



Fort Myers Beach Town Council Special Meeting

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Wednesday, May 28, 2025

Agenda

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF FINAL AGENDA
- V. PUBLIC COMMENT
- VI. ADMINISTRATIVE AGENDA
 - A. Fort Myers Beach Elementary School
A discussion regarding the status of repair and the future of the Fort Myers Beach Elementary School, including but not limited to the terms and conditions of the Interlocal Agreement between the Town of Fort Myers Beach and The School Board of Lee County, Florida, regarding the Fort Myers Beach Elementary School.
- VII. MOMENT OF SILENCE - TO BE HELD ON OAK STREET IN FRONT OF THE FORT MYERS BEACH ELEMENTARY SCHOOL
- VIII. ADJOURNMENT - AT FORT MYERS BEACH ELEMENTARY SCHOOL

NOTE: THIS MEETING IS STREAMED LIVE ON [YOUTUBE](#).

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



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202 In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Request:**

Meeting Date: May 28, 2025

A discussion regarding the status of repair and the future of the Fort Myers Beach Elementary School, including but not limited to the terms and conditions of the Interlocal Agreement between the Town of Fort Myers Beach and The School Board of Lee County, Florida, regarding the Fort Myers Beach Elementary School.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Possible Resolution

4. **Submitter of Information:**

William McKannay, Town
Manager

5. **Background:**

Attachments:

1. Resolution 23-45 - Interlocal Agreement Regarding FMB Elementary School between Fort Myers Beach and The Lee County School Board
2. Resolution 20-45 - ILA Exchange of Real Property and Improvements
3. ILA First Amendment to Real Property Exchange
4. Resolution 21-23 - ILA Second Amendment to Real Property Exchange
5. Resolution 21-35 -ILA-Shared Use Property and Facilities FMB Beach School (Amended & Reinstated)
6. Resolution 21-01 - ILA Shared Use of Property and Facilities (1st)

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Deputy Town Clerk / Legislative Liaison
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
William McKannay, Town Manager

Created/Initiated - 5/21/2025
Approved - 5/23/2025
Approved - 5/23/2025
Final Approval - 5/23/2025

RESOLUTION NUMBER 23-45

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE REBUILD, EXPANSION AND OPERATION OF FORT MYERS BEACH ELEMENTARY SCHOOL; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; 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, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "Interlocal Act"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, On September 28, 2022, Hurricane Ian made landfall as a Category 4 Hurricane in Southwest Florida, with sustained winds of approximately 150 miles per hour. The storm inflicted a catastrophic storm surge and wind damage in Lee County causing severe damage to Fort Myers Beach Elementary School ("FMBE"); and

WHEREAS, there is a mutual desire by the Lee County School Board ("LCSB") and the Town of Fort Myers Beach ("Town") to continue the operations of FMBE in a sound and fiscally responsible way; and

WHEREAS, The LCSB and Town desire to enter into an Interlocal Agreement ("ILA") setting forth the terms and conditions of a new collaboration to assist the LCSB in re-building, operating, and maintaining FMBE; and

WHEREAS, the LCSB and Town have determined that it is in the best interest of the community to enter into the ILA to fully set forth mutually acceptable terms and conditions of this collaborative effort between the parties.

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

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

Section 2. The Agreement attached hereto as Exhibit "A", between the School Board and Town, regarding the rebuild, expansion and operation of Fort Myers Beach Elementary School. The Mayor is authorized to execute the Agreement on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Agreement.

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

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

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King, Council Member	aye
Bill Veach, Council Member	aye
Karen Woodson, Council Member	aye

ADOPTED this 15th day May 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (May 24, 2023 12:51 EDT)

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 EXCLUSIVELY:


John Herin, Jr. May 25, 2023 11:41 EDT

John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 31 day of May 2023.

John Herin

INTERLOCAL AGREEMENT BETWEEN
THE TOWN OF FORT MYERS BEACH
AND
THE SCHOOL BOARD OF LEE COUNTY, FLORIDA
REGARDING THE FORT MYERS BEACH ELEMENTARY SCHOOL

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this 15th day of May, 2023, by and between THE TOWN OF FORT MYERS BEACH ("Town"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and THE SCHOOL BOARD OF LEE COUNTY, FLORIDA a public body corporate and political subdivision existing under the laws of the State of Florida, its successors and assigns ("School Board"); collectively or singularly also referred to herein as "Party" or the "Parties".

WITNESSETH:

WHEREAS, the School Board and the Town serve the residents of the Town of Fort Myers Beach;

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "Interlocal Act"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for the joint exercise of any power, privilege, or authority that each of them could exercise separately;

WHEREAS, On September 28, 2022, Hurricane Ian made landfall as a Category 4 Hurricane in Southwest Florida, with sustained winds of approximately 150 miles per hour. The storm inflicted a catastrophic storm surge and wind damage in Lee County causing severe damage to Fort Myers Beach Elementary School ("FMBE");

WHEREAS, prior to Hurricane Ian, FMBE had experienced declining student enrollment;

WHEREAS, there is a mutual desire by the Board and the Town to continue the operations of FMBE in a sound and fiscally responsible way;

WHEREAS, the Town and School Board now intend to enter into this Agreement setting forth the terms and conditions of a new collaboration to assist the School Board in re-building, operating, and maintaining FMBE as set forth herein;

WHEREAS, the School Board and the Town previously entered into an Interlocal Agreement Relating to the Exchange of Real Property and Improvements, dated effective October 7, 2020, as amended by that certain First Amendment to Interlocal Agreement Relating to the Exchange of Real

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Property and Improvements fully executed on December 21, 2020 (collectively, the "Exchange Agreement");

WHEREAS, the School Board and Town will revise the Exchange Agreement as may be necessary to serve best the needs of the Town's residents, the students of FMBE, and the users of Bay Oaks Recreational Facility;

WHEREAS, the School Board is the owner of certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("School Board Property"), upon which is located FMBE;

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in Exhibit "B" attached hereto and incorporated herein by reference (the "Bay Oaks Property");

WHEREAS, the School Board and Town have determined that it shall serve the public interest to enter into this Agreement to fully set forth mutually acceptable terms and conditions of this collaborative effort between the Parties; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I: PURPOSE AND EFFECTIVE DATE

1.1 The purpose of the Agreement is to set forth terms and conditions acceptable to the Parties, to accomplish the initiatives enumerated herein, including the re-build and continuing operation of FMBE for students from grades K-5.

1.2 The Recitals set forth above are incorporated into the terms of this Agreement as if fully incorporated herein.

1.3 The "Effective Date" of this Agreement shall be the date on which the latter of the School Board or the Town executes this Agreement and delivers a copy to the other Party.

SECTION II: PHASED ENROLLMENT

School Board Responsibilities:

2.1 Both Parties desire to have students enrolled as of April 2023, return to FMBE as soon as possible utilizing the historic school building located on the School Board Property ("Historic Building"). The School Board shall be responsible for renovating the Historic Building to meet the needs of the current

enrollment, approximately fifty-two (52) students, to be completed during the fall semester of 2023. The Parties recognize that the use of the Historic Building is an integral part of the overall solution to provide an educational facility for students on the island. The School Board shall provide all necessary services to meet the needs of students as set forth herein. The services shall be provided at the sole discretion of the School Board in compliance with applicable law, regulation, and policy.

2.2 Over the next several years, the Parties have a joint goal to increase enrollment to a fiscally feasible level for FMBE in accordance with Section 3 of this Agreement. The School Board shall assist with increasing enrollment and shall attempt to solicit partnerships with other entities to provide attractors to the school to include special programs. In addition, beginning in fiscal year 2024-2025, the School Board shall expand the proximity zone boundaries of FMBE to Summerlin Road and San Carlos Boulevard to allow as many students as possible to attend FMBE.

2.3 Should enrollment increase, the School Board shall provide the necessary facilities and staff to accommodate the increased student enrollment in compliance with applicable law, regulation, and policy. The Town understands that the School Board will be fiscally responsible and legally compliant in doing so. The decision is left to the School Board's sole discretion to determine what is the necessary facility and staff ratios to accommodate the increased enrollment not to exceed 150 student stations.

2.4 For fiscal years 2023-2024, 2024-2025, 2025-2026, and 2026-2027 School Board shall bear the full costs of operating and maintaining FMBE.

2.5 No later than November of 2026, the School Board and Town, through their respective designees, shall review the enrollment numbers at FMBE and begin the discussion as to the future of FMBE with the following options:

a. If FMBE's student enrollment meets the threshold that FMBE can sustain itself at the same level as the other barrier island schools, namely Pine Island Elementary School and the Sanibel School (collectively, "Barrier Island Schools") the School Board shall maintain FMBE as a school operated by the School District of Lee County. The annual cost calculation shall be based on the annual cost per student report submitted to the Department of Education ("DOE") at the end of each fiscal year. ("Cost Per Student Report")

b. Beginning in fiscal year 2027-2028, the Town may provide a financial contribution towards the maintenance and operation of FMBE if it is unable to financially sustain itself at the same level as Barrier Island Schools as set forth in the Cost Per Student Report. The Town's contribution shall be reflective of the difference between FMBE's operational costs and that of other Barrier Island Schools.

c. If, at the end of fiscal year 2026-2027, FMBE is unable to financially sustain itself at the same level as Barrier Island Schools as set forth in the Cost Per Student Report, or if the Town is unable

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to provide a financial contribution to cover the difference, the Town may assume the responsibility for the full operation of FMBE by turning it into a municipal charter school for fiscal year 2027-2028. The School Board will assist the Town in expediting the application process for the charter school. At the time the charter school is approved, the School Board will have no further obligation for FMBE. The charter school will be eligible for all funding that is available per federal and state law. Throughout the term of this Agreement, the Town may also collect funds for the startup operation of the charter school. Contemporaneously, the School Board and Town shall come to an agreement for either the sale or lease of the facilities for the operation of the charter school. This provision does not prohibit other charter options from being considered.

d. If, after fiscal year 2026-2027, the Town is unable to cover the cost per student difference as outlined in section b above or move forward with a charter school option as outlined in section b and c above the School Board, at its sole discretion, may close FMBE.

Town Responsibilities:

2.6 Town shall actively recruit students to FMBE to increase enrollment by engaging with their community and local businesses. Parents, PTO, community members, community leaders, and businesses will work on community outreach to inform them of FMBE.

2.7 During the term of this Agreement, the Town shall create an ad-hoc committee that shall meet, at minimum, twice a year to review the student enrollment numbers, DOE survey results, and other matters related to FMBE. There shall be one meeting in May and one in November. The ad-hoc committee shall consist of no more than 10 people and must include members of the community, to include at least one (1) parent with a student attending FMBE, one (1) representative from the Fort Myers Beach business community, one (1) Town Council representative, (5) representatives from the School Board representing operations and planning, academics, Principal of FMBE, budget and finance as well as other members of School Board leadership.

2.8 After fiscal year 2026-2027, the Town may provide a financial contribution towards the maintenance and operation of FMBE if it is unable to financially sustain itself at the same level as Barrier Island Schools as set forth in the Cost Per Student Report as further provided in section 2.5 above.

2.9 At the conclusion of fiscal year 2026-2027, if there are not enough students enrolled for FMBE to financially sustain itself, as determined by the School Board in its sole discretion and based on the Cost Per Student Report, the School Board may close FMBE.

2.10 The School Board and Town will work together to educate businesses and employees about FMBE school programs and encourage employers to provide work schedules that align with school hours and the Bay Oaks after-school program.

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2.11 The Town shall provide access to aftercare programs at Bay Oaks Property. Remediation/remodeling of the Bay Oaks Property shall be completed by the fall semester of 2023. The Town agrees that Bay Oaks Property will not be used as a town hall facility, unless space permits, as determined by the Town in its sole discretion. The Bay Oaks Property and after school program will be ready to host children contemporaneously with the opening of FMBE in the fall semester of 2023.

2.12 The Town shall cooperate with the School Board to allow a portion of the Bay Oaks Property to be used as a staging area for FMBE renovation and construction projects. The Town and the School Board shall share the use of the facilities located on the Town Property and the School Board Property, respectively, subject to such terms, limitations and conditions set forth in the Exchange Agreement, which may be modified from time-to-time as mutually agreed to by the Parties.

SECTION III: PHASED TIMELINE FOR RENOVATION AND BUILD

3.1 The Parties agree to the following implementation schedule:

Phase I

a. The School Board shall be responsible for renovating the Historic Building to meet the temporary needs of the current enrollment, approximately fifty-two (52) students, by the fall semester of 2023.

b. Thereafter, by fiscal year 2024-2025, the School Board shall build additional FMBE facilities to accommodate a permanent kitchen/café.

c. Also, by fiscal year 2024-2025 and in compliance with applicable law, regulation, and policy, SREF, and building code the School Board shall improve the Historic Building with additional classroom space to accommodate the growth in student enrollment not to exceed 80 student stations.

Phase II

a. The School Board shall design and construct additional facilities in compliance with applicable law, regulation, and policy, SREF, and building code to accommodate the growth in student enrollment not to exceed 150 student stations. Said cost shall be borne by the School Board for fiscal years 2023-2024, 2024-2025, 2025-2026, 2026-2027.

b. If FMBE's student enrollment meets the threshold that FMBE can sustain itself at the same level as the other Barrier Island Schools based on the Cost Per Student Report, the School Board shall continue to operate FMBE in compliance with applicable law, regulation, and regulations policy.

3.2 The Parties agree that the School Board retains sole authority to make decisions as may be deemed necessary to adhere to the timelines and costs outlined herein, and to complete the Phase I and Phase II improvements within the time and in the manner specified herein.

3.3 The Parties agree that the School Board will procure all goods and services contemplated by this Agreement in accordance with the School Board's procurement policies and procedures.

SECTION IV: DEFAULT

If either Party fails to materially fulfill its obligations under this Agreement that Party will be in default. The other Party to the Agreement shall provide written notice of the default and an opportunity to cure the default within 60 days of receipt of said notice. If the defaulting Party fails to cure the default within said time, the other Party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either Party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party. Upon termination of this Agreement in accordance with this paragraph, the non-defaulting Party may exercise its reversionary interest as set forth in the Exchange Agreement.

SECTION V: NOTICE

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person and signed for or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

If to the School Board: The Superintendent of Schools
Office of the Superintendent
2855 Colonial Blvd.
Fort Myers, Florida 33966

With a Copy to: School Board Attorney and General Counsel
Office of Legal Services
2855 Colonial Blvd.
Fort Myers, Florida 33966

If to the Town: Town Manager
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, Florida 33931

With a Copy to:

Town Attorney
Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, Florida 33931

The address to which any notice or demand may be given to either Party may be changed by written notice.

SECTION VI: LIABILITY AND INDEMNIFICATION

6.1 Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the Town shall defend, hold harmless and indemnify the School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the Town, its agents, invitees, licensees, employees, or contractors in connection with the exercise of the Town's rights or fulfillment of the Town's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the Town beyond that set forth in Section 768.28, Florida Statutes.

6.2 Subject to the limitations as set forth in Florida Statutes, §768.28 and §252.51, the School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability, cost, and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the School Board, its agents, invitees, licensees, employees, and contractors in connection with the exercise of the School Board's rights or fulfillment of the School Board's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the School Board beyond that set forth in Section 768.28, Florida Statutes.

6.3 The Parties shall, respectively, maintain or cause to be maintained in full force and effect commercial general liability insurance on their respective parcels with a combined single limit of liability of (i) not less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury to or personal injury or death to any one person and consequential damages arising therefrom, (ii) not less than Two Million and 00/100 Dollars (\$2,000,000.00) for bodily injury to or personal injury or death of more than one person and consequential damages arising therefrom, and (iii) not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for property damage arising out of any one occurrence, and the other Party shall be an additional insured under such policy. Each Party shall always maintain worker's compensation insurance in the minimum statutory limits required by the State of Florida. Such insurance shall be procured from a good and solvent insurance company or companies licensed to do business in the State of Florida. Upon reasonable request, each Party shall provide the other with a copy of the policy of such

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insurance coverage. All insurance policies required to be carried by either Party covering their respective parcel shall, to the extent permitted by law, expressly waive any right on the part of the insurer against the other Party. The Parties agree that their policies will include such waiver clause or endorsement.

SECTION VII: MISCELLANEOUS

7.1 Term and Termination: The Parties agree that this Agreement, including all its terms, covenants, conditions, and restrictions, shall continue in force and effect for a term of four (4) years. The Parties may extend the terms of this Agreement by mutual written agreement.

7.2 Non-Discrimination: The Parties shall not unlawfully discriminate against any individual based on his or her race, age, religion, ancestry, color, ethnicity, gender, national origin, marital status, familial status, disability, sexual orientation, genetic information, or gender identity or expression with respect to any activity occurring or under this Agreement.

7.3 Unavoidable Delay: In the event that either the School Board or the Town are unable to meet the deadline for their respective obligations under this Agreement due to any circumstance beyond the control of the School Board and/or Town, including without limitation, the occurrence of a force majeure event, then the time for such performance shall be extended as required by such circumstance or the occurrence of such event. Each party shall be responsible for any additional costs arising out of the delay and affecting their respective obligations under this Agreement. The term "*Force Majeure*" shall include without limitation labor strikes (whether lawful or not), fire, tropical cyclone, adverse weather conditions, unavoidable casualties, inability to obtain labor or materials, vandalism, terrorism, civil unrest, moratoriums, financial emergencies and the like.

7.4 Enforcement of Agreement: In the event that either Party is required to enforce this Agreement by court proceedings, then the Parties agree that each Party shall pay its own attorney's fees and costs.

7.5 Entire Agreement: This Agreement embodies the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior written and/or oral understandings or agreements with respect thereto.

7.6 Modifications and Amendments: Modifications and amendments to the provisions contained in this Agreement, including deadlines and schedules, may be made only by an instrument in writing which is executed by both Parties.

7.7 Joint Preparation: This Agreement has been negotiated fully between the Parties as an arms-length transaction. Both Parties participated fully in the preparation of the Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both

Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any Party.

7.8 Assignment: This Agreement may not be assigned, in whole or in part, by any Party without prior written consent of the other Party, which may be granted or withheld in its sole discretion. The School Board retains sole authority to select the design professionals, contractors, or other parties for the purpose of performing any of the School Board's obligations hereunder.

7.9 Third Party Beneficiaries: This Agreement is solely for the benefit of the School Board and the Town, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in the Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the School Board and the Town any right, remedy, or claims under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the School Board and the Town, and their respective representatives, successors, and assigns.

7.10 Joint Defense: In the event that a third party or parties challenge the validity of this Agreement unrelated to the Parties through legal proceedings or otherwise, the Parties hereto agree to cooperate with each other in defense of this Agreement, with each such Party to bear its own attorney's fees and costs associated with such defense.

7.11 Severability: The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part of this Agreement not held to be invalid or unenforceable.

7.12 Time is of the Essence: The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder, and all "days" referenced herein, including in any of the attachments, shall be deemed "calendar days" unless otherwise specifically set forth.

7.13 Controlling Laws: This Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the State of Florida. Venue for any dispute shall be in Lee County, Florida.

7.14 Authorization: The execution of this Agreement has been duly authorized by the School Board and Town. The School Board and the Town have complied with all requirements of law in connection with the execution and delivery of this Agreement and the performance of their respective obligations hereunder. The School Board and the Town have full power and authority to comply with the terms and provisions of this Agreement.

7.15 Heading for Convenience Only: The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

7.16 Counterparts: This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgments pages, if any; may be detached from the counterparts and attached to a single copy of this document to physically form one document.

7.17 Jury Trial Waiver: The Parties waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other for any matter whatsoever arising out of or in any way connected with this Agreement.

SECTION VIII: DISPUTE RESOLUTION

As a condition precedent to a Party bringing any suit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.

SECTION IX: PUBLIC RECORDS

The Parties recognize and agree that the School Board and Town are subject to the provisions of the Florida Records Law, under Chapter 119, Florida Statutes. The Parties shall comply with Florida's Public Records Laws and agree to keep and maintain public records in accordance with Florida law and records retention schedules. Further, the Parties will ensure records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month, and year first written above.

