



Fort Myers Beach Local Planning Agency

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

Agenda

Wednesday, November 12, 2025

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. APPROVAL OF MINUTES**
 - A. October 14, 2025
- VI. PUBLIC COMMENT**
- VII. PUBLIC HEARINGS**

- A. LPA Resolution 25-19, VAR20250243 for Beach Access #43

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250243, REQUESTING A VARIANCE OF 20 INCHES OR 1.7 FOOT FROM LDC SECTION 34-652 (D), TO ALLOW A 60-INCH-WIDE OR 5-FOOT-WIDE ON-GRADE PATHWAY WHERE A MAXIMUM 40-INCH-WIDE OR 3.3-FOOT-WIDE ON GRADE PATHWAY IS PERMITTED THROUGH A DUNE IN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #43) RECORDED FOR THE REAL PROPERTY LOCATED AT 102 ESTERO BOULEVARD; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

- B. LPA Resolution 25-21, VAR20250261 for Beach Access #41

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250261, REQUESTING A VARIANCE FROM LDC SECTION 34-652(F)(2) C., TO ALLOW AN 8-FOOT-WIDE DUNE WALKOVER WHERE A MAXIMUM 6-FOOT-WIDE DUNE WALKOVER IS PERMITTED FOR USES OTHER THAN SINGLE FAMILY RESIDENTIAL IN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT, FOR THE PUBLIC

ACCESS EASEMENT (BEACH ACCESS #41) RECORDED FOR THE REAL PROPERTY LOCATED AT 252 ESTERO BOULEVARD; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

C. LPA Resolution 25-20, SEZ20250241 for Beach Access #41

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250241 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF A 8 FEET WIDE AND 110 FEET LONG ELEVATED DUNE WALKOVER IN ENVIRONMENTALLY CRITICAL ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #41) RECORDED FOR THE REAL PROPERTY LOCATED AT 252 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

D. Proposed Ordinance 25-27, Certified Recovery Residences

PROPOSED ORDINANCE NO. 25-27

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA: 1) ESTABLISHING PROCEDURES FOR THE REVIEW AND APPROVAL OF APPLICATIONS FOR REASONABLE ACCOMMODATIONS NEEDED TO OPERATE CERTIFIED RECOVERY RESIDENCES FROM EXISTING LAND USE REGULATIONS IN NEW SECTION 34-204 IN DIVISION 4 "APPLICATIONS AND PROCEDURES" OF ARTICLE II "ZONING DISTRICTS STANDARDS AND NONCONFORMITIES" OF CHAPTER 34, AS MANDATED BY SECTION 397.487(15)(A), FLORIDA STATUTES; AND 2) AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR APPROVAL OF APPLICATIONS FOR REASONABLE ACCOMMODATIONS TO OPERATE A CERTIFIED RECOVERY RESIDENCE AS PROVIDED IN SECTION 34-204, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

VIII. ADMINISTRATIVE AGENDA

IX. LPA MEMBERS ITEMS/REPORTS

X. LPA ATTORNEY ITEMS/REPORTS

- XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS**
- XII. ITEMS FOR NEXT MONTHS AGENDA**
- XIII. ADJOURNMENT**

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF THE LOCAL PLANNING AGENCY UNANIMOUSLY APPROVES A REQUEST FOR A VARIANCE, EXTENSION OR SATISFACTION OF CONDITIONS, A REQUEST FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL MAY BE MADE BY ANYONE IF THE REQUEST IS RECEIVED BY THE TOWN CLERK WITHIN 10 BUSINESS DAYS OF THE LOCAL PLANNING AGENCY DECISION PURSUANT TO SEC. 34-232 OF THE LAND DEVELOPMENT CODE.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE LOCAL PLANNING AGENCY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED IN ACCORDANCE WITH FLORIDA STATUTE 286.0105.



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. 239-765-0202



Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931
Tuesday, October 14, 2025

Minutes

9:00 AM

DRAFT

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Chair Anita Cereceda, LPA Members James Boan, James Dunlap, John McLean, Jane Plummer and Don Sudduth.

Excused: Doug Eckmann

LPA Member Sudduth moved to accept LPA Member Eckmann's request for an excused absence, seconded by LPA Member Plummer.

The motion carried unanimously.

II. INVOCATION

Chair Cereceda wished LPA Member Plummer a happy birthday.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

Town Clerk Baker noted the selection of Chair and Vice Chair was left off the agenda.

LPA Member Dunlap moved to add the reorganization of Chair and Vice Chair after the Approval of Minutes, seconded by LPA Member Sudduth.

The motion carried unanimously.

V. APPROVAL OF MINUTES

REORGANIZATION OF CHAIR AND VICE CHAIR

Town Clerk Baker read the procedure.

LPA Member Boan nominated Anita Cereceda as Chair, seconded by LPA Member McLean. She accepted.

The vote was unanimous by roll call.

LPA Member Boan nominated Jane Plummer as Vice Chair, seconded by LPA Member McLean. She accepted.

The vote was unanimous by roll call.

A. Local Planning Agency - September 9, 2025

LPA Member Plummer moved to approve the minutes, seconded by LPA Member Boan.

The motion carried unanimously.

VI. PUBLIC COMMENT

No public comment.

VII. PUBLIC HEARINGS

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

A. Ordinance 25-21; CPA20250188, 1668 I Street (Beach Bar Signage)

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY ORDINANCE 24-18 FOR THE PARCEL LOCATED AT 1668 I STREET, GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0070B.0110 FORT MYERS BEACH, TO INCLUDE A DEVIATION FOR ADDITIONAL SIGNAGE; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. No ex parte communications were disclosed.

Community Development Planner Jason Green reviewed the background of the request as stated on the yellow sheet. Staff recommended approval with conditions.

Renee Oij from Sign Permits Plus represented the applicant. She explained that they needed three signs because of the building's location. She described the signs' design and noted they were turtle-friendly. She was comfortable with the conditions in the staff report.

No public comment.

LPA Member Boan moved to approve the ordinance, finding it consistent with the Comprehensive Plan and the Land Development Code, including the conditions, seconded by LPA Member Sudduth.

The motion carried unanimously by roll call vote.

B. Ordinance 25-22, CPD20250201, 125, 131-151 School Street and 2661-1681 Estero Blvd. (Cottages at Myerside)

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING/APPROVING WITH CONDITIONS/ DENYING AN AMENDMENT TO THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING, PREVIOUSLY APPROVED BY ORDINANCE 24-15 FOR THE PARCEL LOCATED FOR THE PROPERTY LOCATED AT 125, 131-151 SCHOOL STREET AND 2661-2681 ESTERO BLVD., FORT MYERS BEACH, GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0020C.0230; 19-46-24-W3- 0020C.0270; 19-46-24-W3-0020C.0290 IN FORT MYERS BEACH; PROVIDING FOR REVISIONS TO SCHEDULE OF

USES TO INCLUDE OUTDOOR CONSUMPTION ON PREMISES AS A USE ASSOCIATED WITH THE HOTEL AND RESTAURANT USE, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICT OF LAW, SCRIVENER'S ERRORS AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. Ex parte communications: Chair Cereceda spoke to the applicant. No disclosures from other members. Planner Green reviewed the background of the request as stated on the yellow sheet. Planner Green clarified consumption on premises per the town's code. Staff recommended approval with conditions.

Attorney Keith Long from Long Law represented the applicants. His presentation began with the Site Aerial, Background, Requested Amendment, Proposed Outdoor COP Areas, LDC Compliance & Compatibility, Comprehensive Plan Consistency, Staff Findings & Recommended Action and Summary. Mr. Long did not oppose adding a condition regarding the hours of operation to serve alcohol. LPA Member Plummer questioned public access to the pool, but Mr. Long was unfamiliar with the technical aspects of the operation. Town Attorney Stuparich noted that the LPA could add a recommendation to be resolved at the hearing.

No public comment.

LPA Member Plummer requested that a condition be added stating that the pool was for guests only. LPA members generally agreed with a recommendation instead of a condition.

LPA Member Dunlap moved to approve the ordinance with staff's conditions, plus a condition that the consumption and serving of alcohol would be limited to 8:00 a.m. to 10:00 p.m. and a conversation regarding public access or restrictions to the pool bar area, finding it consistent with the Comprehensive Plan (comp plan) and the Land Development Code (LDC), seconded by LPA Member Sudduth.

Chair Cereceda expressed concern about amending the CPD that has not yet broken ground.

The motion carried unanimously by roll call vote.

- C. Ordinance 25-19; DA20250186, 50 Old San Carlos (Kilwins Times Square)
AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING OR DENYING A HOME RULE DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT 50 OLD SAN CARLOS BOULEVARD, FORT MYERS BEACH, FL, STRAP NOS. 24-46-23-W3-00208.002A OWNED BY CARLOS L. CHAVEZ AS TRUSTEE FOR THE CARLOS L. CHAVEZ TRUST, AS AUTHORIZED BY SECTION 2-100 OF THE TOWN'S LAND DEVELOPMENT CODE AND IN COMPLIANCE WITH THE PROCEDURES FOR APPLICATION AND APPROVAL OF DEVELOPMENT AGREEMENTS WITH DEVIATIONS SET FORTH IN RESOLUTION NUMBER 24-247 FOR THE PURPOSE OF REDEVELOPMENT OF THE PROPERTY TO ALLOW A MIXED USE DEVELOPMENT WITH COMMERCIAL AT THE OPEN GROUND LEVEL

AND SINGLE FAMILY RESIDENTIAL ABOVE.; PROVIDING FOR TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO THE IDENTIFICATION OF THE PROPOSED USE OF THE PROPERTY, A FINDING OF CONSISTENCY WITH THE TOWN OF FORT MYERS BEACH COMPREHENSIVE PLAN, COMMITMENTS AND DEVELOPMENT OBLIGATIONS, DEVIATIONS NEEDED FOR DEVELOPMENT; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance. Ex parte communications: Chair Cereceda spoke to the applicant and Mr. Vanasse. She is also familiar with the property. No disclosures from other members.

Planner Green reviewed the background of the request as stated on the yellow sheet. LPA Member Plummer expressed concerns regarding allowing mobile vendors in Times Square.

Patrick Vanasse of the Neighborhood Company represented the applicant. His presentation started with the Project Team, Background & Request, Background, Request, Property Location, Subject Site, Request, Rendering, Ground Floor Layout, Second & Third Floor Layout, Site Plan, Floor Area Ratio, Height and Findings.

Attorney Richard Akin from Henderson, Franklin, Starnes & Holt, P.A., noted that on page five, language was added that was a concern. He suggested language to clarify that he would pay his proportionate share. Town Attorney Stuparich was fine with amending the language before it goes to the town council for first reading. On page seven, he thought the applicant was exempt from the South Florida Water Management District ERP (Environmental Resource Permit). He suggested adding, if necessary, to permit requests. Town Attorney Stuparich had no issue adding the language. Mr. Vanasse noted that on page 2 of 16, the square footage should be 2,797.5. He discussed drainage in Times Square and would abide by the town's centralized plan. Mr. Vanasse will work with the staff regarding the language changes discussed. He discussed how the building could easily connect with everything else.

Albert Dambrose with The Neighborhood Company described the location of the air conditioners. LPA Member Plummer asked if the mobile trailer could be in a box with a gate to camouflage it. Mr. Dambrose replied that they did not want to camouflage the business. He explained that they wanted to see the colorful, artistic exterior of the ice cream truck. He added that the light-duty truck was approved by FEMA (Federal Emergency Management Agency).

Carlos Chavez, applicant, described how difficult and expensive it was to build the project. The residence would be his and he did not plan on renting it. Chair Cereceda asked whether he would entertain a mural on the side of his building and he replied positively. He indicated he would start construction as soon as he could.

Mr. Akin addressed paragraph 12 regarding the amendment that allows the

developer to terminate the agreement unilaterally without the town's permission. He noted it was protection for the applicant and provided a hypothetical example. Town Attorney Stuparich suggested adding that it would revert to the status quo. Mr. Akin will meet with the town attorney to work on the language.

LPA Member Dunlap discussed offering alternatives to construction staging and materials to help the applicant, given the site's tight layout and traffic.

Mr. Dambrose noted that the staging would be challenging. He described ideas for building the foundation and other aspects of the structure, as well as the rest of the Times Square community.

No public comment.

LPA Member Plummer added a condition requiring potted plants. Town Attorney Stuparich read the five language changes discussed.

LPA Member McLean moved to approve the ordinance with the conditions noted and amendment, finding it consistent with the comp plan and LDC, seconded by LPA Member Dunlap.

The motion carried unanimously by roll call vote.

D. VAR20250227, 1741 Estero Boulevard (The Goodz)

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20250227, A VARIANCE TO AMEND PREVIOUSLY APPROVED VARIANCE (VAR 20240270) ADDING A VARIANCE FROM LDC 34-2020 TO REDUCE PARKING REQUIREMENT, IN THE DOWNTOWN ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 1741 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0080B.0010 ; AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. Ex parte communications: LPA Member Plummer had conversations with the owner and his father, LPA Member Boan noted that he received a letter from someone who objected and LPA Member McLean received the same letter. No disclosures from other members.

Planner Green reviewed the background of the request as stated on the yellow sheet. He added that the variance replaced the previous variance in its entirety. Staff found it was consistent with the comp plan and the LDC. Kara Stewart represented the applicant. The applicant is proposing a restaurant and a children's game room on the third floor and is asking for a total of 35 parking spaces. She explained the parking calculation and noted there were several parking lots in the area.

Ms. Stewart provided documentation to the town regarding notice. No public comment.

LPA Member Dunlap moved to approve the resolution as recommended by staff and consistent with the comp plan and LDC, seconded by LPA Member Boan.

The motion carried unanimously by roll call vote, with LPA Member Sudduth

excused.

E. SEZ20250228, 1741 Estero Blvd (The Goodz)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING SPECIAL EXCEPTION SEZ20250228 TO ALLOW CONSUMPTION ON PREMISES (COP) IN THE OUTDOOR PATIO AT THIRD FLOOR WITHIN 500 FEET OF DWELLING UNITS FOR THE PROPERTY LOCATED AT 1741 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 19-46-24-W4-0080B.0010; AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. Ex parte communications: Chair Cereceda and LPA Member Plummer spoke to the owner. No disclosures by other members.

Planner Green reviewed the background of the request as stated on the yellow sheet. Staff found the request consistent with the comp plan and LDC.

Kara Stewart represented the applicant and stated that they would only serve beer and wine. She suggested that condition number four should state that they will stay in compliance with the town's noise ordinance. Chair Cereceda asked whether the sound could be adjusted.

Graham Belger, property owner, stated that the volume could be controlled on all the electronic games. The LPA removed condition four. Mr. Belger hoped to break ground in December.

No public comment.

Ms. Stewart stated the hours of operation were 10:00 a.m. to 10:00 p.m. for the restaurant and alcohol service. Alcohol would be permitted in the children's game room. Ms. Stewart clarified that the COP request was for the outside patio. LPA Member McLean was not bothered by alcohol in the game room. Mr. Belger added that they were going to be strict with supervision. Town Attorney Stuparich recommended eliminating the word amplified from condition number three due to a temporary injunction at the circuit court level regarding First Amendment rights.

The hours of operation will be added as condition number four.

Chair Cereceda moved to approve the resolution eliminating the word amplification in condition number three, replacing condition four with the hours of service and operation from 10:00 a.m. to 10:00 p.m. and it is consistent with the comp plan and the LDC, seconded by LPA Member Dunlap.

The motion carried 4-1 by roll call vote, with LPA Member Boan dissenting and LPA Member Sudduth excused.

F. Ordinance 25-24, Impact Fee Study

AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA ADOPTING AN IMPACT FEE STUDY DATED AUGUST 25, 2025 AND PREPARED BY DP GUTHRIE LLC; AMENDING ARTICLE IV

ENTITLED "IMPACT FEES" IN CHAPTER 2 ENTITLED ADMINISTRATION OF THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO 1) INCORPORATE UPDATED INFORMATION CONTAINED IN THE REFERENCED IMPACT FEE STUDY, 2) REDUCE THE NUMBER OF IMPACT FEE CATEGORIES AND SPECIFIC USES, 3) CHANGE THE METHOD OF CALCULATION OF FEES FOR SINGLE FAMILY HOMES FROM PER DWELLING TO SQUARE FOOTAGE RANGE TO REFLECT THE TYPICAL IMPACT OF LARGER HOMES, 4) REDUCE THE AMOUNT OF FEES BASED ON UPDATED POPULATION AND PROJECT EXPECTATIONS, AND 5) PROVIDING FOR AN UPDATE EVERY FOUR (4) YEARS PAYABLE FROM COLLECTED IMPACT FEES; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the ordinance.

Planner Green reviewed the background of the request as stated on the yellow sheet. He noted there would not be a fee on the food truck park because they were considered transient, not brick and mortar. LPA Member Dunlap stated that they would have an impact and were transient by description, but not by operation. Planner Green will check Bonita Springs and others in the area.

Planner Green explained that the study had to be conducted every four years and the cost of living could not be adjusted every year. He described when and how fees were collected. A discussion was held regarding the perception that new projects should pay more due to their impact. Mr. Green commented that it was their proportionate share of that project. They have to connect the amount of impact and the percentage of the project. LPA Member Plummer thought the impact fees were connected to utilities.

Planner Green replied that impact fees for utilities were separate and mobility, transportation and parks and rec were covered under this ordinance. He explained that consolidating categories did not really lower fees and used lodging as an example. He discussed the threat of adding fringe areas and what the law said they could do within the parameters.

LPA Member Boan asked whether they could compare fees from the last study. Planner Green explained that the categories had changed, but he did have a spreadsheet he could provide. LPA Member Dunlap felt like it was completely reversed and he would like to see the previous math because it did not settle with him at all. Chair Cereceda noted that the perspective was that Planner Green was talking about limitations and the LPA was talking about possibilities.

Public comment:

Kara Stewart explained that the town adopted Lee County's impact fee schedule in the past because the town was built out before Ian.

Albert Dambrose indicated that some new projects assumed there were no impact fees. He listed projects that would not pay much of an impact fee because they were there before Ian. He thought they might have to raise

taxes to make up the difference. He added that the LDC included a five-year timer that said if properties were vacant for five years, they would not get credits for impact fees and would be at a disadvantage for commercial development.

Public comment closed.

LPA Member McLean agreed that it felt wrong that the fees were much lower than historically, but realized that impact fees were not going to be required for any redevelopment, because it was for the development of new growth.

Planner Green suggested that they negotiate with the DAs (Development Agreements) and CPDs (Commercial Planned Developments) that come through because there was an impact from the development. He requested input regarding the five-year rule. He will research starting the timeline based on the loss or change of use and expanding the timeline.

LPA Member Dunlap moved to approve the ordinance, including the LDC and the inclusion of the requests, seconded by LPA Member Sudduth.

The motion carried unanimously by roll call vote.

VIII. ADMINISTRATIVE AGENDA

A. 2026 Calendar

Discuss and approve the monthly schedule for LPA meetings in 2026.

Town Clerk Baker listed the dates and no conflicts were reported.

IX. LPA MEMBERS ITEMS/REPORTS

LPA Member Dunlap asked that similar communities be researched regarding impact fees with DAs.

LPA Member Sudduth agreed.

LPA Member Boan congratulated Chair Cereceda and Vice Chair Plummer for their reappointment.

No items from other members.

X. LPA ATTORNEY ITEMS/REPORTS

No items.

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Planner Green requested that the December meeting be moved to the 16th at 1:00 p.m. LPA members consented.

XII. ITEMS FOR NEXT MONTHS AGENDA

A big project will probably be on the agenda. Chair Cereceda requested that the agenda be complete when they receive it.

XIII. ADJOURNMENT

LPA Member Dunlap moved to adjourn. Chair Cereceda adjourned the meeting at 1:01 p.m.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2026-95**

1. Request:

Meeting Date: November 12, 2025

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250243, REQUESTING A VARIANCE OF 20 INCHES OR 1.7 FOOT FROM LDC SECTION 34-652 (D), TO ALLOW A 60-INCH-WIDE OR 5-FOOT-WIDE ON-GRADE PATHWAY WHERE A MAXIMUM 40-INCH-WIDE OR 3.3-FOOT-WIDE ON GRADE PATHWAY IS PERMITTED THROUGH A DUNE IN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #43) RECORDED FOR THE REAL PROPERTY LOCATED AT 102 ESTERO BOULEVARD; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The LPA will make recommendations to the Town Council regarding the variance request or approve the variance request unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council or serve as final agency action if the request is approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Ehab Guirguis on behalf of Lee County, the owner of the 6-foot-wide public access easement (Beach Access #43) recorded for the real property located at 102 Estero Blvd, is requesting a 20 inches or 1.7-foot variance from the Town's LDC Section 34-652 (d), to allow a 60-inch-wide or 5-foot-wide on-grade pathway where a maximum 40-inch-wide or 3.3-foot-wide on grade pathway is permitted through a dune in the Environmentally Critical (EC) zoning district.

The subject property previously supported a 60-inch-wide or 5-foot-wide dune walkover which was destroyed during Hurricane Ian. The Applicant is now proposing to replace the previously existing 5-foot-wide dune walkover with a 60-inch-wide or 5-foot-wide on-grade pathway through a dune on the existing 72-inch-wide or 6-foot-wide public access easement (Beach Access #43). The proposed pathway will be covered by a Mobi mat with a 3-foot-high post and rope barrier. As per LDC Section 34-652(d), one on-grade pathway of up to 40 inches is permitted use by right per property in EC zoning district. All pathways exceeding 40 inches or 3.3 foot may only be approved through a variance. To continue the full use of the 6-foot-wide public access easement, the Applicant is requesting a variance to allow a 5-foot-wide on-grade pathway through a dune in the EC zoning district seaward of the 1978 CCCL.

