses, and other groups affiliated with the Fort Myers Beach community. The USF team in partnership with SPC Collaborative Labs will invite elected officials, but request elected officials to listen and observe, but not participate. This Forum will:

- ask participants to identify characteristics of Fort Myers Beach that they value most and do not want to change, and issues affecting Fort Myers Beach that the Town will need to address
- begin to discuss participants' desires for the future of the Town and Town government, including a potential vision statement, and possible goals, objectives or recommendations related to the vision and issues
- Discuss priorities

The USF team in partnership with SPC Collaborative Labs will develop workshop materials for the Forum. The USF team will also prepare a Forum Summary outlining activities and conclusions at the Forum, as well as suggestions for Town communication.

1.7 Community Focus Group Forum 2 (3 hours)

Community Forum II will allow participants to:

- Review draft vision, objectives and recommendations
- Review input received through resident survey and social media since Forum 1
- Discuss and refine the draft vision, goals, objectives, and recommendations
- Test the degree of support or consensus for the vision, goals, objectives, and recommendations
- Discuss priorities

The USF team in partnership with SPC Collaborative Labs will develop workshop materials for Forum II based on discussions at Forum I, including the draft vision, objectives, and recommendations. The team will also prepare a written and visual Forum Summary outlining activities and conclusions at the Forum, as well as suggestions for social media communication.

1.8 Employee Survey

To foster employee engagement, and assess employee readiness for change, the USF team will work with staff to develop a Town-wide, web-based employee survey. Employee feedback would be anonymous, with a goal of 100% employee participation/input. Survey questions would focus on:

- identifying internal and external strengths, weaknesses, opportunities and threats (SWOT) that are influencing Fort Myers Beach
- how the Town's current plans, policies and processes will shape future outcomes
- suggestions for improving organizational effectiveness
- overall employee engagement and readiness for change
- employee desires for the future of Atlantis government as an organization and as a workplace

Initial questions for the survey will be developed in collaboration with staff. This survey would include a mechanism for full employee participation, rather than a statistically representative sampling of employee opinion. The USF team will analyze, group and summarize the employee survey into two reports: one detailed report for leadership, and one abbreviated report which will be shared with all employees to foster engagement and buy-in.

1.9 Employee Focus Group Forum (3 hours)

This Employee Forum will invite a representative sampling of employees across all departments, and all levels, of the organization.

- debrief the employee survey results
- prioritize the SWOT analysis results from the employee survey

The USF team will develop workshop materials for the Employee Forum. The USF team in partnership with SPC Collaborative Labs will prepare an Employee Forum Summary outlining activities and conclusions at the Forum.

1.10 Report to Council

The USF team in partnership with SPC Collaborative Labs will prepare a presentation and report of Phase 1: Deliverables 1.1 – 1.9. This presentation will outline activities and conclusions, solicit comments on the overarching vision and goals resulting from the Community Forum, and solicit Council approval to proceed to Phase Two of the Strategic Planning Process.

Phase 2

2.1 Leadership Forum I (4 hours)

Leadership Forum I will include Leadership across each department and Town Council.

- debrief the citizen forum/survey results
- debrief the employee forum results
- debrief initial citizen and employee desires for the future of the Town, including potential goals, objectives and recommendations related to the vision
- develop mission, vision, values, and strategic SMART goals for the Town government as an organization

The USF team in partnership with SPC Collaborative Labs will develop workshop materials for Leadership Forum I. The team will prepare a Forum Summary Report outlining activities and conclusions at the Forum.

2.2 Town Manager & Executive Leadership Planning Meeting I (3 hours) virtual

The USF team will meet with the Town Manager and Leadership Team to review the information-to-date and begin to finalize the language for the goals, objectives, and action items. This information will then be used for the Draft Final Report.

2.3 Leadership Forum II (3 hours)

Leadership Forum II will include Leadership across each department and Town Council.

- Review/finalize mission, vision, values, and strategic SMART goals
- Develop champions, objectives, implementation plans and timelines for each goal
- Determine a schedule for monitoring (accountability checkpoints) for each goal

The USF team will develop workshop materials for Leadership Forum II. The team will prepare a Leadership Forum II Summary Report outlining activities and conclusions at the Forum, as well as recommendations for long-term success of the strategic plan.

2.4 Town Manager & Executive Leadership Planning Meeting II (3 hours) virtual

The USF team and in partnership with SPC Collaborative Labs will meet with the Town Manager and Leadership Team to review the information to-date and begin to finalize the language for the goals, objectives, and action items. This information will then be used for the Draft Final Report.

2.5 DRAFT Final Report: Town Manager and Executive Leadership Team

The USF team in partnership with SPC Collaborative Labs will prepare a Draft Strategic Plan which will include:

- An organizational overview
- A definition and purpose of the Strategic Plan
- A written summary of the process used in the completion and assembly of the plan
- An establishment of the Town's mission, vision and values statements
- A list of stakeholder priorities for Town goals and objectives, including those of elected officials, employees, residents, businesses, and of any other significant groups
- A description of SMART goals and objectives for the Town
- Recommendations for the long-term success of the strategic plan
- Raw data obtained from the assembly of the plan
- Other information as deemed necessary by the USF team

Following the Deliverable 2.4, the USF team in partnership with SPC Collaborative Labs will present the final draft report to the Town Manager and Executive Leadership for review and comment.

2.6 Presentation of Final Report to Council

The USF team in partnership with SPC Collaborative Labs will collaborate with Town staff to present the report to the Council. The USF team in partnership with SPC Collaborative Labs will answer questions and/or clarify the report and implementation strategies.

Phase 3

3.1 Implementation Planning

As part of this process, the USF team in partnership with SPC Collaborative Labs will work with the Council and Town Manager to design the “Roadmap” for how to accomplish the goals and objectives while considering accountability strategies, budget alignment and a cultural change management process.

3.2 Strategies for Supporting the Implementation Plan

As part of this process, the USF team in partnership with SPC Collaborative Labs will work with the Council and Town Manager to ensure the five key components needed to support the implementation plan are in place: people, resources, structure, systems, and culture. This will also include an agreed upon dashboard tool and process for the Implementation Plan Facilitation.

3.3 Implementation Plan Facilitation (Quarterly for 1 year)

The completed Strategic Plan is a living document and should function as the main thrust of Fort Myers Beach in goal achievement. The Collaborative Labs team at SPC in partnership with the USF team will facilitate Implementation Workshops on a quarterly basis for a year to assess progress made to date and recalibrate plan to align with goals as needed.

ANTICIPATED TIMELINE

The timeline may be adjusted at the discretion of Town Staff. The total project duration would be approximately 24 to 36 months to complete the scope of services from execution of a signed contract. Note: This outline is tentative and will be refined based on initial consultation with Town Leadership and Staff. It is intended to serve as a starting point for discussions to develop a final design.

Phase One

1.1 Kick Off and Work Plan Refinement	October 2024
1.2 Town Council: Kick-Off, Setting Expectations & Teambuilding	November 2024
1.3 Communications Outreach	October 2024 - Ongoing
1.4 Individual/Group Stakeholder Interviews	January 2025
1.5 Resident Feedback Survey	February 2025
1.6 Community Focus Group Forum I (3 hours)	March 2025
1.7 Community Focus Group Forum II (3 hours)	April 2025
1.8 Employee Survey	March 2025
1.9 Employee Focus Group Forum (3 hours)	May 2025
1.10 Report to Council	June 2025

Phase Two

2.1 Leadership Forum I (4 hours) off-site	August 2025
2.2 Town Manager & Executive Leadership Planning Meeting	September 2025
2.3 Leadership Forum II (3 hours) off-site	October 2025
2.4 Town Manager & Executive Leadership Planning Meeting	November 2025
2.5 Draft Final Report Review	December 2025
2.6 Final Report to Council	January 2026

Phase Three

3.1 Implementation Planning	January 2026
3.2 Strategies for supporting the implementation plan	March 2026
3.3 Implementation plan facilitation	March 2027

ESTIMATED INVESTMENT

The USF Florida Institute of Government and the SPC Collaborative Labs recommend a discussion on the proposed scope of work prior to submitting a formal cost for services. It is important the Town agrees to the anticipated deliverables, methodology and timeline preceding development of the final costs.

Based on the scope and expected deliverables, the estimated costs to complete the proposed Strategic Planning Process is \$225,427.60 for the above-mentioned tasks. The final cost is inclusive of travel, printing, publishing, and ADA document remediation.

PHASE	TIMELINE	COST
Phases 1	October 2024-June 2025	\$115,972.20
Phases 2	August 2025-January 2026	\$62,821.20
Phases 3	March 2026- March 2027	\$46,634.20

ANTICIPATED CHALLENGES AND SOLUTIONS

Coordinating between organizational and community-wide process components

While the strategic planning process methodology focuses primarily on a vision, goals, and objectives for the Town as an organization, it also highlights the importance of developing these within the context of a broader community-wide conversation about the character and future of the Town itself. Activities addressing each of these components will have to be carefully sequenced and coordinated to ensure that the community-wide context is established at a point in the process and in a way that allows the activities focused on Town government to be fully informed and supported by that context.

Effectively integrating employee input with leadership direction

Employee input is often critical to understanding how an organization works and the challenges it faces. At the same time, it is important for employees and senior staff to develop a shared understanding, and level of comfort with, how that input will be used in the process. Careful framing and facilitation of the employee and leadership conversations described above can help ensure a productive role for this input.