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

By: 

Date: 5/9/2023

Armur Persons, Chair of the Board

ATTESTED:

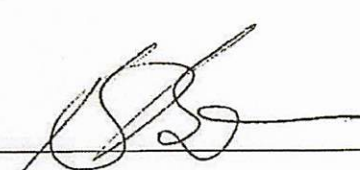
APPROVED
MAY 09 2023
SCHOOL BOARD OF
LEE COUNTY

By: 

Date: 5/9/2023

Dr. Christopher S. Bernier, Superintendent of Schools

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF THE SCHOOL BOARD OF LEE COUNTY, FLORIDA ONLY:

By: 

Kathy Dupuy-Bruno, Esq., School Board Attorney and General Counsel

TOWN OF FORT MYERS BEACH, A FLORIDA MUNICIPAL CORPORATION

By: *Dan Allers* Date: May 15, 2023
Dan Allers (Nov 2, 2023 07:29 EDT)

Dan Allers, Mayor

ATTESTED:

By: *Amy Baker* Date: May 15, 2023
AMY BAKER (Nov 2, 2023 08:57 EDT)

Amy Baker, Town Clerk

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

By: *John R. Herin, Jr.*
John R. Herin, Jr. (Nov 1, 2023 16:27 EDT)

John R. Herein, Jr., Town Attorney

EXHIBIT A

(Legal Description of School Board Property)

**PARCEL "A" LEGAL DESCRIPTION (OWNED BY THE SCHOOL DISTRICT OF LEE COUNTY)
FROM PLAT OF WINKLER SUBDIVISION RECORDED IN PLAT BOOK 8, PAGE 45 OF THE PUBLIC RECORDS OF LEE COUNTY
FLORIDA**

ALL OF WINKLER SUBDIVISION BLOCK J, LOTS 3 THROUGH 45; AND BLOCK I, LOTS 1 THROUGH 26; AND BLOCK D, LOTS 10 THROUGH 12 AND LOTS 22 THROUGH 24, LESS PARCELS DESCRIBED IN INSTRUMENT 2021000335064.

PARCELS DESCRIBED IN INSTRUMENT 2021000335064 CONSTITUTE PARCELS "X" AND "Y" DESCRIBED BELOW

**PARCEL "B" LEGAL DESCRIPTION (OWNED BY THE SCHOOL DISTRICT OF LEE COUNTY)
FROM RESOLUTION 20-39 INSTRUMENT 2021000335062 RECORDED 10/12/2021**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING A PORTION OF AN UN-NAMED STREET LYING BETWEEN BLOCK J AND BLOCK I, WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF LOT 48 OF SAID BLOCK J OF SAID WINKLER SUBDIVISION: THENCE S25° 17'00"W ALONG THE EASTERLY LINE OF LOTS 1 THROUGH 9 OF SAID BLOCK J FOR 225.00 FEET TO THE NORTHEAST

CORNER OF LOT 10 OF SAID BLOCK J; THENCE N64°43'00"W ALONG THE NORTHERLY LINE OF LOT 10 OF SAID BLOCK J FOR 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 10, BLOCK J AND TO THE POINT OF BEGINNING: THENCE CONTINUE S25°17'00"W ALONG THE WESTERLY LINE OF SAID BLOCK J, ALSO BEING THE EASTERLY LINE OF AN UN-NAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION FOR 370.12 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 25.00 FEET: THENCE CONTINUE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID BLOCK J, BEING THE EASTERLY LINE OF SAID UN-NAMED STREET AND ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 94° 17'00" FOR AN ARC LENGTH OF 41.14 FEET TO A POINT OF TANGENCY ON THE NORTHERLY LINE OF OAK STREET (50 FEET WIDE), ALSO BEING A POINT OF CUSP; THENCE N69° 00'00"W ALONG THE NORTHERLY LINE OF SAID OAK STREET FOR 141.38 FEET TO A POINT OF CUSP WITH A CURVE LYING ON THE EASTERLY LINE OF BLOCK D OF SAID SUBDIVISION, HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS S21° 00'00"W: THENCE CONTINUE NORTHEASTERLY ALONG THE EASTERLY LINE OF SAID BLOCK D AND SAID TANGENT CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 85°43'00" FOR AN ARC LENGTH OF 37.40 FEET TO THE END OF SAID CURVE: THENCE N25° 17'00"E ALONG A TANGENT LINE BEING PARALLEL WITH THE WESTERLY LINE OF SAID BLOCK J FOR 114.87 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF BLOCK I OF SAID SUBDIVISION, LYING ON A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS S65° 02'10"W; THENCE CONTINUE EASTERLY AND NORTHEASTERLY ALONG THE EASTERLY LINE OF SAID BLOCK I AND SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 129° 45'10" FOR AN ARC LENGTH OF 56.62 FEET TO A POINT OF TANGENCY: THENCE N25° 17'00"E ALONG A TANGENT LINE BEING THE EASTERLY LINE OF SAID BLOCK I, ALSO BEING THE WESTERLY LINE OF SAID UN-NAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION FOR 246.59 FEET TO THE NORTHEAST CORNER OF LOT 17, BLOCK I OF SAID SUBDIVISION: THENCE S64° 43'00"E FOR 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 25,740 SQUARE FEET (0.59 ACRES), MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

**PARCEL "C" LEGAL DESCRIPTION (OWNED BY THE SCHOOL DISTRICT OF LEE COUNTY)
FROM RESOLUTION 21-24 INSTRUMENT 2021000335063 RECORDED 10/12/2021**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING A PORTION OF AN UN-NAMED STREET LYING BETWEEN BLOCK J AND BLOCK I, WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF LOT 48 OF SAID BLOCK J OF SAID WINKLER SUBDIVISION; THENCE S25° 17'00"W ALONG THE EASTERLY LINE OF LOTS 1 THROUGH 9 OF SAID BLOCK J FOR 225.00 FEET TO THE NORTHEAST CORNER OF LOT 10 OF SAID BLOCK J; THENCE N64° 43'00"W ALONG THE NORTHERLY LINE OF LOT 10 OF SAID BLOCK J FOR 150.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 10, BLOCK J AND TO THE POINT OF BEGINNING; THENCE CONTINUE N64° 43'00"W ALONG THE NORTHWESTERLY EXTENSION OF THE NORTHERLY LINE OF LOT 10 OF SAID BLOCK J FOR 50.00 FEET TO THE NORTHEAST CORNER OF LOT 17, BLOCK I OF SAID SUBDIVISION; THENCE N25° 17'00"E ALONG THE EASTERLY LINE OF SAID BLOCK I FOR 75.00 FEET TO THE NORTHEAST CORNER OF LOT 20, OF SAID BLOCK I; THENCE S64° 43'00"E ALONG THE SOUTHEASTERLY EXTENSION OF THE NORTHERLY LINE OF LOT 20 OF SAID BLOCK I FOR 50.00 FEET TO THE NORTHWEST CORNER OF LOT 7, OF SAID BLOCK J; THENCE S25° 17'00"W ALONG THE WESTERLY LINE OF SAID BLOCK J FOR 75.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,750 SQUARE FEET (0.09 ACRES), MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN) BEARINGS ARE BASED ON THE WESTERLY LINE OF BAY ROAD (THE EASTERLY LINE OF SAID BLOCK J) AS BEARING S25° 17'00"W

LESS PARCEL DESCRIBED IN INSTRUMENT 2021000335064 (NORTH PARCEL)

PLUS THE REMAINDER OF BLOCK I, PLAT OF WINKLER SUBDIVISION NOT SEPERATED OUT IN THE LEGAL DESCRIPTIONS OF PARCELS "Y" AND "Z" DESCRIBED BELOW

EXHIBIT B

(Legal Description of Town Property)

**PARCEL "W" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM COUNTY DEED INSTRUMENT #2009000262584 RECORDED 9/28/2009**

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT THE EASTERLY MOST CORNER OF LOT #1, BLOCK "E" OF WINKLER SUBDIVISION ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 8 AT PAGE 45 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, SAID POINT ALSO BEING THE PRINCIPAL PLACE OF BEGINNING; THENCE S 25° 17' 00" W ALONG THE EASTERLY LINE OF SAID BLOCK "E" A DISTANCE OF 301.04 FEET; THENCE S 5° 07' 24" E A DISTANCE OF 55.69 FEET TO THE NORTHEASTERLY CORNER OF LOT #9, BLOCK "D" OF SAID WINKLER SUBDIVISION; THENCE S 21° 00' 00" W ALONG THE SOUTHEASTERLY LINE OF LOTS #9 AND #25 OF SAID BLOCK "D" A DISTANCE OF 300.00 FEET; THENCE N 69° 00' 00" W ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF OAK STREET (50.00 FEET WIDE) AND THE SOUTHWESTERLY LINE OF SAID BLOCK "D" A DISTANCE OF 396.87 FEET TO THE WEST BOUNDARY OF LOT #1 OF SECTION 19 AS SHOWN ON THE PLAT OF SAID WINKLER SUBDIVISION; THENCE N 0° 18' 00" W ALONG THE SAID WEST BOUNDARY A DISTANCE OF 807.00 FEET TO THE NORTHEASTERLY BOUNDARY LINE OF SAID WINKLER SUBDIVISION; THENCE S 64° 43' 00" E ALONG SAID NORTHEASTERLY BOUNDARY LINE A DISTANCE OF 693.65 TO A POINT THAT IS N 25° 17' 00" E FROM THE PRINCIPAL PLACE OF BEGINNING; THENCE S 25° 17' 00" W A DISTANCE OF 50.00 FEET TO THE PRINCIPAL PLACE OF BEGINNING.

SAID PARCEL IS SUBJECT TO ALL RIGHT-OF WAYS AND EASEMENTS OF RECORD.

**PARCEL "X" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM SPECIAL WARRANTY DEED #2021000335064 RECORDED 10/21/21 (SOUTH PARCEL)**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING ALL OF LOTS 10 THROUGH 24, BLOCK D, WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 24, BLOCK D OF SAID WINKLER SUBDIVISION; THENCE N21° 28' 12" E ALONG THE NORTHWESTERLY LINE OF LOT 24 AND LOT 10 OF SAID BLOCK D FOR 300.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 10; ALSO BEING THE SOUTHERLY LINE OF SAID UNNAMED STREET (50' WIDE) AS SHOWN ON SAID PLAT; THENCE S68° 3' 48" E ALONG THE NORTHEASTERLY LINE OF SAID BLOCK D, ALSO BEING THE SOUTHWESTERLY LINE OF SAID UNNAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION, FOR 75.00 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET; THENCE CONTINUE SOUTHEASTERLY ALONG SAID CURVE AND SAID UNNAMED STREET AND ALONG THE NORTHEASTERLY LINE OF SAID BLOCK D THROUGH A CENTRAL ANGLE OF 65° 47' 00" (CHORD BEARING S35° 38' 18" E) FOR AN ARC DISTANCE OF 114.81 FEET TO A POINT OF TANGENCY; THENCE S02° 44' 48" E, ALONG THE EASTERLY LINE OF SAID BLOCK D, ALSO BEING THE WESTERLY LINE OF SAID UNNAMED STREET AS SHOWN ON SAID PLAT FOR 225.62 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE CONTINUE SOUTHWESTERLY ALONG SAID CURVE AND ALONG THE WESTERLY LINE OF SAID UNNAMED STREET THROUGH A CENTRAL ANGLE OF 114° 13' 00" (CHORD BEARING S54° 21' 42" W) FOR AN ARC DISTANCE OF 49.84 FEET TO A POINT OF TANGENCY ON THE NORTHERLY RIGHT OF WAY LINE OF OAK STREET (50' WIDE) AS SHOWN ON SAID PLAT; THENCE N68° 3' 48" W ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK D, AND ALONG THE NORTHERLY LINE OF SAID OAK STREET FOR 235.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 61,071 SQUARE FEET (1.40 ACRES), MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) WITH THE WESTERLY LINE OF BAY ROAD (THE EASTERLY LINE OF SAID BLOCK J) AS BEARING N25° 45' 12" E.

**PARCEL "Y" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM SPECIAL WARRANTY DEED #2021000335064 RECORDED 10/21/21 (NORTH PARCEL)**

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, TOWN OF FORT MYERS BEACH, SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, BEING A PORTION OF BLOCK I AND A PORTION OF AN UNNAMED STREET AS SHOWN ON THE PLAT OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY MOST CORNER OF LOT 48, BLOCK J OF SAID WINKLER SUBDIVISION; THENCE N64° 14'48"W ALONG THE NORTHEASTERLY LINE OF LOT 1, BLOCK J, ACROSS AN UNNAMED STREET AND ALONG THE NORTHEASTERLY LINE OF LOT 26, BLOCK I OF SAID SUBDIVISION FOR 350.00 FEET TO THE NORTHEASTERLY CORNER OF LOT 1, BLOCK I OF SAID SUBDIVISION AND THE POINT OF BEGINNING; THENCE S45° 48'43"E ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 2599 AT PAGE 781 WITHIN SAID BLOCK I, FOR 158.11 FEET TO THE SOUTHEASTERLY CORNER OF LOT 25 OF SAID BLOCK I, ALSO BEING THE WESTERLY LINE OF AN UNNAMED STREET (50' WIDE) AS SHOWN ON SAID PLAT; THENCE S25° 45'12"W ALONG THE EASTERLY LINE OF SAID BLOCK I, ALSO BEING THE WESTERLY LINE OF SAID UNNAMED STREET AS SHOWN ON SAID PLAT OF WINKLER SUBDIVISION, FOR 100.00 FEET TO THE SOUTHEAST CORNER OF LOT 21 OF SAID BLOCK I; THENCE S64° 14' 48 "E ALONG THE SOUTHEASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 21, ACROSS SAID UNNAMED STREET, FOR 50.00 FEET TO THE NORTHWEST CORNER OF LOT 7 OF BLOCK J OF SAID SUBDIVISION; THENCE S59°26'36"W, EXTENDING ACROSS SAID UNNAMED STREET AND ACROSS A PORTION OF SAID BLOCK I FOR 231.98 FEET; THENCE S 11°26' 52"W ACROSS SAID BLOCK I, FOR 152.53 FEET TO AN INTERSECTION WITH A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS S65° 30'22"W, ALSO BEING THE NORTHERLY LINE OF AN UNNAMED STREET AS SHOWN ON SAID PLAT; THENCE CONTINUE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT AND ALONG THE SOUTHERLY LINE OF SAID BLOCK I THROUGH A CENTRAL ANGLE OF 21° 44' 50" (CHORD BEARING N13° 37' 13"W) FOR AN ARC DISTANCE OF 9.49 FEET TO A POINT OF TANGENCY; THENCE N02° 44'48"W, ALONG THE WESTERLY LINE OF BLOCK I, ALSO BEING THE EASTERLY LINE OF AN UNNAMED STREET (50' WIDE) AS SHOWN ON SAID PLAT, FOR 127.34 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 150.00 FEET; THENCE CONTINUE NORTHWESTERLY ALONG SAID CURVE AND ALONG THE WESTERLY LINE OF SAID BLOCK I THROUGH A CENTRAL ANGLE OF 65°47' 00" (CHORD BEARING N35° 38' 18"W) FOR AN ARC DISTANCE OF 172.22 FEET TO A POINT OF TANGENCY; THENCE N68° 31' 48 "W ALONG THE WESTERLY LINE OF SAID BLOCK I AND THE EASTERLY LINE OF SAID UNNAMED STREET FOR 22.44 TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE CONTINUE NORTHWESTERLY ALONG THE WESTERLY LINE OF SAID BLOCK I AND SAID UNNAMED STREET THROUGH A CENTRAL ANGLE OF 94° 17'00" (CHORD BEARING N21° 23' 18"W) FOR AN ARC DISTANCE OF 41.14 FEET TO A POINT OF TANGENCY; THENCE N25° 45' 12"E ALONG THE NORTHWESTERLY LINE OF SAID BLOCK I AND THE EASTERLY LINE OF SAID UNNAMED STREET FOR 95.36 FEET TO THE SOUTHWESTERLY MOST CORNER OF LOT 7, BLOCK I OF SAID SUBDIVISION, BEING THE SOUTHWESTERLY MOST CORNER OF SAID PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 2599 AT PAGE 781; THENCE N37° 42'07"E ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL FOR 102.22 FEET; THENCE N57° 33' 01 "E ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL FOR 29.41 FEET; THENCE S88° 03' 05"E ALONG THE SOUTHERLY LINE OF SAID PARCEL FOR 123.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 86,512 SQUARE FEET (1. 99 ACRES), MORE OR LESS.

**PARCEL "Z" LEGAL DESCRIPTION (OWNED BY TOWN OF FORT MYERS BEACH)
FROM COUNTY DEED #2020000249474 RECORDED 10/16/2020
THIS "PARCEL" IS COMPRISED OF 3 SEPARATE LEGAL DESCRIPTIONS, EACH A PORTION OF THE OVERALL**

PART 1:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING A PART OF BLOCK I OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 1, BLOCK I OF SAID SUBDIVISION; THENCE N.88° 31'17"W. FOR 123.88 FEET; THENCE S.57° 04'49"W. FOR 29.41 FEET; THENCE S.37° 13'55"W. FOR 102.21 FEET TO THE SOUTHWESTERLY CORNER OF LOT 7 OF SAID BLOCK I; THENCE N.25° 17'00"E. ALONG THE WESTERLY LINE OF SAID BLOCK I FOR 150.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00'00" FOR 39.27 FEET TO THE NORTHERLY LINE OF SAID BLOCK I; THENCE S.64°43'00"E. ALONG THE NORTHERLY LINE OF SAID BLOCK I FOR 125.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD. BEARINGS ARE BASED ON THE NORTHERLY LINE OF BLOCK I AS BEARING S64°43'00"E. CONTAINING 6,313 SQUARE FEET (0.14 ACRES), MORE OR LESS.

PART 2:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING A PART OF BLOCK I OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 1, BLOCK I OF SAID SUBDIVISION; THENCE S.64° 43'00"E. ALONG THE NORTH LINE OF SAID BLOCK I FOR 125.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00'00" FOR 39.27 FEET TO THE EASTERLY LINE OF SAID BLOCK I; THENCE S.25° 17'00"W. ALONG THE EASTERLY LINE OF SAID BLOCK I FOR 25.00 FEET TO THE SOUTHEASTERLY CORNER OF LOT 25 OF SAID BLOCK I; THENCE N.46° 16'54"W. FOR 158.11 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD. BEARINGS ARE BASED ON THE NORTHERLY LINE OF BLOCK I AS BEARING S64°43'00"E. CONTAINING 3,616 SQUARE FEET (0.08 ACRES), MORE OR LESS.

PART 3:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, AND BEING A PART OF BLOCK J OF WINKLER SUBDIVISION, AS RECORDED IN PLAT BOOK 8 AT PAGE 45, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 1, BLOCK J OF SAID SUBDIVISION; THENCE S.64° 43'00"E. ALONG THE NORTHERLY LINE OF SAID BLOCK FOR 40.00 FEET; THENCE S.25° 17'00"W. FOR 105.00 FEET; THENCE N.57° 35'30"W. FOR 40.31 FEET; THENCE N.49° 56'29"W. FOR 155.13 FEET TO THE WESTERLY LINE OF SAID BLOCK; THENCE N.25° 17'00"E. ALONG THE WESTERLY LINE OF SAID BLOCK FOR 35.44 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 25.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00'00" FOR 39.27 FEET TO THE NORTHERLY LINE OF SAID BLOCK; THENCE S.64° 43'00"E. ALONG THE NORTHERLY LINE OF SAID BLOCK FOR 125.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY. BEARINGS ARE BASED ON THE NORTHERLY LINE OF BLOCK J AS BEARING S64°43'00"E. CONTAINING 16,000 SQUARE FEET (0.37 ACRES), MORE OR LESS.

EXHIBIT C

(Shared Use Schedule)

Facility: Gym

Reserve for Ft. Myers Beach Elementary students for basketball and other indoor activities during the following dates/times:

August, September, October,

November, and December

Every Wednesday from 8 am to 2 pm

May, June

Every Wednesday from 8 am to 2 pm

Facility: Soccer Field

Reserve for Ft. Myers Beach Elementary students for soccer and other activities on the field during the following dates/times:

January and February

Every Wednesday from 8 am to 2 pm

1st Friday in December (Field Day)

8 am to 2 pm

Last Full Day of each School Year - date TBD

(End of Year "Family Day")

7 am to 2 pm

Facility: Softball Field

Reserve for Ft. Myers Beach Elementary students for softball and other activities on the field during the following dates/times:

March

Every Wednesday from 8 am to 2 pm

Facility: Tennis Courts

Reserve for Ft. Myers Beach Elementary students for tennis and other activities on the courts during the following dates/times:

April

Every Wednesday from 8 am to 2 pm

RESOLUTION NUMBER 20-45

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE EXCHANGE OF REAL PROPERTY AND IMPROVEMENTS RELATED TO THE REDEVELOPMENT OF BAY OAKS RECREATIONAL FACILITY; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; 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 School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board is the owner of certain real property upon which is located the Fort Myers Beach Elementary School ("School Board Property"); and

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property ("Town Property"); and

WHEREAS, the School Board Property contains tennis courts, a playground, a portion of a multi-sport field (the other portion of which is located on the Town Property), and certain other recreational facilities; and

WHEREAS, the Town Property contains a baseball field, tennis courts, basketball court, portion of a multi-sport field (the other portion of which is located on the School Board Property), and a recreational center; and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, the School Board and the Town believe it is in their best interest to share the use of the School Board facilities and Town facilities, along with certain additional facilities to be constructed on the School Board Property or the Town Property (“Recreational Facilities”); and

WHEREAS, in order to maximize the use of their respective properties and the Recreational Facilities, the School Board and the Town desire to enter into an Interlocal Agreement regarding the exchange of certain portions of their respective properties and the future use of the Recreational Facilities (“Agreement”).