Attachments:

1. NS LPA Resolution 25-19, Beach Access 43
2. Exhibit A- Site Plan
3. Exhibit B- Survey
4. Exhibit C- 102 Estero deed and recorded public access easement
5. Exhibit D- Application
6. Staff report

Financial Impact:

Unknown

6. Alternative Action

Approval/ Denial

7. Staff Recommendations:

Approval with conditions

8. Recommended Approval:

Georgina Cid, Community Development Manager

Date: November 04, 2025

Frankie Kropacek, Community Development Director

Date: November 04, 2025

nancy stuparich, Town Attorney

Date: November 04, 2025

Amy Baker, Town Clerk

Date: November 04, 2025

LPA RESOLUTION 25-19

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250243, REQUESTING A VARIANCE OF 20 INCHES OR 1.7 FOOT FROM LDC SECTION 34-652 (D), TO ALLOW A 60-INCH-WIDE OR 5-FOOT-WIDE ON-GRADE PATHWAY WHERE A MAXIMUM 40-INCH-WIDE OR 3.3-FOOT-WIDE ON GRADE PATHWAY IS PERMITTED THROUGH A DUNE IN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #43) RECORDED FOR THE REAL PROPERTY LOCATED AT 102 ESTERO BOULEVARD; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Lee County (hereinafter "applicant"), is the owner of the public access easement (Beach Access #43) recorded for the real property located at 102 Estero Boulevard, Fort Myers Beach, Florida (hereinafter "subject property"); and

WHEREAS, the STRAP for the subject property is 24-46-23-W1-02100.00CE, and the legal description for the subject property is attached, see Exhibit "B"; and

WHEREAS, the subject property is located in the "Mixed Residential" and "Recreation" category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the subject property is located in the "Commercial Planned Development" and the "Environmentally Critical" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, LDC Section 34-652(d), permits maximum one on-grade pathway of up to 40-inches or 3.3-foot-width through a dune per property in the Environmentally Critical (EC) zoning district; and

WHEREAS, the subject property historically supported a 5-foot-wide dune walkover that was destroyed during Hurricane Ian in 2022; and

WHEREAS, the Applicant is requesting a variance of 20 inches or 1.7 feet from LDC Section 34-652 (d), to allow replacement of the previously existing dune walkover with a 60-inch-wide or a 5-foot-wide on-grade pathway where a maximum 40-inch-wide or a 3.3-foot-wide on-grade pathway is permitted through a dune in the Environmentally Critical zoning district; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 12, 2025, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

- A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying the variance are/ are not the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted is/ is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the specific piece of property for which the variance is sought are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

WHEREAS, eligible members of the LPA voted ____ to ____ by roll call vote to approve/ approve with conditions/ deny the requested variances with the following conditions:

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. The variance shall only apply to the pathway through dune as shown on the provided site plan. Demolition or substantial damage to the on-grade pathway shall render the variance to be null and void.

3. This variance applies to the proposed on-grade pathway through dune in the subject property only. Any additional modification or additional construction on subject property must comply with all applicable regulations or seek a new variance.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. VAR20250243, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on November 12, 2025.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS ____ day of _____, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of ____, 2025.

EXHIBITS

Exhibit A: Site Plan

Exhibit B: Survey

Exhibit C: Recorded Easement

OWNER

LEE COUNTY
2115 SECOND ST
FORT MYERS, FL 33901
PHONE: (239) 533-2221
FAX: (239) 485-2262

SITE ADDRESS

ESTERO BLVD.
FORT MYERS BEACH, FL 33931

TOTAL PROJECT AREA

0.04 ACRES

BOARD OF COUNTY COMMISSIONERS

KEVIN RUANE	DISTRICT 1
CECIL PENDERGRASS	DISTRICT 2
DAVID MULICKA	DISTRICT 3
BRIAN HAMMAN	DISTRICT 4
MIKE GREENWELL	DISTRICT 5

COUNTY MANAGER

DAVE HARNER

ASSISTANT COUNTY MANAGER

PETER WINTON
CHRISTINE BRADY
GLEN SALYER
MARC MORA
ROBERT CODIE

FACILITIES CONSTRUCTION & MANAGEMENT

EHAB GUIRGUIS, P.E.

CONSTRUCTION PLANS
FOR



FORT MYERS BEACH ACCESS 43
VARIOUS REPAIRS
FEMA DI : 1291090
FEMA PROJECT # : 702317
SECTION 24, TOWNSHIP 46 S., RANGE 23 E.
LEE COUNTY, FLORIDA

INDEX OF PLANS

SHEET NO.	DESCRIPTION
C01	COVER
C02	GENERAL NOTES & ABBREVIATIONS
C03	AERIAL KEY MAP
C04	FLUCFCS AND SOILS MAPS
C05	EXISTING CONDITIONS AND SITE PLANS

WEILER ENGINEERING CORP.
201 WEST MARION AVENUE SUITE
1306 PUNTA GORDA, FLORIDA 33950
PHONE: (941) 505-1700
FAX: (941) 505-1702



JOHNSON ENGINEERING, LLC
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901 PHONE:
(239) 334-0046
E.R. #642 & L.B. #642



NOTICE TO ALL
CONTRACTORS

IT'S THE LAW IN FLORIDA
2 BUSINESS DAYS BEFORE
YOU DIG
CALL SUNSHINE
1-800-432-4770

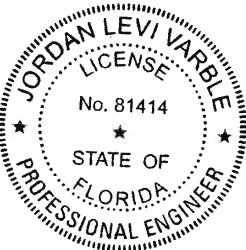
STATE, COUNTIES & CITIES
ARE "NOT" PART OF THE
ONE CALL SYSTEM. THEY
MUST BE CALLED
INDIVIDUALLY.



REGISTERED PROFESSIONAL ENGI
FLORIDA LICENSE NO. 81414

JORDAN LEVI VARBLE, PE

DATE



digitally signed and
sealed by Jordan L.
Varble, P.E., on the date
adjacent to the seal.
Printed copies of this
document are not
considered signed and
sealed and the signature
must be verified on any
electronic copies.
2025.10.16

OCTOBER 2025

BEACH ACCESS 43



LOCATION MAP

0 300 600 1200
INTENDED DISPLAY SCALE:
22"X34" PLAN 1"=600'
11"X17" PLAN 1"=1200'

SHEET NUMBER
C01

\\\\ftms01\\drawings\\2023\\20236180-000\\Engineering\\Drawings\\00\\Fort Myers Beach\\236180-007 C0

ABBREVIATIONS

AC	ACRE
ALT	ALTER
APPROX.	APPROXIMATE
ASE	ASBESTOS
BM	BENCHMARK
BOD	BUILDING
BOT	BOTTOM
CB	CATCH BASIN
CF	CUBIC FEET
CFM	CUBIC FEET PER MINUTE
CI	CAST IRON
CIP	CAST IRON PIPE
CJ	CONSTRUCTION JOINT
COMP	CORRUGATED METAL PIPE
CO	CLEANOUT
CV	CHECK VALVE
CF	CUBIC FOOT
CV	CUBIC YARD
CL	CENTER LINE
CLKG	CAULKING
CLF	CHAIN LINK FENCE
COL	COLUMN, COLOR
CONC	CONCRETE
CONST	CONSTRUCTION
CONT	CONTINUOUS
CONTR	CONTRACTOR
CTRS	CENTERS
CJ	COPPER
CU, IN.	CUBIC INCH
DIA., Ø	DIAMETER
DIA6	DIAGONAL
DM	DIMENSION
DIS.	DISTANCE
DIP	DUCTILE IRON PIPE
DR	DRAINAGE EASEMENT
DWG	DRAWING
E	EAST
EL./LEV	ELEVATION
EQUIP	EQUIPMENT
EROP	ELLIPTICAL REINFORCED CONCRETE PIPE
ESMT	EASEMENT
EX	EXISTING
FF	FINISHED FLOOR
FPE	FINISHED FLOOR ELEVATION
FM	FORCE MAIN
FDC	FIRE DEPARTMENT CONNECTION
FDN	FOUNDATION
FIN	FINISH
FRP	FIBERGLASS REINFORCED PLASTIC
FT	FEET
G	NATURAL GAS
GC	GENERAL CONTRACTOR
GI	GALVANIZED IRON
GPM	GALLONS PER MINUTE
GV	GATE VALVE
GAL	GALLON
GALV	GALVANIZED
GR	GRADE
HDPE	HIGH DENSITY POLYETHYLENE
HOR	HORIZONTAL
HYD	HYDRANT
ID	INSIDE DIAMETER
IDD	IONA DRAINAGE DISTRICT
INV	INVERT
IRR	IRRIGATION
LAE	LAKE ACCESS EASEMENT
LOC	LEE COUNTY UTILITY EASEMENT
LF	LINEAL FEET
LME	LAKE MAINTENANCE EASEMENT
LMT	LAKE MAINTENANCE TRACT
MGD	MILLION GALLONS PER DAY
MH	MANHOLE
MJ	MECHANICAL JOINT
MAX	MAXIMUM
MECH	MECHANICAL
MES	MITERED END SECTION
MFR	MANUFACTURER
MIN	MINIMUM
MISC	MISCELLANEOUS
N	NORTH
NE	NORTHEAST
NW	NORTHWEST
NPW	NON POTABLE WATER
NTS	NOT TO SCALE
NUN/#	NUMBER
NON	NOMINAL
NG	NATURAL GAS
OC	ON CENTERS
OCEW	ON CENTER EACH WAY
OD	OUTSIDE DIAMETER
POF	POUNDS PER CUBIC FOOT
PSF	POUNDS PER SQUARE FOOT
PV	PLUG VALVE
PSI	POUNDS PER SQUARE INCH
PVC	POLYVINYL CHLORIDE
POLY, PE.	POLYETHYLENE
PAVT	PAVEMENT
PC	POINT OF CURVATURE
PGL	PROPOSED GRADE LINE
PL	PROPERTY LINE
PLBG	PLUMBING
PLWD	PLYWOOD
PW	POTABLE WATER
PT	POINT OF TANGENCY
PUE	PUBLIC UTILITY EASEMENT
PVI	POINT OF VERTICAL INTERSECTION
QUAN	QUANTITY
R	RADIUS
RD	ROAD
RCF	REINFORCED CONCRETE PIPE
REQD	REQUIRED
ROW	RIGHT OF WAY
RU	REUSE LINE
R/W	RIGHT OF WAY
S	SOUTH
SE	SOUTHEAST
SW	SOUTHWEST
SS	SANITARY SEWER
SAN	SANITARY
SCH	SCHEDULE
SECT	SECTION
SEW	SEWER
SH	SHEET
SPEC	SPECIFICATION
SQ	SQUARE
STA	STATION
STL	STEEL
STD	STANDARD
SUR	SURFACE
SYM	SYMMETRICAL
TOE	TOE OF SLOPE
TOB	TOP OF BANK
THK	THICK
TEL	TELEPHONE
TEMP	TEMPERATURE
TRANS	TRANSFORMER
TYP	TYPICAL
UE	UTILITY EASEMENT
VERT	VERTICAL
W	WATER
WM	WATER MAIN
W/	WITH
W/O	WITHOUT
WO	WOOD
WT	WEIGHT
WV	WATER VALVE
WH	WALL HYDRANT

SYMBOLS

	GATE VALVE		IRRIGATION SERVICE (DOUBLE)
	TEE ASSEMBLY		IRRIGATION SERVICE (SINGLE)
	REDUCER		SEWER SERVICE (DOUBLE)
	BLOW OFF		SEWER SERVICE (SINGLE)
	FIRE HYDRANT		WATER SERVICE (DOUBLE)
	FIRE HYDRANT ASSEMBLY W/ GATE VALVE		WATER SERVICE (SINGLE)
	MITERED END SECTION		HEADWALL
	MAN-HOLE W/ NUMBER		DRAINAGE INLET (SEE PLAN FOR TYPES)
	PLUG VALVE		THROAT INLET
			FLARED END SECTION

HATCH PATTERNS

	WETLAND		EXISTING LAKE TO BE FILLED
	UPLAND BUFFER		PROPOSED LAKE
	UPLAND PRESERVE		LITTORAL SHELF AREA
	INDIGENOUS AREA		COMPENSATING LITTORAL PLANTING AREA
	NATURAL AREA		RIPRAP / GRAVEL
	FILTER MARSH		BRICK PAVERS
	EXISTING LAKE	NOTE: HATCH PATTERNS ARE FOR ILLUSTRATIVE PURPOSES ONLY. ACTUAL HATCH PATTERNS ON DRAWING MAY VARY IN SCALE & ANGLE	

LINETYPES

	EXISTING	PROPOSED
RIGHT-OF-WAY LINE	---	---
CENTER LINE	---	---
LAKE MAINTENANCE EASEMENT	---	---
PUBLIC UTILITY EASEMENT	---	---
DRAINAGE EASEMENT	---	---
WETLAND BOUNDARY	---	---
FORCE MAIN	--- FM ---	--- FM ---
SANITARY SEWER	--- SS ---	--- SS ---
WATER MAIN	--- WM ---	--- WM ---
IRRIGATION MAIN	--- IRR ---	--- IRR ---
RE-USE MAIN	--- RU ---	--- RU ---
PERIMETER BERM	--->--->--->---	--->--->--->---
FENCE LINE	--- X --- X ---	--- X --- X --- X --- X ---
SILT FENCE	--- Δ --- Δ --- Δ ---	--- Δ --- Δ --- Δ --- Δ --- Δ ---
BULKHEAD	---	---
STRUCTURAL BUFFER	---	---

GENERAL NOTES:

- ELEVATIONS REFERENCE TO NAVD 1988. CONVERSION TO NGVD 1929 IS: NAVD 1988 + 1.18 = NGVD 1929.
- THE GENERAL NOTES MUST BE PART OF THIS ENTIRE DOCUMENT PACKAGE AND ARE PART OF THE CONTRACT DOCUMENTS. THE GENERAL NOTES ARE REFERENCED HEREIN AND MUST BE REFERRED TO BY THE CONTRACTOR. THE CONTRACTOR MUST BE FAMILIAR WITH AND ACKNOWLEDGE FAMILIARITY WITH ALL THE GENERAL NOTES AND ALL OF THE PLANS SPECIFICATION NOTES.
- CONTRACTOR MUST VERIFY ALL DIMENSIONS INCLUDED WITHIN THE PLAN SET AND SHOULD NOT SCALE OFF THE DRAWINGS DUE TO POTENTIAL PRINTING INACCURACIES. ALL DIMENSIONS ARE TO BE CHECKED AND CONFIRMED BY THE GENERAL CONTRACTOR PRIOR TO PREPARATION OF SHOP DRAWINGS, FABRICATION/ORDERING OF PARTS AND MATERIALS AND START OF SITE WORK.
- JOHNSON ENGINEERING, LLC. IS NOT RESPONSIBLE FOR AND HAVE NO CONTRACTUAL LEGAL OR OTHER RESPONSIBILITIES FOR JOB SITE SAFETY, JOB SITE SUPERVISION, OR ANYTHING RELATED TO THE SAME. JOHNSON ENGINEERING, INC. IS NOT RESPONSIBLE TO IDENTIFY OR REPORT ANY JOB SITE SAFETY ISSUES OR ANY JOB SITE CONDITIONS, AT ANY TIME.
- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, STANDARD PLANS (LATEST EDITION), LEE COUNTY DEVELOPMENT STANDARDS AND SPECIFICATIONS AND LEE COUNTY UTILITIES REQUIREMENTS.
- CONTRACTOR SHALL RETAIN, ON THE WORK SITE, COPIES OF ANY PERMITS NECESSARY FOR CONSTRUCTION.
- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ANY REQUIRED TREE REMOVAL PERMITS.
- THE SITE CONTRACTOR SHALL BECOME FAMILIAR WITH THE GEOTECHNICAL REPORT IF ONE WAS PREPARED. THE CONTRACTOR SHALL COMPLY WITH ALL THE SITE PREPARATION AND OTHER SITE RELATED ITEMS, RECOMMENDATIONS AND PROCEDURES.
- CONTRACTOR ACKNOWLEDGES THAT CONSTRUCTION SITE IS WITHIN A PUBLIC USE AREA AND SHALL MAINTAIN A SAFE AND SECURE WORK AREA.
- CONTRACTOR IS REQUIRED TO OBTAIN FROM THE ENGINEER AND OWNER WRITTEN APPROVAL FOR ANY DEVIATIONS FROM THE PLANS AND/OR SPECIFICATIONS.
- EXISTING OFF-SITE DRAINAGE PATTERNS SHALL BE MAINTAINED DURING CONSTRUCTION.
- ANY PUBLIC LAND CORNER WITHIN THE LIMITS OF CONSTRUCTION IS TO BE PROTECTED. IF A CORNER MONUMENT IS IN DANGER OF BEING DESTROYED AND HAS NOT BEEN PROPERLY REFERENCED, THE CONTRACTOR SHOULD NOTIFY THE OWNER/ENGINEER WITHOUT DELAY.
- THE LOCATION OF EXISTING UTILITIES, PAVEMENT, VEGETATION, AND MISCELLANEOUS IMPROVEMENTS ARE APPROXIMATE ONLY. THE EXACT LOCATIONS SHALL BE FIELD VERIFIED BY THE CONTRACTOR.
- CONTRACTOR SHALL NOTIFY THE LEE COUNTY DIVISION OF DEVELOPMENT REVIEW A MINIMUM OF 72 HOURS PRIOR TO ALL REQUIRED INSPECTIONS.
- CONTRACTOR TO PROVIDE SILT FENCE AND OTHER APPROPRIATE MEASURES TO AFFECT THE FILTRATION OF SURFACE WATER FLOWS AND TO PROVIDE EROSION PROTECTION DURING CONSTRUCTION ACTIVITIES. PROTECTION IS TO BE MAINTAINED DURING THE CONSTRUCTION PERIOD UNTIL DISTURBED SOILS HAVE BEEN STABILIZED WITH VEGETATION OR SUITABLE EROSION PROTECTION TREATMENT.
- DURING CONSTRUCTION, GRATE INLET AND JUNCTION BOX OPENINGS SHALL BE COVERED WITH FILTER FABRIC (MIRAF 140N OR APPROVED EQUAL) TO PREVENT DEBRIS AND FILL FROM FALLING INTO THE INLET.
- CONTRACTOR SHALL USE DESIGNATED CONSTRUCTION ENTRANCES FOR EMPLOYEES AND DELIVERY OF MATERIALS.
- ALL CONSTRUCTION DEBRIS AND OTHER WASTE MATERIAL SHALL BE DISPOSED OF OFF-SITE IN ACCORDANCE WITH APPLICABLE REGULATION. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE SITE IS CLEAN ONCE CONSTRUCTION IS FINISHED.
- CONTRACTOR SHALL PROMPTLY REPORT ALL FIELD CHANGES TO THE ENGINEER.
- THE CONTRACTOR SHALL ACCURATELY PLOT THE LOCATIONS AND DEPTHS OF ALL IMPROVEMENTS INSTALLED ON A FINAL SET OF RECORDED DRAWINGS WHICH SHALL BE DELIVERED TO THE ENGINEER.
- CONTRACTOR SHALL INCORPORATE BEST MANAGEMENT PRACTICES TO PREVENT CONSTRUCTION DEBRIS, DUST, AND OTHER MATERIALS FROM LEAVING THE IMMEDIATE WORK AREA AND ENTERING LOCAL WATERS. THIS INCLUDES TURBIDITY CONTROLS AND MONITORING FOR IN-WATER WORK AND OTHER LAND-DISTURBING ACTIVITIES. TURBIDITY CONTROLS AND MONITORING SHALL BE IN ACCORDANCE WITH PROJECT PERMITS.
- ALL PILES SHALL ACHIEVE EMBEDMENT AS SHOWN IN PLANS.
- CONSTRUCTION OF BOARDWALK DESIGN MAY REQUIRE MINOR GRADING BY CONTRACTOR TO ACHIEVE DESIRED GRADES. CONTRACTOR MUST RECEIVE WRITTEN APPROVAL FROM ENGINEER PRIOR TO GRADING COMMENCEMENT.
- UNLESS OTHERWISE NOTED, PILES SHALL BE INSTALLED IN THE SAME LOCATIONS AS PREVIOUS PILES TO MINIMIZE ENVIRONMENTAL IMPACT.
- REMOVAL OF VEGETATION SHALL ONLY BE ALLOWED WITHIN BOARDWALK LIMITS. REMOVAL OF VEGETATION OUTSIDE BOARDWALK LIMITS SHALL REQUIRE PRIOR APPROVAL FROM COUNTY OR ENGINEER.
- ALL CONSTRUCTION MATERIALS SHALL BE PER PLAN DETAILS.
- ALL PILES SHALL BE CUT OFF BELOW DECK. WATERPROOF PILE TOPS WITH DENSO 35 TAPE.
- BEVEL TOP EDGE OF STANCHIONS, RAILS, AND DECKING TO REMOVE SHARP EDGES AND SPLINTERS.
- CONTRACTOR SHALL ENSURE RAILING IS FREE OF BURRS AND SHARP EDGES.
- CONTRACTOR SHALL CONDUCT CLEANUP ON A DAILY BASIS.

SITE DEMOLITION:

- ANY SITE DEMOLITION IS BASED ON AVAILABLE INFORMATION PROVIDED TO ENGINEER AND MAY NOT COVER ALL ASPECTS OF THE PROJECT. IT IS THE CONTRACTOR'S RESPONSIBILITY TO COVER ALL EXISTING INFRASTRUCTURE TO BE REMOVED IN THEIR DEMOLITION BUDGET.
- CONTRACTOR SHALL SUBMIT VERIFICATION OF COMPLIANCE THAT ALL DEMOLITION DEBRIS IS DISPOSED OF IN A MANNER CONSISTENT WITH FDEP REGULATIONS.