Integrating input received through different channels

The scope of work in this proposal contemplates soliciting input from all stakeholders through a variety of modes: interviews, focus groups, community meetings, surveys, and social media. To maximize participant satisfaction with the process, it will be important that the full range of this input is available to participants and understood by them when they need it.

Transparency and responsiveness

The process outlined in this proposal includes many activities and conversations and will ideally result in products that guide Town government operations for a significant time to come. Because of this, it will be critical that residents and other stakeholders understand the range of input received and conversations conducted in the process, and how the results are based on that input and those conversations.

ADDITIONAL INFORMATION

Our team of experts in Statistics and Data Analysis, Survey Development, Human Resource and Project Management, as well as strategic planning for local governments come from both the University of South Florida School of Public Affairs and St. Petersburg College Collaborative Labs may include:

Angela Crist, MPA, serves as the Director of the USF FIOG. Ms. Crist has a proven track record as a high energy, results driven leader recognized for innovative strategies and tactics. Her excellent problem solving and customer-oriented focus have created value and managed client expectations to obtain mutual benefit. With over 15 years of experience, Angela has built and led new departments or groups with related staff training and mentoring to attain long-term business goals. She has consistently achieved positive results by motivating and leading organizations to identify, develop and capitalize on business opportunities by forging alliances across organizational boundaries. Her professional affiliations include Florida Village and County Management Association, Florida League of Cities, Florida Association of Counties, USF Alumni Association, USF Area Community Civic Association, and Leadership Tampa Bay Alumni Association.

John L. Daly, PhD, is Associate Professor of Public Administration and past Founding Director of the School of Public Affairs at the University of South Florida. His research interests include human resource management and public policy issues facing local government. He also is a specialist of governance and public policy challenges facing southern African nations. John has received two Fulbright Scholar grants to the Kingdom of Swaziland. He first served as a consultant to the Kingdom of Swaziland's government (1998-99). His second Fulbright grant allowed him to join the University of Swaziland faculty (2005-06). Most recently, John was selected as the 2014 recipient of the International Village/County Management Association's Academic Award in Memory of Stephen B. Sweeney. This honor was presented to him at the 100th ICMA Conference in Charlotte, NC, in September 2014. John is the author of two books, *Training in Developing Nations* (2005, M.E. Sharpe/Routledge) and *Human Resource Management in the Public Sector: Policies and Practices*, (2012, M. E. Sharpe/Routledge). Dr. Daly has extensive experience providing consulting services to Florida municipal governments, primarily in the areas of human resource management and organizational development.

Tina Fischer serves as the Director and facilitator for the SPC Collaborative Labs. Tina has over 25 years leading process improvement, corporate training, strategic planning, and facilitation. In addition to facilitating, she manages the operations of Collaborative Labs to ensure successful outcomes for clients. Tina's previous experience as a computer consultant had her traveling across the United States helping Fortune 500 clients implement new computer systems. Through this experience, her propensity for efficiency developed. She specialized in workflow management, process improvement, effective team communication, policy and procedure documentation, training, and quality control. Tina received her Bachelor of Science in Electrical Engineering from Florida State University. She was also an adjunct math professor for St. Petersburg College. Her love of teaching and ability to simplify the complex is apparent during client engagements.

Andrea Henning, MEd, serves as the Executive Director and facilitator for the SPC Collaborative Labs. Andrea has over 30 years leading strategic planning, corporate training, and leadership development, including the launch of the Collaborative Labs over 17 years ago. She has facilitated over 3000 regional, national, and international engagements. Prior to the Labs, Andrea led corporate training and organizational development for companies including: Chrysler, GE, and Universal Studios. She managed projects at Paradigm Learning for Frito-Lay, Pepsi, Capital One, and Kimberly-Clark. Andrea is a certified Co-Active Coach. Her education includes a BA from Wheaton College, a M.Ed., and post-graduate work in Educational Psychology from the University of Toledo.

Jonathan Massie serves as the Visual Illustrator for the SPC Collaborative Labs. Jonathan is Collaborative Lab's extraordinary artist. He interprets our workshop discussions into compelling illustrations that depict their shared vision and strategy. Jonathan has completed over 3,000 illustrations to date. These illustrations capture participants' stories in a unique way that are used beyond the workshop into strategy implementation. Jonathan has a Bachelor of Fine Arts from Virginia Commonwealth University. He began his career creating graphic design and managing art departments for newspapers such as the Chicago Sun Times, Cincinnati Enquirer, Detroit Free Press, and Baltimore Sun. Over the past 20 years, 10 of which have been with the Labs, Jonathan has focused on designing business illustrations for nonprofit, government, and commercial clients. His talents span various media including pen, marker, computer graphics and video production.

Stephen Neely, PhD, is an assistant professor in Public Administration at the University of South Florida's School of Public Affairs. He has an earned PhD in Public Administration from North Carolina State University, as well as two master's degrees in social and public policy Analysis as well as Business Administration. His specialties include research methods, survey administration, and data analysis, and he has previously conducted survey research in partnership with agencies/organizations such as the Florida Village/County Management Association, the Florida Center for Cybersecurity, and the Village of Zephyrhills, Florida.

Robyn Odegard, MA, serves as the Learning and Development Facilitator with the Florida Institute of Government at USF. In this role, she serves as project manager, program manager, and research administrator. Robyn holds certifications as a Certified Associate in Project Management (CAPM) from the Project Management Institute and CRA USF-ADVANCED certification from USF Research and Innovation. She received her MA in Political Science from the University of South Florida.

PJ Petrick serves as the Project Technologist for the SPC Collaborative Labs. PJ manages and assists with facilitating all the technology needs of the collaborative engagements at Collaborative Labs. Specializing in guiding participants through using the Collaborative Labs cutting edge technology, PJ uses a hands-on approach to ensure that session goals are met in the most efficient manner. PJ has over 16 years' experience in the business and management information systems industry. He has managed technology in over 3000 collaborative events. He was the planner and leader of the St. Petersburg College's technology instillation team. He has also owned and managed small businesses over the last 10 years. PJ received a Bachelor of Science from the University of Central Florida and holds an A+ certification in technology.

BRIEF DESCRIPTION OF ORGANIZATIONS

PRIMARY LEAD AGENCY

The John Scott Dailey Florida Institute of Government (FIOG) was created by the Florida Legislature in 1980 and subsequently designated as a Type I Institute by the Florida Board of Regents. The institute fulfills its statewide mission through a consortium of six (6) affiliate program offices located at the Florida State University, the University of Florida, the University of South Florida, the University of Central Florida, Florida Atlantic University, and Florida Gulf Coast University.

The FIOG at USF works directly with all USF faculty, staff, and practitioner's university-wide to bring their expertise to our clients. All our USF faculty, staff and practitioners are highly qualified and provide top notch services in a variety of critical areas including developing and implementing training and research programs, services, and grant and contract administration activities involving federal, state, and local governments, non-profit organizations, and the private sector.

In January 2013, the School of Public Affairs (SPA) at the University of South Florida (USF) was created to merge the graduate programs in Urban and Regional Planning and Public Administration, as well as the John Scott Dailey Florida Institute of Government. The faculty consists of an interdisciplinary group of scholars and former practitioners who share a common commitment to student learning, top-notch scholarship and applied community engagement.

The School's John Scott Dailey Florida Institute of Government (FIOG) provides training and technical assistance to local and state government officials, volunteers, and the general public on a wide range of topics, such as team building, strategic planning, goal setting and effective communication. FIOG partners University professionals from a variety of disciplines with organizational leaders charged with solving specific local issues to identify, evaluate and implement effective solutions. For the purposes of this project.

CO-LEAD AGENCY

Collaborative Labs at St. Petersburg College, founded in 2004, specializes in the design, facilitation, and documentation of highly interactive and dynamic facilitated planning engagements whether in-person, mobile, virtual or hybrid.

Strategic planning services are designed to produce maximum benefits in minimal time for clients. At Collaborative Labs, strategic visioning is the specialty. With more than 17 years of redefining strategic planning services and collaborative problem solving the extensive roster of satisfied clients is a testament to the value-added partnerships and lasting results. Their unique approach to strategic planning services is unparalleled in the industry from understanding how to leverage team strengths, enhancing individual performance to aligning business solutions with corporate goals. Expert facilitators empower participants to resolve conflicts and competing priorities through collaboration, and pinpoint overlapping areas of responsibility to help employees avoid duplication of effort and prevent deliverables from slipping through the cracks.

Importantly, Collaborative Labs is known for ensuring that all your stakeholders have an equal voice in the strategic-planning process. This is critical to the success of your endeavor and produces significantly better results than top-down planning. When individual team members are actively involved in contributing to business solutions, they feel more invested in the outcomes and take greater pride in organizational achievements – further enhancing your potential for success.

OUR SERVICE CAPABILITIES

The John Scott Dailey Florida Institute of Government (FIOG at USF) works directly with all USF faculty, staff, and practitioner's university-wide to bring their expertise to our clients. As part of a regional structure for enhanced relationships, FIOG serves government and non-profit entities within a 9- county region including Hardee, Hernando, Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota.

With over 25 years of experience in the local community, the Florida Institute of Government at the University of South Florida has a vast history of helping government and non-profit entities through visioning and strategic planning processes, offering, and coordinating trainings, technical assistance, and applied research projects for the local community. Since 1995, the institute has conducted approximately 24,793 workshops and conferences statewide in Florida—an average of 2,749 per year. Also, during this same time, approximately 580,685 participants, the large majority of whom represent officials and employees from local government in Florida, have attended programs resulting in over 2.6 million professional contact hours. The institute has also conducted an estimated 1,190 technical assistance and applied research projects, an average of 119 annually.