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

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

Section 2. The Agreement attached hereto as Exhibit “A”, between the School Board and Town, regarding the exchange of School Board Property and Town Property is approved. The Mayor is authorized to execute the Agreement on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Agreement.

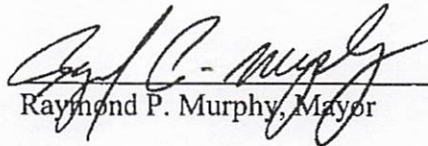
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

ADOPTED this 5th day of October, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

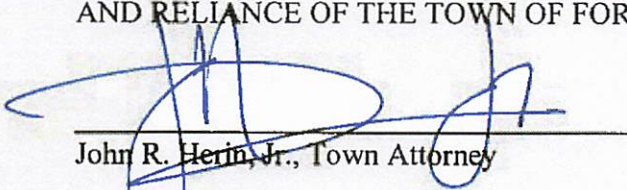
TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Amy Baker, Deputy 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 Resolution was filed in the Office of the Town Clerk on this 7 day of October 2020.

**INTERLOCAL AGREEMENT RELATING TO EXCHANGE OF
REAL PROPERTY AND IMPROVEMENTS
BETWEEN
THE TOWN OF FORT MYERS BEACH AND
THE SCHOOL BOARD OF LEE COUNTY**

THIS INTERLOCAL AGREEMENT ("**Agreement**") is made and entered into this 5 day of OCTOBER, 2020, by and between the TOWN OF FORT MYERS BEACH ("**Town**"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and the SCHOOL BOARD OF LEE COUNTY, FLORIDA ("**School Board**"); collectively referred to herein as the "**Parties**".

WITNESSETH:

WHEREAS, the School Board and the Town Council both serve the people of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "**Interlocal Act**"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board is the owner of certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**School Board Property**"), upon which is located the Fort Myers Beach Elementary School; and

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in Exhibit "B" attached hereto and incorporated herein by reference (the "**Bay Oaks Property**"); and

WHEREAS, the School Board Property contains tennis courts, a playground, a portion of a multi-sport field (the other portion of which is located on the Bay Oaks Property), and certain other recreational facilities (the "**School Facilities**"); and

WHEREAS, the Bay Oaks Property contains a baseball field, tennis courts, basketball court, portion of a multi-sport field (the other portion of which is located on the School Board Property), and a recreational center (the "Bay Oak Facilities"); and

WHEREAS, it has come to the attention of the Parties that some portions of the School Facilities are located within right-of-ways dedicated to the Town; and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and other citizens of the Town of Fort Myers Beach for the Town and the School Board to share the use of the School Facilities, the Bay Oaks Facilities, along with certain additional facilities to be constructed on the School Board Property or the Bay Oaks Property (collectively, the "Recreational Facilities"); and

WHEREAS, in order to maximize the use of their respective properties and the Recreational Facilities, the School Board and the Town desire to exchange certain portions of their respective properties.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I. PURPOSE AND EFFECTIVE

1.1 Purpose and Intent. It is the purpose and intent of this Agreement to set forth the process and define the terms and conditions for the exchange of the property described in Section II.

1.2 Recitals. The Recitals set forth above are incorporated into the terms of this Agreements as if set of herein at length.

1.3 Effective Date. The "Effective Date" of this Agreement shall be the date on which the later of the School Board or the Town executes this Agreement and delivers a copy thereof to other party.

SECTION II: EXCHANGE OF PROPERTY; CONVEYANCE REQUIREMENTS

2.1 Exchange of Property. The School Board agrees to grant and convey, and the Town agrees to acquire and accept, fee-simple title to that portion of the School Board Property generally described and depicted on Exhibit "C" attached hereto and incorporated herein (the "School Board Exchange Parcels"). In exchange therefore, the Town agrees to grant and convey, and the School Board agrees to acquire and accept, fee-simple title to that portion of the Town Property generally described and depicted on Exhibit "D" attached hereto and incorporated herein (the "Town Exchange

Parcels"). The School Board Exchange Parcels and the Town Exchange Parcels are referred to, collectively, as the **"Exchange Parcels"**. The legal descriptions and depictions of the Exchange Parcels shall be confirmed and finalized pursuant to surveys to be obtained as set forth in Section 2.2.3. Additionally, the Town agrees to make improvements to the School Facilities and construct certain additional facilities as set forth in Section 2.4.

2.2 Evidence of Title and Survey.

2.2.1 The School Board shall cause the authorized agent (**"Title Agent"**) of a Florida licensed title insurer of its choice (**"Title Insurer"**) to examine title to the School Board Exchange Parcels, and thereafter deliver a commitment, with legible copies of instruments listed as exceptions attached thereto, agreeing to issue an owner's policy of title insurance covering the School Board Exchange Parcels (the **"Town Commitment"**), subject to those matters enumerated in Section 2.2.3 hereof, to the Town on or before thirty (30) day after the Effective Date.

The Town shall have fifteen (20) days after receipt of the Town Commitment to notify the School Board in writing that the Town objects to one or more of the title exceptions disclosed by the Town Commitment (individually, a **"Title Objection"**). The School Board shall have fifteen (20) day after receipt of the Town's notice to respond with respect to each of the Title Objections noted by the Town by: (i) agreeing to cure one or more of such Title Objections; and/or (ii) refusing to cure one or more of such Title Objections. In the event that the School Board agrees in writing to cure one or more Title Objections, the School Board shall have until the thirtieth (30th) day following the Town's receipt of such writing from the School Board to do so (the **"School Board's Curative Deadline"**). If the School Board fails to cure all such Title Objections, which it has agreed to cure by the School Board's Curative Deadline, then the Town may waive such objections and proceed with the Closing, or the Town may terminate this Agreement by written notice to the School Board within five (5) days following the School Board's Curative Deadline. If the Town terminates this Agreement pursuant to the preceding sentence, the parties shall be without further obligation hereunder, except to the extent such obligations expressly survive the termination of this Agreement. In the event that the School Board refuses in writing to cure one or more Title Objections, the Town may waive such Title Objections and proceed with the Closing, or the Town may terminate this Agreement by written notice to the School Board within five (5) days after receiving the School Board's written refusal to cure. If the Town terminates this Agreement pursuant to the preceding sentence, the parties shall be without further obligation hereunder, except to the extent such obligations expressly survive the termination of this Agreement.

In the event that the School Board fails to respond to the Town's notice of Title Objections within the permitted time, the School Board shall be deemed to have refused to cure all such Title Objections, and the Town may waive such Title Objections and proceed with the Closing, or the Town may terminate this Agreement by written notice to the School Board within five (5) days after the deadline for which the School Board was supposed to have responded to the Title Objections. If the Town terminates this

Agreement pursuant to the preceding sentence, the parties shall be without further obligation hereunder, except to the extent such obligations expressly survive the termination of this Agreement.

2.2.2 The School Board shall cause the Title Agent of Title Insurer to examine title to the Town Exchange Parcels, and thereafter deliver a commitment, with legible copies of instruments listed as exceptions attached thereto, agreeing to issue an owner's policy of title insurance covering the Town Exchange Parcels (the "**School Board Commitment**"), subject to those matters enumerated in Section 2.2.3 hereof, to the School Board on or before forty-five (45) day after the Effective Date.

The School Board shall have fifteen (20) days after receipt of the School Board Commitment to notify the Town in writing that the School Board objects to one or more of the title exceptions disclosed by the School Board Commitment (individually, a "Title Objection"). The Town shall have fifteen (20) day after receipt of the School Board's notice to respond with respect to each of the Title Objections noted by the School Board by: (i) agreeing to cure one or more of such Title Objections; and/or (ii) refusing to cure one or more of such Title Objections. In the event that the Town agrees in writing to cure one or more Title Objections, the Town shall have until the thirtieth (30th) day following the School Board's receipt of such writing from the Town to do so (the "**Town's Curative Deadline**"). If the Town fails to cure all such Title Objections, which it has agreed to cure by the Town's Curative Deadline, then the School Board may waive such objections and proceed with the Closing, or the School Board may terminate this Agreement by written notice to the Town within five (5) days following the Town's Curative Deadline. If the School Board terminates this Agreement pursuant to the preceding sentence, the parties shall be without further obligation hereunder, except to the extent such obligations expressly survive the termination of this Agreement. In the event that the Town refuses in writing to cure one or more Title Objections, the School Board may waive such Title Objections and proceed with the Closing, or the School Board may terminate this Agreement by written notice to the Town within five (5) days after receiving the Town's written refusal to cure. If the School Board terminates this Agreement pursuant to the preceding sentence, the parties shall be without further obligation hereunder, except to the extent such obligations expressly survive the termination of this Agreement.

In the event that the Town fails to respond to the School Board's notice of Title Objections within the permitted time, the Town shall be deemed to have refused to cure all such Title Objections, and the School Board may waive such Title Objections and proceed with the Closing, or the School Board may terminate this Agreement by written notice to the Town within five (5) days after the deadline for which the Town was supposed to have responded to the Title Objections. If the School Board terminates this Agreement pursuant to the preceding sentence, the parties shall be without further obligation hereunder, except to the extent such obligations expressly survive the termination of this Agreement.

2.2.3 The Parties shall be deemed to have accepted, the following exceptions to title ("**Permitted Exceptions**") as to the property to be received by each:

- (i) Public or private utility easements, recorded in the public records;
- (ii) Zoning and other land use laws, statutes, ordinances or regulations of applicable governmental authorities having jurisdiction over the property to be received;
- (iii) Ad valorem real property taxes levied in the year of the Closing and all subsequent years (unless exempt);
- (iv) Matters not objected to or otherwise waived pursuant to Sections 2.2.1 and 2.2.2 above.

2.2.4 The Town, shall obtain surveys of the Exchange Parcels (each a "**Survey**", collectively the "**Surveys**") made by a licensed surveyor and meeting the requirements to remove the standard survey exceptions from the title commitments required in Sections 2.2.1 and 2.2.2. If a Survey reveals one or more encroachments or other conditions affecting the marketability of the title of the property to be received by such party, such party may deem any such encroachment or other condition to be a Title Objection by written notice to the other party within ten (10) days of such party's receipt of the Survey, and the party in receipt of such written notice shall thereafter respond in accordance with the procedures of Section 2.2.1 or 2.2.2, respectively.

2.3 **Costs of Conveyance.** The Town shall pay all costs associated with the conveyance of the Exchange Parcels, including but not limited to: (i) documentary stamp taxes on the deeds (in the event the conveyance is not exempt), (ii) recording fees for the deeds, (iii) costs of the title search and owner's title policy premium for the Exchange Parcels, (iv) costs of any lender's policy and /or endorsements relating to any lender providing financing to the Town in connection with any construction and/or improvements required to be made by the Town under this Agreement to the School Board Property, Town Property and/or Exchange Parcels, (v) the cost of the Surveys, (vi) engineering or other professional fees associated with preparation of the Final Site Plan (as defined in Section 3.2.1), and (vii) the School Board's reasonable attorney fees incurred in connection with the transaction contemplated by this Agreement, including preparation of this Agreement and the conveyance documents. In the event this Agreement is terminated or otherwise does not close as contemplated, the Town shall remain obligated to pay all such costs as described herein; to the extent, the costs were actually incurred.

2.4 **Construction/Improvement Obligations.**

2.4.1 The Town shall, at the Town's cost and expense, complete construction, repair and/or improvement of the following facilities:

- (i) Replacement of existing playground equipment, installation of shade covering over playground equipment, and replacement of ground surface
- (ii) Reconditioning of play courts and installation of shade coverings
- (ii) Construction of secured parking lot for use by parents and other visitors of Fort Myers Beach Elementary School
- (iii) Installation of additional fencing and/or repair of existing fencing to ensure all Recreational Facilities are securely enclosed during school use as outlined in the survey of the "Exchange Parcels"

2.4.2 The Town shall use its best efforts to complete the items in Section 2.4.1 within TBD days following the Closing, but in no event later than TBD _____, 2021. These obligations shall survive the Closing.

SECTION III: CLOSING AND CONDITIONS PRECEDENT

3.1 **Closing.** The consummation of the exchange transaction contemplated by this Agreement (the "**Closing**") shall be on or before the earlier of (i) fifteen (15) days following the satisfaction of all Conditions Precedent (as defined below) or (ii) January 31, 2021 (the "**Closing Date**"). On the Closing Date, the School Board agrees to convey the School Board Exchange Parcels to the Town and the Town agrees to convey the Town Exchange Parcels to the School Board.

3.2. **Conditions Precedent.** Notwithstanding the foregoing, Closing shall be contingent upon the satisfaction of the following conditions (the "**Conditions Precedent**") prior to Closing:

3.2.1 **Final Site Plan.** The Town shall prepare a site plan incorporating the plans for construction of the improvements outlined in Section 2.4 to the existing Recreational Facilities, which shall be approved by the School Board.

3.2.2 **Construction Plan.** The Parties shall work together to prepare a construction plan detailing the order/phases in which the improvements outlined in Section 2.4 will be constructed, the timeframe for completion of each phase, how the Recreational Facilities will be used during construction, and other details relating to the construction process, including safety and cleanup measures to be undertaken during construction.

3.2.3 Surveys. The Town shall have obtained the Surveys as set forth in Section 2.2.4 and the Parties agreed to the final legal descriptions for the Exchange Parcels.

3.2.4 Shared Use Agreement. The Parties shall approve the form of an interlocal agreement to be executed at Closing which shall address the rights and obligations of the Parties relating to the shared use, operation and maintenance of the Recreational Facilities (the "Shared Use Agreement"). The form Shared Use Agreement shall provide for the following:

- (i) Responsibility for inspection, maintenance, repair and replacement of the Recreational Facilities
- (ii) Responsibility for daily opening and closure of the Recreational Facilities
- (iii) Schedule of days/times during which the School Board shall have priority or exclusive use of certain portions of the Recreational Facilities
- (iv) Implementation of after school clubs and programming
- (v) Insurance, liability and indemnification requirements
- (vi) Restrictions on the School Board Exchange Parcel relating to recreational use of the property and sale or disposition by the Town, with reverter provision in favor of the School Board.
- (v) Restrictions on the Town Exchange Parcel relating to educational and/or recreational use of the property and sale and disposition by the School Board, with reverter provision in favor of the Town.
- (vi) The length, terms and conditions of the shared use agreement.

3.2.5 Vacation of ROW. The Town shall have taken all actions necessary and effectively vacate the right-of-ways located within the Town Exchange Parcels.

3.2.6 In the event the Conditions Precedent are not satisfied by the Closing Date, either party may extend the Closing Date for up to thirty (30) days by delivering written notice thereof to the other party prior to the Closing Date. If neither party extends this Agreement as provided above, this Agreement shall terminate and the Parties shall have no further obligations hereunder (except for those obligations, which expressly survive the termination of the Contract, if any). If the Closing is extended but the Conditions Precedent are not satisfied by the extended Closing Date, the Agreement shall

terminate and the parties shall have no further obligations hereunder (except for those obligations which expressly survive the termination of the Agreement, if any).

3.3 Closing Documents.

3.3.1 The School Board shall deliver a fully executed, witnessed and acknowledged Special Warranty Deed conveying marketable, insurable fee-simple title to the School Board Exchange Parcels to the Town subject only to any Permitted Exceptions (the "School Board Deed").

3.3.2 The Town shall deliver a fully executed, witnessed and acknowledged Quit-Claim Deed conveying all of the Town's interest, if any, in the Town Exchange Parcels to the School Board subject only to any Permitted Exceptions (the "Town Deed").

3.3.3 The School Board shall deliver (i) an owner's affidavit as to the School Board Exchange Property in form sufficient and acceptable to the Title Company so as to allow it to eliminate the standard owner's exceptions, including the parties' in possession, mechanic's lien, and "gap" exceptions from each respective title commitment and policy; (ii) non-foreign "FIRPTA" affidavits in the customary form; (iii) any corrective instruments that are necessary to cure one or more Title Objections, which Title Objections the School Board has agreed to cure in accordance with Section 2.2.1, (iv) satisfactions or partial releases from any lender holding a mortgage or security interest in the School Board Exchange Property, and (v) such further documents as may reasonably be required to convey and vest title to the School Board Exchange Property in the Town, and to enable the Title Company to issue a title policy to the Town as required in accordance with the terms of this Agreement, together with any other documents reasonably required to accomplish the intent of the Parties. This obligation shall survive Closing.

3.3.4 The Town shall deliver (i) an owner's affidavit as to the Town Exchange Property in form sufficient and acceptable to the Title Company so as to allow it to eliminate the standard owner's exceptions, including the parties' in possession, mechanic's lien, and "gap" exceptions from each respective title commitment and policy; (ii) non-foreign "FIRPTA" affidavits in the customary form; (iii) any corrective instruments that are necessary to cure one or more Title Objections, which Title Objections the Town has agreed to cure in accordance with Section 2.2.2, (v) satisfactions or partial releases from any lender holding a mortgage or security interest in the Town Exchange Property, and (vi) such further documents as may reasonably be required to convey and vest title to the Town Exchange Property in the School Board, and to enable the Title Company to issue a title policy to the School Board as required in accordance with the terms of this Agreement, together with any other documents reasonably required to accomplish the intent of the Parties. This obligation shall survive Closing.

SECTION IV: DEFAULT

If either party fails to materially fulfill its obligations under this Agreement that party will be considered to be in default. The other party to the Agreement shall provide written notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting party fails to cure the default within said time period, the other party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party.

SECTION V: NOTICE:

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Town: Town of Fort Myers Beach, a Florida municipal corporation
Town Manager
2525 Estero Blvd.
Fort Myers Beach, FL 33931

School Board: School Board of Lee County
Office of the Superintendent
2855 Colonial Blvd.
Fort Myers, FL 33966

The address to which any notice or demand may be given to either party may be changed by written notice.

SECTION VI: MISCELLANEOUS:

The Parties represent and warrant that they have full authority to enter into and sign the Agreement. The terms and conditions of this Agreement shall extend to and bind any successor entity of the Parties hereto. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other. The prevailing Party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. Any dispute arising hereunder shall be subject to, and all rights contained herein may be enforced through, an appropriate action in law or at equity brought in a court of competent jurisdiction

located in Lee County, Florida. This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof. No modification or amendment of this Agreement shall be valid and binding the School Board the Town unless it is in writing and executed by or on behalf of the School Board and the Town.

SECTION VII: DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law. In the event of any dispute hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all attorneys' fees and costs in connection therewith.

SECTION VIII: ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part thereof, shall be made by either Party unless approved by both the School Board and the Town.

SECTION IX: EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION X: REVERSIONARY INTEREST

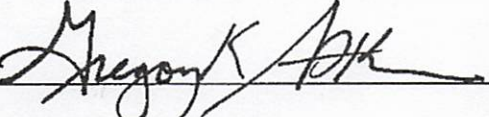
The Town shall use the School Board Exchange Parcel for recreational use. If the Town conveys the School Board Exchange Parcel or fails to use the School Board Exchange Parcel for recreational use, the School Board may notify the Town and request the reverter of the School Board Exchange Parcel back to the School Board.

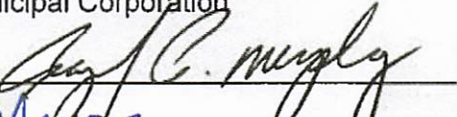
The School Board shall use the Town Exchange Parcels for educational/recreational use. If the School Board conveys the Town Exchange Parcels or fails to use the Town Exchange Parcels for educational/recreational use, the Town may notify the School Board and request the reverter of the Town Exchange Parcels back to the Town.

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month and year first written above.

The School Board of Lee County, Florida

Town of Fort Myers Beach, a Florida
Municipal Corporation

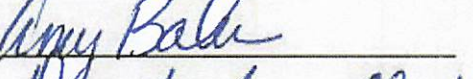
By: 
Its: Gregory K. Adkins, Ed.D., Superintendent

By: 
Its: Mayor

RATIFIED AND APPROVED:

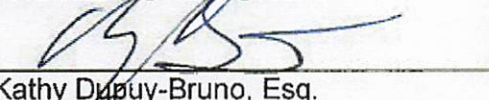
ATTESTED:

By: 
Its: Mary Fischer, Board Chair

By: 
Its: Deputy Town Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM:

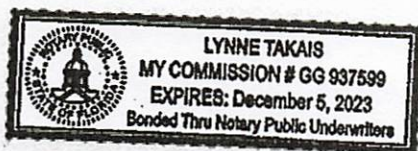
By: 
Kathy Dupuy-Bruno, Esq.
School Board Attorney

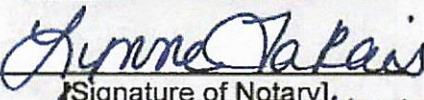
By: 
Town Attorney

SEP 22 2020

STATE OF FLORIDA
COUNTY OF LEE SCHOOL BOARD OF
LEE COUNTY

The foregoing instrument was signed and acknowledged before me by means of ☒ physical presence or ☐ online notarization this 23rd day of September 2020, by Mary Fischer, as Board chair of The School Board of Lee County, Florida, who produced the following as identification or is personally known to me and who did/did not take an oath.