EXISTING UTILITY NOTE:

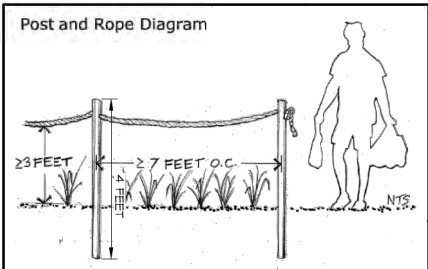
- CONTRACTOR TO CONTACT "SUNSHINE 811" FOR LOCATES TWO BUSINESS DAYS BEFORE YOU DIG, 1-800-432-4770. STATE, COUNTIES, AND CITIES ARE NOT PART OF THE ONE CALL SYSTEM, THEY MUST BE CALLED INDIVIDUALLY.

ACCESSIBILITY DESIGN GUIDELINES:

- ALL ACCESSIBLE (A.K.A. ADA) COMPONENTS AND ACCESSIBLE ROUTES MUST BE CONSTRUCTED TO MEET, AT A MINIMUM THE MOST STRINGENT OF: (A) THE REQUIREMENTS OF THE "AMERICANS WITH DISABILITIES ACT" (ADA) CODE (42 U.S.C. § 12101 ET SEQ. AND 42 U.S.C. § 4151 ET SEQ.); AND (B) ANY APPLICABLE LOCAL AND STATE GUIDELINES; AND ANY AND ALL AMENDMENTS TO BOTH, WHICH ARE IN EFFECT AT THE TIME OF CONSTRUCTION.

CONDITIONS FOR WORKING AROUND ANIMALS:

- CONTRACTOR SHALL COMPLY WITH THE STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE, REVISED AUGUST 2013 DOCUMENT.



POST & ROPE DETAIL

N.T.S.
PER FDEP CCCL POST AND ROPE GUIDELINES

SILT FENCE DETAIL:

STATE OF FLORIDA E&SC DESIGNER & REVIEWER MANUAL, LATEST EDITION: JULY 2013

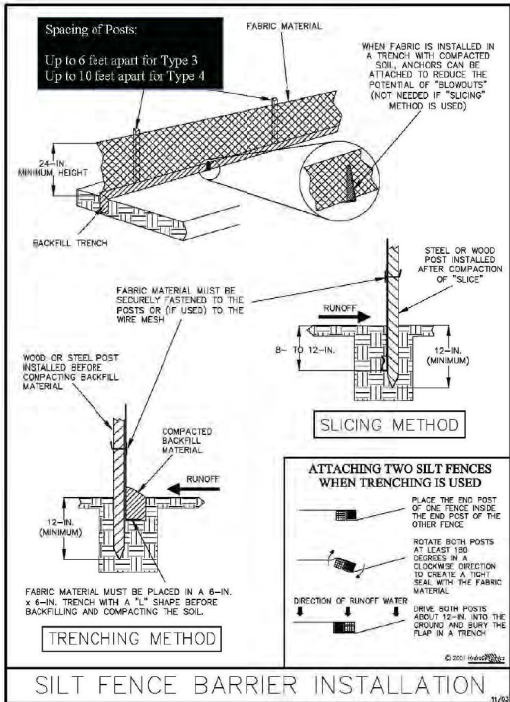


Figure V-2: Illustration of a Silt Fence Barrier

Permissions is given by HydroDynamics Incorporated to copy and reproduce this detail.

V-7

JOHNSON ENGINEERING

— An Apex Company —

JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.R. #642 & L.B. #642

WEILER ENGINEERING CORPORATION
An Apex Company
WEC

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PHONE: (941) 505-1700
FAX: (941) 505-1702

JORDAN LEVI VARGAS, P.E.
FL License No. 81414



FORT MYERS BEACH
ACCESS 43
VARIOUS REPAIRS
LEE COUNTY, FLORIDA

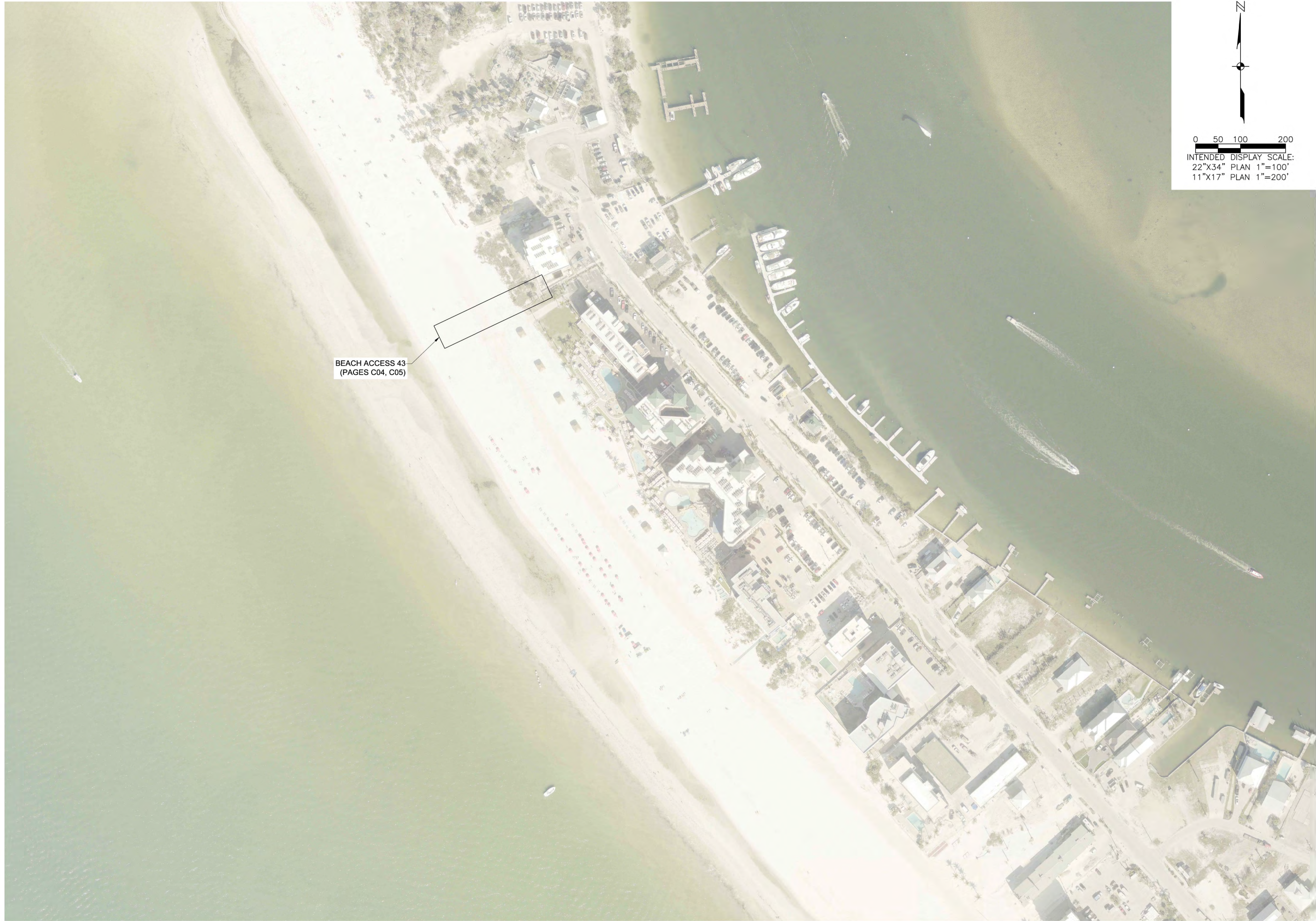
REVISIONS	DATE	DESCRIPTION
NO.		

DATE: OCTOBER 2025
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

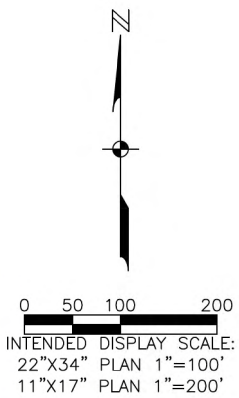
GENERAL NOTES & ABBREVIATIONS

SHEET NUMBER

C02



BEACH ACCESS 43
(PAGES C04, C05)



INTENDED DISPLAY SCALE:
22"X34" PLAN 1"=100'
11"X17" PLAN 1"=200'



**FORT MYERS BEACH
ACCESS 43
VARIOUS REPAIRS
LEE COUNTY, FLORIDA**

NO.	REVISIONS DESCRIPTION	DATE	
		DATE	

DATE: OCTOBER 2025
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

AERIAL KEY MAP

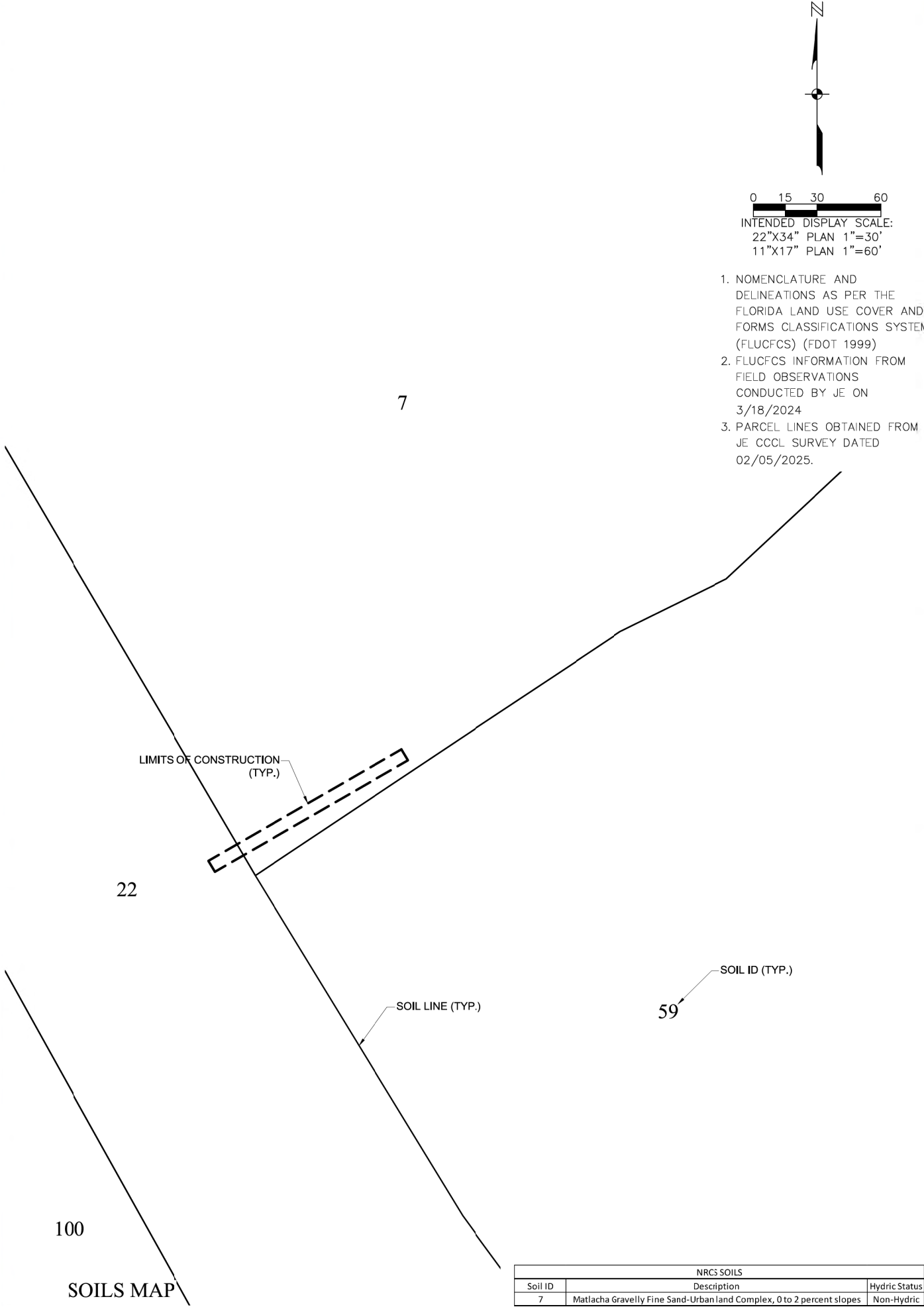
SHEET NUMBER

C03



FLUCFCS Code	Description	Status	Area in Acres
180	Recreational Beach Access	N	0.01
Total Site			0.01
Legend			
N = Non Wetlands			Total N 0.01
W = Wetlands			Total W 0.00
SW = Surface Waters			Total SW 0.00
Total Site			0.01

FLUCFCS MAP



NRCS SOILS		
Soil ID	Description	Hydric Status
7	Matlacha Gravelly Fine Sand-Urban land Complex, 0 to 2 percent slopes	Non-Hydric

SOILS MAP

0 15 30 60
INTENDED DISPLAY SCALE:
22"x34" PLAN 1"=30'
11"x17" PLAN 1"=60'

1. NOMENCLATURE AND DELINEATIONS AS PER THE FLORIDA LAND USE COVER AND FORMS CLASSIFICATIONS SYSTEM (FLUCFCS) (FDOT 1999)
2. FLUCFCS INFORMATION FROM FIELD OBSERVATIONS CONDUCTED BY JE ON 3/18/2024
3. PARCEL LINES OBTAINED FROM JE CCCL SURVEY DATED 02/05/2025.

JOHNSON ENGINEERING
— An Apex Company —
JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
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JORDAN LEVI VARBLE, PE
FL License No. 81414



FORT MYERS BEACH
ACCESS 43
VARIOUS REPAIRS
LEE COUNTY, FLORIDA

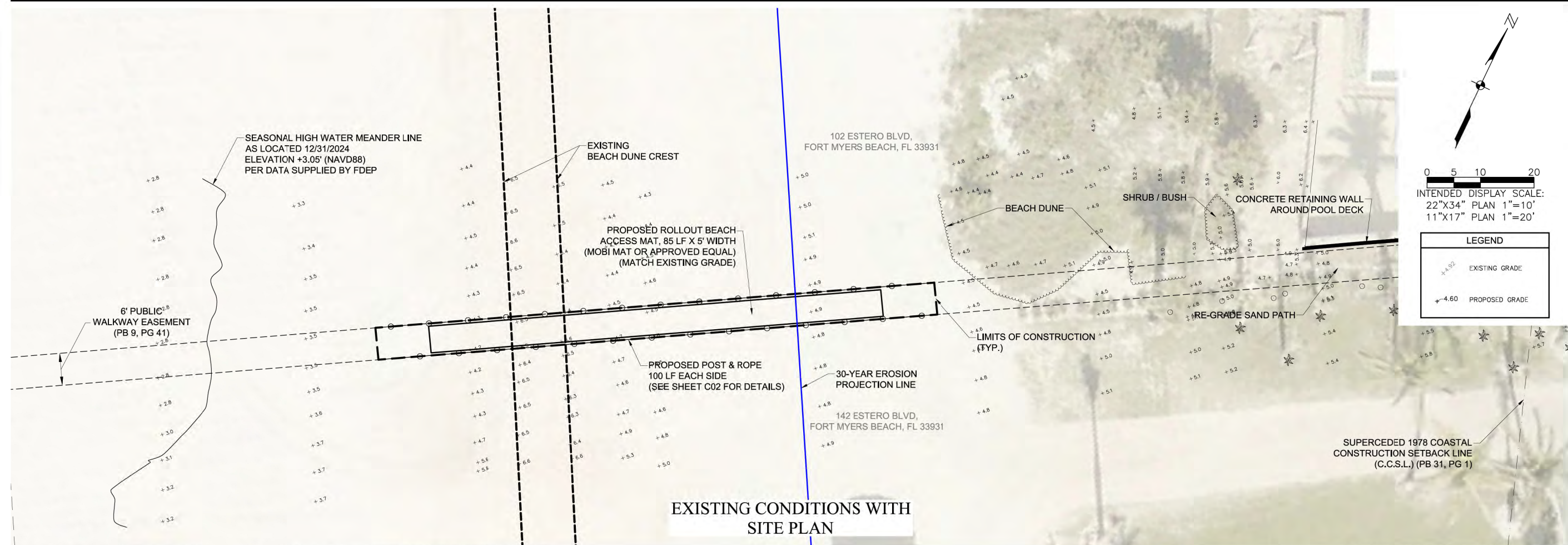
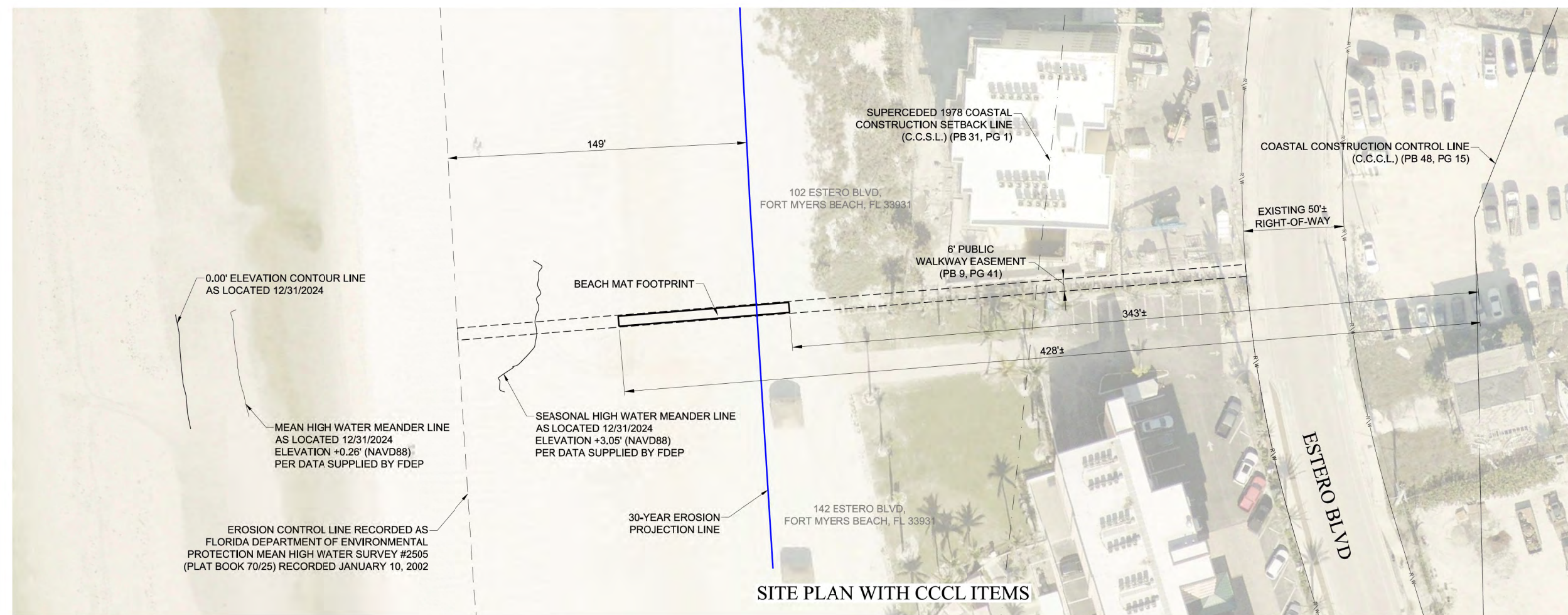
REVISIONS	DATE
DESCRIPTION	
NO.	