Collaborative Labs at St. Petersburg College, through an engaging, collaborative process and interactive technology (brainstorming and polling technology), are able to bring stakeholders together and help them achieve consensus on a shared strategic vision, priorities and accountability. The customized programs are designed to foster creative business solutions that create successful outcomes. The real value of the services provided lies not only within the expert facilitation and collaborative technology, but also in the ability to leverage those resources to provide a practical and actionable roadmap for success. A Real-Time Record™ is made available within two to three business days to allow the client to start right away on the outcomes of the engagement.

The Collaborative Labs at St. Petersburg College have facilitated over 3,000 engagements for business and organizations within government, municipality, profit, and non-profits. These engagements have taken place in person at their 10,000 square foot state-of-the-art technology labs, mobile throughout the United States and virtual.

1. **Request:**

Meeting Date: December 2, 2024

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A SUPPLEMENTAL TASK AUTHORIZATION #16 WITH AXIS INFRASTRUCTURE, LLC IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO PROVIDE TECHNICAL SUPPORT, GIS, AND SPECIAL PROJECT MANAGEMENT FOR THE 2024-25 FISCAL YEAR; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Agreements over the procurement threshold for administrative approval require Town Council approval.

What the action accomplishes:

Provides Technical Support, GIS, Special Project Management for FY 24/25

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Frankie Kropacek, Operations & Compliance Director

5. **Background:**

The following services will be provided by Axis Infrastructure for fiscal year 2024/2025:

1. Planning and Zoning staff, permit review, and technical analysis as required by the Comprehensive Plan and Land Development Code.
2. Coordination with Town departments and staff, advisory boards, and public hearings.
3. Coordinate special projects, manage Comprehensive Plan and LDC rewrite, manage GIS resource and other assets.
4. Coordinate with Town Management and Town Council and serve at their direction.
5. Transportation reviews and coordination when appropriate.

Attachments:

1. 24-256, Axis Infrastructure STA16
2. STA 16 Axis Infrastructure FY25 Planning Services

Financial Impact:

Not to exceed \$280,000.00

6. **Alternative Action**

Do not approve the agreement.

7. **Management Recommendations:**

Approve

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney

Created/Initiated - 11/14/2024
Approved - 11/18/2024
Approved - 11/21/2024

Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NO. 24-256

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, APPROVING A SUPPLEMENTAL TASK AUTHORIZATION #16 WITH AXIS INFRASTRUCTURE, LLC IN AN AMOUNT NOT TO EXCEED \$280,000.00 TO PROVIDE TECHNICAL SUPPORT, GIS, AND SPECIAL PROJECT MANAGEMENT FOR THE 2024-25 FISCAL YEAR; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town executed a professional services agreement under RFQ-20-22-AD with Axis Infrastructure, LLC ("Contractor"), whereby Contractor will provide the Town with professional services to assist with ongoing miscellaneous professionals services within the categories of work included within the agreement; and

WHEREAS, the Town Council approved the one-year renewal of the Agreement on October 28, 2024 through Resolution 24-219 extending the term of the Agreement to September 30, 2025; and

WHEREAS, the Town is in need of services under the professional services agreement for the current fiscal year, including technical support, GIS, and special project management; and

WHEREAS, approval of this Supplemental Task Authorization #16 is in the best interest of the residents of Fort Myers Beach as it will provide for the uninterrupted delivery of service.

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

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

Section 2. That the Supplemental Task Authorization between the Town and Contractor for the provision of professional services for the current fiscal year as attached and incorporated herein as Exhibit "A" is approved.

Section 3. That the Town Manager is authorized to execute the Supplemental Task Authorization and to expend budgeted funds on behalf of the Town as needed.

Section 4. That if any section, sentence, clause or phrase herein is held to be invalid by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Resolution.

Section 5. That this Resolution shall become effective immediately upon its adoption.

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

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

ADOPTED this 2nd day of December 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 December 2024

.

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

 X Supplemental Task Authorization

NO.: STA # 16

CONTRACT/PROJECT NAME: Technical Support, GIS, and Special Project Management for FY24/25

CONSULTANT: Axis Infrastructure

PROJECT NO.: _____

SOLICIT NO.: RFQ-20-22-AD

CONTRACT NO.: _____

REQUESTED BY: Andy Hyatt DATE OF REQUEST: November 12, 2024

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: November 12, 2024

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: November 12, 2024

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: November 12, 2024

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: November 12, 2024

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____

Department Director

_____ Date

By: _____

Contracts Manager

_____ Date

ACCEPTED: Axis Infrastructure

By: _____

Consultant/Provider

_____ Date

TOWN APPROVAL:

By: _____

Town Manager

_____ Date

By: _____

Town Attorney

_____ Date

Date to Proceed: _____

Cost of STA: N.T.E. \$ 280,000.00

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Technical Support, GIS, Special Project Management for FY 24/25

Overview

STA NO. 16: Technical Support, GIS, Special Project Management for FY 24/25

The following services will be provided by Axis Infrastructure for fiscal year 2024/2025:

1. Planning and Zoning staff, permit review, and technical analysis as required by the Comprehensive Plan and Land Development Code.
2. Coordination with Town departments and staff, advisory boards, and public hearings.
3. Coordinate special projects, manage Comprehensive Plan and LDC rewrite, manage GIS resource and other assets.
4. Coordinate with Town Management and Town Council and serve at their direction.
5. Transportation reviews and coordination when appropriate.

Hourly Breakdown:

Planner Hourly @ \$110/ hour
Senior Planner @ \$130/hour
Senior GIS Analysis @ 185/hour

Total Cost (of Job): N.T.E. \$280,000.00

EXHIBIT BDate: November 12, 2024

COMPENSATION AND METHOD OF PAYMENT FOR
Technical Support, GIS, Special Project Management for FY 24/25

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Technical Support Community Development		NTE	WIPP

TOTAL
(Unless list is continued on next page)

\$280,000.00

NTE

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated September 27, 2021, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto September 27, 2021, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: November 12, 2024

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR
Technical Support, GIS, Special Project Management for FY 24/25

Consultant or Sub-consultant Name: Axis Infrastructure
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Senior Planner / Manager	\$56.52	2.3	\$130
Planner	\$37.93	2.97	\$110
GIS Analyst	61.66	3.0	\$185
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

****NOTE:** Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: November 12, 2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR
Technical Support, GIS, Special Project Management for FY 24/25

CONSULTANT OR SUB-CONSULTANT NAME: Axis Infrastructure
(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Standard Rate Schedule As Included with Proposal	
Travel to requested meetings	As outlined in Proposal
Items as directed by the Town, backup provided.	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: November 12, 2024

TIME AND SCHEDULE OF PERFORMANCE FOR

JOB NAME – Fiscal 2023 Technical Support, GIS, and Special Project Management

This EXHIBIT “C” establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT “A”	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1-5	Technical Support, GIS, Special Project Management for FY 24/25	FY 2025	FY 2025

EXHIBIT DDate: November 12, 2024

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

Technical Support, GIS, Special Project Management for FY 24/25

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Planning /Transportation	Planning Analytics LLC					
GIS/Planning	Exp					

1. **Request:**

Meeting Date: December 2, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RECINDING RESOLUTION 24-177 AND AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO APPROVE AN UPDATED STANDARD TASK AUTHORIZATION #4 IN THE AMOUNT OF \$146,980.00 WITH TETRA TECH UNDER CONTRACT NO. 22-25-AD FOR TIER 1 PROJECT CARLOS CIRCLE AND ANY ASSOCIATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Carlos Circle lacks the infrastructure to properly collect and transmit stormwater.

What the action accomplishes:

This action will continue the work under the original task order under the current Tetra Tech professional services agreement to accomplish flood-free streets, allowing residents to go about their daily business in a rain event.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Community
Services Director

5. **Background:**

The previous Town Council Resolution authorized the execution of an agreement in the amount not to exceed \$145,990. Tetra Tech has began work under this contract, but the professional services agreement and fee schedule have since expired. Tetra Tech has an additional current contract under RFQ-22-25-AD in which this replacement agreement will continue the same services initiated from the original Town Council approval.

From the original background: "Carlos Circle experiences severe flooding during normal rain events. With extreme rain events, it can get up to a foot - foot and a half of flooding. The stormwater project that was installed was not finished or adequate to handle that amount of water. According to the engineers, the issue with Carlos Circle is the lack of infrastructure to properly collect and transmit stormwater off of the island. As a result, flooding occurs routinely. It is understood that there may be an outfall pipe located at the southeastern end of the circle. However, the outfall (if it still exists) is not connected to any infrastructure. It is also unknown the condition or size, and there is no easement for this or any other outfall. The drainage off of Carlos Circle is no longer there due to Hurricane Ian and residents are rebuilding their lots and seawalls. People are trapped in their houses for days because it takes at least 72 hours for the water to recede into the ground."

Attachments:

1. 24-255, STA 4 - Carlos Cir ns
2. STA 4 - Carlos Drainage_
3. 24-177, STA 38 - Carlos Cir

Financial Impact:

\$146,980.00

6. **Alternative Action**

Deny the agreement and stop the drainage work on Carlos Circle.