[Signature of Notary]
Lynne Takais
[Typed or Printed Name]

STATE OF FLORIDA
COUNTY OF LEE

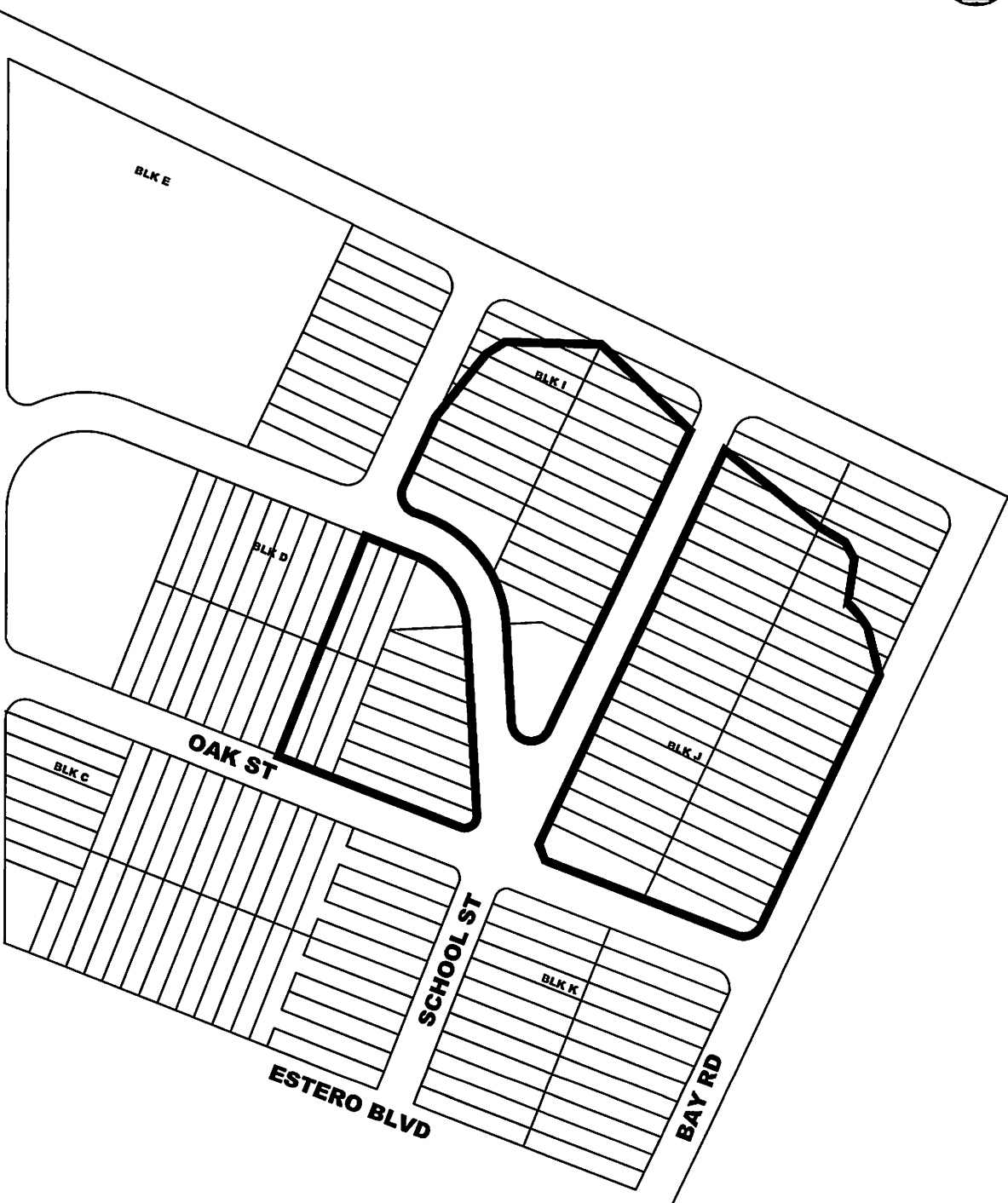
The foregoing instrument was signed and acknowledged before me by means of
☒ physical presence or ☐ online notarization this 7 day of OCTOBER 2020
2020, by RAYMOND C. MURRAY as MAYOR of The Town of Fort Myers Beach,
a Florida municipal corporation, who produced the following as identification
or is personally known to me and who
did/did not take an oath.



Jason Freeman
[Signature of Notary]
JASON FREEMAN
[Typed or Printed Name]

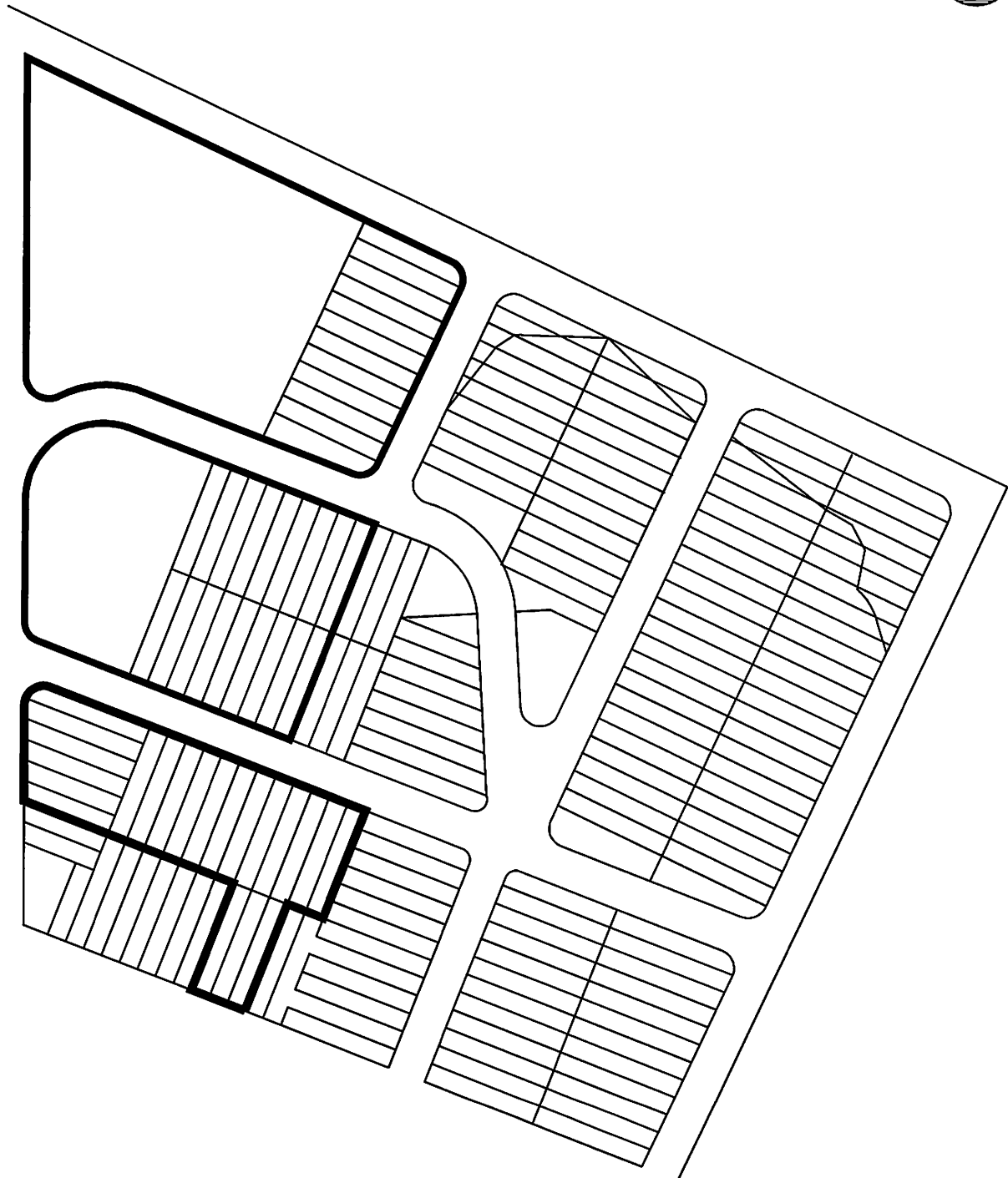


GULF BEACH RD



LEE COUNTY SCHOOL DISTRICT PROPERTY

**EXHIBIT
A**

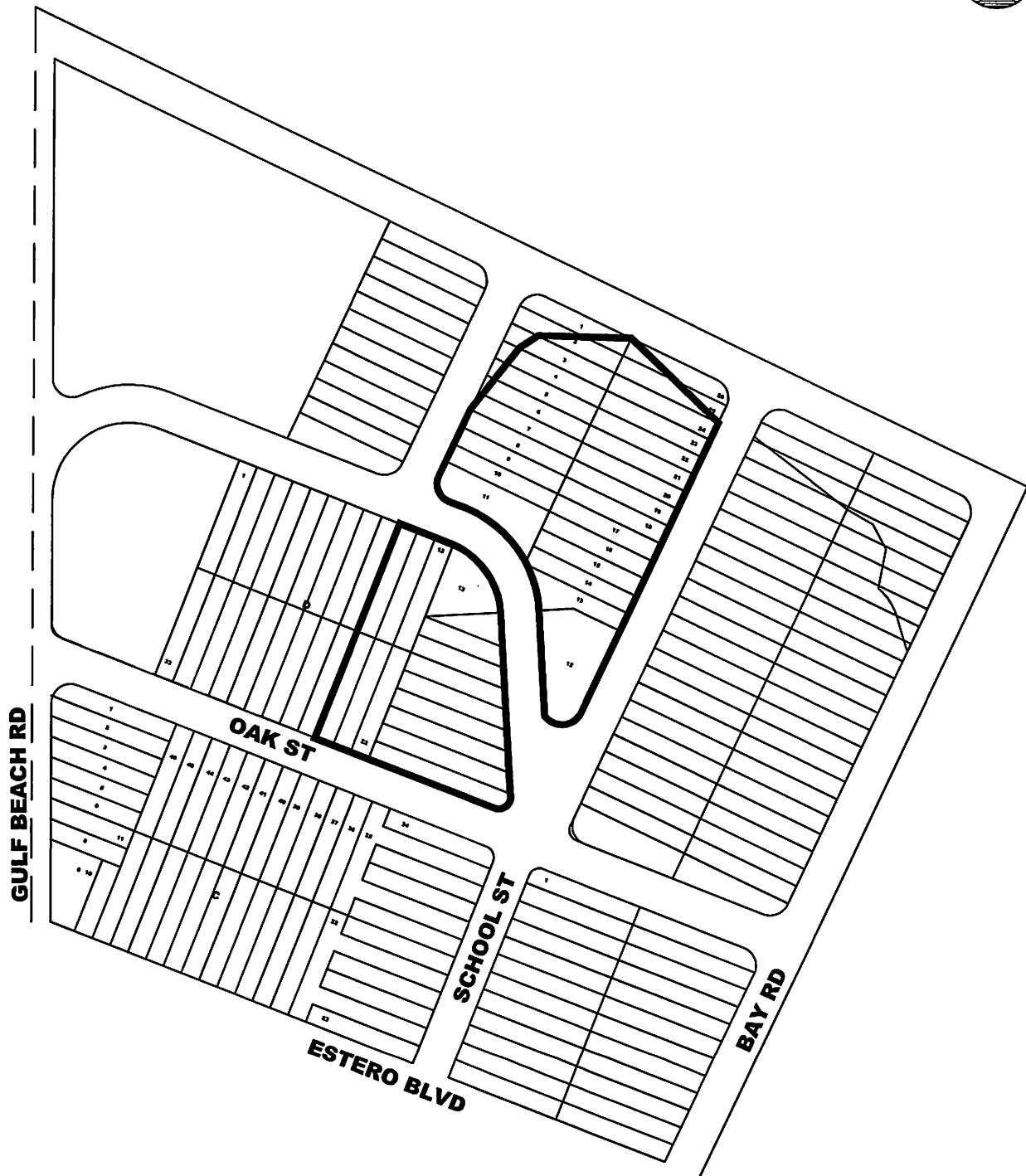


**NOTE: TOWN OF FORT MYERS BEACH CONTROLS ALL
RIGHTS-OF-WAY INTENAL TO PROJECT SITE**



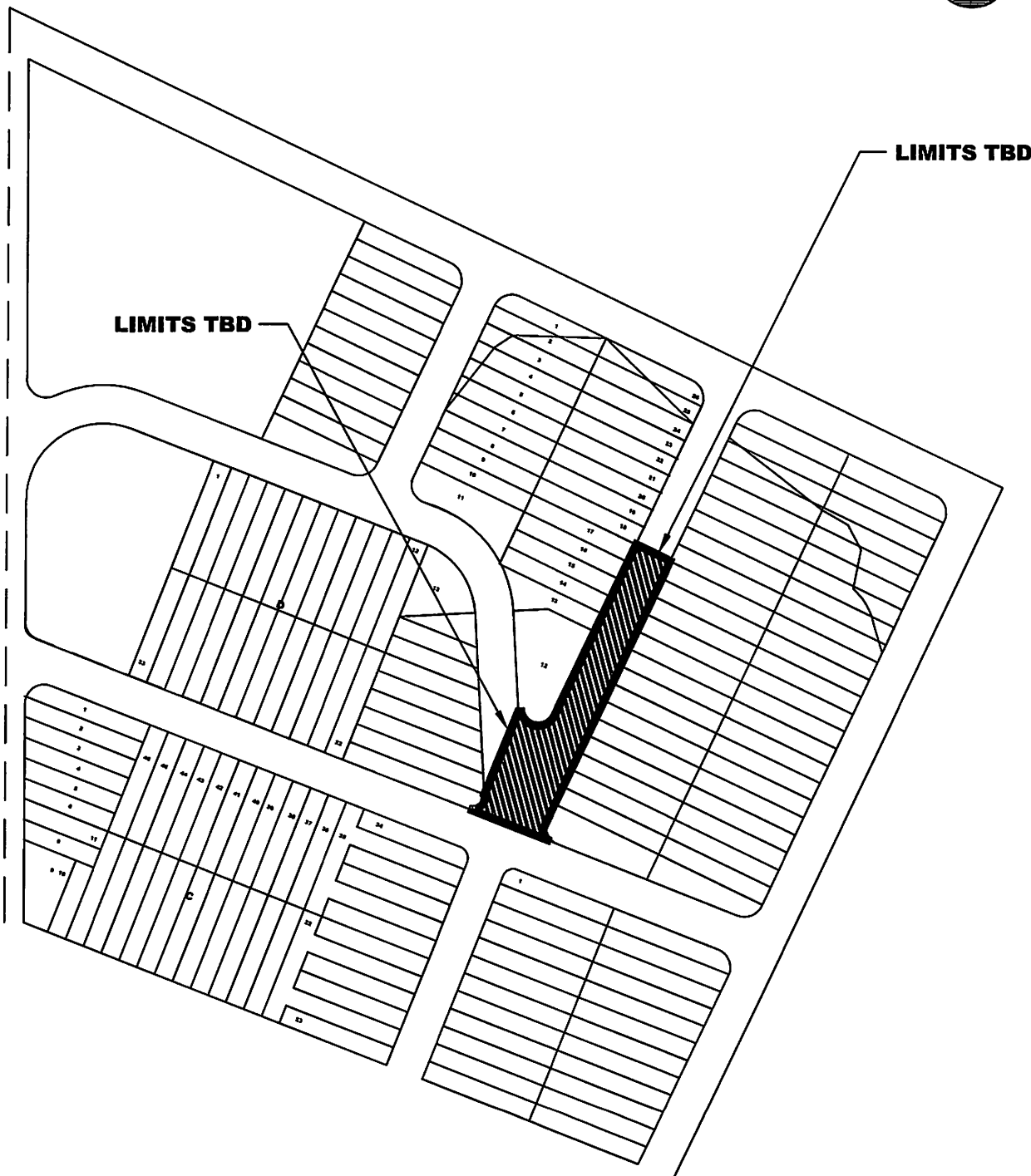
TOWN OF FORT MYERS BEACH PROPERTY

**EXHIBIT
B**



**LEE COUNTY SCHOOL DISTRICT
EXCHANGE PROPERTY
(CONVEYED TO TOWN OF FORT MYERS BEACH)**

**EXHIBIT
C**



**TOWN OF FORT MYERS BEACH
EXCHANGE PROPERTY
(CONVEYED TO LEE COUNTY SCHOOL DISTRICT)**

**EXHIBIT
D**

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT RELATING TO
EXCHANGE OF REAL PROPERTY AND IMPROVEMENTS**

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT RELATING TO EXCHANGE OF REAL PROPERTY AND IMPROVEMENTS (this “**First Amendment**”), is made as of the ____ day of December, 2020 by and between the TOWN OF FORT MYERS BEACH (the “**Town**”), and THE SCHOOL BOARD OF LEE COUNTY, FLORIDA (the “**School Board**”).

WITNESSETH THAT:

WHEREAS, the Town and the School Board have entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements effective October 7, 2020 (the “**Agreement**”) with respect to the property and facilities relating to the Bay Oaks Recreational Facility and Fort Myers Beach Elementary School, as more fully described therein (the “**Exchange Parcels**”); and

NOW, THEREFORE, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration each to the other paid, the receipt and sufficiency of which is hereby acknowledged, the Town and the School Board hereby agree as follows:

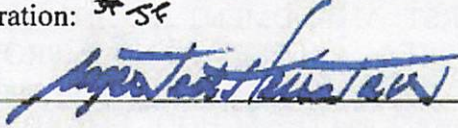
1. **CLOSING**. The time for completing the Closing (as defined in Section 3.1 of the Agreement) is hereby extended sixty (60) days, such that the Closing shall take place on or before the earlier of (i) fifteen (15) days following the satisfaction of all Conditions Precedent or (ii) April 1, 2021.

2. **RATIFICATION**. Except as modified by or where inconsistent with this First Amendment, the Agreement is hereby ratified and confirmed. Where inconsistent, the terms of this First Amendment shall supersede and take precedence over the Agreement. Capitalized terms used but not defined herein shall have the meanings attributed to such terms in the Agreement. The Agreement, as amended hereby, shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

3. **COUNTERPART EXECUTION**. This First Amendment may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument. This First Amendment shall not be effective unless and until the same has been executed and delivered by all parties hereto whether in one or more counterparts. To facilitate execution of this First Amendment, the parties may execute and exchange counterparts of signature pages by telephone, DocuSign, facsimile or portable document format (.pdf).

IN WITNESS WHEREOF, the parties have executed this instrument under seal as of the day and year first above written.

TOWN OF FORT MYERS BEACH, a Florida municipal corporation: JS

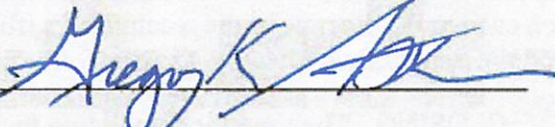
By: 

Name: ROGER T. HERNSTADT

Its: TOWN MANAGER

Dated: 12/21/2020

THE SCHOOL BOARD OF LEE COUNTY, FLORIDA

By: 

Name: Gregory K. Adkins, Ed. D

Its: Superintendent

Dated: 12/14/2020

Approved as to Form

By: 
School Board Attorney

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach recognized the Kiwana's Club for all the work they did. Council Member Atterholt discussed water quality issues and recognized public officials. He encouraged everyone to contact their state representatives.

Mayor Murphy noted that Representative Passidomo from Naples tested positive for the coronavirus.

Vice Mayor Hosafros recognized Patrick McKeon for volunteering to write the book on the Mound House. She recognized the Friends of the Mound House for providing the funds to produce the book.

Council Member Allers thanked Alison Giesen, BORCAB and staff for their hard work on Bay Oaks. He thanked the Woman's Club for allowing Santa and his elf to put a tree in the festival that raised almost \$500.00 for the autism group.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No reports.

VIII. APPROVAL OF MINUTES**A. December 3, 2020 Management & Planning Session**

Amendment: Refer to Chadd Chustz as Project Manager in the future. Vice Mayor Hosafros moved to approve the minutes as amended; second by Council Member Allers.

Motion carried unanimously.

B. December 7, 2020 Town Council

Amendments: Vice Mayor Hosafros recognized all the citizens of the Town under Local Achievements and Recognitions. The dissenters to the vote to confirm Mayor Murphy were Vice Mayor Hosafros and Council Member Veach.

Vice Mayor Hosafros moved to approve the minutes with amendments; second by Council Member Allers.

Motion carried unanimously.

IX. CONSENT AGENDA

Vice Mayor Hosafros moved to approve the consent agenda; second by Council Member Atterholt.