DATE:	OCTOBER 2025
PROJECT NO.	20236180-000
FILE NO.	24-46-23
SCALE:	AS SHOWN

FLUCFCS AND
SOILS MAP

SHEET NUMBER

C04



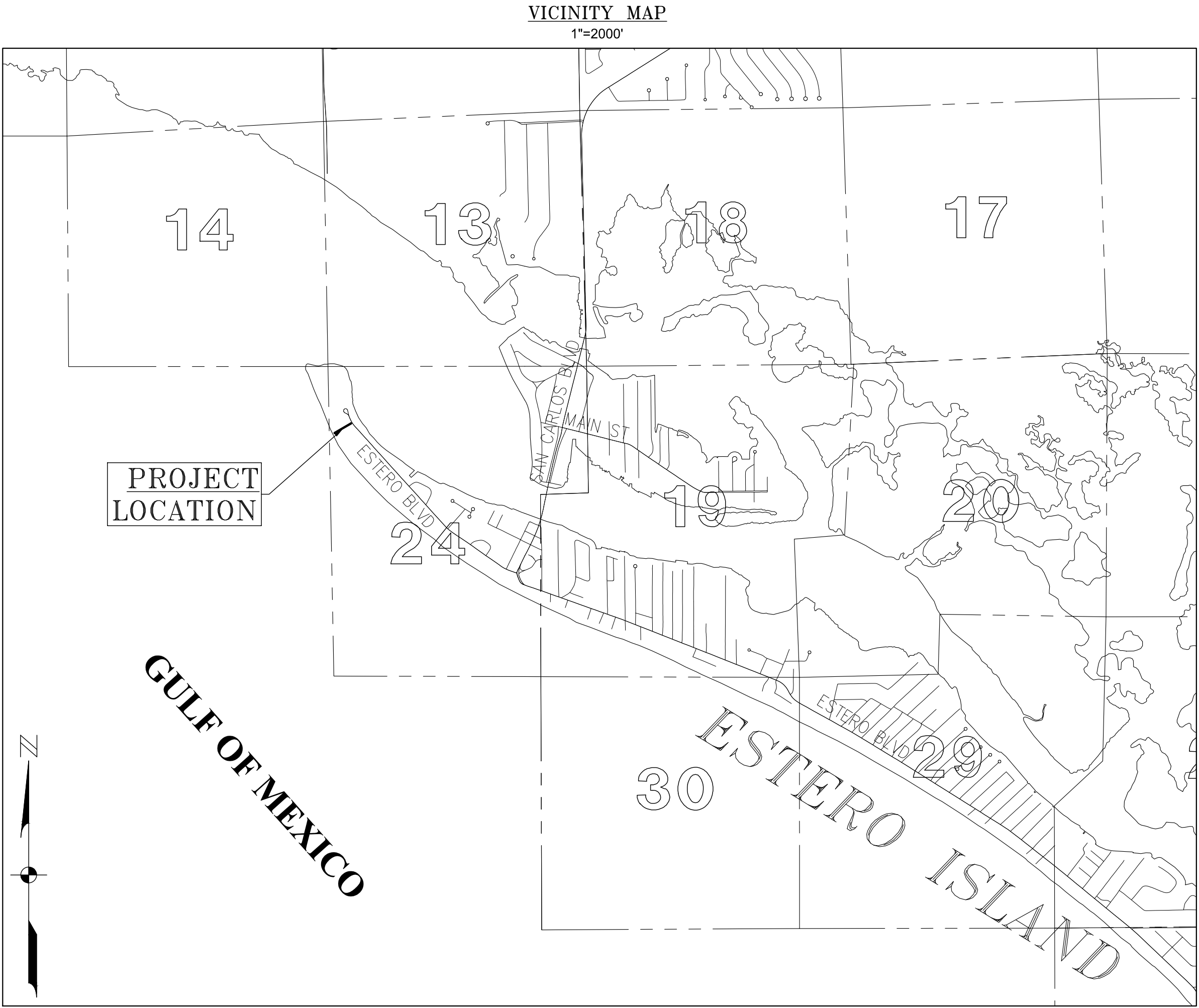
REVISIONS					
NO.	DESCRIPTION	DATE			
DATE:			OCTOBER 2025		
PROJECT NO. 20236180-000					
FILE NO.			24-46-23		
SCALE:			AS SHOWN		

BOUNDARY, TOPOGRAPHIC, AND
MEAN HIGH WATER LINE SURVEY
FOR
FORT MYERS BEACH ACCESS #43
ISLAND SHORES CLUB SECTION SUBDIVISION
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
CITY OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

NOTES:

- DATE OF LAST FIELDWORK: DECEMBER 31, 2024.
- SURVEYED PARCEL HAS NO PHYSICAL ADDRESS AND LIES BETWEEN 102 AND 142 ESTERO BLVD, FORT MYERS BEACH, FL 33931
- BEARINGS SHOWN HEREON ARE BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983, ADJUSTMENT OF 2011 (NAD83/2011), WHEREIN THE MEASURED BEARING BETWEEN FOUND ORIGINAL COASTAL CONSTRUCTION MONUMENTS "A25A" AND "A37A" BEARS SOUTH 49°13'01" EAST.
- COORDINATES SHOWN HEREON ARE IN UNITS OF U.S. SURVEY FEET AND ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM (NAD83/2011) FOR THE WEST ZONE OF FLORIDA AND WERE ESTABLISHED UTILIZING TRIMBLE RTK GPS REDUNDANT OBSERVATION PROCEDURES FROM A FIXED BASE STATION OF KNOWN GEODETIC POSITION AND A REDUNDANT CHECK TO A FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) COASTAL CONSTRUCTION SURVEY MONUMENT OF KNOWN GEODETIC POSITION. THE BASE STATION USED IS PART OF THE TRIMBLE VRS NOW NETWORK (VRS). THE BASE STATION AND SURVEY MONUMENT HAVE THE RECORD POSITION LISTED BELOW:

STATION	LATITUDE	LONGITUDE	STATE PLANE COORDINATES (FT)	
FTMY(VRS)	N26°38'20.41934"	W81°52'25.49756"	N 837,971.29060	E 697,406.83738
FDEP COASTAL CONSTRUCTION MONUMENT "A25A"	N26°27'10.3174"	W81°57'18.7055"	N 770,294.918	E 670,825.675
- ELEVATIONS SHOWN HEREON ARE IN FEET RELATIVE TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), AND ARE BASED ON A CLOSED LEVEL LOOP ORIGINATING FROM NATIONAL GEODETIC SURVEY (NGS) BENCHMARK 872 5366 F (PID AD7852) HAVING A PUBLISHED ELEVATION OF +22.60.
- THE EROSION CONTROL LINE RECORDED IN PLAT BOOK 56, PAGE 33 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IS THE BOUNDARY BETWEEN THE GULF OF MEXICO (STATE OF FLORIDA) AND THE EASEMENT INTEREST OF THE SUBJECT PARCEL (LEE COUNTY, FLORIDA).
- THE LOCATION OF THE MEAN HIGH WATER LINE WAS DETERMINED BY USING THE MEAN HIGH WATER ELEVATION OF +0.26 FEET NAVD88, AS PROVIDED BY STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION PER TIDAL WATER SURVEY APPROVAL LETTER DATED 4/17/2024 AND WAS LOCATED FOR COASTAL CONSTRUCTION PURPOSES.
- THIS SURVEY COMPLIES WITH THE REQUIREMENTS FOR SURVEYS PER CHAPTER 62B-33.0081, FLORIDA ADMINISTRATIVE CODE.
- THE SURVEYED PARCEL LIES IN F.E.M.A. FLOOD ZONE VE, HAVING A BASE FLOOD ELEVATION OF (+13'), (+14'), AND (+15') ACCORDING TO THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD RATE MAP (F.I.R.M.) PANEL NUMBER 12071C0554G WITH AN EFFECTIVE DATE OR NOVEMBER 17, 2022.
- THIS SURVEY MEETS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:7,500)
- THE LOCATION OF THE 1990 COASTAL CONSTRUCTION WAS BASED ON FOUND ORIGINAL MONUMENTS "A25A" AND "A37A" PER THE PLAT RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA.
- THE LOCATION OF THE 1978 COASTAL CONSTRUCTION SETBACK LINE WAS BASED ON FOUND ORIGINAL MONUMENTS PER THE PLAT RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
- SUBSTANTIAL VISIBLE IMPROVEMENTS OTHER THAN THOSE SHOWN, NOT LOCATED. UNDERGROUND IMPROVEMENTS, ENCROACHMENTS AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
- THIS SURVEY DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.
- NO ENVIRONMENTAL ASSESSMENT OR AUDIT WAS PERFORMED ON THE SURVEYED PARCEL BY THIS FIRM.
- THIS SURVEY DOES NOT PURPORT TO DELINEATE THE REGULATORY JURISDICTION OF ANY FEDERAL, STATE OR LOCAL AGENCY.
- THIS SURVEY DOES NOT DETERMINE PROPERTY OWNERSHIP OR PROPERTY RIGHTS. THIS SURVEY LOCATED THE BOUNDARY IN ACCORDANCE WITH AND IN RELATION TO THE LEGAL DESCRIPTION.
- ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.
- AREA OF SURVEYED PARCEL IS 2,359 SQUARE FEET OR 0.05 ACRES, MORE OR LESS.
- THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. A TITLE COMMITMENT AND/OR ABSTRACT OF TITLE WAS NOT PROVIDED TO THE SURVEYOR.
- AERIAL PHOTOGRAPHY SHOWN HEREON WAS OBTAINED FROM LEE COUNTY AND IS DATED 2024. IT IS INCLUDED FOR ORIENTATION PURPOSES ONLY.



0 1000 2000 4000
(INTENDED DISPLAY SCALE: 1"=2000')

PROPERTY OWNER: LEE COUNTY

DESCRIPTION

(FORT MYERS BEACH ACCESS #43)
PUBLIC WALKWAY EASEMENT BEING THE NORTHERLY 3 FEET OF LOT 42 AND THE SOUTHERLY 3 FEET OF LOT 43, ISLAND SHORES CLUB SECTION, PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

THIS MEAN HIGH WATER LINE SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

THIS SURVEY IS ONLY FOR THE BENEFIT OF:

LEE COUNTY,
A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY.

I HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472, FLORIDA STATUTES.



Digitally signed by
RICHARD G. DANIELS
LS7229 STATE OF
FLORIDA
Date: 2025.02.05
06:41:41 -05'00'

THIS SURVEY HAS BEEN DIGITALLY SIGNED BY:
RICHARD G. DANIELS (FOR THE FIRM L.B. 642)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 7229
ON THE DATE ADJACENT TO THE SEAL.

THIS CERTIFICATION IS TO THE DATE OF LAST FIELD WORK AS SHOWN IN NOTE 1 AND NOT THE SIGNATURE DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED, AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

FIELD BOOK 265, PAGES 74-78
FIELD BOOK 2894, PAGE 41

REVISIONS

DATE	DESCRIPTION
5/14/2024	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE:	4/1/2024
PROJECT NO.	20236180-000
FILE NO.	24-46-23
SCALE:	AS SHOWN

COVER SHEET

SHEET NUMBER

1 OF 3

REVISIONS

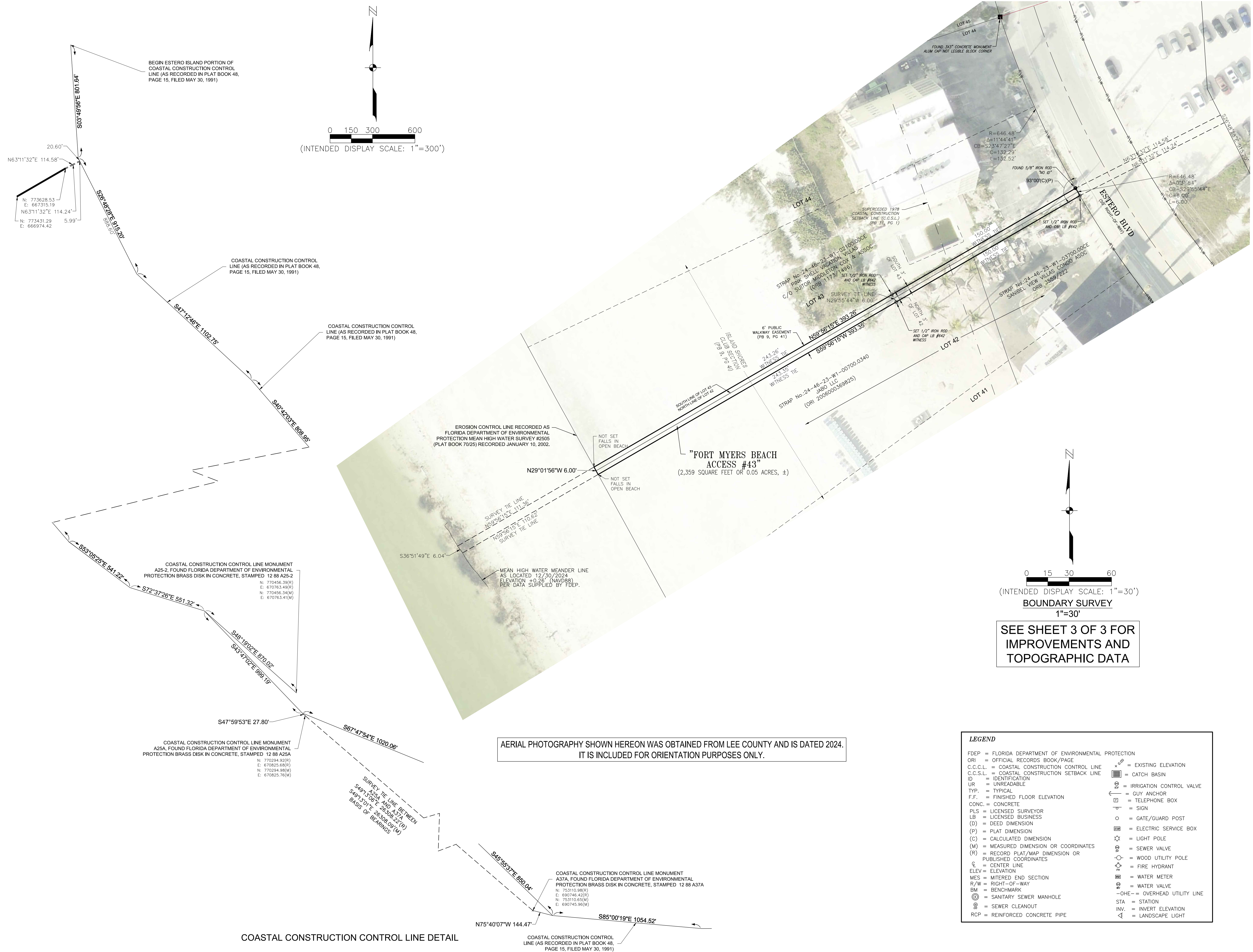
DATE	DESCRIPTION
5/14/2024	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE:	4/1/24
PROJECT NO.	20236180-000
FILE NO.	31-47-25
SCALE:	AS SHOWN

C.C.C.L. DETAIL AND BOUNDARY SURVEY

SHEET NUMBER

2 OF 3



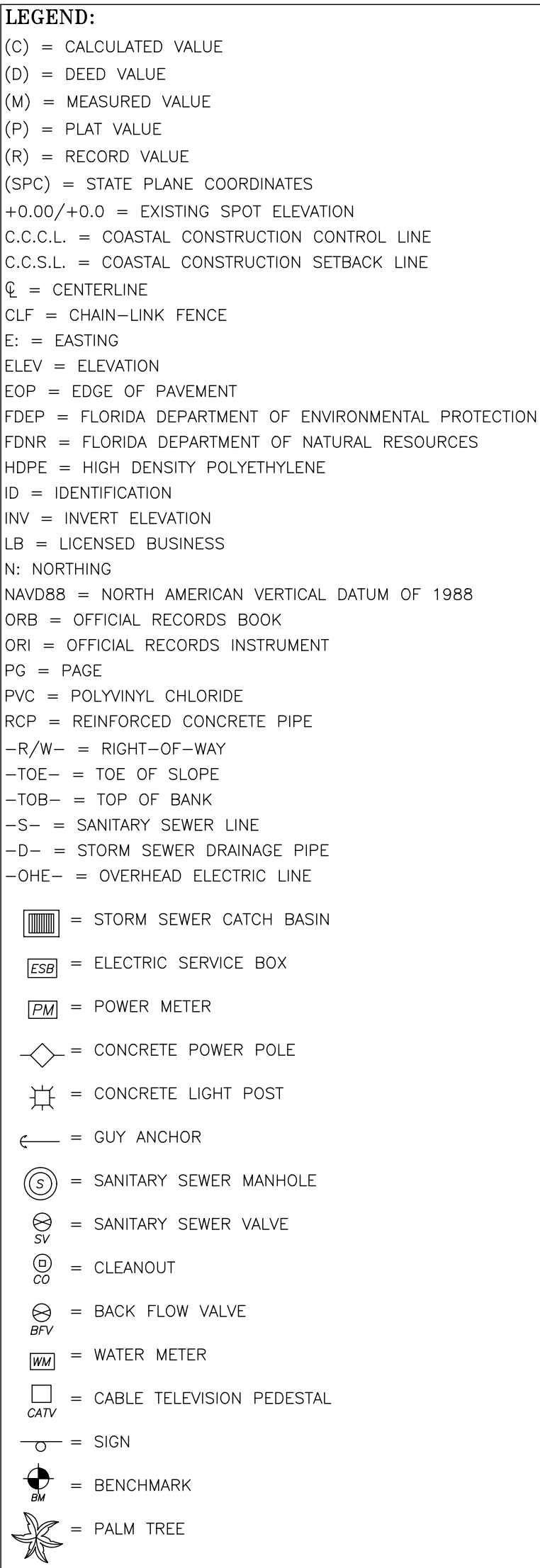
REVISIONS

DATE	DESCRIPTION
5/14/2024	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE: 4/1/24
PROJECT NO. 20236180-000
FILE NO. 31-47-25
SCALE: 1"=20'

SHEET NUMBER

3 OF 3



AERIAL PHOTOGRAPHY SHOWN HEREON WAS OBTAINED FROM LEE COUNTY AND IS DATED 2024.
IT IS INCLUDED FOR ORIENTATION PURPOSES ONLY.

CONDOMINIUM DECLARATION
OF
PINK SHELL VACATION VILLAS, A CONDOMINIUM
Fort Myers Beach, Florida

THIS CONDOMINIUM DECLARATION, made and executed this day of 1976, by Pink Shell, Inc., a Florida corporation, hereinafter called the Developer, for itself, its successors, grantees and assigns, and the said Developer does submit the condominium property as hereinafter defined and described to condominium ownership upon the terms and conditions hereinafter set forth.

DEFINITIONS

DEFINITION OF TERMS USED IN CONDOMINIUM DECLARATION. As used herein or elsewhere in the condominium documents, unless otherwise provided, the terms used shall be defined as herein provided:

a. Assessment. Assessment means a share of the fund required for the payment of common expenses which from time to time are assessed against the unit owner.

b. Association. Association shall mean Pink Shell Vacation Villa Condominium Association, Inc., which shall be responsible for the operation of the condominium as may be otherwise herein provided.

c. Common Element. Common element shall include the tangible or intangible personal property required for the maintenance and operation of the condominium together with all other elements necessary for the common maintenance, safety and welfare of the condominium owners.

d. Common Expense. Common expenses means those expenses for which unit owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of common elements and such other expenses as may be declared expenses either by this declaration or by the manager or the Association.

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

f. Condominium Property. Condominium property means and includes the land of a condominium and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

g. Unit Owner. Unit owner or owner of the unit means owner of a condominium parcel or unit in fee simple or any other interest in real property recognized by law.

h. Condominium Documents. Condominium documents shall include this declaration together with By-Laws attached hereto as Exhibit "A", Plot Plan which is attached hereto as Exhibit "B" and herein referred to as Plot Plan, Rules and Regulations of Pink Shell Vacation Villas Condominium Association, Inc., which are attached hereto as Exhibit "C" and Form of Warranty Deed attached hereto as Exhibit "D". Articles of Incorporation of Pink Shell Vacation Villas Condominium Association, Inc. are hereto attached as Exhibit "E".

1. STATEMENT OF CONDOMINIUM SUBMISSION. Pink Shell, Inc. a Florida corporation, herewith submits the following described property to condominium ownership in accordance with Florida Statutes, Chapter 711. This property is located on Fort Myers Beach in Lee County, Florida, more particularly described as follows:

Lots 43 and 44 Island Shores Club Section, all per plat in Plat Book 9, Page 41, Public Records of Lee County, Florida.

Together with an easement for ingress and egress to the sewage treatment plant, drainfield and sewage lines and for maintenance thereof over and across the following described real property:

Lots 38 and 39, Block D, Island Shores Club Section, per map or plat thereof filed and recorded in Plat Book 9, Page 41, Public Records of Lee County, Florida, as the said sewage plant, drainfields and sewage lines are actually constructed or placed thereon.

Together with the right to use the sewage treatment plant, drainfield and sewage lines located thereon, subject to the requirement of maintenance thereof by the association. Said easement and the right to use the improvements located thereon shall cease and terminate upon the county installing a central sewer system and all units in the condominium connecting to such sewer system. The developer reserves the right to use the said Lots 38 and 39 in any manner not inconsistent with the above described easement.

2. CONDOMINIUM NAME. The name by which this condominium is to be identified shall be Pink Shell Vacation Villas, a Condominium.

3. UNIT IDENTIFICATION. The identification of each unit shall be by number, and the same shall be as indicated on the Plot Plan which is attached hereto as Exhibit "B", and a part of this Condominium Declaration by reference, and hereinafter called the Plot Plan.

4. SURVEY AND GRAPHIC DESCRIPTION. A Survey of the land submitted herewith to condominium ownership and a Plot Plan describing each unit, the common elements, the limited common elements, and their relative location and their approximate dimensions is attached hereto as Exhibit "B".

5. OWNERSHIP OF UNITS. The Developer has provided thirty (30) units which shall be transferred by deed to unit owners. These units are subject to private ownership and the term "owner" shall include an owner of one or more of the thirty (30) living units which are a part of the condominium.

6. OWNERSHIP OF COMMON ELEMENTS. The ownership of common elements as may be herein described, and as the same are designated to each unit in a portion of this Condominium Declaration, are the percentage of ownership allocated to each unit as follows:

One/Thirtieth (1/30)

7. VOTING RIGHTS, SHARING OF COMMON EXPENSES, AND OWNING COMMON SURPLUS. There shall be one (1) vote for each unit or a total of thirty (30) possible votes. The sharing of the common expenses and the ownership of the common surplus shall be distributed equally among the thirty (30) units which comprise the condominium.

8. BYLAWS. The Bylaws shall be the Bylaws of the Association which are attached hereto as an exhibit and made a part hereof by reference including any amendments thereto, hereafter adopted as therein provided.

9. UNITS. Units are those cubicles of space, together with all improvements constructed therein, as are further identified and described in the Plot Plan, which is attached as Exhibit "B" to this Condominium Declaration, the boundaries of which units shall be as follows:

A. Boundaries: Each Unit shall be bounded as to both horizontal

and vertical boundaries as below defined, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

a. Horizontal Boundaries: The upper and lower boundaries of the units shall be:

i. Upper Boundary. The underside of the finished undecorated ceiling of the unit, extended to meet the vertical boundaries.

ii. Lower Boundary. The upperside of the finished undecorated surface of the floor of the unit, extended to meet the vertical boundaries.

b. Vertical Boundaries: The vertical boundaries shall be the finished interior undecorated surfaces of the perimeter walls of the unit as shown on the Surveyor plans and the interior surfaces of the unit's windows and doors that abut the exterior of the building or common areas. The vertical boundaries of the units shall include the interior surfaces of the screens of the balcony, serving that unit, extended to the horizontal boundaries.

B. Exclusive Use: Each unit owner shall have the exclusive use of his unit.

C. Appurtenances: The ownership of each unit shall include, and there shall pass with each unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not to be limited to:

a. Common Elements. An undivided one/thirtieth (1/30th) share of the common elements.

b. Automobile Parking Space. (For private passenger automobile only) - the privilege of using one unassigned parking space within the area designated on the plat for parking.

c. Easements. For the benefit of the unit.

d. Association Membership and interest in funds and assets held by the Association.

e. Provided, however, that such appurtenances shall be subject to the easements for the benefit of other units and the Association.