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
Jeff Hauge, Community Services Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/14/2024
Approved - 11/20/2024
Approved - 11/21/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-255

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH RECINDING RESOLUTION 24-177 AND AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO APPROVE AN UPDATED STANDARD TASK AUTHORIZATION #4 IN THE AMOUNT OF \$146,980.00 WITH TETRA TECH UNDER CONTRACT NO. 22-25-AD FOR TIER 1 PROJECT CARLOS CIRCLE AND ANY ASSOCIATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town previously requested approval to utilize a combination of swales and piping and release stormwater into Matanzas Pass via a legal outfall or to Estero Boulevard; and

WHEREAS, the proposed improvements will be performed as a change order with the Contractor currently performing improvements on “Tier 1” projects; and

WHEREAS, without this stormwater improvement to Carlos Circle, the area will continue to flood routinely with every rain event; and

WHEREAS, Resolution 24-177 approved Supplemental Task Authorization #38, which was incorrectly attached to the Resolution since it referred to an expiring contract; and

WHEREAS, this Resolution seeks to rescind Resolution 24-177, which approved an incorrect Supplemental Task Authorization and replace it with Supplemental Task Authorization #4 under the current RFQ-22-25-AD professional services agreement, which will allow for the continuance of work associated with this project.

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

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 Supplemental Task Authorization #4, a copy of which is attached to this Resolution as “Attachment A”.

Section 3. The Town Council hereby rescinds the previous approved Resolution 24-177.

Section 4. This resolution will take effect immediately.

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

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

ADOPTED this 2nd of December 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 December 2024.

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: 4

CONTRACT/PROJECT NAME: Carlos Circle Drainage Improvements

CONSULTANT: Tetra Tech

PROJECT NO.: _____

SOLICIT NO.: RFQ-22-25-AD

CONTRACT NO.: RFQ-22-25-AD

REQUESTED BY: Mark Ashton

DATE OF REQUEST: 8/9/2024

PURCHASE ORDER NUMBER: _____

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: 9/04/2024

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: 9/04/2024

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: 9/04/2024

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: 9/04/2024

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____ Date _____ By: _____ Date _____
Department Director Contracts Manager

By: _____ Date _____
Finance Department

ACCEPTED: Tetra Tech, Inc.

By: [Signature] 9/4/24
Consultant/Provider Date

TOWN APPROVAL:

By: _____ Date _____ By: _____ Date _____
Town Manager Town Attorney

Date to Proceed: _____

NTE of STA: \$146,980

Completion Due Date: _____

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES Carlos Circle Drainage Improvements – September 2024

Overview

The Town of Fort Myers Beach (TOWN) provides stormwater management throughout the TOWN's jurisdiction and has been working over the past several years to make improvements. One area of concern has been Carlos Circle, which is located towards the north end of the island. The issue with Carlos Circle is the lack of infrastructure to properly collect and transmit stormwater off of the island. As a result, flooding occurs routinely. It is understood that there may be an outfall pipe located at the southeastern end of the circle, however, the outfall (if it still exists) is not connected to any infrastructure. It is also unknown of the condition or size, and there is no easement for this or any other outfall. Prior to hurricane Ian, swales were installed to assist, locally with drainage. However, those swales provided minimum benefit due to the lack of outfalls. The swales were also filled in and remain unusable following Hurricane Ian.

To assist the property owners along Carlos Circle, there are two (2) potential options:

- Utilize a combination of swales and piping and release stormwater to Mantanzas Pass via a legal outfall
- Utilize a combination of swales and piping and release stormwater to Estero Boulevard

Other than the method of release, both options are anticipated to be the same in terms of collection and transmission. For the outfall, an easement will be required from one of the property owners with access to the adjacent surface water. For release to Estero Boulevard, an evaluation of the existing infrastructure would need to be performed in order to determine if the existing system has sufficient capacity to accept the additional water and if such connection would result in a potential surcharge of Carlos Circle due to differences in elevation. It is noted that Estero Boulevard is approximately 1.4 feet higher than Carlos Circle, so this evaluation will need to consider the depth of the system(s) and potential to surcharge with or without the use of a check valve.

This scope of services includes evaluation of Estero Boulevard along with the design, permitting and construction oversight for the proposed improvements. It is understood that the proposed improvements will be performed as a change order with the Contractor currently performing improvements on "Tier 1".

To fast-track a solution, the TOWN/CONSULTANT will be pursuing an easement, simultaneously while the CONSULTANT evaluates the available capacity of the existing Estero Boulevard system.

Scope of Services

Task 1: Evaluation

Evaluation

CONSULTANT will perform the following to determine if the existing infrastructure along Estero Boulevard is sufficient to accept additional stormwater from Carlos Circle:

1. Collect existing data including the existing environmental resource permit (ERP) for Estero Boulevard, as-built drawings, and if available, shop drawings of the perforated pipe and exfiltration boxes.

2. Perform a site visit to review the system and the exfiltration boxes to verify condition and sizes.
3. Perform calculations in order to estimate the stormwater flow generated within Carlos Circle during a 25-year, 72-hour storm event. This is anticipated to include using the hydraulic model data within the existing ERP and preparing an AdICPR model, if needed.
4. Utilizing the calculated flow, combined with the flow from the existing ERP, evaluate the ability of the existing Estero Boulevard system (piping and exfiltration boxes) to accept the additional flow without surcharging Carlos Circle as a result of elevation differences.
5. Simultaneously with the Estero Boulevard system evaluation, the CONSULTANT will assist the TOWN in researching property owners and attempting to secure an easement for an outfall. For the purpose of this proposal it is anticipated that only those 4-5 property owners near the intersection of Carlos Circle and Estero Boulevard with vacant lots will be approached.

If from the calculations it is determined that Estero Boulevard cannot accept additional flow, then the outfall alternative would be the only viable option. If it is determined that the Estero Boulevard system can handle the additional flow and without surcharging Carlos Circle, then the TOWN would need to choose which alternative they desire to proceed with (provided an easement for an outfall can be secured). If neither an easement can be secured for an outfall, nor the Estero Boulevard system is sufficient, then no further services would be performed.

Task 2: Final Design & Permitting

Once an alternative has been selected by the TOWN, the CONSULTANT will proceed with the following final design and permitting tasks:

Surveying

1. CONSULTANT will perform surveying along Carlos Circle (approx.. 820 linear feet) as well as at the point of proposed discharge (either outfall or connection to existing Estero Boulevard piping). The purpose of the survey will be to collect topographic data and above-ground features in the vicinity of proposed construction. Horizontal data will be in feet and shall be projected on the Florida State Plane Coordinate System, West Zone, NAD83 (2011). Vertical data will be in feet and shall be referenced to the North American Vertical Datum of 1988, NAVD88. All surveying efforts will be performed to the minimum standards as set forth in Chapter 472 of the Florida Statutes.
2. Utilizing a subconsultant (to be determined), perform limited subsurface utility exploration (SUE) to include ground penetrating radar and vacuum exploration in the vicinity of proposed underground construction activities. As the need and extent of SUE efforts are unknown at this time, this scope of services includes an allowance of \$7,000 for SUE efforts.
3. For the outfall option, if selected, CONSULTANT will prepare a sketch and legal description for the area required for the TOWN to secure an easement for the outfall. It is understood that the TOWN will negotiate and record the easement and that other than preparation of the sketch and legal description, no other assistance from CONSULTANT is required.

Final Design

1. Utilizing survey and SUE data collected, CONSULTANT will proceed with the final design, which will result in preparation of engineering drawings for use in construction by the TOWN's current Contractor performing the Tier 1 Water and Stormwater Improvements. As such, design

will be reduced to deliverable submission to the TOWN for review at 75-, and 100-percent completion levels. The design is anticipated to include a combination of swales and closed piping along with either a connection to existing piping or a new outfall for discharge. The drawings shall generally include but not be limited to the following:

Civil – 3 sheets

Plan/Profile – 3 sheets

Structural – 2 sheets

Outfall/Seawall Reconstruction – 2 sheets

2. Perform quality assurance/control reviews at the 75- and 100-percent completion stages.
3. Furnish a PDF set of drawings, Technical Specifications and opinion of probable construction costs (OPCC) at the 75- and 100-percent completion stages.
4. Schedule and attend review meetings with the TOWN following their review of the 75-percent and 100-percent submittals.

Permitting

1. Prepare and submit an Individual ERP application to the SFWMD for the proposed improvements.
 - a. In support of the application, Form 62-330.301(26) "Certification of Financial Capability for Perpetual Operations and Maintenance" shall be prepared. This will include the preparation of a written Operation and Maintenance (O&M) plan which shall specifically identify the activities required to ensure the perpetual performance of the system. Overall inspection, maintenance, schedule and future capital expenditures shall be included.
2. Prepare and submit an application to the United States Army Corps of Engineers (USACE) (for the outfall option) to include the outfall as a permitted part of surface water discharge.
3. Prepare and submit to the SFWMD a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWP3) for stormwater control during construction.
4. The CONSULTANT shall respond to one (1) request for additional information (RAI) from each permitting agency to clarify the original application(s). Comments after each initial RAI would require additional services due to unknown services required at this time.

Permitting Notes:

1. The TOWN currently holds a master dewatering permit with the South Florida Water Management District (SFWMD). The Contractor will be required to prepare a submittal package outlining their plans to perform dewatering in accordance with the TOWN's existing permit submit it to the SFWMD. As such, no services associated with dewatering or a dewatering permit.
2. DRAFT permit applications for required permits will be submitted to the TOWN for review with the 75-percent submittal. Upon review by the TOWN, the CONSULTANT will finalize all applications and submit them to the TOWN for signature. The intent will be to submit the applications at the 100-percent completion stage.