Motion carried unanimously.

A. Extension of execution date for LCSB property swap

Amendment to extend Resolution 20-45 completion date for an exchange of real property and improvements related to the redevelopment of Bay Oaks recreational facility, not to exceed 60 days.

Vice Mayor Hosafros moved to approve the amendment; second by Council Member Atterholt.

Motion carried unanimously.

RESOLUTION NUMBER 21-23

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING A SECOND AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE EXCHANGE OF REAL PROPERTY AND IMPROVEMENTS RELATED TO THE REDEVELOPMENT OF BAY OAKS RECREATIONAL FACILITY; AUTHORIZING THE EXECUTION OF THE SECOND AMENDMENT BY THE TOWN MANAGER AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE SECOND AMENDED INTERLOCAL AGREEMENT; 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 School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board is the owner of certain real property upon which is located the Fort Myers Beach Elementary School ("School Board Property"); and

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property ("Town Property"); and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, in order to maximize the use of their respective properties, the School Board and the Town entered into an Interlocal Agreement regarding the exchange of certain portions of their properties ("Agreement"), which Agreement the parties have previously amended ("First Amendment"); and

WHEREAS, the School Board and Town desire to further amend the Agreement to extend the closing date therein, and update the legal description of the parcels of land the parties have agreed to exchange ("Second Amendment").

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

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

Section 2. The Second Amendment to the Agreement attached hereto as Exhibit "A", between the School Board and Town, regarding the exchange of School Board Property and Town Property is approved. The Town Manager is authorized to execute the Second Amendment on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Second Amended Agreement.

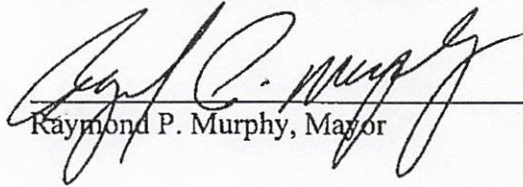
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

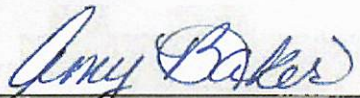
Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

ADOPTED this 3rd day of May, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

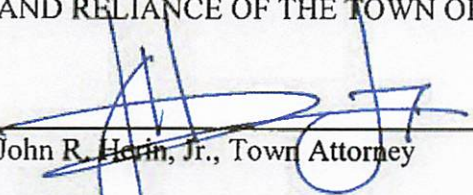
TOWN OF FORT MYERS BEACH


Raymond P. Murphy, 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 Resolution was filed in the Office of the Town Clerk on this 6 day of May 2021.

**SECOND AMENDMENT TO INTERLOCAL AGREEMENT RELATING TO
EXCHANGE OF REAL PROPERTY AND IMPROVEMENTS**

THIS SECOND AMENDMENT TO INTERLOCAL AGREEMENT RELATING TO EXCHANGE OF REAL PROPERTY AND IMPROVEMENTS (this "Second Amendment"), is made as of the 3rd day of May, 2021 by and between the TOWN OF FORT MYERS BEACH (the "Town"), and THE SCHOOL BOARD OF LEE COUNTY, FLORIDA (the "School Board").

WITNESSETH:

WHEREAS, the Town and the School Board have entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements effective October 7, 2020 (the "Agreement") with respect to the property and facilities relating to the Bay Oaks Recreational Facility and Fort Myers Beach Elementary School, as more fully described therein (the "Exchange Parcels"); and

WHEREAS, the Town and the School Board amended the Agreement effective December 21, 2020 (the "First Amendment") to extend the Closing Date of the exchange of title to the Exchange Parcels as set forth in the Agreement; and

WHEREAS, the Town and the School Board desire to amend the Agreement and the First Amendment to further extend the Closing Date of the exchange of title to the Exchange Parcels as set forth in the Agreement and First Amendment and to update the legal descriptions of the Exchange Parcels as set forth in the Agreement.

NOW, THEREFORE, for Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration each to the other paid, the receipt and sufficiency of which is hereby acknowledged, the Town and the School Board hereby agree as follows:

1. CLOSING. The time for completing the Closing (as defined in Section 3.1 of the Agreement) is hereby extended sixty (60) days, such that the Closing shall take place on or before the earlier of (i) fifteen (15) days following the satisfaction of all Conditions Precedent or (ii) August 1, 2021.

2. EXCHANGE PARCELS. The School Board agrees to grant and convey, and the Town agrees to acquire and accept, fee-simple title to that portion of the School Board Property generally described and depicted on Exhibit "A" attached hereto and incorporated herein (the "School Board Exchange Parcels"). In exchange therefore, the Town agrees to grant and convey, and the School Board agrees to acquire and accept, fee-simple title to that portion of the Town Property generally described and depicted on Exhibit "B" attached hereto and incorporated herein (the "Town Exchange Parcels"). The School Board Exchange Parcels and the Town Exchange Parcels are referred to, collectively, as the "Exchange Parcels". The legal descriptions and depictions of the Exchange Parcels shall be confirmed and finalized pursuant to surveys to be obtained as set forth in Section 2.2.4 of the Agreement.

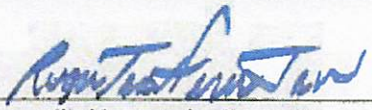
3. RATIFICATION. Except as modified by or where inconsistent with this Second Amendment, the Agreement is hereby ratified and confirmed. Where inconsistent, the terms of

this Second Amendment shall supersede and take precedence over the Agreement. Capitalized terms used but not defined herein shall have the meanings attributed to such terms in the Agreement. The Agreement, as amended hereby, shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

4. COUNTERPART EXECUTION. This Second Amendment may be executed in any number of counterparts and by each of the parties hereto in separate counterparts, all such counterparts together constituting but one and the same instrument. This Second Amendment shall not be effective unless and until the same has been executed and delivered by all parties hereto whether in one or more counterparts. To facilitate execution of this Second Amendment, the parties may execute and exchange counterparts of signature pages by telephone, DocuSign, facsimile or portable document format (.pdf).

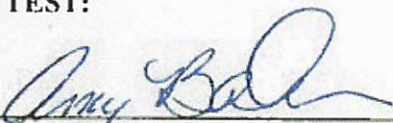
IN WITNESS WHEREOF, the parties have executed this instrument under seal as of the day and year first above written.

TOWN OF FORT MYERS BEACH



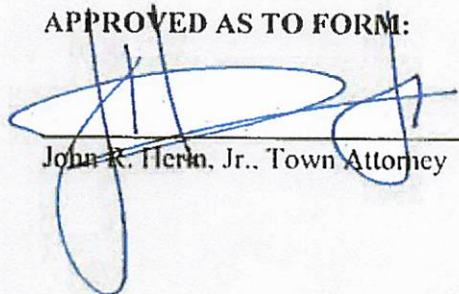
Roger T. Hernstadt, Town Manager

ATTEST:



Amy Baker, Town Clerk

APPROVED AS TO FORM:



John R. Herm, Jr., Town Attorney

**THE SCHOOL BOARD OF LEE
COUNTY, FLORIDA**

By: _____

Its: _____

RATIFIED AND APPROVED:

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____
School Board Attorney



Engineers • Environmental Scientists • Surveyors

Description of Parcels of Land
Lying in
Section 19, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Conveyance Parcels to Town of Fort Myers Beach)

North Parcel:

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being a portion of Block I and a portion of an unnamed street as shown on the plat of Winkler Subdivision, as recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, Public Records of Lee County, Florida and further described as follows:

Commencing at the northwesterly most corner of Lot 48, Block J of said Winkler Subdivision; thence N64°14'48"W along the northeasterly line of Lot 1, Block J, across an unnamed street and along the northeasterly line of Lot 26, Block I of said subdivision for 350.00 feet to the northeasterly corner of Lot 1, Block I of said subdivision and the Point of Beginning; thence S45°48'43"E along the southwesterly line of said parcel of land described in Official Record Book 2599 at page 781 within said Block I, for 158.11 feet to the southeasterly corner of Lot 25 of said Block I, also being the westerly line of an unnamed street (50' wide) as shown on said plat; thence S25°45'12"W along the easterly line of said Block I, also being the westerly line of said unnamed street as shown on said plat of Winkler Subdivision, for 100.00 feet to the southeast corner of Lot 21 of said Block I; thence S64°14'48"E along the southeasterly extension of the south line of said Lot 21, across said unnamed street, for 50.00 feet to the northwest corner of Lot 7 of Block J of said subdivision; thence S59°26'36"W, extending across said unnamed street and across a portion of said Block I for 231.98 feet; thence S11°26'52"W across said Block I, for 152.53 feet to an intersection with a curve concave to the north having a radius of 25.00 feet and to which point a radial line bears S65°30'22"W, also being the northerly line of an unnamed street as shown on said plat; thence continue northwesterly along said curve to the right and along the southerly line of said Block I through a central angle of 21°44'50" (chord bearing N13°37'13"W) for an arc distance of 9.49 feet to a point of tangency; thence N02°44'48"W, along the westerly line of Block I, also being the easterly line of an unnamed street (50' wide) as shown on said plat, for 127.34 feet to the beginning of a tangent curve to the left having a radius of 150.00 feet; thence continue northwesterly along said curve and along the westerly line of said Block I through a central angle of 65°47'00" (chord bearing N35°38'18"W) for an arc distance of 172.22 feet to a point of tangency; thence N68°31'48"W along the westerly line of said Block I and the easterly line of said unnamed street for 22.44 to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue northwesterly along the westerly line of said Block I and said unnamed street through a central angle of 94°17'00" (chord bearing N21°23'18"W) for an arc distance of 41.14 feet to a point of tangency; thence N25°45'12"E along the northwesterly line of said Block I and the easterly line of said unnamed street for 95.36 feet to the southwesterly most corner of Lot 7,

Page 1 of 4



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PLAT BOOK 8, PAGE 45, RECORD BOOK 2599
OFFICIAL RECORD BOOK 2599, PAGE 781
PLAT BOOK 8, PAGE 45, RECORD BOOK 2599

Block I of said subdivision, being the southwesterly most corner of said parcel as described in Official Record Book 2599 at page 781; thence N37°42'07"E along the southwesterly line of said parcel for 102.22 feet; thence N57°33'01"E along the southwesterly line of said parcel for 29.41 feet; thence S88°03'05"E along the southerly line of said parcel for 123.88 feet to the Point of Beginning.

Containing 86,512 square feet (1.99 acres), more or less.

And also:

South Parcel:

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being all of Lots 10 through 24, Block D, Winkler Subdivision, as recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, and further described as follows:

Beginning at the southwest corner of Lot 24, Block D of said Winkler Subdivision; thence N21°28'12"E along the northwesterly line of Lot 24 and Lot 10 of said Block D for 300.00 feet to the northwest corner of said Lot 10; also being the southerly line of said unnamed street (50' wide) as shown on said plat; thence S68°31'48"E along the northeasterly line of said Block D, also being the southwesterly line of said unnamed street as shown on said plat of Winkler Subdivision, for 75.00 feet to the beginning of a tangent curve to the right having a radius of 100.00 feet; thence continue southeasterly along said curve and said unnamed street and along the northeasterly line of said Block D through a central angle of 65°47'00" (chord bearing S35°38'18"E) for an arc distance of 114.81 feet to a point of tangency; thence S02°44'48"E, along the easterly line of said Block D, also being the westerly line of said unnamed street as shown on said plat for 225.62 feet to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue southwesterly along said curve and along the westerly line of said unnamed street through a central angle of 114°13'00" (chord bearing S54°21'42"W) for an arc distance of 49.84 feet to a point of tangency on the northerly right of way line of Oak Street (50' wide) as shown on said plat; thence N68°31'48"W along the southwesterly line of said Block D, and along the northerly line of said Oak Street for 235.95 feet to the Point of Beginning.

Containing 61,071 square feet (1.40 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are state plane grid for the Florida West Zone (North American datum of 1983/1990 adjustment) with the westerly line of Bay Road (the easterly line of said Block J) as bearing N25°45'12"E.

CES, Inc. (LB8267)

Date: 5-11-2021



Scott C. Whitaker, P.S.M. 4324 / Professional Surveyor and Mapper

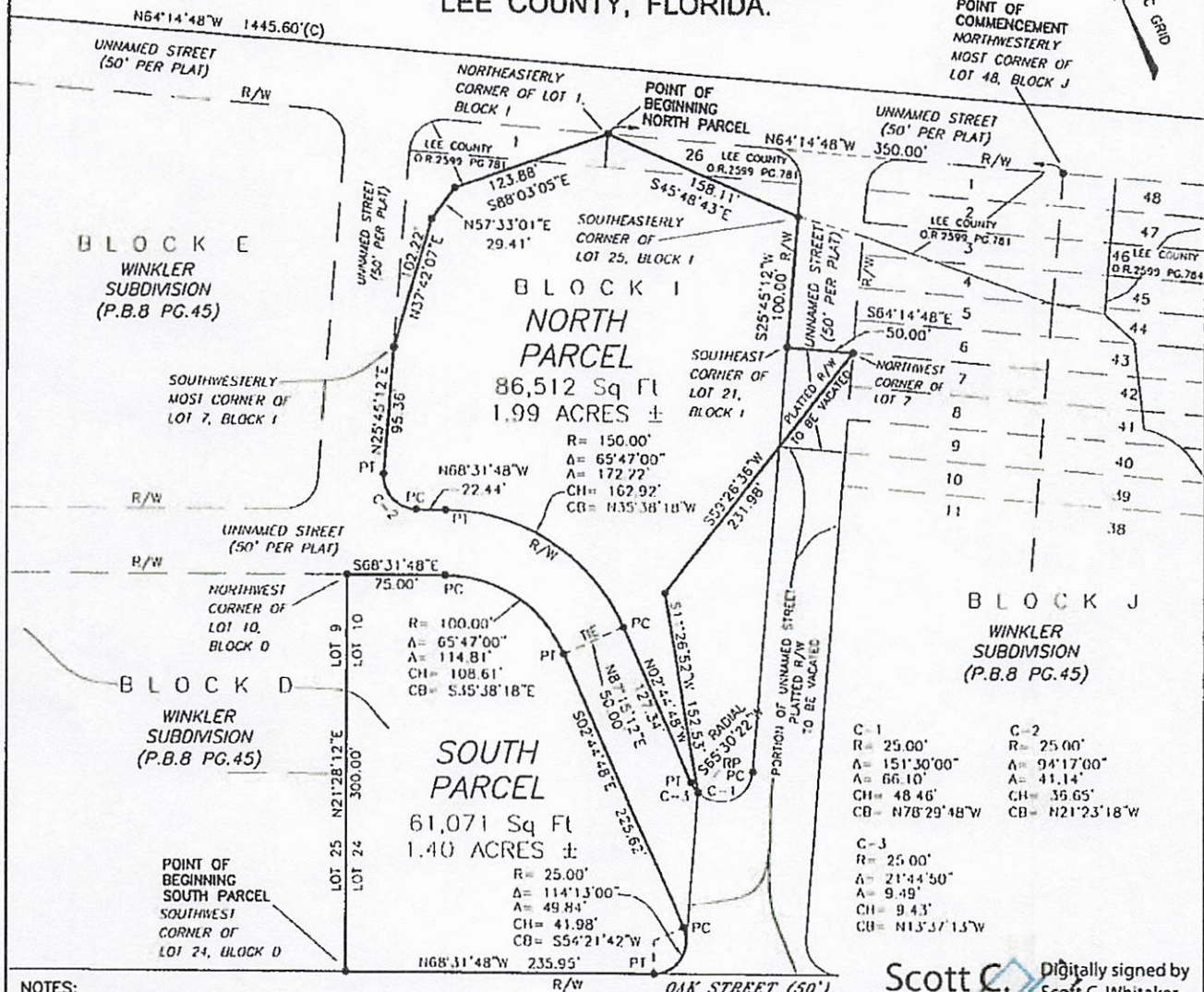
Page 2 of 4

2010596 0021ESC_CONVEYANCE PARCELS TO TOWN OF FORT MYERS BEACH.dwg

SKETCH TO ACCOMPANY DESCRIPTION

OF
A PARCEL OF LAND LYING IN
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH,
LEE COUNTY, FLORIDA.

N
BEARINGS ARE SPC GRID



Scott C. Whitaker
Digitally signed by Scott C. Whitaker
Date: 2021.05.11 00:15:42 -04'00'

SKETCH OF DESCRIPTION
*** THIS IS NOT A SURVEY ***
CES, INC.

SCOTT C. WHITAKER, P.S.M.
FLORIDA CERTIFICATION NO. 4324

CONVEYANCE PARCELS TO TOWN OF FORT MYERS BEACH

CES Inc

Engineers • Environmental Scientists • Surveyors
13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919
TEL (239) 481-1331

DATE	PROJECT NO	DRAWN BY	SCALE	SHEET	FILE NO (S-I-R)
5-11-21	596.002	SCW	1" = 120'	3 OF 4	19-46-21

D.B. = DEED BOOK
O.R. = OFFICIAL RECORD BOOK
P.H. = PLAT BOOK
P.C. = POINT OF CURVE
R.P. = RADIUS POINT
R/W = RIGHT-OF-WAY
SPC = STATE PLANE CO-ORDINATE

PG. = PAGE
P.I. = POINT OF TANGENCY



Engineers • Environmental Scientists • Surveyors

Description of a Parcel of Land
Lying in
Section 19, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Lee County District School Board Site)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being a portion of Blocks J and I and a portion of an Unnamed Street, as shown on the plat of Winkler Subdivision, recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, and further described as follows:

Commencing at the northwesterly most corner of Lot 48 of said Block J of said Winkler Subdivision; thence S25°45'12"W along the easterly line of Lots 1 through 4 of said Block J for 100.00 feet to the northwesterly most corner of Lot 44 of said Block J and to the Point of Beginning; thence N49°28'17"W along the southwesterly line of a parcel of land described in Official Record Book 2599 at page 781 within said Block J, for 155.13 feet to the northwest corner of said parcel also being the easterly line of an unnamed street as shown on said plat; thence S25°45'12"W along the westerly line of said Block J, also being the easterly line of said unnamed street as shown on said plat of Winkler Subdivision, for 89.56 feet to the northwest corner of Lot 7 of said Block J; thence S59°26'36"W, extending across said unnamed street and across a portion of said Block I for 231.98 feet; thence S11°26'52"W across said Block I, for 152.53 feet to an intersection with a curve concave to the north having a radius of 25.00 feet and to which point a radial line bears S65°30'22"W, also being the northerly line of an unnamed street as shown on said plat; thence continue S25°45'12"W, departing said block line and extending across said unnamed street, for 114.87 feet to a point on a tangent curve to the right having a radius of 25.00 feet and also lying on the southerly line of Block D as shown on said plat; thence continue southwesterly along said curve and along the southerly portion of said Block D, through a central angle of 85°43'00" (chord bearing S68°36'42"W) for an arc distance of 37.40 feet to a point of cusp lying on the northerly line of Oak Street (50 feet wide) as shown on said plat; thence S68°31'48"E along the northerly line of said Oak Street and the southerly line of said Block J for 392.27 feet to the beginning of a tangent curve to the left having a radius of 25.00 feet; thence continue easterly along said curve and along the southerly line of said Block J through a central angle of 85°43'00" (chord bearing N68°36'42"E) for an arc distance of 37.40 feet to a point of tangency on the westerly line of Bay Road (50 feet wide) as shown on said plat; thence N25°45'12"E along the easterly line of said Block J and the westerly line of said Bay Road for 321.38 feet to the southwesterly most corner of a parcel of land described in Official Record Book 2599 at page 784, said point lying 5.00 feet southwesterly from the northeast corner of Lot 38 of said Block J; thence N10°14'48"W, departing said westerly line of Bay Street, along the

Page 1 of 4



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Lee County District School Board
Fort Myers, Florida 33901-1000
Phone: 239.486.1000
Fax: 239.486.1001

westerly line of said parcel for 50.00 feet to the beginning of a tangent curve to the left having a radius of 65.00 feet; thence continue northwesterly along said westerly line and along said curve through a central angle of 46°44'28" (chord bearing N33°37'02"W) for an arc distance of 53.03 feet; thence N14°45'12"E along the westerly line of said parcel for 66.02 feet; thence N26°28'11"W along the westerly line of said parcel for 30.15 feet to the northwest corner of said parcel as described in Official Record Book 2599 at page 784; thence N57°07'18"W along the southwesterly line of said parcel as described in Official Record Book 2599 at page 781 for 40.31 feet to the Point of Beginning.

Containing 187,796 square feet (4.31 acres), more or less.

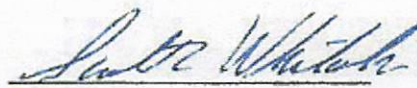
Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are state plane grid for the Florida West Zone (North American datum of 1983/1990 adjustment) with the westerly line of Bay Road (the easterly line of said Block J) as bearing N25°45'12"E.