Easement to Air Space: The appurtenances shall include an exclusive easement for the use of the air occupied by the unit as it exists at any particular time and as the unit may be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

Cross Easements: The appurtenances shall include the following easements from each unit owner to each other unit owner.

a. Ingress and Egress. Easements through the common areas for ingress and egress.

b. Maintenance, Repair and Replacement. Easements through the units and common elements for maintenance, repair and replacement of the units and common elements. Such access to the units shall be only during reasonable hours except that access may be had at any time in case of emergency.

c. Support. Every portion of a unit contributing to the support of the unit building shall be burdened with an easement of support for the benefit of all other units and common elements in the building.

d. Utilities. Easements through the units and other common areas for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the units and the common

elements; provided, however, that such easements through a unit shall be only according to the plans and specifications for the unit building or as the building is constructed unless approved in writing by the unit owner.

10. MAINTENANCE RESPONSIBILITY. The owner of a unit shall have the responsibility to maintain, repair, and replace all matters and things relating to the interior of the premises owned by him and shall keep said premises in such manner as to cause no damage or nuisance to other owners in the building and shall specifically refrain from making any changes in appearances or otherwise to the exterior of the unit. The Association shall be responsible for the maintenance, repair, and improvement of the building exteriors in the manner and method as may be herein set forth or as may be set by the Bylaws of the Association.

11. ASSESSMENT. Assessments against owners shall be made by the Board of Administration of the Association, and shall be borne by the owners on a pro-rata basis, and on the same basis as their percentage of ownership of the entire condominium as the same exists at the time of said assessment.

12. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM. The administration and management of the condominium units, limited common elements, and of the common elements and the providing of utilities as may be designated shall be by the condominium Association, who shall have by and through its officers and administrators, such powers, authority, and responsibilities as are vested in the officers and directors of a corporation not for profit under the laws of the State of Florida, and provided for in the Bylaws which are attached hereto as Exhibit "A". The Association shall have authority to enter into management agreements through its officers.

When unit owners other than the Developer own fifteen (15%) percent or more of the units which will be operated ultimately by the Association, these unit owners other than the Developer shall be entitled to elect not less than one-third (1/3rd) of the members of the Board of Administration of the Association.

Unit owners other than the Developer shall be entitled to elect not less than a majority of the Board of Administration of the Association within a time period not to exceed three (3) years after sales by the Developer have been closed on at least fifty (50%) percent of the units which will be operated ultimately by the Association or not less than three (3) months after sales have been closed by the Developer of ninety (90%) percent of the units that will be operated ultimately by the Association, or when all the units that will be operated ultimately by the Association have been completed and some of them have been sold and none of the others are being offered for sale by the Developer in the ordinary course of business whichever shall first occur.

The Developer shall be entitled to elect at least one (1) member of the Board of Administration of the Association as long as the Developer holds for sale in the ordinary course of business any units in the condominium operated by the Association.

13. INSURANCE. Insurance upon the common elements and the entire condominium improvements, exclusive of tangible personal property of unit owners or improvements placed within the condominium units by the owners thereof, including maximum flood insurance, fire, wind and extended coverage, shall be maintained by the Association, or the Developer, in the event the Association shall not have been activated, in an amount not less than their full insurable value for Pink Shell Vacation Villas, a Condominium. As herein provided, Association shall mean the Developer in the event the Association shall not have been activated. Said insurance shall be purchased for the benefit of the owners and their respective mortgagees, grantees, assignees, and others claiming interest, as their interest may appear. The Association shall maintain public liability insurance as the same relates to the common elements in an amount not less than Fifty Thousand

(\$50,000.00) Dollars property damage, Three Hundred Thousand (\$300,000.00) Dollars per person, and Five Hundred Thousand (\$500,000.00) Dollars per accident. The responsibility for maintaining insurance for personal property and personal liability, public liability as the same relates to the interior of the respective apartments, shall be that of the owner. In the event of loss, by fire or other casualty, covering property other than that which the individual owner is responsible for, the proceeds of any such insurance shall be paid to the Beach First National Bank, Fort Myers Beach, Florida, as Insurance Trustee, or such other bank or trustee as may be designated by the Association. In the event of partial destruction of the common elements or improvements insured by the Association, the premises shall be reconstructed or repaired, unless the members of the Association shall, at a meeting called for such purpose, determine that such reconstruction shall not be completed and the action shall be approved by all financing institution mortgage or lienholders holding outstanding liens against condominium units. In the event of total destruction, the same shall not be reconstructed or repaired unless at a meeting of the Association called within one hundred twenty (120) days after such occurrence or casualty, the owners of more than seventy five (75%) percent of the condominium unit owners shall vote in favor of such reconstruction or repair. The Insurance Trustee may rely upon a certificate of the Association, through one of its executive officers, to determine whether or not damaged property is to be reconstructed or repaired. The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an owner shall be paid by the Insurance Trustee to the owner, or if there is a mortgage endorsement as to such unit, then to the unit owner and the mortgagee jointly, who may use such proceeds as they may be advised.

If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the owners who own the damaged units, and against all owners in the case of damage to common elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against owners for damage to units shall be in proportion to the cost of reconstruction and repair of their respective units. Such assessments on account of damage to common elements shall be in proportion to the owner's share in the common elements and shall be payable to the Insurance Trustee for disbursement.

14. CONDOMINIUM MEMBERSHIP. There is herewith established the condominium Association which is or shall be incorporated as a corporation not for profit pursuant to the laws of the State of Florida. The members shall be comprised of all owners of units. Membership in the Association shall be established by the recordation in the Public Records of Lee County, Florida, of a deed in fee title or other estate of ownership to the respective unit. Upon such recordation, the membership of prior unit owners shall be terminated. When the administration, management, and control of the units and common elements shall be vested in the Association as provided by the Act, and such authority and powers as granted to a corporation not for profit under the laws of the State of Florida, the Association shall be governed by the Bylaws as are attached hereto and marked Exhibit "A", or as amended. The resident agent of the Association for service of process shall be Robert C. Davis, Sr., a resident of the State of Florida, and whose address is 250 Estero Boulevard, Fort Myers Beach, Florida 33931, until his successor shall be designated by the Association.

16. ASSOCIATION FUNCTIONS. The operation of the condominium shall be by the Association which shall be called Pink Shell Vacation Villas Condominium Association, Inc., a corporation not for profit. This Association shall operate through its Board of Administration. The Board of Administration shall elect officers for the Association. All officers and directors of the Association shall have a fiduciary relationship to the unit owners.

A. The Association shall act through its officers and shall have the capacity to contract, sue and be sued. The Association is authorized to maintain, manage, and operate the condominium property.

B. No unit owner, except as an officer of the Association, shall have any authority to act for the Association.

C. No unit owner shall make any alterations in the improvements of a condominium which are to be maintained by the Association. No unit owner shall remove any portion of the condominium improvements or make any additions thereto or do any work which would jeopardize the safety or soundness of the building containing his unit. No unit owner shall impair any easement which is a part of the condominium property.

D. The Association shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units.

E. The Association shall have the power to make and collect assessments, and to maintain, repair, and replace any of the common elements; the Association shall have a lien against the unit for any unpaid assessments.

F. The Association shall maintain accounting records according to good accounting practices which shall be open to inspection by unit owners or their authorized representatives at reasonable times. Written summaries of these accounting records shall be supplied at least annually to unit owners or their authorized representatives. These accounting records include a record of all receipts and expenditures on behalf of the Association and an account for each unit which reflects the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amounts paid upon that unit owner's account, and the balance due under that account.

G. The Association shall maintain in its records copies of all insurance policies. A copy of each insurance policy obtained by the Association shall be made available for inspection by unit owners or their authorized representatives at reasonable times.

H. The Association shall have the power to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey the same.

I. In any legal action to which the Association is a party, the Association shall give notice of the suit within a reasonable time to all unit owners. These unit owners shall have the right to intervene and defend in the legal action if it appears that they may be exposed to liability as individual unit owners.

17. AMENDMENT OF AND ADDITION TO CONDOMINIUM DECLARATION BY DEVELOPER. The Developer, so long as it owns more than one (1) condominium unit, reserves the right at any time to amend the Declaration, as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary to carry out the purposes of the development provided that such amendment shall not increase the proportion of common expenses borne by the condominium owners.

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18. USE RESTRICTIONS AND LIMITATIONS UPON LEASING OF UNITS. Use of the property herein submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

A. Single Family Residence. A unit shall be used only for single family residence and the common elements shall be used for the purpose of furnishing of services and facilities as herein provided for the welfare and enjoyment of such residence.

B. Nuisance. The units shall not be used for any immoral, improper, or unlawful purpose and no use shall be allowed which will create a public or private nuisance. All property shall be kept in a neat and orderly manner.

C. Leasing of Units. The leasing or renting of a unit by an owner is not prohibited except that no lease shall be granted for a period of less than one (1) day (24 hour period). However, all leases or rentals for a period of more than twelve (12) months shall be approved by the Manager designated by the Association. Any owner desiring to lease his unit for more than twelve (12) months shall submit such request in writing to the Association or the Manager as may be designated by the Association setting forth the name of the Lessee, the type of lease to be used and supply any other information as may be requested by the Association or Manager. Provided, however, that no lease granted shall in any way violate or lessen any part of this Declaration or any restriction upon use of the unit as herein established or as may hereafter be established. Anything herein to the contrary, nothing shall prohibit the Developer from leasing units for consecutive terms not exceeding five (5) years.

19. ALL CONDOMINIUM UNITS FREELY TRANSFERABLE. All condominium units and parcels of ownership are freely transferable subject only to those conditions reflected in this Condominium Declaration.

20. METHOD OF AMENDMENT OF DECLARATION. Except for provisions of amendment of this Declaration as granted to the Developer herein, this Declaration may be amended by a special meeting called for such purpose after giving written notice to each owner, mailed by United States mail, at least fourteen (14) days prior to the date of such meeting. At such meeting so called, amendments may be made to the Declaration upon approval of a simple majority of the members of the Association. Any such amendments so passed shall be evidenced by a certificate executed by the President or Vice President and the Secretary, and executed with the formalities of a deed and shall include the recording data identifying the original Declaration.

21. TERMINATION. The condominium property may be removed from the provisions of the Florida Condominium Act, by all of the unit owners, and upon compliance with Florida Statute 711.16, as the same may be amended from time to time.

22. MISCELLANEOUS PROVISIONS.

A. The covenants and restrictions as herein contained and as attached hereto as exhibits forming a part of the condominium documents shall be deemed to run with the land.

B. If any provision of this Declaration and its exhibits hereto, as the same now exists or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said condominium documents shall remain in full force and effect.

C. These condominium documents shall be binding upon the heirs, nominees, successors, administrators, executors, and assigns of all unit owners.

D. All notices as herein provided shall be by United States Certified Mail, or by hand delivery.

E. No amendment to this Declaration shall be effective to change or alter the rights or reservations as herein reserved by the Developer. Moreover, no amendment to this Declaration shall be effective to change or lessen the rights of any institutional mortgagee. Institutional mortgagee, as herein defined, shall include any bank, savings and loan association, or other recognized lending institution.

F. The liens herein referred to as rental claims or maintenance assessments to particular condominium units shall be specifically subordinate to the claim of any institutional mortgagee whose mortgage is filed in the Public Records of Lee County, Florida, prior to the Association filing its lien in the Public Records.

G. Anything herein to the contrary notwithstanding the responsibility for maintenance, repair and replacement of any windows, doors, screens, plastic, or other sliding aluminum panels, sliding glass doors, porches, or verandas appurtenant to particular condominium units shall be that of the unit owners whether or not the same shall be located within the condominium unit except in those instances where such damage shall occur as a result of and as part of building structural damage resulting from calamity covered by condominium Association insurance. Moreover, recognizing the importance of continuity, and the importance of uniform appearance, no amendment or alteration of any area of the exterior of the condominium unit or appurtenances thereto shall be made by the unit owner which is not in conformity with the general plan and color scheme of the buildings and without the consent of the Association.

H. Anything herein to the contrary, the responsibility for the maintenance, repair, and replacement of any electrical, plumbing, or other utility specifically serving the individual condominium unit shall be borne by the unit owner.

I. The Developer, its successors, nominees and assigns specifically reserve the right to install in the recreational areas or the common element areas coin operated laundry machines, or other coin operated machines and vending machines. The Developer specifically reserves the right of ingress and egress to common areas and to the condominium individual units for the purpose of installation, maintenance and repairs of such items.

J. There shall be no limitation upon sale of any unit based upon race, creed, color, sex, religion or national origin.

K. No fee charged by the Association for approval of lease for more than twelve (12) months shall be in excess of expenditures reasonably required, and shall in no event exceed Fifty (\$50.00) Dollars. No charge shall be made in connection with an extension or renewal of a lease.

L. No amendment of the Declaration shall be made which shall change the configuration or size of any condominium unit in any material fashion or alter the appurtenances of such unit, or change the proportion by which a unit owner shares the common expenses or owns the common surplus without the consent of the unit owner.

M. There is specifically granted to each unit owner a non-exclusive easement for streets, walks and other rights of way serving the unit as a part of the common elements. All liens and leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each unit owner.

N. All persons joining this Declaration subjects their interest to the provisions of this declaration and the provisions of Chapter 711, Florida Statutes (1975).

O. Any first Mortgagee who shall acquire title by reason of foreclosure or deed transfer in lieu of foreclosure, may be excused from payment of any unpaid liens for common expenses unpaid by the Mortgagor which were not recorded in the

Public Records of Lee County, Florida, prior to recording of it's evidence of title, provided that this shall not excuse such Mortgage holder from payment of any such expenses during the period of his or its ownership of such unit.

IN WITNESS WHEREOF, Pink Shell, Inc., a Florida corporation, by and through its undersigned officers, has caused this Condominium Declaration to be signed in its name, and its corporate seal affixed and attested by its Secretary, this day of 1976.

Attest:

Pink Shell, Inc.

Roxanna L. Smith
Secretary

by

Robert C. Davis Sr.
President

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this 17th day of December 1976, before me personally appeared ROBERT C. DAVIS Sr., and ROXANNA SMITH, President and Secretary respectively of Pink Shell, Inc., a corporation under the laws of the State of Florida, to me known to be the persons described in and who executed the foregoing instrument and acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned, and that the Secretary affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal the day and year last aforesaid.

[Signature]
Notary Public

My Commission expires: 8-24-80

THIS INSTRUMENT PREPARED BY:
Larry A. Echols, Esquire
Attorney at Law
Post Office Box 2689
Fort Myers Beach, Florida 33931.

JOINDER OF MORTGAGEE

Gulf Federal Savings and Loan Association of Fort Myers, a corporation organized and existing under the laws of the United States of America, whose address is 2301 McGregor Boulevard, Fort Florida 33901, called the Mortgagee, the owner and holder of a mortgage upon the following lands in Lee County, Florida:

Lots 43 and 44 Island Shores Club Section, all per plat in Plat Book 9, Page 41, Public Records of Lee County, Florida.

which mortgage is dated June 10th, 1976 and is recorded in O.R. Book 1143 at Page 1593 of the Public Records of Lee County, Florida, joins in the making of the foregoing Condominium Declaration, and the Mortgagee agrees that the lien of its mortgage shall be upon the following described property in Lee County, Florida:

Units 1-30 of Pink Shell Vacation Villas a Condominium, according to the Condominium Declaration.

Gulf Federal Savings and Loan Association of Fort Myers.

by Bobby E. Williams President

Attest: Paul K. Lutz Assistant Secretary

Witness

Witness

STATE OF FLORIDA
COUNTY OF LEE

I HEREBY CERTIFY that on this 17th day of December, 1976, before me personally appeared Bobby E. Williams and Richard K. Newton of Gulf Federal Savings and Loan Association of Fort Myers, a corporation organized and existing under the laws of the United States of America, to me known to be the persons who executed the foregoing instrument as such officers and severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned, and that they affixed thereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Fort Myers in the County of Lee and State of Florida, the day and year last aforesaid.

MY COMMISSION EXPIRES NOV 2, 1979

Notary Public.

BYLAWS
OF
PINK SHELL VACATION VILLAS CONDOMINIUM ASSOCIATION, INC.
(A Corporation Not For Profit)

DEFINITIONS

All terms used in these Bylaws shall have those definitions set forth in the Condominium Declaration of Pink Shell Vacation Villas, a Condominium. Any terms not defined in the Declaration shall have those definitions established by Florida Statute 711. If any definition in the Declaration conflicts with a definition in the Florida Statutes, the definition in the Declaration shall prevail and govern the interpretation of this document.

ARTICLE I
NAME AND LOCATION

Section 1. The name of this Association shall be Pink Shell Vacation Villas Condominium Association, Inc., a corporation not for profit.

Section 2. The principal office of the Association in this State shall be located at 100 Estero Boulevard, Fort Myers Beach, Florida.

Section 3. Other offices for the transaction of business shall be located at such places as the Board of Administration may from time to time determine.

ARTICLE II
MEMBERSHIP AND VOTING PROVISIONS

Section 1. The members of the Association shall be defined as the Unit Owners, more particularly described in the Condominium Declaration. The total possible number of association memberships shall be thirty (30).

Section 2. An annual meeting of the association members shall be held at 1:30 p.m. on the first Monday in March of each year or within thirty (30) days thereof as determined by the Board of Administration; said meeting to be held at the principal office of the Association or any such place in Lee County, either on the condominium property or elsewhere, as may be described in the notice of such meeting. At such meeting, the association members shall elect administrators to serve until their successors shall be elected and qualified.

Special members' meetings shall be held at the principal office of the corporation whenever called by the President or Vice President or by a majority of the Board of Administration, and must be called by such officers upon written request from members entitled to cast one-third (1/3rd) of the votes of the entire membership. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

Section 3. Notice of the time and place of the annual meeting or special meeting shall be sent by Certified United States Mail, by the Secretary, to each association member, or in the case of a husband and wife, the same may be addressed by one notice addressed to both of them, not less than fourteen (14) days before the date of such meeting. These notices may, in the alternative, be hand delivered with appropriate receipts provided by the Secretary or his agent. Notice shall further be posted in a conspicuous place upon the condominium property at least fourteen (14) days prior to such meeting.

Section 4. Voting.

A. The owner of each unit shall be entitled to one (1) vote. If an owner owns more than one unit, he shall be entitled to one (1) vote for each unit owned. The vote of a unit shall not be divisible.

B-I

B. A simple majority of all of the owners' total votes shall decide any question unless the Declaration, Bylaws, or Articles provides otherwise.

Section 5. Quorum. Unless otherwise provided in these Bylaws, the presence in person or by proxy of a majority of unit owners shall constitute a quorum.

Section 6. Proxies. Votes may be cast in person or by proxy. All proxies shall be in writing, signed by the person entitled to vote, shall be filed with the Secretary of the Association prior to the meeting at which they are to be used, and shall be valid only for the particular meeting designated. Where a unit is owned jointly by a husband and wife, and they have not designated one of themselves as a Voting Member, a proxy must be signed by both in order to designate a third person as proxy. No person shall be designated to hold more than five (5) proxies.

Section 7. Designation of Voting Member. If a unit is owned by one person, his right to vote shall be established by the record title to the unit. If a unit is owned by more than one person, the person entitled to cast the unit's vote shall be designated in a Certificate to be filed with the Secretary, signed by all of the record owners of the unit. If a unit is owned by a corporation, it shall designate the officer or employee entitled to cast the unit's vote by executing a Certificate to be filed with the Secretary, signed by its President or Vice President and attested to by its Secretary or Assistant Secretary. The person designated in such Certificate shall be known as the Voting Member. If, for a unit owned by more than one person or by a corporation, such Certificate is not on file with the Secretary of the Association, the vote of the unit shall not be counted in determining the presence of a quorum, or for any purpose requiring the approval of the person entitled to cast the vote for the unit, except if said unit is owned jointly by a husband and wife. Such Certificate shall be valid until revoked or superseded by a subsequent Certificate, or until a change occurs in the ownership of the unit. If a unit is owned jointly by a husband and wife, the following provisions are applicable:

A. They may, but they shall not be required to, designate a Voting Member;

B. If they do not designate a Voting Member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting;

C. Where they do not designate a Voting Member and only one is present at a meeting, the person present may cast the unit's vote.

Section 8. Limitation on Right to Vote. Each association member has an obligation to pay a monthly maintenance assessment. In addition, an association member may be obligated to pay a special assessment. The Association has the responsibility and obligation to make and collect these assessments. If, at the time of any meeting of the association members, any association member is more than forty-five (45) days delinquent in the payment of any assessment, he shall not be entitled to vote. The Treasurer, or such other person or entity charged with the responsibility of collecting assessments, shall, at the commencement of any meeting, certify to the person conducting the meeting which units are current in the payment of all assessments and are therefore eligible to vote.

ARTICLE III
ADMINISTRATION AND MANAGEMENT OF
CONDOMINIUM BY BOARD OF ADMINISTRATION

Section 1. The administration and management of the condominium property as the same relates to the common elements, and limited common elements, and the providing of utilities, as may be designated, shall be vested in the condominium association through the Board of Administration. Minutes of all meetings of unit owners and the Board of Administration shall be kept in a business-like manner and shall be available for inspection by unit owners or Board of Administration members at all reasonable times. The Association shall maintain records according to good accounting practices which shall be open to inspection by unit owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to unit owners or their authorized representatives. Such records shall include a record of all receipts and expenditures, together with an accounting for each unit which shall designate the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments come due, and the amounts paid upon the account and the current balance due.

Section 2. Powers and Duties. The Board of Administration shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all acts and things that are not prohibited by law, the Declaration, Articles, or these Bylaws directed to be exercised and done by unit owners. These powers shall specifically include, but shall not be limited to, the following:

A. To exercise all powers specifically set forth in the Declaration, Articles, Bylaws, the Act, and all powers incidental thereto.

B. To make regular and special assessments; to collect said assessments; and to use and expend the assessments to carry out the purposes of the Association.