3. The CONSULTANT will coordinate payment of required permit application fees with the TOWN and will provide backup documentation to the TOWN. All permit application fees will be paid by the TOWN.
4. At this time, no impact to threatened or endangered species is anticipated, and therefore, no associated permitting is proposed at this time.

Task 3: Construction Phase Services

Tetra Tech will assist the TOWN with the following:

1. Prepare and provide the drawings to Andrew Site Work along with a request for proposal.
2. Assist the TOWN in addressing questions regarding the design and with negotiating a change order.
3. Prepare a change order for execution between the TOWN and Andrew Site Work once a change order has been negotiated.
4. Serve as an extension of staff providing project management oversight and coordination activities.
5. Review shop drawing submittals to confirm conformance of proposed products with the Contract Documents. It is anticipated that up to 10 shop drawings will be submitted.
6. Prepare responses to Contractor requests for information (RFIs). Up to 3 RFIs are anticipated.
7. Make site visits at various stages of construction to observe the progress and quality of the various aspects of contractor's work. It is anticipated 5 visits will be performed. CONSULTANT will determine if work is proceeding in accordance with the Contract Documents. The purpose of the site visits will be to enable CONSULTANT to observe construction to the extent necessary to certify the project's completion in conformance with permit approvals.
8. Utilizing the resident project representative (RPR) assigned to the Tier 1 Side Streets Water and Stormwater Improvements project, provide up to 80 hours of construction engineering and inspection (CEI) services to observe pipe installation, connection to existing piping or new outfall construction, and other critical aspects of construction such as maintenance of traffic and roadway restoration.
9. Conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that the CONSULTANT may recommend, in writing, final payment to Contractor and give written notice to the TOWN and the Contractor that the work is acceptable.
10. Prepare a set of reproducible Record Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished to the CONSULTANT by the Contractor.
11. Prepare a certification of completion for closeout of the ERP and USACE permits.

Hourly Breakdown:

Personnel	Hourly Rate	Hours	Cost
Project Manager 2	\$240	181	\$43,440
Engineer 2 (Civil)	\$135	204	\$27,540
Sr CAD Designer 1	\$130	130	\$16,900
Sr Engineer 1	\$245	39	\$9,555
Engineer 3 (Civil)	\$150	44	\$6,600
Project Assistant 2	\$85	39	\$3,315
Construction Project Rep 1	\$125	80	\$10,000
Sr Land Surveyor	\$185	14	\$2,590
Survey Crew Chief	\$140	20	\$2,800
Survey Tech 2	\$115	20	\$2,300
Engineer 2 (Structural)	\$135	34	\$4,590
Engineer 3 (Structural)	\$150	12	\$1,800
Sr CAD Designer 1 (Structural)	\$160	40	\$6,400
Subs (Subsurface Utility Exploration)			\$7,700
Other Direct Costs – GIS Platform			\$1,450
TOTAL		110	\$146,980

Total Cost (of Job): \$146,980.00

EXHIBIT BDate 9/4/2024COMPENSATION AND METHOD OF PAYMENTCarlos Circle Drainage Improvements – September 2024Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
1	Evaluation	\$20,430	NTE	WIPP
2	Final Design & Permitting	\$79,765	NTE	WIPP
3	Construction Phase Services	\$46,785	NTE	WIPP
TOTAL		\$146,980		

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 8/13/2024, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 8/13/2024, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 9/4/2024

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR

Carlos Circle Drainage Improvements

Consultant or Sub-consultant Name: Tetra Tech, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 9/4/2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

Carlos Circle Drainage Improvements

CONSULTANT OR SUB-CONSULTANT NAME: Tetra Tech
(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.54/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$12.01
Lunch	\$11.82
Dinner	\$24.72
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	
Reproduction (Photocopy) 8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: 9/4/2024

TIME AND SCHEDULE OF PERFORMANCE

Carlos Circle Drainage Improvements – September 2024

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
1	Evaluation	30	30
2	Final Design & Permitting	150	180
4	Construction Phase Services	150	330

EXHIBIT D

Date: 9/4/2024

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

Carlos Circle Drainage Improvements – September 2024

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:
(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Subsurface Utility Exploration	To Be Determined					

CPM Rate Table



Rates for: IEW

Updated: April 10, 2024

Confidential and Privileged
Information. Do not
Distribute.

Rate Table - IEW		Billing Rate
Labor Group	Billing Titles	
Operations Management		
	Principal in Charge	395.00
Project and Program Management		
	Project Manager 1	220.00
	Project Manager 2	240.00
	Sr Project Manager	300.00
	Program Manager	320.00
Engineers		
	Engineer 1	120.00
	Engineer 2	135.00
	Engineer 3	150.00
	Project Engineer 1	190.00
	Project Engineer 2	205.00
	Sr Engineer 1	245.00
	Sr Engineer 2	275.00
	Sr Engineer 3	290.00
	Principal Engineer	370.00
Engineering Designers		
	Engineering Technician	85.00
	Engineering Designer 1	105.00
	Engineering Designer 2	125.00
	Engineering Designer 3	145.00
	Sr Eng Designer 1	180.00
	Sr Eng Designer 2	195.00
	Sr Eng Designer 3	205.00
Information Technology		
	Sys Analyst / Programmer 1	180.00
	Sys Analyst / Programmer 2	190.00
	Sr Sys Analyst / Programmer 1	215.00
	Sr Sys Analyst / Programmer 2	285.00
Scientists		
	Scientist 1	90.00
	Scientist 2	110.00
	Scientist 3	135.00
	Sr Scientist 1	155.00
	Sr Scientist 2	185.00
	Sr Scientist 3	240.00
	Principal Scientist	270.00
Planning		
	Planner 1	100.00
	Planner 2	130.00
	Planner 3	145.00
	Sr Planner 1	160.00
	Sr Planner 2	175.00
	Sr Planner 3	200.00

Rate Table - IEW		
Labor Group	Billing Titles	Billing Rate
	Principal Planner	215.00
Construction Observation		
	Construction Project Rep 1	125.00
	Construction Project Rep 2	135.00
	Sr Constr Project Rep 1	165.00
	Sr Constr Project Rep 2	220.00
Construction Administration		
	Construction Administrator	110.00
	Sr Construction Administrator	135.00
Construction Management		
	Construction Manager 1	215.00
	Construction Manager 2	245.00
	Sr Construction Manager	260.00
	Construction Director	290.00
Surveying		
	Survey Tech 1	85.00
	Survey Tech 2	115.00
	Survey Tech 3	125.00
	Survey Crew Chief	140.00
	Surveying Specialist	155.00
	Land Surveyor	160.00
	Sr Land Surveyor	185.00
Technicians		
	Technician 1	85.00
	Technician 2	100.00
	Technician 3	115.00
	Sr Technician 1	155.00
	Sr Technician 2	160.00
	Sr Technician 3	165.00
Computer Aided Design (CAD)		
	CAD Technician 1	85.00
	CAD Technician 2	100.00
	CAD Technician 3	115.00
	CAD Designer	130.00
	Sr CAD Designer 1	160.00
	Sr CAD Designer 2	175.00
	CAD Director	210.00
Geographic Information Systems (GIS)		
	GIS Analyst 1	85.00
	GIS Analyst 2	115.00
	Sr GIS Analyst	145.00
	GIS Application Developer	155.00
	Sr GIS Application Developer	180.00
Project Administration		
	Project Assistant 1	75.00
	Project Assistant 2	85.00
	Project Administrator	120.00
	Sr Project Administrator	135.00
Contracts / Legal		
	Contract Administrator	105.00

Rate Table - IEW		Billing Rate
Labor Group	Billing Titles	
	Sr Contract Administrator	150.00
Finance / Accounting		
	Project Analyst 1	105.00
	Project Analyst 2	135.00
	Sr Project Analyst	175.00
	Project Accounting Director	250.00
Graphics		
	Graphic Artist	155.00
Consulting		
	Consultant 1	105.00
	Consultant 2	145.00
	Sr Consultant 1	180.00
	Sr Consultant 2	225.00
	Sr Consultant 3	240.00