CES, Inc. (LB8267)

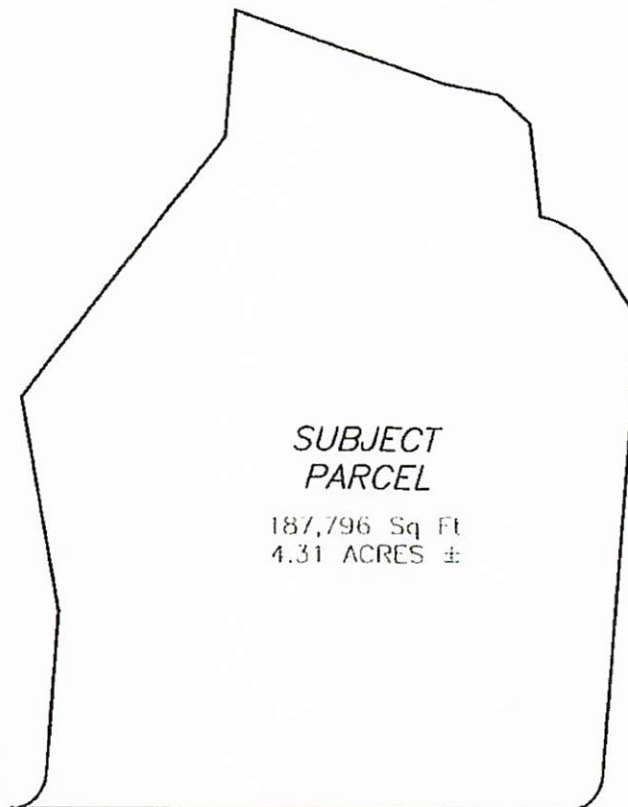
Scott C.
Whitaker

Digitally signed by
Scott C. Whitaker
Date: 2021.04.29
16:40:29 -04'00'


Scott C. Whitaker, P.S.M. 4324
Professional Surveyor and Mapper
State of Florida

SKETCH TO ACCOMPANY DESCRIPTION

OF
A PARCEL OF LAND LYING IN
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH,
LEE COUNTY, FLORIDA.



BEARINGS ARE SPC GRID

SUBJECT
PARCEL

187,796 Sq Ft
4.31 ACRES ±

NOTES:

DESCRIPTION AND SKETCH ARE BASED ON THE RIGHT-OF-WAY CONTROL SURVEY MAPS OF ESTERO BOULEVARD DATED APRIL 16, 2010, RECORD DEEDS, THE RECORD PLAT OF WINKLER SUBDIVISION AND FIELD LOCATED MONUMENTATION.

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) BASED ON GLOBAL POSITIONING SYSTEM (GPS) TIES TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK HOLDING NATIONAL GEODETIC SURVEY CONTROL MONUMENT "8008-2".

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

D.B. = DEED BOOK

O.R. = OFFICIAL RECORD BOOK

P.B. = PLAT BOOK

P.C. = POINT OF CURVE

P.G. = PAGE

P.T. = POINT OF TANGENCY

R.P. = RADIUS POINT

R/W = RIGHT-OF-WAY

SPC = STATE PLANE CO-ORDINATE

SKETCH OF DESCRIPTION

*** THIS IS NOT A SURVEY ***
CES, INC.

Scott C. Whitaker
SCOTT C. WHITAKER, P.S.M.
FLORIDA CERTIFICATION NO. 4324

LEE COUNTY DISTRICT SCHOOL BOARD SITE

CESinc

Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 431-1331

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO (S-T-R)
4-29-21	596.002	SCW	1" = 120'	3 OF 4	19-16-21

RESOLUTION NUMBER 21-35

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE SHARED USE OF REAL PROPERTIES RELATED TO THE REDEVELOPMENT OF BAY OAKS RECREATIONAL FACILITY; AUTHORIZING THE EXECUTION OF THE INTERLOCAL AGREEMENT BY THE TOWN MANAGER AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; 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 School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board is the owner of certain real property upon which is located the Fort Myers Beach Elementary School ("School Board Property"); and

WHEREAS, the Town is the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property ("Town Property"); and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, in order to maximize the use of their respective properties, the School Board and the Town are entering into this Interlocal Agreement regarding the shared use of certain portions of their properties ("Agreement").

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

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

Section 2. The Agreement attached hereto as Exhibit "A", between the School Board and Town, regarding the shared use of School Board Property and Town Property is approved. The Town Manager is authorized to execute the Interlocal on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Agreement.

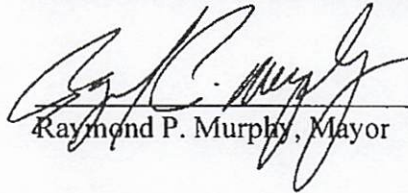
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Bill Veach, Council Member	aye
Jim Atterholt, Council Member	aye

ADOPTED this 2nd day of August, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



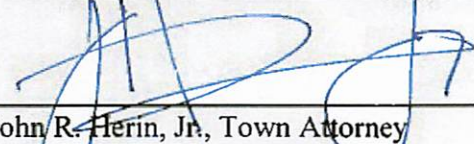
Raymond P. Murphy, Mayor

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 Resolution was filed in the Office of the Town Clerk on this 10 day of Aug, 2021.

**INTERLOCAL AGREEMENT RELATING TO SHARED USE OF PROPERTY AND
FACILITIES BETWEEN THE TOWN OF FORT MYERS BEACH
AND
THE SCHOOL BOARD OF LEE COUNTY**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this 16 day of AUGUST, 2021, by and between the TOWN OF FORT MYERS BEACH ("Town"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and the SCHOOL BOARD OF LEE COUNTY, FLORIDA ("School Board"); collectively or singularly also referred to herein as "Party" or the "Parties".

WITNESSETH:

WHEREAS, the School Board and the Town Council both serve the residents of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "Interlocal Act"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated effective October 7, 2020, as amended by that certain First Amendment to Interlocal Agreement Relating to Exchange of Real Property and Improvements fully executed on December 21, 2020 (collectively, the "Exchange Agreement");

WHEREAS, upon consummation of the Exchange Agreement (the "Exchange Closing"), the School Board shall be the owner of that certain real property delineated in the Site Plan (as defined below), as will be more particularly described in the Survey and S&L (both as defined below) ("School Board Property"). A copy of the final S&L of the School Board Property are attached hereto as Exhibit "A"; and

WHEREAS, the School Board Property contains Fort Myers Beach Elementary School and certain related parking facilities and other improvements; and

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located

adjacent to the School Board Property and more particular delineated in the Site Plan (as defined below), as will be more particularly described in the Survey and S&L (both as defined below)(the "Town Property"). A copy of the final S&L of the Town Property are attached hereto as Exhibit "B"; and

WHEREAS, the Town Property contains tennis courts, a playground, a baseball field, a multi-sport field, basketball courts and recreation center building; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and visitors of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property (collectively, the "Shared Facilities"); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I. PURPOSE AND EFFECTIVE

1.1 Purpose. It is the purpose and intent of this Agreement to set forth the rights and obligations of the School Board and the Town relating to the use, operation and maintenance of the Shared Facilities.

1.2 Recitals. The Recitals set forth above are incorporated into the terms of this Agreements as if set of herein at length.

1.3 Effective Date. The "Effective Date" of this Agreement shall be the date on which the later of the School Board or the Town executes this Agreement and delivers a copy thereof to other Party.

SECTION II: OPERATION AND USE OF THE SHARED FACILITIES

2.1 Shared Use. The Town and the School Board shall share the use of the Shared Facilities located on the Town Property and the School Board Property, respectively, subject to such terms, limitations and conditions set forth in this Section.

2.2 Exclusive and Priority Use. The School Board shall have exclusive use of the playground during regular school hours on days school is in session, as determined by the academic calendar adopted annually by the School Board. The School Board shall be given exclusive use of the other Shared Facilities at such times and on such dates as set forth in a separate use schedule to be mutually agreed upon and adopted by the

School Board and the Town prior to the 1st of July each year (the "Use Schedule"). A copy of the initial Use Schedule is attached hereto as Exhibit "C", which shall be effective as of the Effective Date of this Agreement and remain in effect until an updated schedule is adopted as provided herein. The Parties agree each may install, update, and maintain a reasonable sign in a mutually acceptable location, which acceptance may not be unreasonably, withheld conditioned, or delayed, delineating the Use Schedule, so the Parties' stakeholders and the general public may be aware of the Use Schedule. The School Board may modify the signage to ensure it complies with all local, state, and federal laws and regulations relating to public school operations.

The School Board agrees to allow the Town to use the parking lot on the School Board Property ("School Parking Lot") on weeks when school is not in session and weekends.

2.3 Clubs and Programming Activities. The Town and the School Board shall work together in good faith to continue the current fee-based afterschool program for the benefit of School Board's students, which is currently being implemented and operated by the Town at the recreational center building on Monday through Friday of each week during the academic year. Programming shall include time set aside each day for completion of homework, structured playtime, and free play. Clubs and activities may vary from time to time, and may include things such as swim club, community involvement club, soccer, and art. The after school program shall be open to any student enrolled in kindergarten through fifth grade at Fort Myers Beach Elementary School, and there shall be no limit on the number of students that may enroll in the after school program. All students/participants shall adhere to the operational, health and safety guidelines established by the Town Manager/Parks and Recreation Director.

2.4 Hours of Operation; Opening and Closing of Shared Facilities. Each Party shall be responsible for opening and closing the Shared Facilities under their respective control consistent with the posted hours of the Shared Facilities for use by the School Board's students and Town's property owners, residents, businesspersons, and other visitors of the Town.

2.5 Final Site Plan. The site plan attached hereto as Exhibit "D" (the "Site Plan") is the final site plan, as mutually approved by the Parties. The Town agrees, at its cost, to have a Florida licensed and insured surveyor prepare (i) a survey of the School Board Property and the Town Property (acknowledging one survey containing both properties will suffice) ("Survey") and (ii) sketches and legal descriptions (collectively, "S&L") for the Town Property and the School Board Property, which sketches and descriptions shall be subject to the School Board's approval prior to being final, which approval may not be unreasonably withheld, conditioned or delayed.

2.6 Construction Plan and Obligations. Within nine (9) months of the full execution of this Agreement, unless otherwise mutually agreed by the Parties in writing, the Town shall, at Town's sole cost and expense and to the School Board's or School Board's staff's reasonable satisfaction, which satisfaction may not be unreasonably

withheld, conditioned, or delayed, complete the construction, repair and improvement of the following facilities (collectively, the **"Town Improvement Obligations"**):

- (i) Replacement of existing playground equipment, including the ground surface, located in the Northeast quadrant of the School Board Property, along with installation of a shade covering over the playground equipment;
- (ii) Reconditioning of the two existing play courts in the northern portion of the School Board Property and the installation of shade coverings over those play courts;
- (iii) Alteration of the parking lot in the School Board Property to conform to the new boundary between the School Board Property and the Town Property, where such alteration must ensure the parking lot is safe and secure, to the School Board's reasonable satisfaction, and the parking lot is left in the same or better condition;
- (iv) Installation of additional fencing and/or replacement or repair of existing fencing to ensure all Recreational Facilities (as defined in the Exchange Agreement) and Shared Facilities are securely enclosed during school use of those facilities; and
- (v) Installation and/or extension of a sidewalk within the School Board Property to connect the school building with the Pavilion, Multi-Sport Court, Court to be resurfaced and the School Playground, all as depicted on the Site Plan, which sidewalk must be completed in conformity with the Americans With Disabilities Act (**"ADA"**), including all amendments, guidance, and regulations related to the ADA.

Prior to commencing any construction or development on the Town Property or the School Board Property, Town must ensure the School Board Property has a secure fence in place to ensure the safety of the school and its occupants, and the Town agrees, on behalf of itself, its assigns, agents, employees, vendors, and contractors, not to commit or omit any action that would jeopardize the safety of the school, its occupants or the School Board Property. Once the fence is installed by the Town, School Board shall have the obligation to maintain the fence; provided, however, Town shall be responsible for promptly repairing any damage to the fence caused by the Town, including its assigns, agents, employees, vendors, and contractors.

Further, Town agrees to provide the School Board with a minimum of 14 days' advance written notice prior to undertaking any work that may adversely affect the ability of school students or faculty to access the School Board Property, including, without limitation, improvements to Oak Street, School Street, and the parking lot on the School Board Property (collectively, the **"Access Work"**). Upon completion of the Access Work,

the Town agrees to ensure all points of ingress and egress at the 4-way intersection of Oak Street and School Street have smooth and even grade transitions. Town agrees to perform all construction and development work in a diligent manner, consistent with first-class construction and development practices in Lee County, Florida, consistent with the Town Code of Ordinances (and, if and where applicable, the Lee County Land Development Code and Florida Department of Transportation) standards, and free of liens. The provisions of this paragraph shall survive Closing. In the event the Town fails to timely and satisfactorily complete the Town Improvement Obligations, the School Board may, upon written notice to the Town, undertake to perform the Town Improvement Obligations and bill the Town for all costs incurred by the School Board in the performance of such work, plus 20% in compensation for Town's default on its obligations and to help the School Board recoup some of its overhead costs incurred to perform and complete such obligations. The Town will reimburse the foregoing costs to the School Board within 30 days of the School Board providing an invoice to the Town for such services, and Town agrees to pay 10% interest per annum on all untimely paid invoices, which interest will accrue from the due date until the invoice is paid.

SECTION III: MAINTENANCE, REPAIR AND IMPROVEMENT

3.1 Subsequent to the completion of the Town's Improvement Obligations each Party shall, at their sole cost and expense, maintain the Shared Facilities on their respective properties in a clean and safe condition, in good repair, and in compliance with all applicable laws and governmental regulations applicable to the Shared Facilities. The Parties' obligations as provided herein shall include, but not be limited to: (i) repair or replacement of any equipment, or parts of equipment, which have excessive wear, become structurally unstable, or otherwise become unsafe, (ii) replacement and replenishment of mulch or such other fall surface utilized on the playground, (iii) landscape maintenance and pest/rodent control, (iv) cleaning and resurfacing of sports courts, and (v) cleaning and repainting of equipment and structures. The Parties will ensure the Shared Facilities meet *U.S. Consumer Product Safety Commission's (CPSC) and ADA guidelines* at all times. In the event a Party, or anyone acting under the control or direction of such party, by intentional misconduct or gross negligence, causes or permits damage to occur to the Shared Facilities, then such party shall, within 45 days of receipt of notice of such occurrence, promptly repair such damage, at its sole cost and expense.

3.2 Subsequent to the completion of the Town's Improvement Obligations, the Parties shall inspect the Shared Facilities on their respective properties on a routine basis in order to assess the need for maintenance and repairs in connection with the obligations herein. Each Party shall have the right to inspect all of the Shared Facilities from time to time, as it deems necessary, to confirm the Shared Facilities are being maintained in the condition as required in this Section. In the event either Party becomes aware that any of the Shared Facilities has fallen in disrepair, is unsafe, or any such other condition requiring maintenance or repair, the Party shall promptly notify the other Party of same. In the event either Party fails to timely and satisfactorily complete its obligations in this Section III, the non-defaulting Party may, upon written notice to the defaulting Party,

undertake to perform those obligations and bill the defaulting Party all costs incurred in the performance of such work, plus 20% in compensation for the Party's default on its obligations and to help the non-defaulting Party recoup some of its overhead costs incurred to perform and complete such obligations. The defaulting Party will reimburse the foregoing costs to the non-defaulting Party within 30 days of the non-defaulting Party providing to the defaulting Party an invoice for such services, and the non-defaulting Party agrees to pay 10% interest per annum on all untimely paid invoices, which interest will accrue from the due date until the invoice is paid.

3.3 In consideration of the Town's right to use the School Parking Lot in accordance with Section 2.2 above, Town agrees to reimburse School Board for a proportionate share of the costs to maintain, including resurfacing and restriping, the School Parking Lot, as deemed reasonably necessary by the School Board. Town's proportionate share shall be equal to the annual costs incurred by the School Board to maintain the School Parking Lot multiplied by a fraction the numerator of which is the number of (i) weekend days in that year plus (ii) days in all of the weeks school is not in session in that year and the denominator of which shall be the total number of days in that year. Within sixty (60) days of receiving an invoice from School Board with supporting documentation and evidence the work was competitively procured, Town shall reimburse School Board for Town's proportionate share. Town shall reimburse School Board annually while this Agreement is in effect.

SECTION IV: DEFAULT

If either Party fails to materially fulfill its obligations under this Agreement that Party will be considered to be in default. The other Party to the Agreement shall provide written notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting Party fails to cure the default within said time period, the other Party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either Party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other Party unless such waiver is in writing and signed by the waiving Party. Upon termination of this Agreement in accordance with this paragraph, the non-defaulting Party may exercise its reversionary interest as set forth in the Exchange Agreement.

SECTION V: NOTICE:

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person and signed for or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Town: Town of Fort Myers Beach, a Florida municipal corporation
Attn: Town Manager
2525 Estero Boulevard

Fort Myers Beach, Florida 33931

School Board: Lee County School Board
Kathy Dupuy-Bruno, Esq.
2855 Colonial Blvd.
Fort Myers, Florida 33966

The address to which any notice or demand may be given to either Party may be changed by written notice.

SECTION V: LIABILITY AND INDEMNIFICATION

5.1 Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the Town shall defend, hold harmless and indemnify the School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the Town, its agents, invitees, licensees, employees, or contractors in connection with the exercise of the Town's rights or fulfillment of the Town's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the Town beyond that set forth in Section 768.28, Florida Statutes.

5.2 Subject to the limitations as set forth in Florida Statutes, §768.28 and §252.51, the School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the School Board, its agents, invitees, licensees, employees, and contractors in connection with the exercise of the School Board's rights or fulfillment of the School Board's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the School Board beyond that set forth in Section 768.28, Florida Statutes.

5.3 The Parties shall, respectively, maintain or cause to be maintained in full force and effect commercial general liability insurance on their respective parcels with a combined single limit of liability of (i) not less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury to or personal injury or death to any one person and consequential damages arising therefrom, (ii) not less than Two Million and 00/100 Dollars (\$2,000,000.00) for bodily injury to or personal injury or death of more than one person and consequential damages arising therefrom, and (iii) not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for property damage arising out of any one occurrence, and the other Party shall be an additional insured under such policy. Each Party shall further maintain adequate worker's compensation insurance at all times in the minimum statutory limits required by the State of Florida. Such insurance shall be procured from a good and solvent insurance company or companies licensed to do

business in the State of Florida. Upon reasonable request, each Party shall provide the other with a copy of the policy of such insurance coverage. All insurance policies required to be carried by either Party covering their respective parcel shall, to the extent permitted by law, expressly waive any right on the part of the insurer against the other Party. The Parties agree that their policies will include such waiver clause or endorsement.

SECTION VI: MISCELLANEOUS:

The Parties represent and warrant that they have full authority to enter into and sign this Agreement. This Agreement contains the entire agreement between the Town and School Board, any verbal understanding, statements or prior writings or agreements to the contrary notwithstanding. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other. The prevailing Party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. Any dispute arising hereunder shall be subject to, and all rights contained herein may be enforced through, an appropriate action in law or at equity brought in a court of competent jurisdiction located in Lee County, Florida; furthermore, **the Parties irrevocably waive their right to trial by jury in any legal proceeding arising under this Agreement.** This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof. No modification or amendment of this Agreement shall be valid and binding on the School Board or the Town unless it is in writing and executed by or on behalf of the School Board and the Town. The terms and conditions of this Agreement shall extend to and bind any successor entity of the Parties hereto.

The Parties agree that this Agreement, including all of its terms, covenants, conditions, and restrictions, shall continue in force and effect for a term of fifteen (15) years and shall automatically renew for successive periods of fifteen (15) years, until the earlier to occur of (i) the parties mutually agree to terminate this Agreement pursuant to a signed termination or (ii) a Party provides notice to the other at least three years prior to the renewal date that such Party intends to use its respective property for a purpose inconsistent with this Agreement. Upon termination of this Agreement in accordance with this paragraph, either Party may exercise its reversionary interest as set forth in the Exchange Agreement.

SECTION VII: DISPUTE RESOLUTION

As a condition precedent to a Party bringing any suit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both

Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law. In the event of any dispute hereunder, the prevailing Party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all attorneys' fees and costs in connection therewith.

SECTION VIII: ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part thereof, shall be made by either Party unless approved by both the School Board and the Town.

SECTION IX: EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

<Remainder of page intentionally left blank. Signatures appear on following pages.>

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month and year first written above.