C. To employ, dismiss and control the personnel necessary for the maintenance and operation of the condominium, its common areas and facilities; to employ attorneys, accountants, contractors, and other professionals as the need arises.

D. To make and amend regulations respecting the operation, use, and maintenance of the common elements, limited common elements, property, facilities, and all other units.

E. To contract for the management of the condominium and to delegate to a Manager all of the powers and duties of the Association, except those which may be required by the Declaration to have approval of the Membership; to contract for the management of condominium property.

F. To provide for the further improvement of the property, both real and personal, including the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and to acquire and enter into agreements, pursuant to the Act, subject to the provisions of the Declaration, Articles, and Bylaws.

G. The Association shall have the power to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey the same.

Section 3. The business, condominium property, and all assessments and generally the management and control of the Association and property owned by it, shall be conducted and be managed by the Board of Administration of five (5) administrators who shall be elected by the association members.

Section 4. The annual budget meeting of the Association may be held during the annual Association meeting.

Section 5. Meetings of the Board of Administration shall be held in the principal office of the Association or at such other places, within or without the condominium property, as a majority of the administrators shall from time to time designate.

Section 6. Meetings of the Board of Administration shall be open to all unit owners and notices of these meetings shall be conspicuously posted at least forty eight (48) hours in advance for the attention of unit owners, except in the case of an emergency.

Section 7. A majority of the Board of Administration for the transaction of business at any annual or special meeting shall be necessary to constitute a quorum and the act of a majority of the administrators present at any such meeting at which a quorum is present shall be the act of the Board of Administration.

Section 8. The Board of Administration shall elect the officers of the Association. Such election may be held at the Board of Administration meeting following the annual Association meeting. An officer may be removed at any time by a majority vote of the Board of Administration.

Section 9. Vacancies in the Board of Administration may be filled by the remaining members of the Board at any Board of Administration meeting.

Section 10. At each annual meeting of the Association, the administrators or the chairman thereof shall submit a report to the Association of the business transacted during the preceding year, together with a report of the general financial condition of the Association.

Section 11. Members of the Board of Administration shall be elected for a term of one (1) year, and any member of said Board of Administration may be re-elected for additional terms.

Section 12. Within sixty (60) days after unit owners other than the Developer are entitled to elect a member or members of the Board of Administration of the Association as provided in the Declaration of Condominium, the Association, through its Board of Administration, shall call a meeting and give not less than thirty (30) days nor more than forty (40) days notice of such a meeting to the unit owners for such a purpose. Such a meeting may be called and such a notice may be given by any unit owner if the Association, through its Board of Administration, failed to act.

Section 13. The Board of Administration shall adopt a budget for each fiscal year and the same shall contain estimates of costs for performing the various matters and functions of the Association. Copies of the proposed budget and assessments shall be mailed to each unit owner with notice of the budget meeting not less than thirty (30) days prior to the budget meeting. This budget, together with the notice for the budget meeting, may be delivered by hand as otherwise provided herein.

Section 14. The Board of Administration shall deposit the funds of the Association in such bank or banks as they may from time to time direct, and withdrawal of such funds shall be by such person or persons as the Board of Administration may direct. The Board of Administration shall have the power to borrow funds on behalf of the Association to meet current expenses not then collected from regular assessments for recurring common expenses or from special assessments.

Section 15. The Association shall maintain in its records copies of all insurance policies. A copy of each insurance policy obtained by the Association shall be made available for inspection by unit owners or their authorized representatives at reasonable times.

Section 16. No unit owner, except as an officer of the Association, shall have any authority to act for the Association.

Section 17. The association members or Board of Administration may direct any officer or administrator of the Association to provide surety or fidelity bonds in such amounts as may be directed. The bond premium for the bonds described above shall be paid for by the Association.

Section 18. The Board of Administration may make such rules and regulations governing use of condominium property as they may deem proper upon approval of a majority of all unit owners.

Section 19. The Board of Administration may employ such agents or parties as it may deem necessary to assist it in the administration and management of the Association. The Board of Administration may employ a management company to assist it in the administration and management of the Association.

ARTICLE IV OFFICERS

Section 1. The Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Administration. One (1) person may hold more than one (1) of these offices, except that the same person may not hold the offices of President and Secretary. All of the officers shall be members of the Board of Administration.

Section 2. Election. The officers of the Association shall be elected annually by the Board of Administration at the first organizational meeting of each new Board.

Section 3. Term. The officers shall hold office for one (1) year or until their successors are elected and qualify for their office.

Section 4. The President. The President shall be the Chief Executive Officer of the Association. He shall preside at all meetings of unit owners and of the Board of Administration. He shall exercise the executive powers of the Association and have general supervision over its affairs and other officers. He shall sign all written contracts and perform all of the duties incident to his office and such others as may be delegated to him from time to time by the Board of Administration.

Section 5. The Vice President. The Vice President shall perform all of the duties of the President in the absence of the President, and such other duties as may be required of him by the Board of Administration.

Section 6. The Secretary. The Secretary shall issue notices of all Board of Administration meetings and all meetings of unit owners; he shall attend and keep the Minutes of same; he shall have charge of all of the books of the Association as well as its records and papers, except those kept by the Treasurer. All minutes shall be kept in a business-like manner and shall be available for inspection by unit owners and Board of Administration members at all reasonable times. The functions of the Secretary may be delegated to a manager or management company or its agents and employees working with and under the approval of the Secretary and the Board of Administration.

Section 7. The Treasurer.

A. The Treasurer shall have custody of the Association's funds and securities. He shall keep full and accurate accounts of the Association's receipts and disbursements. He shall deposit all monies and other valuable effects in the name of and to the credit of the Association in such depositories as may be designated by the Board of Administration. The books shall reflect an account for each unit owner. This account shall contain the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amounts paid upon that unit owner's account and the balance due under that account.

B. He shall disburse the funds of the Association as may be ordered by the Board of Administration, making proper vouchers for such disbursements. He shall render an account of all his transactions as the Treasurer and of the financial condition of the Association to the Board of Administration whenever it may require it.

C. He shall collect all assessments and shall promptly report to the Board of Administration the status of collections.

D. He shall maintain accounting records according to good accounting practices which shall be open to inspection by unit owners or their authorized representatives at reasonable times. He shall render to unit owners or their authorized representatives at least annually, a written summary of the Association's fiscal activities.

E. He shall prepare the Association's budget.

F. The functions of the Treasurer may be delegated to a manager or management company or its agents and employees working with and under the approval of the Treasurer and the Board of Administration.

ARTICLE V
ASSESSMENTS

Section 1. Fiscal Year. The fiscal year of the Association shall begin on the first day of January of each year, provided, however, that the Board of Administration, whenever it deems it advisable, is expressly authorized to change to a different fiscal year in accordance with the applicable provisions of the Internal Revenue Code.

Section 2. Determination of Assessments.

A. The Board of Administration shall fix and determine the sum or sums necessary and adequate to assess unit owners for their share of the common expenses set forth in the budget. Common expenses shall include expenses for the operation, maintenance, repair, or replacement of the common elements and limited common elements; costs of carrying out the powers and duties of the Association; all insurance premiums and expenses, including flood, wind, fire insurance and extended coverage; and any other expenses designated as common expenses by the Board or the Declaration. Funds for the payment of common expenses shall be assessed against unit owners as provided in the Declaration. Assessments shall be payable monthly in advance and shall be due on the first day of each month unless otherwise ordered by the Board of Administration. Special assessments, if necessary, shall be levied in the same manner as regular assessments and shall be payable in the manner determined by the Board of Administration. All funds due under these Bylaws and the Declaration are common expenses.

B. When the Board of Administration has determined the amount of any assessment, the Treasurer shall mail or present to each unit owner a statement of assessment. All assessments shall be paid to the Treasurer and, upon request, the Treasurer shall give a receipt for each payment received.

C. The Board of Administration has the authority to make assessments as to the following:

- (1) For additional recreational or social activities;
- (2) For additions to the common elements and limited common elements.

Section 3. Application of Payments and Commingling of Funds.
All sums collected by the Association from assessments may be commingled in a single fund or divided into more than one fund, as determined by the Board of Administration.

Section 4. Acceleration of Assessment Installments Upon Default. If a unit owner shall be in default in the payment of an installment upon any assessment, the Board of Administration may accelerate the remaining monthly installments for the twelve month period. A notice of acceleration shall be sent to the unit owner and thereupon, the unpaid balance of the assessment shall become due upon the date stated in the notice, which shall not be less than fifteen (15) days after delivery of or the mailing of such notice.

Section 5. Audit. The Board of Administration shall render an annual statement to the unit owners no later than four (4) months after the end of the Association's fiscal year. The Board of Administration shall perform a continual internal audit of its financial records for the purpose of verifying the same but no independent or external audit shall be required of it. The Board of Administration may conduct an external audit by an independent auditor at such reasonable time as it shall agree to; provided, however, said request for inspection is not made more than once in any calendar year and provided that the cost and expense of same is borne by the Association.

Section 6. Assessments for recurring common expenses shall be made for a twelve-month period concurrent with the preparation of the annual budget. Such assessments shall be due in twelve (12) equal consecutive monthly installments on the first day of each month for the twelve-month period in which the assessments are made. If the new annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior annual assessment, and regular monthly installments thereon shall be due upon each installment payment date until modified or changed by a new assessment schedule. The total assessments for the recurring common expenses shall not be more than one hundred fifteen (115%) percent of the assessments for the prior year, provided that this provision shall not prevent the levy of any necessary, extraordinary assessment from time to time. In determining whether assessments exceed one hundred fifteen (115%) percent of similar assessments in prior years, there shall be excluded from the computation any provision for reasonable reserves made by the Board of Administration in respect of repair or replacement of the condominium property or in respect of anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis. If a budget is adopted by the Board of Administration which requires an assessment against unit owners in any fiscal or calendar year exceeding one hundred fifteen (115%) percent of such assessments for the preceding year, upon written application of at least ten (10%) percent of the unit owners, a special meeting of the unit owners shall be held not less than ten (10) days after written notice to each unit owner, but within thirty (30) days of the delivery of such

application to the Board of Administration by any member thereof, at which such special meeting the unit owners may consider and enact a revision of the budget and may recall any or all members of the present Board of Administration and elect their successors. The Board of Administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the unit owners at the meeting or by a majority of their whole number by a writing, such budget shall not thereafter be re-examined by the unit owner in the manner hereinabove set forth nor shall the Board of Administration be recalled under the terms of this section. So long as the developer is in control of the Board of Administration, the Board shall not impose an assessment for any year greater than one hundred fifteen (115%) percent of the prior year without approval of a majority of the unit owners. In the event that such an annual assessment proves to be insufficient, it may be amended at any time thereafter provided that the written approval of not less than sixty six and two-thirds (66 2/3%) percent of the unit owners entitled to vote have indicated their approval of the revised annual assessment. Any unpaid assessments for the remaining portion of the twelve-month period shall then be due in equal monthly installments on the first month thereafter during the year in which the revised assessment is made. The rights and powers to collect common expenses, granted to the Board of Administration in this Article, may be exercised concurrently by the Developer until such time as the management of the Association shall be fully vested in the Board of Administration elected by the owners of the Association. The Board of Administration may have such actions or rights as the law may provide for any default of assessment payments; the Association shall have a lien against the unit for any unpaid assessments.

Section 7. Assessments for Emergencies. Assessments for common expenses of emergencies which cannot be paid from the assessments for recurring expenses shall be made only after notice of the need therefor to the apartment owners concerned. After such notice, and upon approval in writing of more than one-half (1/2) of such apartment owners concerned, the assessment shall become effective, and it shall be due after thirty (30) days' notice thereof in such manner as the Board of Administration of the Association may require.

Section 8. Lien for Assessments Subordinate to Existing Mortgagees. In any foreclosure action the lien of the Association shall be subordinate and inferior to any mortgage liens of record encumbering such apartment, at the time the lien for assessment was recorded. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment for any sums, charges or assessments required to be paid to the Association without waiving its lien securing payment. The Association is obligated to send the mortgagee, if any, a copy of the default notice prior to instituting any action.

Section 9. Notification of Mortgagee. Any apartment owner who mortgages his apartment shall notify the Association, providing the name and address of his mortgagee. The Association shall notify the mortgagee of any unpaid assessments due from the owner of an apartment.

Section 10. Payment of Assessments by First Mortgage Holders and Excusal Therefrom. A first mortgagee who shall acquire title to a unit as a result of foreclosure or a deed in lieu of foreclosure may not during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership. Provided, however, that if any such first mortgage holder shall acquire title as herein provided, then his successors or assigns shall not be responsible for the share of common expenses or assessments made by the Association pertaining

To such unit which are chargeable to the former unit owner and which became due prior to acquisition of title as a result of foreclosure unless such share is secured by a claim of lien for assessments that has been recorded prior to the recording of the foreclosed mortgage. Provided, however, that the Developer shall be excused from the payment of a share of the common expenses and assessments for a period of the later period of time of the fourth calendar month following the month in which the Declaration shall be recorded or a period terminating on the first day of the month of the third succeeding calendar month after closing of the first purchase and sale of a condominium unit within the condominium development.

ARTICLE VI
DEFAULT, COMPLIANCE AND LEGAL ACTIONS

Section 1. Violations. In the event of a violation by a unit owner of any of the provisions of the Declaration, Bylaws, or the Act, the Association, by direction of its Board of Administration, shall notify the unit owner of said breach by written notice, transmitted to the unit owner at his address by certified mail. If such violation shall continue for a period of thirty (30) days from the date of mailing of the notice, the Association shall have the right to treat such violation as an intentional, material breach of the Declaration, Bylaws, or the Act, and the Association shall then, at its option, have the following elections:

A. To commence an action in equity to enforce performance on the part of the unit owner; or

B. To commence an action at law to recover its damages; or

C. To commence an action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Upon finding by a Court that the unit owner was in violation of any of the provisions of the above-mentioned documents, the unit owner shall reimburse the Association for its reasonable attorney's fee incurred in bringing such action. Any violations which are deemed by the Board of Administration to be a hazard to public health or safety may be corrected by the Association immediately, as an emergency matter. The cost thereof shall be charged to the unit owner as a specific expense.

Section 2. Negligence or Carelessness of a Unit Owner. All unit owners shall be liable for the expenses of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by the negligence of any member of his family, his or their guests, employees, agents, licensees, or lessees. Such liability shall be limited to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any unit or its appurtenances. The cost of any maintenance, repair, or replacement performed pursuant to this Section shall be charged to said unit owner as a specific expense.

Section 3. Costs and Attorney's Fees. In any proceeding arising because of an alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the original or Appellate Court.

Section 4. No Waiver of Rights. The failure of the Association or a unit owner to enforce any right, provision, covenant

or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or unit owner to enforce such right, provision, covenant, or condition in the future.

Section 5. Election of Remedies. All Rights, remedies, and privileges granted to the Association or a unit owner pursuant to any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted by the condominium documents.

Section 6. Notice of Right to Intervene. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting the Association and the unit owners, the Association shall give notice of the exposure within a reasonable time to all unit owners who may be exposed to the liability. These unit owners shall have the right to intervene and defend in the legal action if it appears that they may be exposed to liability as individual unit owners.

ARTICLE VII UNITS FREELY TRANSFERABLE

Section 1. The unit owners shall be free to sell or transfer their units to any individual or corporation without Association approval.

Section 2. Acquisition on Foreclosure. At any foreclosure sale of a parcel, the Board of Administration may acquire the parcel being foreclosed in the name of the Association or its designee. The acquisition of a foreclosed parcel shall only be accomplished with the authorization and approval of an affirmative vote of Voting Members casting not less than sixty (60%) percent of the total votes of the Voting Members present at any regular or special meeting. The term "foreclosure", as used in this Section, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments. The power of the Board of Administration to acquire a parcel at any foreclosure sale shall never be interpreted as a requirement or obligation on the part of the Board of Administration or the Association to do so. The provisions hereof are permissive in nature and are set forth herein for the purpose of confirming this power in the Board of Administration should the requisite approval of Voting Members be obtained. The Board of Administration shall not be required to obtain the approval of unit owners at the foreclosure sale of a parcel due to the foreclosure of the Association's lien for assessments under the provisions of the Declaration, provided the bid of the Board of Administration does not exceed the amount of the judgment.

ARTICLE VIII AMENDMENTS TO THE BYLAWS

Prior to the time of the recordation of the Declaration, these Bylaws may be amended, altered, or rescinded by an instrument, in writing, signed by a majority of the then existing Board of Administration.

Subsequent to the recording of the Declaration, these Bylaws may be altered, amended, or added to at any duly called meeting of the unit owners provided that:

A. Notice of the meeting shall contain a statement of the proposed amendment;

OFF: 1173 PC1516

B. The amendment shall be approved upon the affirmative vote of a majority of unit owners;

C. Said amendment shall be recorded and certified as required by the Act. Notwithstanding anything above to the contrary, until unit owners are entitled to elect a majority of the Board of Administration, these Bylaws may not be amended without a prior resolution of the Board of Administration requesting said amendment; and

D. Notwithstanding the foregoing, no amendment to these Bylaws may, at any time, be adopted or become effective which shall abridge, amend, or alter the rights of Developer, as set forth in any of the condominium documents and as specified in the Act, without first obtaining the prior written consent of the Developer.

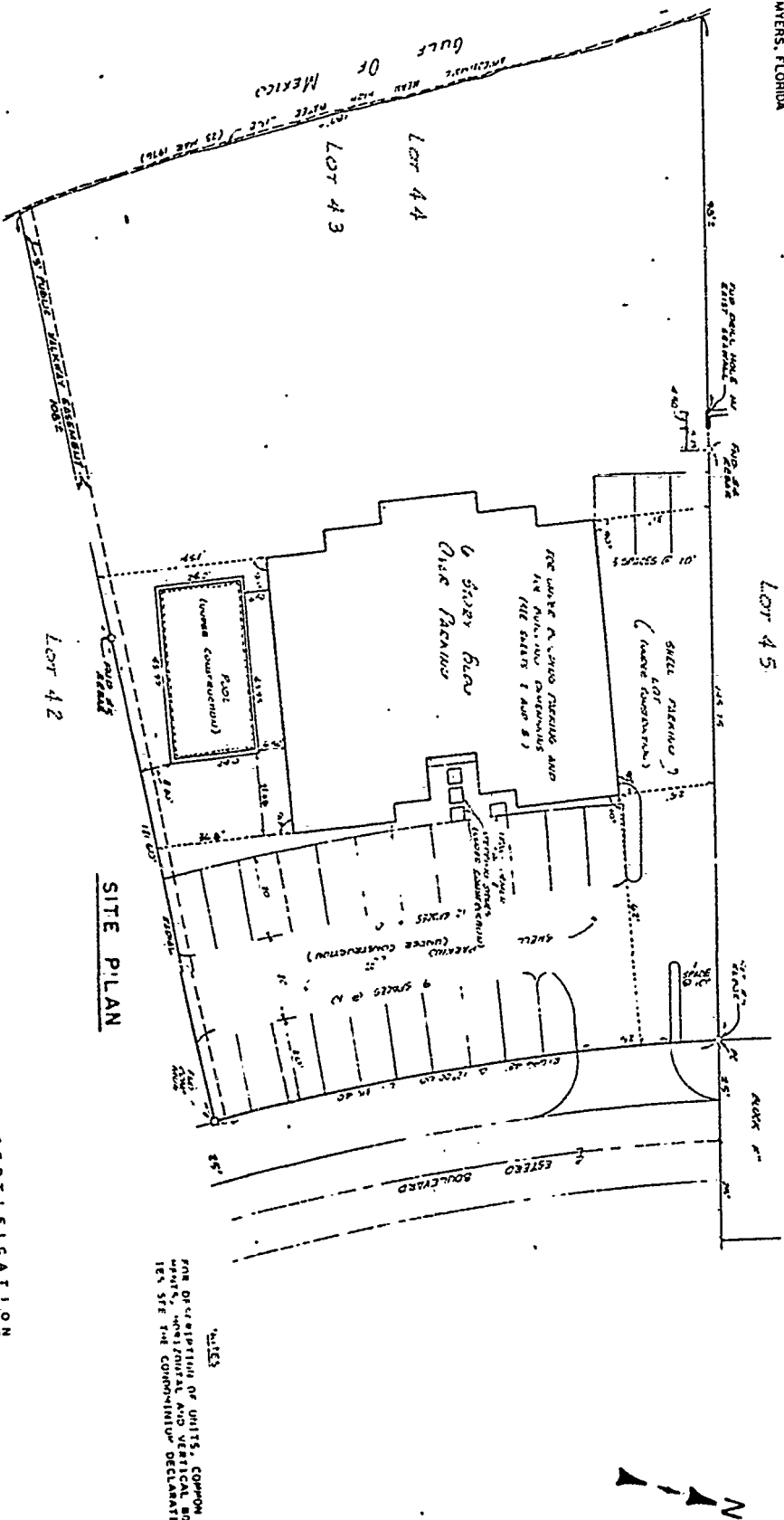
A CONDOMINIUM

DATE: MAY 1976
JOB NO. 2498
SCALE: 1" = 20'

5 PAGE 12
SHEET NO. 1 OF 3

OFF. 1173 Pg. 1517
REC. 1173

EXHIBIT "B"



14. AMI SHIRT'S CLUB SECTION, A
 LOT 53 & 54,
 SUBDIVISION AS RECORDED IN PLAT BOOK 2, PAGE 41
 OF THE PUBLIC RECORDS OF LEF. COUNTY, FLORIDA.