Tt Price Proposal		Labor Plan													Price Summary / Totals			
		13 Resources													Task Pricing Totals		146,980	
Carlos Circle Drainage Improvements to alleviate flooding	Bill Rate >	240.00	135.00	130.00	245.00	150.00	85.00	125.00	185.00	115.00	140.00	135.00	150.00	160.00				
Submitted to: Town of Fort Myers Beach (Attn: Mayor)															Total Price146,980			
Contract Type: T&M															Pricing by Resource			
	Total Labor Hrs																	Task Pricing Totals
Project Phases / Tasks	857	181	204	130	39	44	39	80	14	20	20	34	12	40	Labor137,830	Subs7,700	ODCs1,450	146,980
Task 1 - Evaluation	120	28	34	4	8	42	4	-	-	-	-	-	-	-	20,430	-	-	20,430
Data Collection/Review	16	4	6		2	4									2,860			2,860
Site Visit	16	8	8												3,000			3,000
Calculations/Modeling	38	4			4	30									6,440			6,440
Evaluation and Surcharge Review	18	4		4	2	8									3,170			3,170
Easement Exploration Assistance	32	8	20				4								4,960			4,960
Task 2 - Final Design & Permitting	447	78	90	100	27	2	20	-	14	20	20	24	12	40	71,615	7,700	450	79,765
Surveying	86	4	4	24	-	-	-	-	14	20	20	-	-	-	12,310	7,700	450	20,460
Field Surveying	70	2	4	16					8	20	20				9,680		400	10,080
Subsurface Utility Exploration	1	1													240	7,700	50	7,990
Sketch & Legal Description	15	1		8					6						2,390			2,390
Final Design	204	36	30	48	14	-	-	-	-	-	-	24	12	40	33,800	-	-	33,800
Drawings	166	22	24	48	4	-	-	-	-	-	-	24	4	40	25,980	-	-	25,980
Civil Sheets (3)	96	20	24	48	4										15,260			15,260
Structural Sheets (2)	70	2										24	4	40	10,720			10,720
QA/QC Reviews	26	8			10								8		5,570			5,570
75% & 100% Review Meetings with TOWN	12	6	6												2,250			2,250
Permitting	157	38	56	28	13	2	20	-	-	-	-	-	-	-	25,505	-	-	25,505
ERP Application Submittal	73	20	28	12	3	2	8	-	-	-	-	-	-	-	11,855	-	-	11,855
Application	21	4	8	4	1	2	2								3,275			3,275
O&M Plan & Supporting Documents	52	16	20	8	2		6								8,580			8,580
USACE Submittal	24	2	8	4	6		4								3,890			3,890
Respond to RAIs (2 budgeted)	60	16	20	12	4		8								9,760			9,760
Task 3 - Construction Phase Services	290	75	80	26	4	-	15	80	-	-	-	10	-	-	45,785	-	1,000	46,785
Prepare/Provide Drawings to Andrew Site Work	4	2		2											740			740
Change Order Negotiation/Preparation	10	4	4				2								1,670			1,670
Project Management as Extension of Staff	40	40													9,600			9,600
Shop Drawing Review (10 est.)	42	4	20		4		4					10			6,330			6,330
Respond to RFIs (3)	14	4	8				2								2,210			2,210
Site Visits (5)	42	8	30				4								6,310		1,000	7,310
RPR Services	80							80							10,000			10,000
Substantial Completion Walkthrough	13	6	6				1								2,335			2,335
Final Completion Walkthrough	8	4	4												1,500			1,500
Record Drawing Preparation	23	1	2	20											3,110			3,110
SFWMD & USACE Certifications	14	2	6	4			2								1,980			1,980
Totals	857	181	204	130	39	44	39	80	14	20	20	34	12	40	137,830	7,700	1,450	146,980

RESOLUTION NUMBER 24-179

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO APPROVE STA 38 IN THE AMOUNT OF 145,990.00 WITH TETRA TECH UNDER CONTRACT NO. 22-25-AD FOR TIER 1 PROJECT CARLOS CIRCLE AND ANY ASSOCIATED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town is requesting approval to utilize a combination of swales and piping and release stormwater into Matanzas Pass via a legal outfall or to Estero Boulevard; and

WHEREAS, the proposed improvements will be performed as a change order with the Contractor currently performing improvements on “Tier 1”; and

WHEREAS, without this stormwater improvement to Carlos Circle, the area will continue to flood routinely with every rain event; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Agreement.

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 Agreement and authorizes the Town Manager or his designee to execute any documentation related to the Agreement which is attached hereto as “Attachment A”.

The foregoing Resolution was adopted by the Town Council upon a motion by council Member King and seconded by Council Member Safford, 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, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 9th of September, 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 13th day of September 2024.

X Supplemental Task Authorization NO.: 38

CONTRACT/PROJECT NAME: Carlos Circle Drainage Improvements

CONSULTANT: Tetra Tech, Inc. PROJECT NO.: _____

SOLICIT NO.: 20-22-AD CONTRACT NO.: 20-22-AD

REQUESTED BY: Mark Ashton, Utilities Director DATE OF REQUEST: 8/13/2024

EXHIBIT "A"	SCOPE OF PROFESSIONAL SERVICE:	DATED: <u>8/13/2024</u>
EXHIBIT "B"	COMPENSATION & METHOD OF PAYMENT:	DATED: <u>8/13/2024</u>
EXHIBIT "C"	TIME AND SCHEDULE OF PERFORMANCE:	DATED: <u>8/13/2024</u>
EXHIBIT "D"	CONSULTANT'S/PROVIDER'S ASSOCIATED SUB-CONSULTANT(S)/SUB-CONTRACTORS:	DATED: <u>8/13/2024</u>

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

Background:

The Town of Fort Myers Beach (TOWN) provides stormwater management throughout the TOWN's jurisdiction and has been working over the past several years to make improvements. One area of concern has been Carlos Circle, which is located towards the north end of the island. The issue with Carlos Circle is the lack of infrastructure to properly collect and transmit stormwater off of the island. As a result, flooding occurs routinely. It is understood that there may be an outfall pipe located at the southeastern end of the circle, however, the outfall (if it still exists) is not connected to any infrastructure. It is also unknown of the condition or size, and there is no easement for this or any other outfall. Prior to hurricane Ian, swales were installed to assist, locally with drainage. However, those swales provided minimum benefit due to the lack of outfalls. The swales were also filled in and remain unusable following Hurricane Ian.

To assist the property owners along Carlos Circle, there are two (2) potential options:

- Utilize a combination of swales and piping and release stormwater to Mantanzas Pass via a legal outfall
- Utilize a combination of swales and piping and release stormwater to Estero Boulevard

Other than the method of release, both options are anticipated to be the same in terms of collection and transmission. For the outfall, an easement will be required from one of the property owners with access to the adjacent surface water. For release to Estero Boulevard, an evaluation of the existing infrastructure would need to be performed in order to determine if the existing system has sufficient capacity to accept the additional water and if such connection would result in a potential surcharge of Carlos Circle due to differences in elevation. It is noted that Estero Boulevard is approximately 1.4 feet higher than Carlos Circle, so this evaluation will need to consider the depth of the system(s) and potential to surcharge with or without the use of a check valve.

This scope of services includes evaluation of Estero Boulevard along with the design, permitting and construction oversight for the proposed improvements. It is understood that the proposed improvements will be performed as a change order with the Contractor currently performing improvements on "Tier 1".

To fast-track a solution, the TOWN/CONSULTANT will be pursuing an easement, simultaneously while the CONSULTANT evaluates the available capacity of the existing Estero Boulevard system.

Scope of Services

Task 1: Evaluation

Evaluation

CONSULTANT will perform the following to determine if the existing infrastructure along Estero Boulevard is sufficient to accept additional stormwater from Carlos Circle:

1. Collect existing data including the existing environmental resource permit (ERP) for Estero Boulevard, as-built drawings, and if available, shop drawings of the perforated pipe and exfiltration boxes.
2. Perform a site visit to review the system and the exfiltration boxes to verify condition and sizes.

3. Perform calculations in order to estimate the stormwater flow generated within Carlos Circle during a 25-year, 72-hour storm event. This is anticipated to include using the hydraulic model data within the existing ERP and preparing an AdICPR model, if needed.
4. Utilizing the calculated flow, combined with the flow from the existing ERP, evaluate the ability of the existing Estero Boulevard system (piping and exfiltration boxes) to accept the additional flow without surcharging Carlos Circle as a result of elevation differences.
5. Simultaneously with the Estero Boulevard system evaluation, the CONSULTANT will assist the TOWN in researching property owners and attempting to secure an easement for an outfall. For the purpose of this proposal it is anticipated that only those 4-5 property owners near the intersection of Carlos Circle and Estero Boulevard with vacant lots will be approached.

If from the calculations it is determined that Estero Boulevard cannot accept additional flow, then the outfall alternative would be the only viable option. If it is determined that the Estero Boulevard system can handle the additional flow and without surcharging Carlos Circle, then the TOWN would need to choose which alternative they desire to proceed with (provided an easement for an outfall can be secured). If neither an easement can be secured for an outfall, nor the Estero Boulevard system is sufficient, then no further services would be performed.

Task 2: Final Design & Permitting

Once an alternative has been selected by the TOWN, the CONSULTANT will proceed with the following final design and permitting tasks:

Surveying

1. CONSULTANT will perform surveying along Carlos Circle (approx.. 820 linear feet) as well as at the point of proposed discharge (either outfall or connection to existing Estero Boulevard piping). The purpose of the survey will be to collect topographic data and above-ground features in the vicinity of proposed construction. Horizontal data will be in feet and shall be projected on the Florida State Plane Coordinate System, West Zone, NAD83 (2011). Vertical data will be in feet and shall be referenced to the North American Vertical Datum of 1988, NAVD88. All surveying efforts will be performed to the minimum standards as set forth in Chapter 472 of the Florida Statutes.
2. Utilizing a subconsultant (to be determined), perform limited subsurface utility exploration (SUE) to include ground penetrating radar and vacuum exploration in the vicinity of proposed underground construction activities. As the need and extent of SUE efforts are unknown at this time, this scope of services includes an allowance of \$7,000 for SUE efforts.
3. For the outfall option, if selected, CONSULTANT will prepare a sketch and legal description for the area required for the TOWN to secure an easement for the outfall. It is understood that the TOWN will negotiate and record the easement and that other than preparation of the sketch and legal description, no other assistance from CONSULTANT is required.

Final Design

1. Utilizing survey and SUE data collected, CONSULTANT will proceed with the final design, which will result in preparation of engineering drawings for use in construction by the TOWN's current Contractor performing the Tier 1 Water and Stormwater Improvements. As such, design will be reduced to deliverable submission to the TOWN for review at 75-, and 100-percent completion levels. The design is anticipated to include a combination of swales and closed

pipings along with either a connection to existing piping or a new outfall for discharge. The drawings shall generally include but not be limited to the following:

Civil – 3 sheets

Plan/Profile – 3 sheets

Structural – 2 sheets

Outfall/Seawall Reconstruction – 2 sheets

2. Perform quality assurance/control reviews at the 75- and 100-percent completion stages.
3. Furnish a PDF set of drawings, Technical Specifications and opinion of probable construction costs (OPCC) at the 75- and 100-percent completion stages.
4. Schedule and attend review meetings with the TOWN following their review of the 75-percent and 100-percent submittals.