The School Board of Lee County, Florida

Town of Fort Myers Beach, a Florida
Municipal Corporation

By: [Signature]

By: [Signature]

Its: Superintendent

Its: MAYOR

RATIFIED AND APPROVED:

ATTESTED:

By: [Signature]

By: [Signature]

Its: Board Chair

Its: Town Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: [Signature]

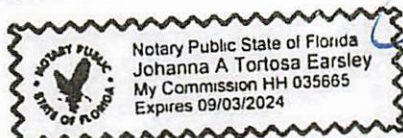
By: [Signature]

School Board Attorney

Town Attorney

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me by means of ☐ physical presence or ☐ online notarization this 29th day of July 2021, by Debbie Jordan, as Board Chair of The School Board of Lee County, Florida, who produced the following as identification _____ or is personally known to me and who did/did not take an oath.



[Signature]
[Signature of Notary]
Johanna H. Tortosa Earsley
[Typed or Printed Name]

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me by means of ☒ physical presence or ☐ online notarization this 16 day of AUGUST

2021, by RAYMOND P. MURPHY, as MAYOR of The Town of Fort Myers Beach,
a Florida municipal corporation, who produced the following as identification
_____ or is personally known to me and who
did/did not take an oath.




[Signature of Notary]
JASON FREEMAN
[Typed or Printed Name]

EXHIBIT A

(Legal Description of School Board Property)



Engineers ♦ Environmental Scientists ♦ Surveyors

Description of a Parcel of Land
Lying in
Section 19, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Lee County District School Board Site)

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being a portion of Blocks J and I and a portion of an Unnamed Street, as shown on the plat of Winkler Subdivision, recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, and further described as follows:

Commencing at the northwesterly most corner of Lot 48 of said Block J of said Winkler Subdivision; thence S25°45'12"W along the easterly line of Lots 1 through 4 of said Block J for 100.00 feet to the northwesterly most corner of Lot 44 of said Block J and to the Point of Beginning; thence N49°28'17"W along the southwesterly line of a parcel of land described in Official Record Book 2599 at page 781 within said Block J, for 155.13 feet to the northwest corner of said parcel also being the easterly line of an unnamed street as shown on said plat; thence S25°45'12"W along the westerly line of said Block J, also being the easterly line of said unnamed street as shown on said plat of Winkler Subdivision, for 89.56 feet to the northwest corner of Lot 7 of said Block J; thence S59°26'36"W, extending across said unnamed street and across a portion of said Block I for 231.98 feet; thence S11°26'52"W across said Block I, for 152.53 feet to an intersection with a curve concave to the north having a radius of 25.00 feet and to which point a radial line bears S65°30'22"W, also being the northerly line of an unnamed street as shown on said plat; thence continue S25°45'12"W, departing said block line and extending across said unnamed street, for 114.87 feet to a point on a tangent curve to the right having a radius of 25.00 feet and also lying on the southerly line of Block D as shown on said plat; thence continue southwesterly along said curve and along the southerly portion of said Block D, through a central angle of 85°43'00" (chord bearing S68°36'42"W) for an arc distance of 37.40 feet to a point of cusp lying on the northerly line of Oak Street (50 feet wide) as shown on said plat; thence S68°31'48"E along the northerly line of said Oak Street and the southerly line of said Block J for 392.27 feet to the beginning of a tangent curve to the left having a radius of 25.00 feet; thence continue easterly along said curve and along the southerly line of said Block J through a central angle of 85°43'00" (chord bearing N68°36'42"E) for an arc distance of 37.40 feet to a point of tangency on the westerly line of Bay Road (50 feet wide) as shown on said plat; thence N25°45'12"E along the easterly line of said Block J and the westerly line of said Bay Road for 321.38 feet to the southwesterly most corner of a parcel of land described in Official Record Book 2599 at page 784, said point lying 5.00 feet southwesterly from the northeast corner of Lot 38 of said Block J; thence N10°14'48"W, departing said westerly line of Bay Street, along the

Page 1 of 4



Sensible Solutions | www.cesincusa.com

13041 McGregor Boulevard
Fort Myers, FL 33919-5910
T 239.481.1331
F 239.481.1073

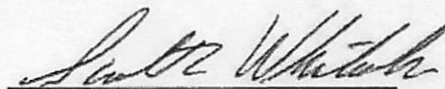
westerly line of said parcel for 50.00 feet to the beginning of a tangent curve to the left having a radius of 65.00 feet; thence continue northwesterly along said westerly line and along said curve through a central angle of $46^{\circ}44'28''$ (chord bearing $N33^{\circ}37'02''W$) for an arc distance of 53.03 feet; thence $N14^{\circ}45'12''E$ along the westerly line of said parcel for 66.02 feet; thence $N26^{\circ}28'11''W$ along the westerly line of said parcel for 30.15 feet to the northwest corner of said parcel as described in Official Record Book 2599 at page 784; thence $N57^{\circ}07'18''W$ along the southwesterly line of said parcel as described in Official Record Book 2599 at page 781 for 40.31 feet to the Point of Beginning.

Containing 187,796 square feet (4.31 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are state plane grid for the Florida West Zone (North American datum of 1983/1990 adjustment) with the westerly line of Bay Road (the easterly line of said Block J) as bearing $N25^{\circ}45'12''E$.

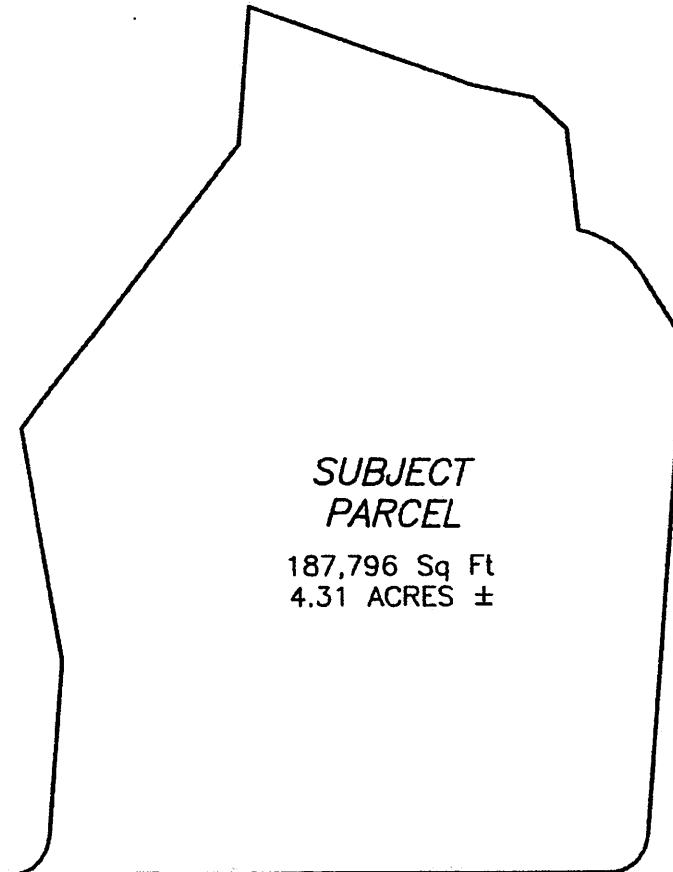
CES, Inc. (LB8267)



Scott C. Whitaker, P.S.M. 4324
Professional Surveyor and Mapper
State of Florida

SKETCH TO ACCOMPANY DESCRIPTION

OF
A PARCEL OF LAND LYING IN
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH,
LEE COUNTY, FLORIDA.



BEARINGS ARE SPC GRID

NOTES:

DESCRIPTION AND SKETCH ARE BASED ON THE RIGHT-OF-WAY CONTROL SURVEY MAPS OF ESTERO BOULEVARD DATED APRIL 16, 2010, RECORD DEEDS, THE RECORD PLAT OF WINKLER SUBDIVISION AND FIELD LOCATED MONUMENTATION.

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) BASED ON GLOBAL POSITIONING SYSTEM (GPS) TIES TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK HOLDING NATIONAL GEODETIC SURVEY CONTROL MONUMENT "BOOB-2".

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

D.B.= DEED BOOK
O.R.= OFFICIAL RECORD BOOK
P.B.= PLAT BOOK
P.C.= POINT OF CURVE
PG. = PAGE
P.T.= POINT OF TANGENCY
RP = RADIUS POINT
R/W = RIGHT-OF-WAY
SPC = STATE PLANE CO-ORDINATE

SKETCH OF DESCRIPTION
*** THIS IS NOT A SURVEY ***
CES, INC.

Scott C. Whitaker
SCOTT C. WHITAKER, P.S.M.
FLORIDA CERTIFICATION NO. 4324

LEE COUNTY DISTRICT SCHOOL BOARD SITE

CES^{INC}

Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 461-1331

2010596.0025K_SCHOOL DISTRICT BOUNDARY.dwg

FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS E032864 & L00267

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
4-29-21	596.002	SCW	1" = 120'	3 OF 4	19-46-24

EXHIBIT B

(Legal Description of Town Property)



Engineers • Environmental Scientists • Surveyors

Description of Parcels of Land
Lying in

Section 19, Township 46 South, Range 24 East
Town of Fort Myers Beach, Lee County, Florida
(Conveyance Parcels to Town of Fort Myers Beach)

North Parcel:

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being a portion of Block I and a portion of an unnamed street as shown on the plat of Winkler Subdivision, as recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, Public Records of Lee County, Florida and further described as follows:

Commencing at the northwesterly most corner of Lot 48, Block J of said Winkler Subdivision; thence N64°14'48"W along the northeasterly line of Lot 1, Block J, across an unnamed street and along the northeasterly line of Lot 26, Block I of said subdivision for 350.00 feet to the northeasterly corner of Lot 1, Block I of said subdivision and the Point of Beginning; thence S45°48'43"E along the southwesterly line of said parcel of land described in Official Record Book 2599 at page 781 within said Block I, for 158.11 feet to the southeasterly corner of Lot 25 of said Block I, also being the westerly line of an unnamed street (50' wide) as shown on said plat; thence S25°45'12"W along the easterly line of said Block I, also being the westerly line of said unnamed street as shown on said plat of Winkler Subdivision, for 100.00 feet to the southeast corner of Lot 21 of said Block I; thence S64°14'48"E along the southeasterly extension of the south line of said Lot 21, across said unnamed street, for 50.00 feet to the northwest corner of Lot 7 of Block J of said subdivision; thence S59°26'36"W, extending across said unnamed street and across a portion of said Block I for 231.98 feet; thence S11°26'52"W across said Block I, for 152.53 feet to an intersection with a curve concave to the north having a radius of 25.00 feet and to which point a radial line bears S65°30'22"W, also being the northerly line of an unnamed street as shown on said plat; thence continue northwesterly along said curve to the right and along the southerly line of said Block I through a central angle of 21°44'50" (chord bearing N13°37'13"W) for an arc distance of 9.49 feet to a point of tangency; thence N02°44'48"W, along the westerly line of Block I, also being the easterly line of an unnamed street (50' wide) as shown on said plat, for 127.34 feet to the beginning of a tangent curve to the left having a radius of 150.00 feet; thence continue northwesterly along said curve and along the westerly line of said Block I through a central angle of 65°47'00" (chord bearing N35°38'18"W) for an arc distance of 172.22 feet to a point of tangency; thence N68°31'48"W along the westerly line of said Block I and the easterly line of said unnamed street for 22.44 to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue northwesterly along the westerly line of said Block I and said unnamed street through a central angle of 94°17'00" (chord bearing N21°23'18"W) for an arc distance of 41.14 feet to a point of tangency; thence N25°45'12"E along the northwesterly line of said Block I and the easterly line of said unnamed street for 95.36 feet to the southwesterly most corner of Lot 7,

Page 1 of 4



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13041 McGregor Boulevard
Fort Myers, FL 33919-5910
T 239.481.1331
F 239.481.1073

Block I of said subdivision, being the southwesterly most corner of said parcel as described in Official Record Book 2599 at page 781; thence N37°42'07"E along the southwesterly line of said parcel for 102.22 feet; thence N57°33'01"E along the southwesterly line of said parcel for 29.41 feet; thence S88°03'05"E along the southerly line of said parcel for 123.88 feet to the Point of Beginning.

Containing 86,512 square feet (1.99 acres), more or less.

And also:

South Parcel:

A parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, Section 19, Township 46 South, Range 24 East, being all of Lots 10 through 24, Block D, Winkler Subdivision, as recorded in Plat Book 8 at Page 45, Public Records of Lee County, Florida, and further described as follows:

Beginning at the southwest corner of Lot 24, Block D of said Winkler Subdivision; thence N21°28'12"E along the northwesterly line of Lot 24 and Lot 10 of said Block D for 300.00 feet to the northwest corner of said Lot 10; also being the southerly line of said unnamed street (50' wide) as shown on said plat; thence S68°31'48"E along the northeasterly line of said Block D, also being the southwesterly line of said unnamed street as shown on said plat of Winkler Subdivision, for 75.00 feet to the beginning of a tangent curve to the right having a radius of 100.00 feet; thence continue southeasterly along said curve and said unnamed street and along the northeasterly line of said Block D through a central angle of 65°47'00" (chord bearing S35°38'18"E) for an arc distance of 114.81 feet to a point of tangency; thence S02°44'48"E, along the easterly line of said Block D, also being the westerly line of said unnamed street as shown on said plat for 225.62 feet to the beginning of a tangent curve to the right having a radius of 25.00 feet; thence continue southwesterly along said curve and along the westerly line of said unnamed street through a central angle of 114°13'00" (chord bearing S54°21'42"W) for an arc distance of 49.84 feet to a point of tangency on the northerly right of way line of Oak Street (50' wide) as shown on said plat; thence N68°31'48"W along the southwesterly line of said Block D, and along the northerly line of said Oak Street for 235.95 feet to the Point of Beginning.

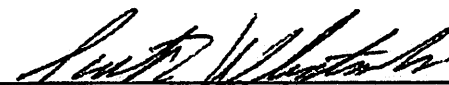
Containing 61,071 square feet (1.40 acres), more or less.

Subject to easements, restrictions, reservations and rights-of-way (recorded and unrecorded, written and unwritten).

Bearings are state plane grid for the Florida West Zone (North American datum of 1983/1990 adjustment) with the westerly line of Bay Road (the easterly line of said Block J) as bearing N25°45'12"E.

CES, Inc. (LB8267)

Date: 5-11-2021



Scott C. Whitaker, P.S.M. 4324 / Professional Surveyor and Mapper

Page 2 of 4

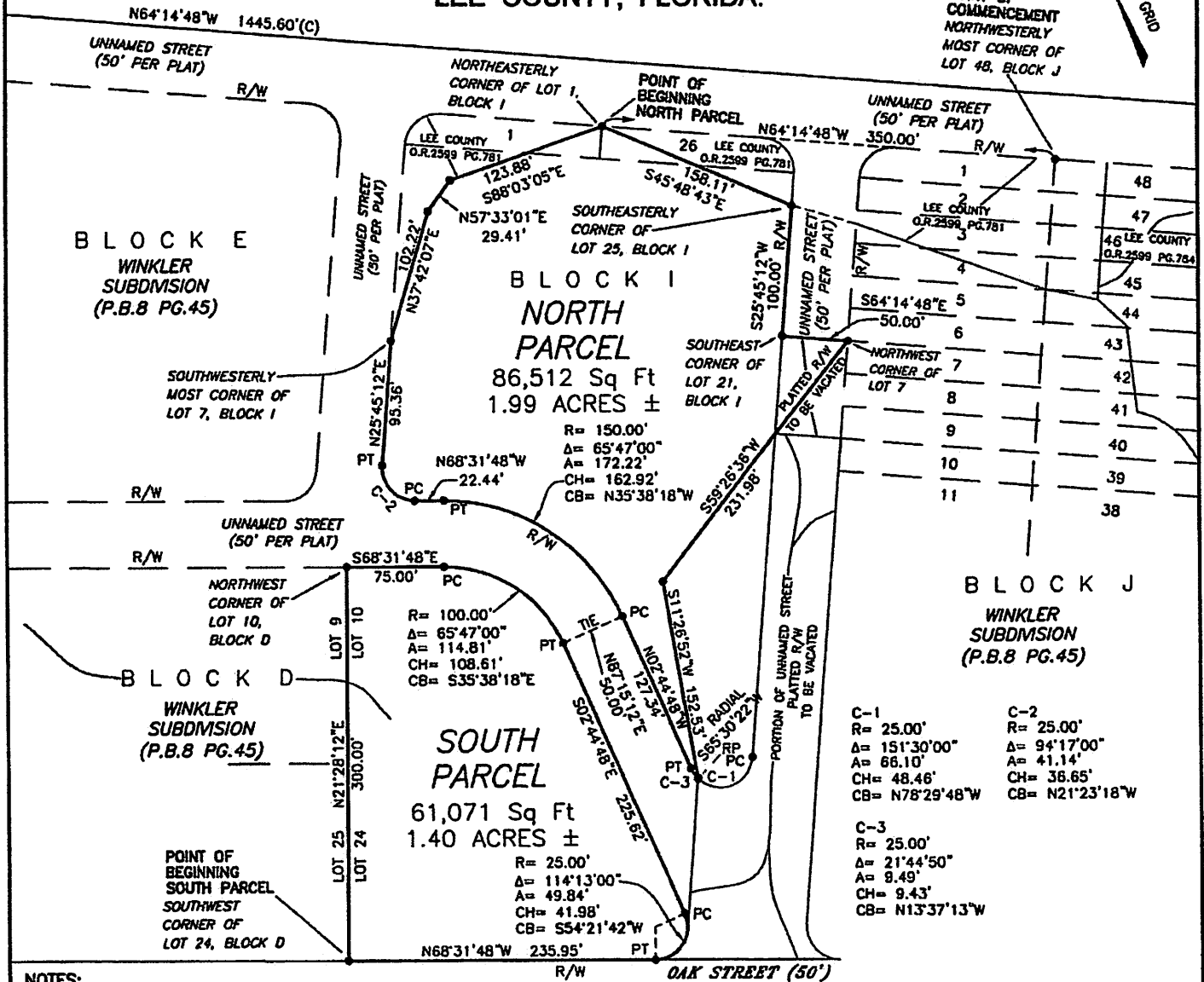
2010596.002DESC_CONVEYANCE PARCELS TO TOWN OF FORT MYERS BEACH.docx



Sensible Solutions.

SKETCH TO ACCOMPANY DESCRIPTION

OF
A PARCEL OF LAND LYING IN
SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
TOWN OF FORT MYERS BEACH,
LEE COUNTY, FLORIDA.



C-1 R= 25.00' Δ= 151°30'00" A= 66.10' CH= 48.46' CB= N78°29'48"W	C-2 R= 25.00' Δ= 94°17'00" A= 41.14' CH= 38.65' CB= N21°23'18"W
C-3 R= 25.00' Δ= 21°44'50" A= 9.49' CH= 9.43' CB= N13°37'13"W	

NOTES:

DESCRIPTION AND SKETCH ARE BASED ON THE RIGHT-OF-WAY CONTROL SURVEY MAPS OF ESTERO BOULEVARD DATED APRIL 16, 2010, RECORD DEEDS, THE RECORD PLAT OF WINKLER SUBDIVISION AND FIELD LOCATED MONUMENTATION.

BEARINGS ARE STATE PLANE GRID FOR THE FLORIDA WEST ZONE (NORTH AMERICAN DATUM OF 1983/1990 ADJUSTMENT) BASED ON GLOBAL POSITIONING SYSTEM (GPS) TIES TO THE FLORIDA HIGH PRECISION GEODETIC NETWORK HOLDING NATIONAL GEODETIC SURVEY CONTROL MONUMENT "BOOB-2".

DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

PARCEL SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS- OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

THE PROPERTY IS SUBJECT TO ANY CLAIM THAT ANY PART OF SAID LAND IS OWNED BY THE STATE OF FLORIDA BY RIGHT OF SOVEREIGNTY, RIPARIAN RIGHTS AND THE TITLE TO FILLED-IN LANDS, IF ANY.

SKETCH OF DESCRIPTION
*** THIS IS NOT A SURVEY ***
CES, INC.