[illegible]

DECEMBER 1976 A. D.
STANLEY R. II
FLA. REG. NO. 986
P.O. BOX 1 S. 1133

Page 47 of 100

EXHIBIT "B"

CONDOMINIUM PLAT BOOK 5 PAGE 15
SHEET NO. 2 OF 3

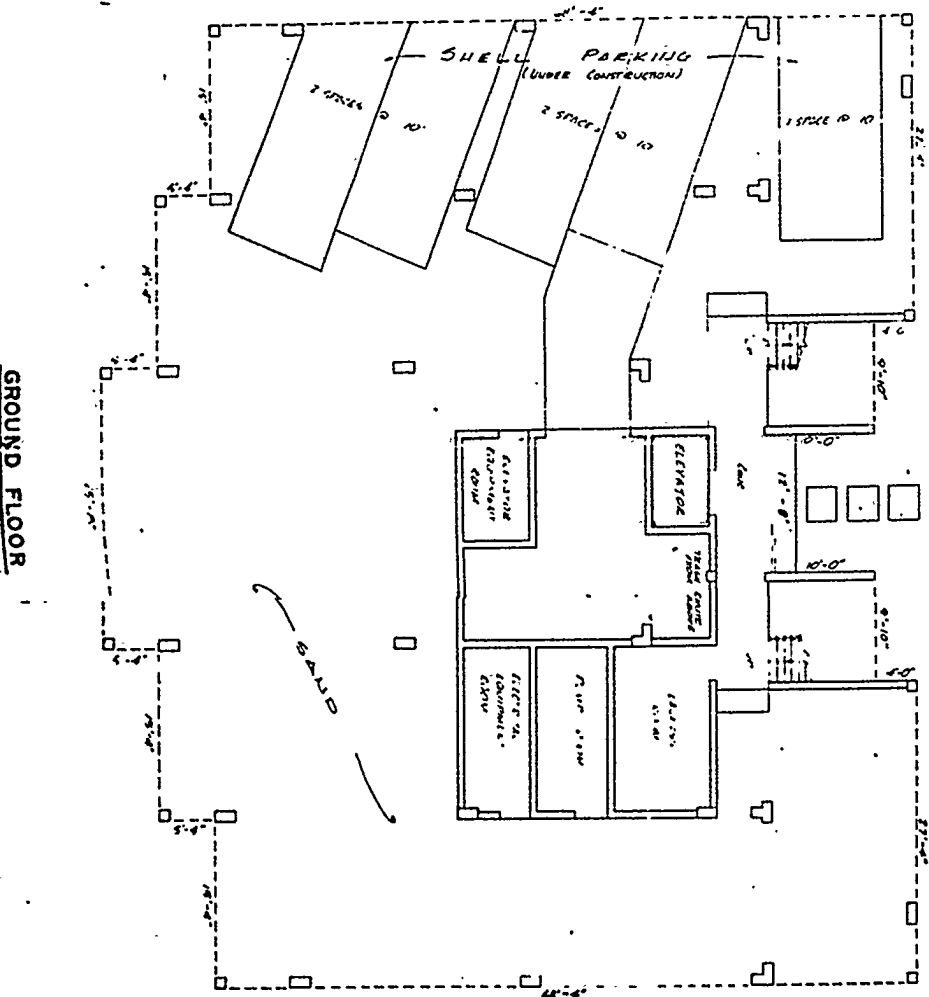
PINK SHELL VACATION VILLAS

A CONDOMINIUM

OFF. 1173 PC1548
REC. 1173 PC1548

INK ENGINEERING, INC.
260 PROFESSIONAL PL.
N. FORT MYERS, FLORIDA

DATE: MAY 1976
JOB NO. 2498
SCALE: 1/8" = 1'-0"



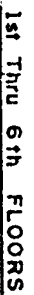
GROUND FLOOR

A CONDOMINIUM

lower boundary

2

3
PAGE 19

[illegible]

SURVEYOR'S CERTIFICATION

PINK SHELL VACATION VILLAS CONDOMINIUM

I have examined the foregoing Declaration of Condominium and attached Exhibits, including the "Plot Plan" of the Pink Shell Vacation Villas Condominium, attached to the Declaration as Exhibit "B", and certify that such material together with the wording of the Declaration relating to matters of survey, is a correct representation of the improvements described, and, further, that with such material there can be determined therefrom the identification, location, and dimensions of the common elements and of each unit.

DONE this 17TH day of DECEMBER, 1976.

INK ENGINEERING, INC.

BY Stanley K. Ink
STANLEY K. INK, Professional
Land Surveyor No. 1733

STATE OF FLORIDA

COUNTY OF LEE

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared STANLEY K. INK to me well known to be the person described in and who executed the above and foregoing Surveyor's Certificate, and he acknowledged before me that he executed the same freely and voluntarily for the uses and purposes therein expressed and set forth, and that he is over the age of twenty-one (21) years.

WITNESS my hand and official seal at Fort Myers, Lee County, Florida, this 17TH day of DECEMBER, 1976.

Howard S. Smith
Notary Public

My Commission Expires: 21.50.1977

EXHIBIT "C"

RESTRICTIONS UPON USE OF UNITS AND RULES

FOR

PINK SHELL VACATION VILLAS CONDOMINIUM

1. Automobiles may be parked only in the areas provided for that purpose. Trucks or other non-private passenger vehicles, trailers or motor homes shall not be parked in the parking areas. Boats and other water vessels shall not be maintained in the automobile parking area nor in the common area.

2. Use of the recreational facilities and of the general common elements will be in such manner as to respect the rights of other unit owners. Use of particular recreational facilities will be controlled by regulations to be issued from time to time, but in general such use will be prohibited between the hours of 11:00 P.M. and 8:00 A.M.

3. No radio or television antenna or any wiring for any purpose may be installed on the exterior of the building.

4. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any unit owner on any part of the outside or inside of the demised premises or building without the prior written consent of the Association.

5. The sidewalks, entrances, passages, vestibules, stairways, corridors, halls and elevator must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises.

6. All stairways shall be used only for the purposes intended, and shall not be used for hanging garments or other objects, or for cleaning of rugs or other household items. No washlines of any kind will be maintained outside owner's unit. No unit owner shall discard or permit to fall any items from the windows of the premises, nor shall they place or permit to be placed any foreign objects in the hallways, stairways and other common areas.

7. All common areas inside and outside the building will be used for their intended purposes and no articles belonging to unit owners shall be kept therein or thereon and such areas shall at all times be kept free of obstruction.

8. Outside servants and domestic help of unit owners shall not gather or lounge in the common areas.

9. All units shall be used for residential purposes only.

10. The flooring of all units shall be carpeted except the bathrooms and kitchens. All carpets shall be medium to heavy carpet and pad, of at least sixteen (16) ounce yarn per square yard of carpet and fifty (50) ounce of rubber padding per square yard.

11. Disposition of garbage and trash shall be only by the use of garbage disposal units or by use of receptacles approved by the Association or slides or other modes of disposition as may be designated by the Developer or Association.

12. No pets or animals shall be allowed to be kept in the condominium except for dogs, cats and birds, which must be kept on a leash or caged at all times when outside the apartment. If the Association or the Developer shall determine that any such pet shall become a nuisance to other unit owners, the pet shall be removed from the premises.

13. No owner may make or permit any disturbing noises in the building whether made by himself, his family, friends or servants, nor do or permit anything to be done by such persons that will interfere with the rights, comforts and conveniences of other tenants. No owner may play or suffer to be played any musical instrument, phonograph, radio or television set in his unit between the hours of 11:00 P.M. and the following 8:00 A.M. if the same shall disturb or annoy other occupants of the condominium.

14. There shall be no restriction as to the minimum age of children who may live in or visit the condominium. It is well recognized, however, that children, particularly young children, may become a source of annoyance to adults. For this reason the activities and behavior of all children when upon the condominium property shall be regulated by an adult, including physical supervision where necessary. The Administrators or their designated representative shall at all times have the authority to reasonably require that the owner, lessee, guest or other adult who is responsible for a particular child, remove him from any common area if the child's conduct is such that they believe this action is necessary. In no event shall children under the age of six (6) years be permitted in the pools or other recreational areas unless accompanied by an adult.

15. No garbage cans, supplies, milk bottles, or other articles shall be placed in the halls or on the staircase landings, nor shall anything be hung from the windows or balconies or placed upon the window sills. Neither shall any linens, cloths, clothing, curtains, rugs or mops be shaken out or hung from any of the windows or doors. No fire exits shall be obstructed in any manner.

16. House guests of unit owners may not maintain residence for a continuous period exceeding three (3) months and all such house guests shall be registered by the unit owner with the Association.

17. Leasing or renting of the unit by unit owner shall be as permitted and subject to the provisions of the Condominium Declaration herein.

The foregoing regulation shall not apply to the Developer.

18. Unit owner must maintain in good condition and repair his unit and all internal surfaces within or surrounding his unit; and maintain and repair the fixtures therein and promptly pay for any utilities which are metered separately to his unit.

19. A unit owner may neither make or cause to be made any structural addition or alteration to the unit nor to the common elements without the written approval of the Association.

20. The Developer, or in its stead, the Association, may retain a pass key to the premises. No unit owner shall alter any lock or install a new lock or a knocker on any door of the premises without the written consent of the Association or the Association's agent. In case such consent is given, the unit owner shall provide the Association with an additional key for the use of the Association pursuant to its right of access to the premises.

21. All window curtains or draperies used on window casings which are visible from the exterior of the premises shall be covered by white lining or shall be of a neutral color.

22. No unit owner shall make repairs, remodel or alter his unit in any way, in any manner which will affect the appearance

of the exterior of the building without the approval of the Association; provided that this limitation shall not apply to the Developer.

23. No unit owner shall ignite nor permit to be ignited any fire, charcoal cooker, burner, wood burner, or other similar device within the confines of his unit, or any common area, except in such ground floor level areas as may be provided from time to time for such purposes.

MODEL FORM OF WARRANTY DEED

THIS INDENTURE, made this _____ day of _____, 1976, by and between PINK SHELL, INC., a Florida corporation, having its principal place of business in the County of Lee and State of Florida, party of the first part, and _____ of the _____ of the _____, party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part forever, the following described condominium unit parcel, situate, lying and being in the County of Lee, State of Florida, to-wit:

Unit No. _____ of PINK SHELL VACATION VILLAS, a Condominium, according to the Condominium Declaration thereof on file and recorded in the office of the Clerk of the Circuit Court in Official Record Book _____, at Page _____, Public Records of Lee County, Florida, together with all appurtenances thereto appertaining and specified in said Condominium Declaration.

SUBJECT TO restrictions, easements and reservations and designations of record as stated in said Condominium Declaration, which party of the second part hereby assumes and agrees to observe, comply with, perform and to be subject to, including but not limited to payment of all assessments as may be determined pursuant to said Condominium Declaration.

And the said party of the first part does hereby fully warrant the title to said condominium parcel, and will defend the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed in its name by its President and its corporate seal to be affixed the day and year above written.

Attest:

PINK SHELL, INC.

Secretary

By _____
President

Witness

Witness

STATE OF FLORIDA

COUNTY OF LEE

I HEREBY CERTIFY that on this _____ day of _____, 1976, before me personally appeared Robert C. Davis, Jr. and Roxanna Smith, President and Secretary respectively of Pink Shell, Inc., a corporation under the laws of the State of Florida, to me known to be the persons described in and who executed the foregoing conveyance to _____ and acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned, and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal the day and year last aforesaid.

Notary Public
My Commission expires:

STATE OF FLORIDA

DEPARTMENT OF STATE • DIVISION OF CORPORATIONS

OFF. REC. 1173 PC1526

I certify that the following is a true and correct copy of

CERTIFICATE OF INCORPORATION

OF

PINK SHELL VACATION VILLAS CONDOMINIUM ASSOCIATION, INC.

filed in this office on the 30th day of November

19 76.

Charter Number: 737395



GIVEN under my hand and the Great
Seal of the State of Florida, at
Tallahassee, the Capital, this the
30th day of November
19 76.

A handwritten signature in cursive script, reading "Bruce C. Shethan".

SECRETARY OF STATE

CORP. 101 (Corp. 94)
7-13-76

EXHIBIT "E"

ARTICLES OF INCORPORATION
OF
PINK SHELL VACATION VILLAS CONDOMINIUM ASSOCIATION, INC.
(A Corporation Not For Profit)

FILED
NOV 30 8 31 AM '76
STATE
FLORIDA

In order to form a non-profit corporation in accordance with the laws of the State of Florida, we, the undersigned, hereby associate ourselves into a corporation for the purposes herein-after mentioned; and to that end we do, by these Articles of Incorporation, set forth the following:

OFF. REC. 1173 PC1527

DEFINITIONS

As used herein, or elsewhere in the condominium documents, the terms used shall be those definitions as set out in Declaration of Condominium of Pink Shell Vacation Villas, a condominium. Any terms not defined in the Declaration shall have those definitions set forth in Chapter 711, Florida Statutes, 1975, the Condominium Act, hereinafter referred to as the Act. If any definition in the Declaration conflicts with a definition in the Florida Statutes,

ARTICLE I
NAME

The name of this corporation shall be PINK SHELL VACATION VILLAS CONDOMINIUM ASSOCIATION, INC. The mailing address for this corporation is 100 Estero Boulevard, Fort Myers Beach, Florida 33931.

ARTICLE II
PURPOSE

This corporation is created to be the Association for PINK SHELL VACATION VILLAS a Condominium. This condominium is constructed upon real property located on Fort Myers Beach in Lee County, Florida.

This corporation will undertake the performance of, and carry out the acts and duties incident to the administration, operation, and management of the condominium in accordance with the terms, provisions, conditions, and authority contained in these Articles of Incorporation and in the Declaration, Bylaws, and the Act. This corporation may own, operate, lease, sell, trade and otherwise deal with the condominium property, in whatever manner may be necessary or convenient to accomplish the proper administration of this condominium.

ARTICLE III
POWERS

The powers of this corporation shall include and be governed by the following provisions:

1. The corporation shall have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of the condominium documents and the Act.

2. The corporation shall have all the powers of condominium associations under and pursuant to the Act, and shall have all of the powers reasonably necessary to implement the purposes of the corporation, including but not limited to, the following:

A. To make, establish, and enforce reasonable rules and regulations governing the use of units, common elements, limited common elements, and condominium property;

B. To make, levy, and collect assessments against unit owners; to provide the funds to pay for common expenses of each building and other improvements within the condominium as is provided in the condominium documents and the Act, and to use and expend the proceeds of assessments in the exercise of the powers and duties of the corporation;

C. To maintain, repair, replace, and operate the condominium property;

D. To reconstruct improvements within the condominium property in the event of casualty or other loss;

E. To enforce the provisions of the condominium documents.

ARTICLE IV MEMBERS

The qualifications of members, the manner of admission to membership, the termination of such membership, and voting by members shall be as follows:

1. The owners of all apartment units in the condominium shall be members of this corporation, and no other persons or entities shall be entitled to membership.

2. Membership shall be established by the acquisition of title to a unit in the condominium. Membership shall be automatically terminated when a unit owner divests himself of or transfers title to his unit.

3. The share of a member in the funds and assets of this corporation, and membership in this corporation cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to a unit.

4. The owners of all of the units in the condominium are referred to herein as the "Membership".

5. Until the condominium property is formally submitted to condominium ownership, the Membership of this corporation shall be comprised of the subscribers to these Articles. In the event of the resignation or termination of Membership of any such subscriber, the remaining subscribers may nominate and designate a successor subscriber. Each of these subscribers and their successors shall be entitled to cast one vote on all matters upon which the Membership is entitled to vote. When the condominium property is formally submitted to condominium ownership, the Developer shall exercise the Membership rights of a unit until title to the unit is transferred.

ARTICLE V TERM

The term for which this corporation is to exist shall be perpetual.

ARTICLE VI
SUBSCRIBERS

The names and street addresses of the subscribers to these Articles are as follows:

Robert C. Davis, Sr.
250 Estero Blvd.
Ft. Myers Beach, Fla. 33931

Larry A. Echols
14 Pepita St.
Ft. Myers Beach, Fla. 33931

Timothy R. Bogott
2431 Harvard Ave.
Ft. Myers, Fla. 33901

Mary A. Echols
14 Pepita St.
Ft. Myers Beach, Fla. 33931

Joan W. Hendry
133 Washington Ave.
Ft. Myers Beach, Fla. 33931

OFF. REC 1173 PC1529

ARTICLE VII
BOARD OF ADMINISTRATION

The affairs of the corporation will be managed by a Board consisting of five (5) administrators determined by the Bylaws. In no event shall the Board consist of less than five (5) administrators. The administrators on the first Board of Administration need not be members of the corporation.

Subsequent administrators of the corporation shall be elected at the annual meeting of the members in the manner determined by the Bylaws. The administrators named in these Articles shall serve until the first election of administrators. All administrators shall have a fiduciary relationship to the unit owners. Any vacancies in their number occurring before the first election shall be filled by the remaining administrators.

The names and addresses of the administrators who shall hold office and serve until the first regular meeting of the Membership at which administrators are elected are as follows:

Robert C. Davis, Sr.
250 Estero Blvd.
Ft. Myers Beach, Fla. 33931

Larry A. Echols
14 Pepita St.
Ft. Myers Beach, Fla. 33931

Timothy R. Bogott
2431 Harvard Ave.
Ft. Myers, Fla. 33901

Mary A. Echols
14 Pepita St.
Ft. Myers Beach, Fla. 33931

Joan W. Hendry
133 Washington Ave.
Ft. Myers Beach, Fla. 33931

ARTICLE VIII
OFFICERS

1. The operations of the condominium Association, through the corporation, shall be by the Board of Administration. The Board of Administration shall elect officers for the Association. All officers of the Association shall have a fiduciary relationship to the unit owners. The Board of Administration or its officers may employ a management company or any other such person or entity to perform the duties and functions of the Association.

2. The Board shall elect the President, Vice President, Secretary, and Treasurer. One (1) person may hold more than one of these offices, except that the same person may not hold the offices of President and Secretary. All of the officers shall be members of the Board of Administration.

ARTICLE IX
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President Robert C. Davis, Sr.
Vice President Larry A. Echols
Secretary Timothy R. Bogott
Treasurer Timothy R. Bogott

OFF-1173 PC1530
REC

ARTICLE X
BYLAWS

The Bylaws of the corporation shall be adopted by the first Board and thereafter may be altered, amended, or rescinded in the manner provided for by the Bylaws.

ARTICLE XI
AMENDMENTS

1. Prior to the time that the Declaration is recorded, these Articles may be amended by an instrument in writing, signed by all the subscribers to these Articles. The instrument shall state the Article Number and the contents of the amendment. It shall be filed in the office of the Secretary of State of the State of Florida and a certified copy of each amendment shall be attached to these Articles and be recorded with the Declaration.

2. After the Declaration is recorded, these Articles may be amended in the following manner:

A. Notice of the subject matter of the proposed amendment shall be included in the Notice of any meeting at which such proposed amendment is considered.

B. A resolution seeking the approval of a proposed amendment may be proposed by either the Board or the Membership, and, after being proposed and approved by one of said bodies, it must be submitted for approval and thereupon receive approval of the other. Such approval must be by seventy five (75%) percent of the members present at any meeting at which there is a quorum; and such approval must be by sixty six and two-thirds (66 2/3%) percent of the members of the Board at a meeting at which there is a quorum.

C. Notwithstanding the foregoing provisions of this Article XI, no amendment to these Articles which shall abridge, amend, or alter the rights of the Developer may be adopted or become effective without the prior written consent of the Developer.

ARTICLE XII
AMENDMENTS TO THE BYLAWS

Prior to the time of the recordation of the Declaration, the Bylaws may be made, amended, altered, or rescinded by an instrument, in writing, signed by a majority of the then existing Board of Administration.

Subsequent to the recording of the Declaration, the Bylaws may be made, altered, amended, or added to at any duly called meeting of the unit owners provided that:

A. Notice of the meeting shall contain a statement of the proposed amendment;

B. The amendment shall be approved upon the affirmative vote of a majority of unit owners;

C. Said amendment shall be recorded and certified as required by the Act. Notwithstanding anything above to the contrary,

until unit owners are entitled to elect a majority of the Board of Administration, these Bylaws may not be amended without a prior resolution of the Board of Administration requesting such amendment; and

D. Notwithstanding the foregoing, no amendment to these Bylaws may, at any time, be adopted or become effective which shall abridge, amend, or alter the rights of Developer, as set forth in any of the condominium documents and as specified in the Act, without first obtaining the prior written consent of the Developer.

IN WITNESS WHEREOF, the subscribers have hereunto affixed their signatures, this _____ day of _____, 1976.

Robert C. Davis, Sr.
Robert C. Davis, Sr.

Timothy R. Bogott
Timothy R. Bogott

Larry A. Echols
Larry A. Echols

Mary A. Echols
Mary A. Echols

Joan W. Hendry
Joan W. Hendry

OFF REC 1173 PG1531

STATE OF FLORIDA

COUNTY OF DEE

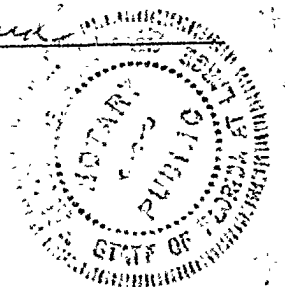
I HEREBY CERTIFY that on this day, before me, a Notary Public duly authorized to take acknowledgements in the State and County named above, personally appeared Robert C. Davis, Sr., Timothy R. Bogott, Larry A. Echols, Mary A. Echols and Joan W. Hendry to me known to be the persons described as subscribers in and who executed the foregoing Articles of Incorporation. They acknowledged before me that they executed the same for the purposes therein expressed.

SWORN TO and subscribed before me this 20 day of DECEMBER, A.D. 1976.

Notary Public
Notary Public

My Commission Expires:

3 DECEMBER 1976



RECORDED IN OFFICIAL
RECORDS
DEE COUNTY, FLORIDA
FILED & VERIFIED

DEC 20 1 35 PM '76

SAL MONTE
CLERK OF CIRCUIT COURT

Sal Monte

A-5

1938694

E A S E M E N T

THIS GRANT OF EASEMENT made the day and year below written
witnesseth that:

WHEREAS, PINK SHELL, INC., a Florida Corporation, is the
owner of the land described below, located in Lee County, Florida;
and

WHEREAS, the Grantee, Lee County, is a political subdivision
of the State of Florida, and

WHEREAS, the Grantor desires to grant a perpetual non-
exclusive easement for a accessway over and across the herein
described property for ingress to and egress from Estero Boulevard
to the Gulf of Mexico, and for the maintenance of the same.