Permitting

1. Prepare and submit an Individual ERP application to the SFWMD for the proposed improvements.
 - a. In support of the application, Form 62-330.301(26) "Certification of Financial Capability for Perpetual Operations and Maintenance" shall be prepared. This will include the preparation of a written Operation and Maintenance (O&M) plan which shall specifically identify the activities required to ensure the perpetual performance of the system. Overall inspection, maintenance, schedule and future capital expenditures shall be included.
2. Prepare and submit an application to the United States Army Corps of Engineers (USACE) (for the outfall option) to include the outfall as a permitted part of surface water discharge.
3. Prepare and submit to the SFWMD a Notice of Intent (NOI) and Stormwater Pollution Prevention Plan (SWP3) for stormwater control during construction.
4. The CONSULTANT shall respond to one (1) request for additional information (RAI) from each permitting agency to clarify the original application(s). Comments after each initial RAI would require additional services due to unknown services required at this time.

Permitting Notes:

1. The TOWN currently holds a master dewatering permit with the South Florida Water Management District (SFWMD). The Contractor will be required to prepare a submittal package outlining their plans to perform dewatering in accordance with the TOWN's existing permit submit it to the SFWMD. As such, no services associated with dewatering or a dewatering permit.
2. DRAFT permit applications for required permits will be submitted to the TOWN for review with the 75-percent submittal. Upon review by the TOWN, the CONSULTANT will finalize all applications and submit them to the TOWN for signature. The intent will be to submit the applications at the 100-percent completion stage.
3. The CONSULTANT will coordinate payment of required permit application fees with the TOWN and will provide backup documentation to the TOWN. All permit application fees will be paid by the TOWN.

4. At this time, no impact to threatened or endangered species is anticipated, and therefore, no associated permitting is proposed at this time.

Task 3: Construction Phase Services

Tetra Tech will assist the TOWN with the following:

1. Prepare and provide the drawings to Andrew Site Work along with a request for proposal.
2. Assist the TOWN in addressing questions regarding the design and with negotiating a change order.
3. Prepare a change order for execution between the TOWN and Andrew Site Work once a change order has been negotiated.
4. Serve as an extension of staff providing project management oversight and coordination activities.
5. Review shop drawing submittals to confirm conformance of proposed products with the Contract Documents. It is anticipated that up to 10 shop drawings will be submitted.
6. Prepare responses to Contractor requests for information (RFIs). Up to 3 RFIs are anticipated.
7. Make site visits at various stages of construction to observe the progress and quality of the various aspects of contractor's work. It is anticipated 5 visits will be performed. CONSULTANT will determine if work is proceeding in accordance with the Contract Documents. The purpose of the site visits will be to enable CONSULTANT to observe construction to the extent necessary to certify the project's completion in conformance with permit approvals.
8. Utilizing the resident project representative (RPR) assigned to the Tier 1 Side Streets Water and Stormwater Improvements project, provide up to 80 hours of construction engineering and inspection (CEI) services to observe pipe installation, connection to existing piping or new outfall construction, and other critical aspects of construction such as maintenance of traffic and roadway restoration.
9. Conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that the CONSULTANT may recommend, in writing, final payment to Contractor and give written notice to the TOWN and the Contractor that the work is acceptable.
10. Prepare a set of reproducible Record Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished to the CONSULTANT by the Contractor.
11. Prepare a certification of completion for closeout of the ERP and USACE permits.

EXHIBIT BDate 8/13/2024COMPENSATION AND METHOD OF PAYMENTCarlos Circle Drainage ImprovementsSection 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
1	Evaluation	\$20,440	NTE	WIPP
2	Final Design & Permitting	\$78,985	NTE	WIPP
3	Construction Phase Services	\$46,565	NTE	WIPP
TOTAL		\$145,990		

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 8/13/2024, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 8/13/2024, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 8/13/2024

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE *** FOR

Carlos Circle Drainage Improvements

Consultant or Sub-consultant Name: Tetra Tech, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
N/A (per master contract)			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 8/13/2024

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

Carlos Circle Drainage Improvements

CONSULTANT OR SUB-CONSULTANT NAME: Tetra Tech

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.54/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$12.01
Lunch	\$11.82
Dinner	\$24.72
In accordance with the Runzheimer rate service for Travel utilizing the "average", dated 5/4/06	
Reproduction (Photocopy) 8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: 8/13/2024

TIME AND SCHEDULE OF PERFORMANCE

Carlos Circle Drainage Improvements

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
1	Evaluation	30	30
2	Final Design & Permitting	150	180
4	Construction Phase Services	150	330

EXHIBIT D

Date: 8/13/2024

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

Carlos Circle Drainage Improvements

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:
(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Subsurface Utility Exploration	To Be Determined					

Tt Price Proposal		Labor Plan														Price Summary / Totals			
		14 Resources														Task Pricing Totals		145,990	
Carlos Circle Drainage Improvements	Bill Rate >	250.00	130.00	170.00	135.00	225.00	150.00	95.00	116.00	210.00	95.00	105.00	130.00	150.00	150.00				
Improvements to alleviate flooding																Total Price145,990			
Submitted to: Town of Fort Myers Beach (Attn: Mark Ashton)																Pricing by Resource			
Contract Type: T&M																			
	Total Labor Hrs																		Task Pricing Totals
Project Phases / Tasks	857	181	204	-	130	39	44	39	80	14	20	20	34	12	40	136,840	7,700	1,450	145,990
Task 1 - Evaluation	120	28	34	-	4	8	42	4	-	-	-	-	-	-	-	20,440	-	-	20,440
Data Collection/Review	16	4	6	-		2	4									2,830			2,830
Site Visit	16	8	8	-												3,040			3,040
Calculations/Modeling	38	4		-		4	30									6,400			6,400
Evaluation and Surcharge Review	18	4		-	4	2	8									3,190			3,190
Easement Exploration Assistance	32	8	20	-				4								4,980			4,980
Task 2 - Final Design & Permitting	447	78	90	-	100	27	2	20	-	14	20	20	24	12	40	70,835	7,700	450	78,985
Surveying	86	4	4	-	24	-	-	-	-	14	20	20	-	-	-	11,700	7,700	450	19,850
Field Surveying	70	2	4	-	16					8	20	20				8,860		400	9,260
Subsurface Utility Exploration	1	1		-												250	7,700	50	8,000
Sketch & Legal Description	15	1		-	8					6						2,590			2,590
Final Design	204	36	30	-	48	14	-	-	-	-	-	-	24	12	40	33,450	-	-	33,450
Drawings	166	22	24	-	48	4	-	-	-	-	-	-	24	4	40	25,720	-	-	25,720
Civil Sheets (3)	96	20	24	-	48	4										15,500			15,500
Structural Sheets (2)	70	2		-										24	4	10,220			10,220
QA/QC Reviews	26	8		-		10									8	5,450			5,450
75% & 100% Review Meetings with TOWN	12	6	6	-												2,280			2,280
Permitting	157	38	56	-	28	13	2	20	-	-	-	-	-	-	-	25,685	-	-	25,685
ERP Application Submittal	73	20	28	-	12	3	2	8	-	-	-	-	-	-	-	11,995	-	-	11,995
Application	21	4	8	-	4	1	2	2								3,295			3,295
O&M Plan & Supporting Documents	52	16	20	-	8	2		6								8,700			8,700
USACE Submittal	24	2	8	-	4	6		4								3,810			3,810
Respond to RAIs (2 budgeted)	60	16	20	-	12	4		8								9,880			9,880
Task 3 - Construction Phase Services	290	75	80	-	26	4	-	15	80	-	-	-	10	-	-	45,565	-	1,000	46,565
Prepare/Provide Drawings to Andrew Site Work	4	2		-	2											770			770
Change Order Negotiation/Preparation	10	4	4	-				2								1,710			1,710
Project Management as Extension of Staff	40	40		-												10,000			10,000
Shop Drawing Review (10 est.)	42	4	20	-		4		4					10			6,180			6,180
Respond to RFIs (3)	14	4	8	-				2								2,230			2,230
Site Visits (5)	42	8	30	-				4								6,280		\$1,000	7,280
RPR Services	80			-					80							9,280			9,280
Substantial Completion Walkthrough	13	6	6	-				1								2,375			2,375
Final Completion Walkthrough	8	4	4	-												1,520			1,520
Record Drawing Preparation	23	1	2	-	20											3,210			3,210
SFWMD & USACE Certifications	14	2	6	-	4			2								2,010			2,010
Totals	857	181	204	-	130	39	44	39	80	14	20	20	34	12	40	136,840	7,700	1,450	145,990

1. **Request:**

Meeting Date: December 2, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-24-08-EN TO KELLY BROTHERS, INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE THE DINGHY DOCK CONSTRUCTION PROJECT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

Town of Fort Myers Beach is obligated by the Matanzas Mooring Field Mooring Rental Agreement as a part of the Matanzas Mooring Field Management Plan, which was approved by Town of Fort Myers Beach Resolution 21-02 to provide dinghy docks as a facility for use by mooring field renters.

The dinghy dock was destroyed by Hurricane Ian. Current dinghy dock facilities are only temporary measures to provide upland access to mooring field renters until permanent facilities can be constructed.