Scott C. Whitaker
SCOTT C. WHITAKER, P.S.M.
FLORIDA CERTIFICATION NO. 4324

CONVEYANCE PARCELS TO TOWN OF FORT MYERS BEACH

D.B.= DEED BOOK

O.R.= OFFICIAL RECORD BOOK

P.B.= PLAT BOOK

P.C.= POINT OF CURVE

RP = RADIUS POINT

PG. = PAGE

R/W = RIGHT-OF-WAY

P.T.= POINT OF TANGENCY

SPC = STATE PLANE CO-ORDINATE

CESINC

Engineers • Environmental Scientists • Surveyors

13041 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919

PH (239) 481-1331

2010584.00254 DISTRICT CONVEYANCE PARCELS TO TOWN BOUNDARY.dwg FLORIDA CERTIFICATE OF AUTHORIZATION NUMBERS 0032844 & 002267

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (S-T-R)
5-11-21	596.002	SCW	1"= 120'	3 OF 4	19-46-24

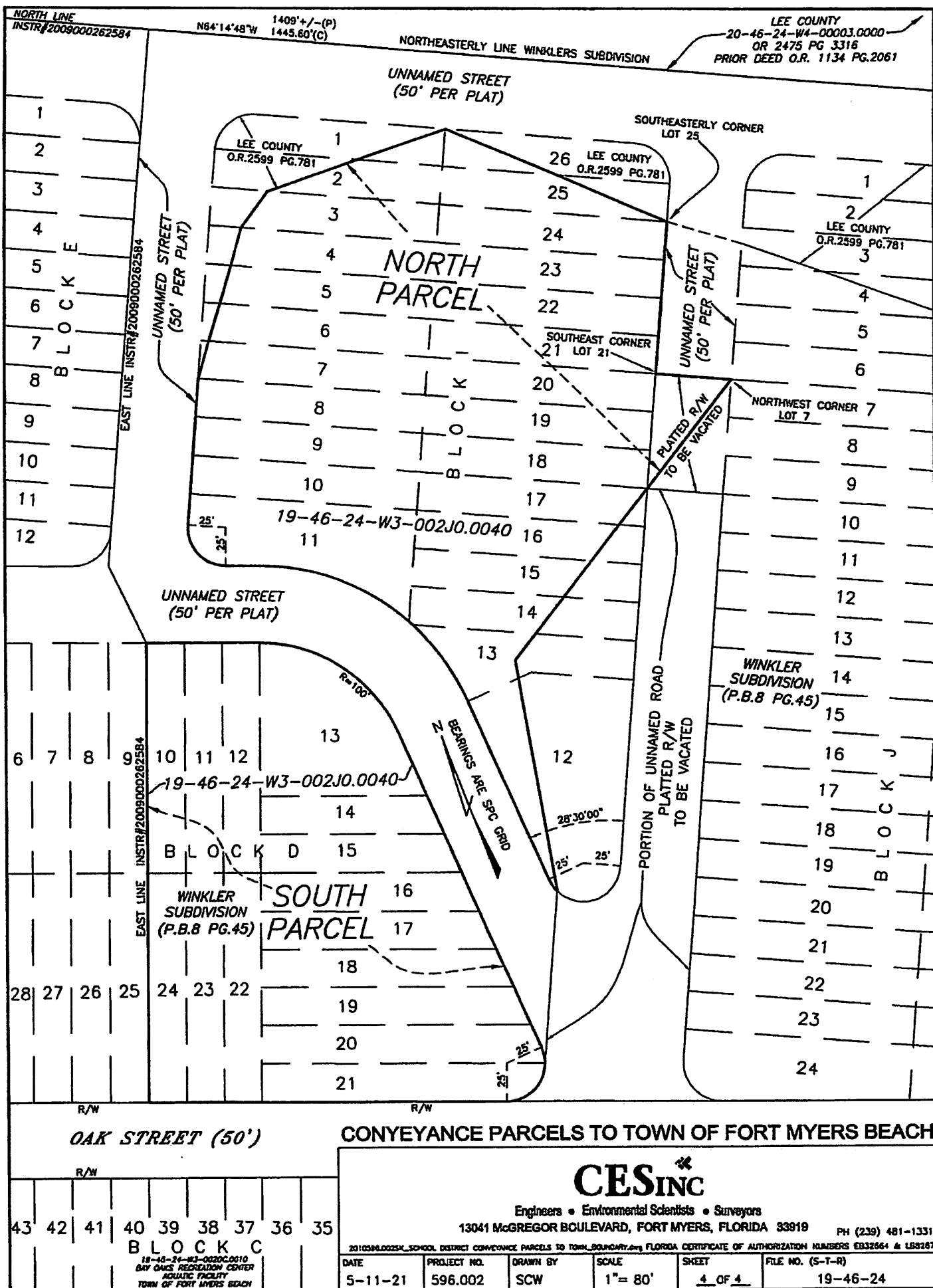


EXHIBIT C
(Shared Use Schedule)

Facility: Gym

Reserve for Ft. Myers Beach Elementary students for basketball and other indoor activities during the following dates/times:

August, September, October, November, and December	Every Wednesday from 8 am to 2 pm
May, June	Every Wednesday from 8 am to 2 pm

Facility: Soccer Field

Reserve for Ft. Myers Beach Elementary students for soccer and other activities on the field during the following dates/times:

January and February	Every Wednesday from 8 am to 2 pm
1st Friday in December (Field Day)	8 am to 2 pm
Last Full Day of each School Year - date TBD (End of Year "Family Day")	7 am to 2 pm

Facility: Softball Field

Reserve for Ft. Myers Beach Elementary students for softball and other activities on the field during the following dates/times:

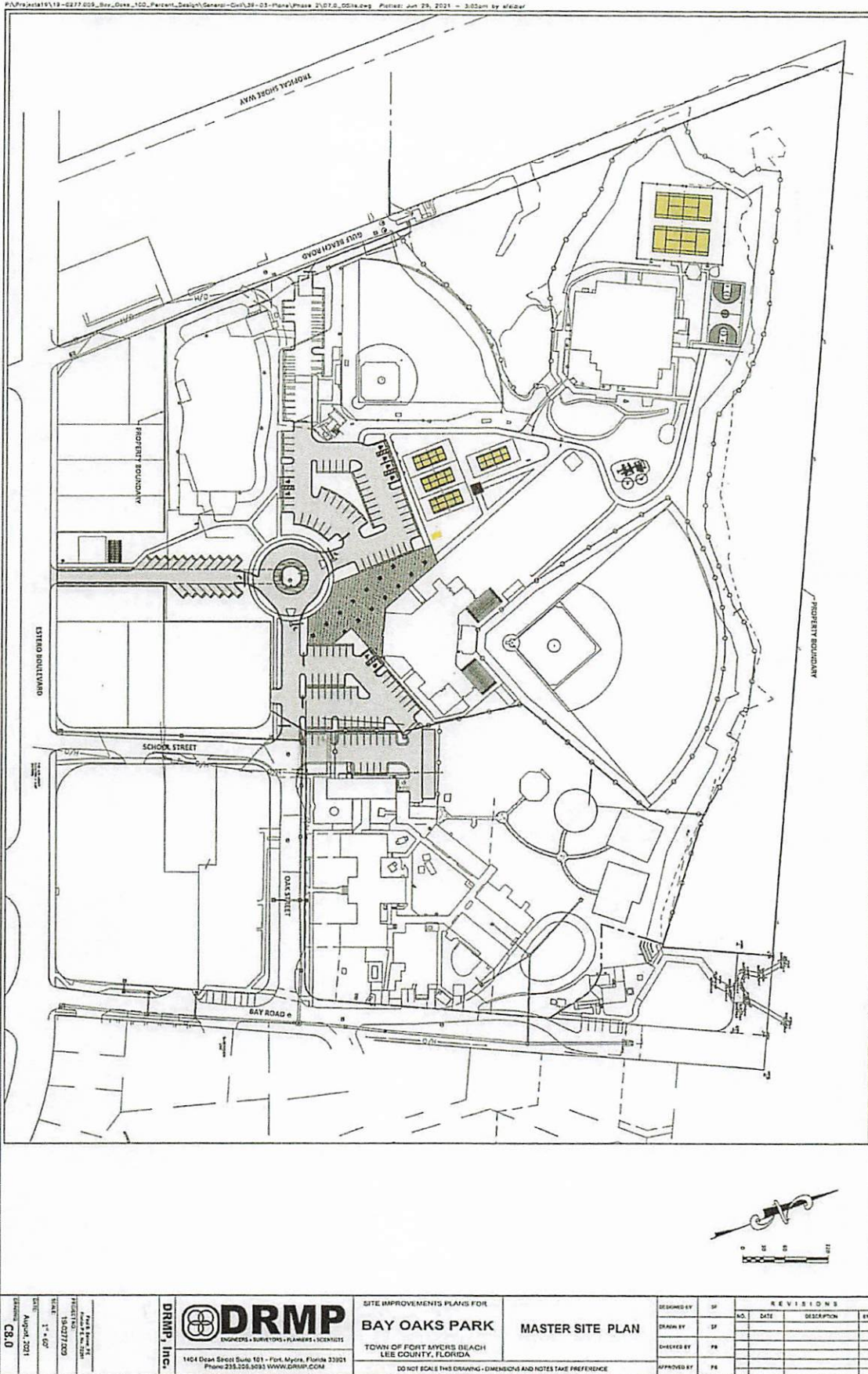
March	Every Wednesday from 8 am to 2 pm
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Facility: Tennis Courts

Reserve for Ft. Myers Beach Elementary students for tennis and other activities on the courts during the following dates/times:

April	Every Wednesday from 8 am to 2 pm
-------	-----------------------------------

EXHIBIT D



RESOLUTION NUMBER 21-01

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF LEE COUNTY AND THE TOWN OF FORT MYERS BEACH REGARDING THE SHARED USE OF THE CURRENT AND PROPOSED REDEVELOPED BAY OAKS RECREATIONAL FACILITY; AUTHORIZING THE EXECUTION OF THE AGREEMENT BY THE MAYOR AND AUTHORIZING ALL APPROPRIATE TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO IMPLEMENT THE INTERLOCAL AGREEMENT; 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, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "Interlocal Act"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town both serve the people of the Town of Fort Myers Beach; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated October 7, 2020 (the "Exchange Agreement");

WHEREAS, upon consummation of the Exchange Agreement (the "Exchange Closing"), the School Board shall be the owner of that certain real property upon which is located the Fort Myers Beach Elementary School and certain related parking facilities and other recreational improvements adjacent to Bay Oaks Recreational Facility ("School Board Property"); and

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property (the "Town Property"); and

WHEREAS, the School Board Property contains tennis courts, a playground, a portion of a multi-sport field (the other portion of which is located on the Town Property), and certain other recreational facilities; and

WHEREAS, the Town Property contains a playground, baseball field, tennis courts, basketball court, portion of a multi-sport field (the other portion of which is located on the School Board Property), and a recreational center; and

WHEREAS, the School Board and the Town have each determined the need for improvement to its existing facilities and/or for additional facilities; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and visitors of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property (collectively, the “Shared Facilities”); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

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

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

Section 2. The Agreement attached hereto as Exhibit “A”, between the School Board and Town, regarding the Shared Facilities is approved. The Mayor is authorized to execute the Agreement on behalf of the Town and all appropriate Town officials are authorized to take all necessary steps to implement the Agreement.

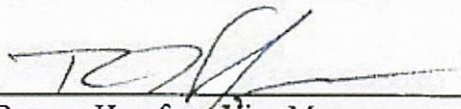
Section 3. This resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

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

Raymond P. Murphy, Mayor	Excused
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Bill Veach, Council Member	Aye
Jim Atterholt, Council Member	Aye

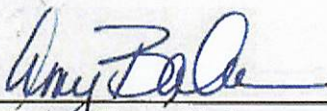
ADOPTED this 19th day of January 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



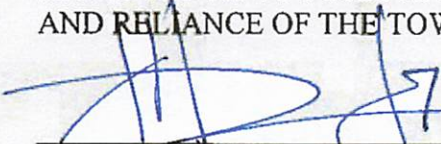
Rexann Hosafros, Vice Mayor

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21 day of January 2021.

**INTERLOCAL AGREEMENT RELATING TO
SHARED USE OF PROPERTY AND FACILITIES
BETWEEN
THE TOWN OF FORT MYERS BEACH AND
THE SCHOOL BOARD OF LEE COUNTY**

THIS INTERLOCAL AGREEMENT ("**Agreement**") is made and entered into this 19th day of January, 2021, by and between the TOWN OF FORT MYERS BEACH ("**Town**"), a Florida Municipal Corporation, acting by and through its Town Council, the governing body thereof, and the SCHOOL BOARD OF LEE COUNTY, FLORIDA ("**School Board**"); collectively referred to herein as the "**Parties**".

WITNESSETH:

WHEREAS, the School Board and the Town Council both serve the residents of the Town of Fort Myers Beach; and

WHEREAS, both the School Board and the Town are duly empowered pursuant to Section 163.01, Florida Statutes, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the School Board and the Town each constitute a "public agency" within the meaning of the Florida Interlocal Cooperation Act of 1969 (the "**Interlocal Act**"), and each is authorized under the Interlocal Act to enter into interlocal agreements providing for them to jointly exercise any power, privilege, or authority that each of them could exercise separately; and

WHEREAS, the School Board and the Town previously entered into that certain Interlocal Agreement Relating to Exchange of Real Property and Improvements, dated effective October 7, 2020 (the "**Exchange Agreement**");

WHEREAS, upon consummation of the Exchange Agreement (the "**Exchange Closing**"), the School Board shall be the owner of that certain real property more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("**School Board Property**"); and

WHEREAS, the School Board Property contains Fort Myers Beach Elementary School and certain related parking facilities and other improvements;

WHEREAS, upon the Exchange Closing, the Town shall be the owner of that certain real property commonly known as Bay Oaks Recreational Facility, located adjacent to the School Board Property and more particular described in Exhibit "B" attached hereto and incorporated herein by reference (the "**Town Property**"); and

WHEREAS, the Town Property contains tennis courts, a playground, a baseball field, a multi-sport field, basketball courts and recreation center building; and

WHEREAS, the School Board and the Town have determined that it is in the best interest of the owners, residents, business persons, and visitors of the Town of Fort Myers Beach for the Town and the School Board to share the use of the recreational facilities and other improvements located upon the School Board Property and the Town Property(collectively, the "Shared Facilities"); and

WHEREAS, the Exchange Agreement requires the Parties to execute an interlocal agreement at the time of the Exchange Closing which addresses the rights and obligations of the Parties relating to shared use, operation and maintenance of the Shared Facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the School Board and the Town do hereby agree as follows:

SECTION I. PURPOSE AND EFFECTIVE

1.1 Purpose. It is the purpose and intent of this Agreement to set forth the rights and obligations of the School Board and the Town relating to the use, operation and maintenance of the Shared Facilities.

1.2 Recitals. The Recitals set forth above are incorporated into the terms of this Agreements as if set of herein at length.

1.3 Effective Date. The "Effective Date" of this Agreement shall be the date on which the later of the School Board or the Town executes this Agreement and delivers a copy thereof to other party.

SECTION II: OPERATION AND USE OF THE SHARED FACILITIES

2.1 Shared Use. The Town and the School Board shall share the use of the Shared Facilities located, subject to such terms, limitations and conditions set forth in this Section.

2.2 Exclusive and Priority Use. The School Board shall have exclusive use of the playground during regular school hours on days school is in session, as determined by the academic calendar adopted annually by the School Board. The School Board shall be given priority use of the other Shared Facilities at such times and on such dates as set forth in a separate use schedule to be mutually agreed upon and adopted by the School Board and the Town prior to the 1st of July each year (the "Use Schedule"). A copy of the initial Use Schedule is attached hereto as Exhibit "C", which shall be effective as of the Effective Date of this Agreement and remain in effect until an updated schedule is adopted as provided herein.

2.3 Clubs and Programming Activities. The Town and the School Board shall work together to develop a fee-based afterschool program for the benefit of School Board's students, which shall be implemented and operated by the Town at the recreational center building on Monday through Friday of each week during the academic year.. Programming shall include time set aside each day for completion of homework, structured play time, and free play. Clubs and activities may vary from time, and may include things such as swim club, community involvement club, soccer, art, and cooking. The after school program shall be open to any student enrolled in kindergarten through fifth grade at Fort Myers Beach Elementary School, and there shall be no limit on the number of students that may enroll in the after school program. All students/participants shall adhere to the operational, health and safety guidelines established by the Town Manager/Parks and Recreation Director.

2.4 Hours of Operation; Opening and Closing of Shared Facilities. The Town shall be responsible for opening and closing of the Shared Facilities consistent with the posted hours of the Shared Facilities as promulgated by the Town for use by property owners, residents, business persons, and other visitors of the Town, and the use rights of the School Board as set forth in Section II. Notwithstanding the foregoing, the School Board shall be responsible for opening the playground in the mornings when school is in session.

SECTION III: MAINTENANCE, REPAIR AND IMPROVEMENT

3.1 The Town shall, at the Town's sole cost and expense, maintain the Shared Facilities in a clean and safe condition, in good repair, and in compliance with any applicable laws or governmental regulations applicable to the Shared Facilities. The Town's obligations as provided herein shall include, but not be limited to: (i) repair or replacement of any , equipment, or parts of equipment which have excessive wear, become structurally unstable, or otherwise become unsafe, (ii) replacement and replenishment of mulch or such other fall surface utilized on the playground, (iii) landscape maintenance and pest/rodent control, (iv) cleaning and resurfacing of sports courts, and (v) cleaning and repainting of equipment and structures.

3.2 The Town shall inspect the Shared Facilities on a routine basis in order to assess the need for maintenance and repairs in connection with its obligations herein. The School Board shall have the right to inspect the Shared Facilities from time to time, as it deems necessary, to confirm the Shared Facilities are being maintained in the condition as required in this Section. In the event the School Board becomes aware that any portion of the Shared Facilities has fallen in disrepair, is unsafe, or any such other condition requiring maintenance or repair, the School Board shall promptly notify the Town of same.

SECTION IV: DEFAULT

If either party fails to materially fulfill its obligations under this Agreement that party will be considered to be in default. The other party to the Agreement shall provide written

notice of the default and an opportunity to cure the default within 30 days of receipt of said notice. If the defaulting party fails to cure the default within said time period, the other party may terminate this Agreement for cause or breach by providing written notice of termination. Failure of either party to exercise its rights in the event of any breach shall not constitute a waiver of such rights. Neither the Town nor the School Board is deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party.

SECTION V: NOTICE:

All notices or demands permitted or required under this Agreement are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Town: Town of Fort Myers Beach, a Florida municipal corporation
Attn: Town Manager
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

School Board: Lee County School Board
Kathy Dupuy-Bruno, Esq.
2855 Colonial Blvd.
Fort Myers, Florida 33966

The address to which any notice or demand may be given to either party may be changed by written notice.

SECTION V: LIABILITY AND INDEMNIFICATION

5.1 Subject to the limitations as set out in Florida Statutes §768.28 and §252.51, the Town shall defend, hold harmless and indemnify the School Board from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the Town, its agents, employees, or contractors in connection with the exercise of the Town's rights or fulfillment of the Town's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the Town beyond that set forth in Section 768.28, Florida Statutes.

5.2 Subject to the limitations as set forth in Florida Statutes, §768.28, the School Board shall defend, hold harmless and indemnify the Town from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising from the act

or omission of the School Board, its agents, employees, and contractors in connection with the exercise of the School Board's rights or fulfillment of the School Board's obligations under this Agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the School Board beyond that set forth in Section 768.28, Florida Statutes.

SECTION VI: MISCELLANEOUS:

The Parties represent and warrant that they have full authority to enter into and sign the Agreement. This Agreement contains the entire agreement between the Town and School Board, any verbal understanding, statements or prior writings or agreements to the contrary notwithstanding. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other. The prevailing Party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing Party. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. Any dispute arising hereunder shall be subject to, and all rights contained herein may be enforced through, an appropriate action in law or at equity brought in a court of competent jurisdiction located in Lee County, Florida. This Agreement constitutes the entire understanding between the Parties with regard to the subject matter hereof. No modification or amendment of this Agreement shall be valid and binding on the School Board or the Town unless it is in writing and executed by or on behalf of the School Board and the Town. The terms and conditions of this Agreement shall extend to and bind any successor entity of the Parties hereto.

SECTION VII: DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law. In the event of any dispute hereunder, the prevailing party shall be entitled to recover all costs and expenses incurred by it in connection with the enforcement of this Agreement, including all attorneys' fees and costs in connection therewith.

SECTION VIII: ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or part thereof, shall be made by either Party unless approved by both the School Board and the Town.

SECTION IX: EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Town and the School Board have executed this Agreement on the day, month and year first written above.

The School Board of Lee County, Florida

Town of Fort Myers Beach, a Florida
Municipal Corporation

By: _____

By: [Signature]

Its: _____

Its: Vice Mayor

RATIFIED AND APPROVED:

ATTESTED:

By: _____

By: [Signature]

Its: _____

Its: Town Clerk

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: _____

By: [Signature]

School Board Attorney

Town Attorney

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was signed and acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____ 2021, by _____, as _____ of The School Board of Lee County, Florida, who produced the following as identification _____ or is personally known to me and who did/did not take an oath.

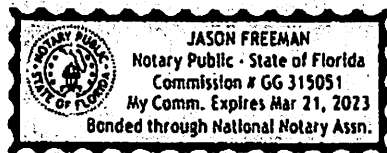
[Signature of Notary]

STATE OF FLORIDA
COUNTY OF LEE

[Typed or Printed Name]

The foregoing instrument was signed and acknowledged before me by means of
☒ physical presence or ☐ online notarization this 21 day of JANUARY 2021
2021, by REXANN HOSEBROS, as VICE MAYOR of The Town of Fort Myers Beach,
a Florida municipal corporation, who produced the following as identification

or is personally known to me and who
did/did not take an oath.



[Signature of Notary]
JASON FREEMAN
[Typed or Printed Name]