What the action accomplishes:

This action awards ITB-24-08-EN to Kelly Brothers, Inc. as the lowest responsive and responsible bidder.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Projects Manager

5. **Background:**

The Matanzas Pass Dinghy Dock is located beneath the San Carlos Boulevard Sky Bridge (SR-865) between the Matanzas Inn Restaurant and Nervous Nellie's, Fort Myers Beach, Florida in Section 24, Township 46, Range 23 East, Lee County.

The Dinghy Dock was first constructed in February 2008 to service the Matanzas Pass Mooring Field. The structure sustained damage from storms over the years, including Tropical Storm Hermine in 2016 and Hurricane Irma in 2017, until it was destroyed by Hurricane Ian in 2022.

Attachments:

1. 24-286, Award Dinghy Dock Kelly Bros Updated
2. Kelly Brothers FMB_003 Official Bid Form
3. CEC 23052 Bid Recommendation 20240919

Financial Impact:

The cost of the Dinghy Dock construction is expected to be reimbursed by FEMA and FDEM.

6. **Alternative Action**

Do not award ITB-24-08-EN to Kelly Brothers, Inc. as the lowest responsive and responsible bidder to construct the Matanzas Pass Dinghy Dock Project.

7. **Management Recommendations:**

Award ITB-24-08-EN to Kelly Brothers, Inc. as the lowest responsive and responsible bidder to

construct the Matanzas Pass Dinghy Dock Project.

8. **Recommended Approval:**

Chadd Chustz, Environmental Projects Manager
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 11/19/2024
Approved - 11/21/2024
Approved - 11/22/2024
Approved - 11/22/2024
Final Approval - 11/22/2024

RESOLUTION NUMBER 24-286

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA TO AWARD ITB-24-08-EN TO KELLY BROTHERS, INC. AS THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER TO COMPLETE THE DINGHY DOCK CONSTRUCTION PROJECT; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach is seeking to maintain and restore the Matanzas Pass Mooring Field Dinghy Dock to provide upland access renters in the mooring field; and

WHEREAS, the Town of Fort Myers Beach is obligated by the Matanzas Mooring Field Mooring Rental Agreement as a part of the Matanzas Mooring Field Management Plan, which was approved by Resolution 21-02 to provide dinghy docks as a facility for use by mooring field renters; and

WHEREAS, the lowest and responsive bid for completion of the Project received from Kelly Brothers, Inc. in the amount of \$204,645.00 base bid and \$129,045.00 alternative bid are eligible for the funding provided by the FEMA Category G Public Assistance Program, and State funding via the Florida Department of Emergency Management pursuant to 252.37(5)(a) and Senate Bill 4-A (2022A); and

WHEREAS, pursuant to a competitive procurement process in compliance with State Law and Town Code – ITB-24-08-EN "Dinghy Dock Construction Project," the Town awards the bid to Kelly Brothers Inc; and

WHEREAS, Kelly Brothers, Inc. has agreed to execute an agreement for the Dinghy Dock Construction Project containing similar terms as included in the bid; and

WHEREAS, it is in the best interest of the Town to award the project to Kelly Brothers, Inc..

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 awards the bid as provided herein with Kelly Brothers, Inc..

Section 3. This resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Council Member King, 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 SOLELY:

Vose Law Firm, Town Attorney

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



PART D
FMB:003 - OFFICIAL BID FORM
(1 of 5 Pages)

FOR

MATANZAS PASS DINGHY DOCK REPLACEMENT PROJECT

ITB-24-08-EN

Bids are to be submitted by

Thursday, September 5, 2024 @ 2:00 P.M. LOCAL TIME

to:

**TOWN OF FORT MYERS BEACH
VIA DEMANDSTAR.COM**

BID OPENING:

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

Thursday, September 5, 2024 at 2:15 P.M. LOCAL TIME

BIDDER: Kelly Brothers, Inc.
(Individual or Firm Name)



PART D
FMB:003 - OFFICIAL BID FORM
(2 of 5 Pages)

Thursday, September 5, 2024
(DATE)

2:00 P.M. LOCAL TIME
(TIME)

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

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN OR DEMANDSTAR.
2. The Undersigned, hereinafter called "BIDDER", is familiar with the local conditions, nature and extent of the work, attended the mandatory pre-bid meeting, examined carefully the sample Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and fulfilled their requirements as well as the bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

MATANZAS PASS DINGHY DOCK REPLACEMENT PROJECT
ITB-24-08-EN

in full accordance with the drawings and specifications prepared in accordance with the Town's advertisement for Bids, Instruction to BIDDERS, Contract and all other documents related thereto on file with TOWN, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:

**SCHEDULE OF VALUES
TOWN OF FORT MYERS BEACH
MATANZAS PASS DINGHY DOCK REPLACEMENT PROJECT**

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
1	Mobilization / Demobilization	1	Job	14,948.00	14,948.00
2.1	Pile Wraps	4	Each	232.00	928.00
2.2	Gangway	1	Job	14,270.00	14,270.00
2.3	Extend Guide Piles	3	Each	4,085.00	12,255.00
2.4	Upland Repairs	1	Job	4,068.00	4,068.00
3	Concrete Floating Dock (BASE BID)	560	Square Feet	262.00	146,720.00
3A	Aluminum Floating Dock (ALTERNATE)	560	Square Feet		Please see Pg. 23 for Total Bid of Aluminum Floating Dock (Alternate).
4	Dispose of Old Concrete Dock	1	Job	4,156.00	
5	Transport Existing Aluminum Docks (1) 4'x26' and (1) 8.5'x50'	1	Job	4,875.00	4,875.00
6	Bid Bond P&P Bonding	1	Job	2,425.00	2,425.00
		Total (Concrete Floating Dock BASE BID) 204,645.00			

Note: There is no cost for a Bid Bond unless the Contractor fails to execute the Contract. The cost provided above includes the cost for Payment and Performance (P&P) Bonding.



**CONSTRUCTION COST
SUMMARY - SCHEDULE OF VALUES (CONCRETE DOCK)**

1. Mobilization/Demobilization	\$ 14,948.00
2. Dinghy Dock Replacement	\$ 31,521.00
3. Concrete Dock	\$ 146,720.00
4. Old Concrete Dock Disposal	\$ 4,156.00
5. Transport Existing Aluminum Dock	\$ 4,875.00
6. Bonding (P&P Bonding)	\$ 2,425.00
TOTAL BASE BID	\$ 204,645.00

**ALTERNATE CONSTRUCTION COST
SUMMARY - SCHEDULE OF VALUES (ALUMINUM DOCK)**

1. Mobilization/Demobilization	\$ 14,948.00
2. Dinghy Dock Replacement	\$ 31,521.00
3A. Aluminum Dock	\$ 71,120.00
4. Old Concrete Dock Disposal	\$ 4,156.00
5. Transport Existing Aluminum Dock	\$ 4,875.00
6. Bonding (P&P Bonding)	\$ 2,425.00
TOTAL ALTERNATE BID	\$ 129,045.00



3. The BIDDER hereby agrees that:
- (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the BIDDER has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
 - (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of a breach of any of the agreements of this proposal, the bid security shall be forfeited.
 - (c) In the event of any conflict between the Invitation to Bid and Ordinance 17-01, the provisions of the ordinance will prevail. A copy of ordinance 17-01 is available on the TOWN'S website.



PART D
FMB:003 - OFFICIAL BID FORM
(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: 08/28/2024 Addendum No. 2 Dated 09/04/2024

Addendum No. _____ Dated: _____ Addendum No. _____ Dated _____

5. If awarded this contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 30 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 60 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any BIDDER or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other BIDDER, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



PART D
FMB:003 - OFFICIAL BID FORM
(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Dane Kelly, Travis Kelly
(Name of License Holder)

CGC1519780, CGC1528509
(State Certificate No.)

1204211 / Lee County
Business Tax Receipt No. (Specify jurisdiction)

Sunbiz.org Document No.656515
(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this
5th day of September, 2024.

Dane Kelly
By: Printed


By: Signature

TITLE: President

Kelly Brothers, Inc.

Company Name

15775 Pine Ridge Road

Mailing Address

Fort Myers, FL 33908

City, State, and Zip

Dane Kelly

Contact Person

estimating@kellybros.net

E-mail / Contact Person

239-482-7300

Telephone Number

NA

Fax Number

ATTEST: 
Assistant Secretary

Travis Kelly
Kelly Brothers, Inc.
15775 Pine Ridge Road, Fort, Myers, FL 33908
State of Incorporation: Florida

(Seal)



September 19, 2024

Chadd Chutz
Environmental Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

Via email: Chadd@fmbgov.com

**Re: Matanzas Harbor Dingy Dock Replacement
Bid Review Summary, ITB-24-08-EN
CEC File No. 23.052**

Dear Chadd:

Coastal Engineering Consultants, Inc. (CEC) has reviewed the apparent low bid as tabulated and provided to us. This bid was submitted by Kelly Brother, Inc. Our review was to determine if they met the Bid Document requirements for the above referenced project. CEC reviewed the submitted bid forms and attachments.

Based upon our review of the bid submittal, it is our opinion that they have the experience to construct this project within the construction time window. Further, Kelly Brother, Inc. has successfully completed numerous marina facility projects of a similar magnitude in Florida.

Therefore, our recommendation for the contract award is to Kelly Brother, Inc.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 260-3776 or via email at mkincaid@cecifl.com.

Respectfully submitted,
COASTAL ENGINEERING CONSULTANTS, INC.



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