WHEREAS, the Grantee desires such a perpetual non-exclusive
easement and agrees to maintain the same.

NOW THEREFORE, Grantor in consideration of the sum of ONE AND
NO/100 (\$1.00) and other good and valuable consideration does by
this instrument give and grant to Grantees, a perpetual easement
for ingress and egress over, across and upon the walkway described
as follows:

A 8' (eight foot) easement for public walkway; the
centerline being the common lot line between Lots
2 & 3, Gulfshore Subdivision as recorded in Plat
Book 9, Page 88, Lee County, Florida Public Records.

The above described parcel of land for ingress,
egress and maintenance thereof purposes from Estero
Boulevard to the Gulf of Mexico.

This easement is granted with the express condition that
Grantor shall have no responsibility for improving or maintaining
the accessway nor any other liability or responsibility to
Grantees, the general public, or to any of those who may use
the accessway.

The easement does not carry uses not specified herein and
may not be used except for the purposes specified and shall be
interpreted to restrict rather than enlarge the uses contemplated
herein.

This easement is for the use of the general public for access
purposes only.

Documentary Tax Pd: \$ 45
\$ Intangible Tax Pd:
CHARLIE GREEN, CLERK, LEE COUNTY
By W. J. Fernstrom Deputy Clerk

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: W. J. FERNSTROM, D.C.

This instrument made and executed on 27 day of
February, 1984.

Leah Smith, Mrs.
Grantor

Executed in the presence of:

Margaret Jones
John White

RECORDED IN OFFICIAL
LEE COUNTY, FLORIDA
RECORD VERIFIED
MAY 6 3 22 PM '85
CLERK OF COUNTY COURT
Charles Jones

STATE OF FLORIDA)
COUNTY OF LEE)

Before me this day personally appeared JOHNAVIEVE DAVIS,
known to me to be the person described in and who executed the
foregoing instrument and who acknowledged before me that (s)he
executed it.

Sworn to before me on the 27 day of February, 1984.

Lee Anna Soltite
Notary Public

My Commission Expires:

Notary Public, State of Florida
My Commission Expires April 9, 1987
Bonded Three Thousand Dollars, \$3,000.00

(SEAL)

This instrument prepared by:
Kenneth A. Jones
Humphrey, Jones & Myers, P.A.
1625 Hendry Street
Fort Myers, FL 33901



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Site Address: 102 Estero Blvd, Fort Myers Beach, FL 33931

STRAP Number: 24-46-23-W1-02100.00CE

Applicant: Lee County Phone: 239-533-8838

Contact Name: Ehab Guirguis Phone: 239-533-8838

Email: EGuirguis@leegov.com Fax: N/A

Current Zoning District: EC (project area), RM

Future Land Use Map (FLUM) Category: Recreation (project area), Mixed Residential

FLUM Density Range: N/A Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☐ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Lee County Phone: 239-533-8838

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 1500 Monroe St, Fort Myers, FL 33901

Email: EGuirguis@leegov.com Fax: N/A

Contact Name: Ehab Guirguis Phone: 239-533-8838



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☒ Other* (please indicate) <u>Easement Holder</u> | |

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

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

Name: Jordan Varble Phone: 239-334-0046
Address: 2122 Johnson St, Fort Myers FL 33901
Email: jlv@johnsoneng.org Fax: N/A

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

Name: Robin Palmer Phone: 941-505-1700
Address: 201 W. Marion Ave, Punta Gorda FL 33950
Email: rpalmer@weilerengineering.org Fax: N/A

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 652 (d)
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



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- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III – Waivers

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

Code Section: N/A Description: N/A

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Kathy Loomis Phone: 239-707-7033

Mailing Address: 1500 Monroe St, Fort Myers, FL 33901

Email: LOOMISKA@leegov.com Fax: N/A

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



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

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

Kathy Loomis
Signature

Kathy Loomis, Deputy Director
Printed Name

STATE OF Florida COUNTY OF Lee

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

presence OR ☐ online notarization, this 24 day of October, 2025, by

Kathy Loomis ☒ who is personally known to me OR ☐ who has produced



KRISTIE LAVENDER
as identification
Commission # HH 578444
Expires December 6, 2028

Kristie Lavender
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



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Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W1-02100.00CE

Property Address: 102 Estero Blvd, Fort Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

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

B. Boundary Survey:

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 190 feet
Depth (please provide an average width if irregular in shape) 400 feet
Frontage on street: 140 feet. Frontage on waterbody: 245 feet
Total land area: 1.75 ☒ acres ☐ square feet

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

From Big Carlos Pass Bridge: Head west on Estero Blvd. Turn right onto Crescent
St., and left onto Second St. Then turn left onto Old San Carlos Blvd, and right onto
Estero Blvd. Destination will be on the left.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

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

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☒ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

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

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name: Fort Myers Beach Access 43
Authorized Applicant: Lee County
LeePA STRAP Number: 24-46-23-W1-02100.00CE

Current Property Status: Existing Beach Access 43	
Current Zoning: EC (project location), RM	
Future Land Use Map (FLUM) Category: Recreation (project area), Mixed Residential	
Comp Plan Density: N/A	Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
LDC Section 34-652 (d)	Environmentally Critical (EC) zoning district.

Complete the narrative statements below for EACH variance requested.

PART I Narrative Statements

Request for variance from _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
On-grade, pathways through a dune, not to exceed 40 inches in width, subject to compliance with all applicable
state and local environmental regulations. No more than one pathway per property.

Reasons for request

Explain why the variance is needed:
The proposed Mobi-Mat is 5 feet wide, exceeding the town's 40-inch limit.
It replaces a previously existing 5-foot-wide boardwalk within the same footprint.
A 40-inch pathway would reduce accessibility for wheelchairs, strollers, and beach users.
Maintaining the prior width preserves safe and ADA compliance to its allowable extent.
The variance is needed to restore the original functional width for public use.

Explain the possible effect the variance, if granted, would have on surrounding properties:

Granting the variance to allow a 5-foot-wide Mobi-Mat will have no adverse impact on surrounding properties. The Mobi-Mat will be installed within the footprint of the previous boardwalk, with no expansion beyond the existing easement. There will be no change in drainage, visual impact, or noise for neighboring properties. Maintaining the full width improves safe, accessible pedestrian movement and reduces off-trail traffic that could impact dunes. Overall, the variance benefits public use without affecting the character, privacy, or use of nearby properties.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

The site is a narrow public beach corridor constrained by sensitive dunes. The pre-existing boardwalk was 5 feet wide, and the same width is needed for functional replacement. Reducing the width to 40 inches would limit safe pedestrian and wheelchair access. The footprint is fixed by natural features and the previous boardwalk location, leaving no practical alternative. The variance relieves an unreasonable burden caused by the strict application of the code while restoring accessibility.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.
1. The site has unique constraints as a narrow public corridor through sensitive coastal dunes. The original 5-foot boardwalk was destroyed during Hurricane Ian, creating the need for replacement. Rebuilding to the same width stays within the existing disturbed footprint, avoiding new environmental impacts. The 20-inch variance over code is minor in context and needed for safe, ADA-compliant use. Rigid enforcement of the 40-inch limit would unnecessarily reduce accessibility without protecting public policy.
2. The exceptional conditions are not the result of any actions by the applicant. The original 5-foot boardwalk predates the 40-inch width limit and was lawfully constructed. Hurricane Ian's destruction, a natural event, created the need for replacement. Rebuilding within the same footprint restores pre-storm functionality. The variance addresses site-specific, historical conditions, not changes caused by the applicant.
3. The requested 5-foot width is the minimum necessary to replace the pre-existing public access pathway. Reducing to 40 inches would unreasonably restrict safe pedestrian and wheelchair access. The width remains entirely within the existing disturbed footprint, with no expansion. It restores ADA-compliant to its maximum extent and functional public access while preserving the site's natural features. No smaller variance would adequately relieve the burden imposed by the strict 40-inch limit.
4. Granting the variance would not be injurious to surrounding properties or the neighborhood. The Mobi-Mat will be installed within the footprint of the previous boardwalk, with no expansion in width. No new drainage, visual, or environmental impacts are expected. Maintaining the 5-foot width improves accessibility, safety, and pedestrian flow for all users. The variance enhances public welfare by restoring functional, ADA-compliant beach access.
5. The circumstances at this site are unique to this specific beach access easement. The narrow corridor, sensitive dunes, and pre-existing 5-foot boardwalk create site-specific conditions. Most other pathways can comply with the 40-inch limit without issue. Amending the regulation for all properties is unnecessary and impractical. The variance addresses specific functional and accessibility needs while maintaining the intent of the code.

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

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

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

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

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

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250243

CASE NAME: Beach Access #43; Request for a variance of 20 inches or 1.7-foot from LDC section 34-652 (d), to allow a 60-inch-wide or 5-foot-wide on-grade pathway where a maximum 40-inch-wide or 3.3-foot-wide on grade pathway is permitted through a dune in the Environmentally Critical (EC) zoning district.

LPA

HEARING DATE: November 12, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi, LEED AP ND/ Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Lee County

Request: A variance of 20 inches or 1.7-foot from LDC section 34-652 (d), to allow a 60-inch-wide or 5-foot-wide on-grade pathway where a maximum 40-inch-wide or 3.3-foot-wide on grade pathway is permitted through a dune in the Environmentally Critical (EC) zoning district.

The Applicant is proposing to replace the previously existing 5-foot-wide dune walkover, with a 5-foot wide on-grade pathway through dune on the existing 6-foot-wide public access easement (Beach Access #43) recorded for the real property located at 102 Estero Blvd. The previous dune walkover was destroyed in Hurricane Ian.

Subject property: See attached site plan

Physical Address: 102 Estero Blvd, Beach Access #43

STRAP #: 24-46-23-W1-02100.00CE

FLU: Mixed residential and Recreational

Zoning: CPD and Environmentally Critical (EC)

Adjacent zoning and land uses:

North: Estero Blvd; Commercial Planned Development zoning; Mixed Residential FLUM; parking

South: Gulf of Mexico

East: Commercial Planned Development and Environmental Conservation zoning; Mixed Residential and Recreation FLUM; Multi-family residential

West: Community Facilities and Environmental Conservation zoning; Recreation FLUM; Bowditch Point Park

II. BACKGROUND AND ANALYSIS

Background:

Ehab Guirguis on behalf of Lee County, the owner of the 6-foot-wide public access easement (Beach Access #43) recorded for the real property located at 102 Estero Blvd, is requesting a 20 inches or 1.7-foot variance from the Town's LDC Section 34-652 (d), to allow a 60-inch-wide or 5-foot-wide on-grade pathway where a maximum 40-inch-wide or 3.3-foot-wide on grade pathway is permitted through a dune in the Environmentally Critical (EC) zoning district.

The subject property previously supported a 60-inch-wide or 5-foot-wide dune walkover which was destroyed during Hurricane Ian. The Applicant is now proposing to replace the previously existing 5-foot-wide dune walkover with a 60-inch-wide or 5-foot-wide on-grade pathway through a dune on the existing 72-inch-wide or 6-foot-wide public access easement (Beach Access #43). The proposed pathway will be covered by a Mobi mat with a 3-foot-high post and rope barrier. As per LDC Section 34-652(d), one on-grade pathway of up to 40 inches is permitted use by right per property in EC zoning district. All pathways exceeding 40 inches or 3.3 foot may only be approved through a variance. To continue the full use of the 6-foot-wide public access easement, the Applicant is requesting a variance to allow a 5-foot-wide on-grade pathway through a dune in the EC zoning district seaward of the 1978 CCCL.

Analysis:

The Environmentally Critical (EC) district was established to protect sensitive coastal resources such as dunes, beaches, and wetlands. The subject 6-foot-wide public beach

access easement (Beach Access #43) is located at 102 Estero Boulevard and was established in February 1984 to provide public access to the Town's beach area along Gulf of Mexico. The easement previously contained a 5-foot-wide dune walkover, which was destroyed during Hurricane Ian.

As per the Applicant, the former dune walkover cannot be reconstructed as Florida Department of Environmental Protection (FDEP) determined that it would be located seaward of the 30-Year Erosion Projection (30-YEP) line and would be classified as a major structure under FDEP Rule 62B-33, F.A.C., which prohibits new major structures seaward of 30-YEP. FDEP uses consistent methodology to designate the 30-Year Erosion Projection (30-YEP) line on a case-by-case basis for each individual property based on its historical shoreline changes. The Applicant is now proposing a 5-foot-wide on-grade pathway surfaced with a Mobi-mat and bordered by a 3-foot-high post-and-rope barrier through a dune in the Environmentally Critical (EC) zoning district.

Pursuant to LDC Section 34-652(d), only one on-grade pathway not exceeding 40 inches or 3.3 feet in width is permitted by right through a dune within the Environmentally Critical (EC) zoning district. Pathways exceeding this width may only be approved through a variance process. The Applicant is therefore requesting a variance of 20 inches or 1.7 foot to restore public access by constructing a 60-inch-wide or a 5-foot-wide on-grade pathway surfaced with a Mobi-mat and bordered by a 3-foot-high post-and-rope barrier.

Neighborhood Compatibility:

The proposed 5-foot-wide on-grade pathway is consistent with the scale and function of existing 6-foot-wide public Beach Access. Granting a variance of 20 inches or 1.7 foot to allow a 60-inch-wide or 5-foot-wide on-grade pathway through a dune where a maximum 40-inch-wide or 3.3-foot-wide pathway is permitted through a dune in the EC zoning district is not anticipated to adversely affect the character of the neighborhood.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The subject property includes a 6-foot-wide public access easement (Beach Access #43), established in February 1984 to provide access to the Town's beach. The easement previously contained a 5-foot-wide dune walkover that was destroyed during Hurricane Ian. Replacement of the former walkover in its original configuration is not permitted under current FDEP regulations, as the structure would be located seaward of the 30-Year Erosion Projection (30-YEP) line and classified as a major structure prohibited in that area.

This regulatory condition limits the Applicant's ability to restore the existing public access within the recorded easement. The Applicant therefore requests a variance of approximately 20 inches (1.7 feet) to allow construction of a 5-foot-wide on-grade pathway through the dune within the Environmentally Critical (EC) zoning district and seaward of the 1978 CCCL.

- b. That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions justifying the variance are not the result of actions by the Applicant after adoption of the regulation. The 6-foot-wide public access easement (Beach Access #43) was established in February 1984 to provide public access to the Town's beach. A 5-foot-wide dune walkover previously existed within this easement but was destroyed by Hurricane Ian. The Applicant now seeks a variance of 20 inches (1.7 feet) to replace the former 5-foot-wide walkover with a 5-foot-wide on-grade pathway, ensuring continued public access within the established public easement (Beach Access #43).

- c. That the variance granted **is/is not** the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The request is for a de minimis variance and granting this variance will allow the Applicant to replace the previously existing 5-foot-wide dune walkover with a 5-foot-wide on-grade pathway through a dune in the EC zoning district. A narrower pathway would restrict the full use of an existing public access easement.

- d. That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

III. RECOMMENDATION

Staff has reviewed the requested variance from LDC Section 34-652 (d), *a request to vary by of 20 inches or 1.7-foot to allow a 60-inch-wide or 5-foot-wide on-grade pathway where a maximum 40-inch-wide or 3.3-foot-wide on grade pathway is permitted through a dune in the Environmentally Critical (EC) zoning district* and find that the variance request does meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20250243, request to vary by 20 inches or 1.7 foot to allow a 5-foot-wide on-grade pathway through a dune for Beach Access #43 in the EC zoning district.

IV. CONDITIONS

If approval of the request is granted, the following conditions should be considered for incorporation into the resolution of approval.

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. The variance shall only apply to the pathway through dune as shown on the provided site plan. Demolition or substantial damage to the on-grade pathway shall render the variance to be null and void.
3. This variance applies to the proposed on-grade pathway through dune in the subject property only. Any additional modification or additional construction on subject property must comply with all applicable regulations or seek a new variance.

V. EXHIBITS

Exhibit A: Site Plan

Exhibit B: Survey

Exhibit C: Deed and recorded easement

Exhibit D: Application packet

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2026-98**

1. Request:

Meeting Date: November 12, 2025

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250261, REQUESTING A VARIANCE FROM LDC SECTION 34-652(F)(2) C., TO ALLOW AN 8-FOOT-WIDE DUNE WALKOVER WHERE A MAXIMUM 6-FOOT-WIDE DUNE WALKOVER IS PERMITTED FOR USES OTHER THAN SINGLE FAMILY RESIDENTIAL IN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #41) RECORDED FOR THE REAL PROPERTY LOCATED AT 252 ESTERO BOULEVARD; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The LPA will make recommendations to the Town Council regarding the variance request or approve the variance request unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council or the LPA will serve as the final agency action if the request is approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Ehab Guirguis on behalf of Lee County, the owner of the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd, is requesting a 2-foot variance from the Town's LDC Section 34-652(f)(2)c., which permits a maximum of 6-foot-wide dune walkover for all uses other than single family residential in the EC zoning district to provide an 8-foot-wide and 110-foot-long dune walkover similar to pre-Ian conditions.

Replacement of structures, including dune walkovers, in the EC zoning district may only be approved through the Special Exception process. The Applicant has simultaneously applied for SEZ20250241, a special exception request to allow like-for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the Environmentally Critical (EC) zoning district.

Attachments:

1. NS Resolution 25-21, VAR20250261 for Beach Access 41
2. Exhibit A - Site plan
3. Exhibit B- Survey
4. Staff report
5. Exhibit C- Estero Island Beach Condominiums deed and recorded easement for BA #41
6. Exhibit D- Applicant's narrative

Financial Impact:

Unknown

6. Alternative Action

Approval/ Denial

7. **Staff Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Georgina Cid, Community Development Manager

Date: November 04, 2025

Frankie Kropacek, Community Development Director

Date: November 04, 2025

nancy stuparich, Town Attorney

Date: November 04, 2025

Amy Baker, Town Clerk

Date: November 04, 2025

LPA RESOLUTION 25-21

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE 20250261, REQUESTING A VARIANCE FROM LDC SECTION 34-652(F)(2) C, TO ALLOW AN 8-FOOT-WIDE DUNE WALKOVER WHERE A MAXIMUM 6-FOOT-WIDE DUNE WALKOVER IS PERMITTED FOR USES OTHER THAN SINGLE FAMILY RESIDENTIAL IN THE ENVIRONMENTALLY CRITICAL ZONING DISTRICT, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #41) RECORDED FOR THE REAL PROPERTY LOCATED AT 252 ESTERO BOULEVARD; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Lee County (hereinafter "applicant"), is the owner of the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Boulevard, Fort Myers Beach, Florida (hereinafter "subject property"); and

WHEREAS, the STRAP for the subject property is 24-46-23-W1-03600.00CE, and the legal description for the subject property is attached, see Exhibit "B"; and

WHEREAS, the subject property is located in the "Mixed Residential" and "Recreation" category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the subject property is located in the "Commercial Planned Development" and the "Environmentally Critical" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, LDC Section 34-652(f)(2)c, limits dune walkovers serving uses other than single-family residential to a maximum width of 6 feet within the Environmentally Critical (EC) zoning district; and

WHEREAS, the subject property historically supported an 8-foot-wide elevated dune walkover that has existed in this layout in the public access easement (Beach Access #41) since prior to 1998; and

WHEREAS, the previously existing 8-foot-wide dune walkover was destroyed during Hurricane Ian in 2022; and

WHEREAS, the Applicant requests a variance from LDC Section 34-652(f)(2)c., to allow a like-for-like replacement of an 8-foot-wide dune walkover where a maximum 6-foot-wide dune walkover is otherwise permitted for uses other than single family residential within the EC zoning district; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 12, 2025, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

A. There are/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

B. The conditions justifying the variance are/ are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is/ is not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

D. The granting of the variance will/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the specific piece of property for which the variance is sought are/ are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

WHEREAS, eligible members of the LPA voted ___ to ___ by roll call vote to approve/ approve with conditions/ deny the requested variances with the following conditions:

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

2. This Variance is contingent to the Special exception approval SEZ20250241, to allow reconstruction of a minor structure including elevated dune walkover on the subject property. Any violation of the conditions of approval for the special exception will render this variance approval null and void.
3. The variance shall only apply to the dune walkover as shown on the provided site plan. Demolition or substantial damage to the walkover shall render the variance to be null and void.
4. This variance applies to the proposed dune walkover in the subject property only. Any additional modification or additional construction on subject property must comply with all applicable regulations or seek a new variance.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.
2. VAR20250261, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on November 12, 2025.
3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda
Vice-Chair Jane Plummer

Member James Boan _____
Member Douglas Eckmann _____
Member Don Sudduth _____
Member John McLean _____
Member James Dunlap _____

DULY PASSED AND ADOPTED THIS ____ day of _____, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of _____, 2025.

EXHIBITS

Exhibit A: Site Plan

Exhibit B: Survey

OWNER

LEE COUNTY
2115 SECOND ST
FORT MYERS, FL 33901
PHONE: (239) 533-2221
FAX: (239) 485-2262

SITE ADDRESS

ESTERO BLVD.
FORT MYERS BEACH, FL 33931

TOTAL PROJECT AREA

0.04 ACRES

BOARD OF COUNTY COMMISSIONERS

KEVIN RUANE	DISTRICT 1
CECIL PENDERGRASS	DISTRICT 2
DAVID MULICKA	DISTRICT 3
BRIAN HAMMAN	DISTRICT 4
MIKE GREENWELL	DISTRICT 5

COUNTY MANAGER

DAVE HARNER

ASSISTANT COUNTY MANAGER

PETER WINTON
CHRISTINE BRADY
GLEN SALYER
MARC MORA
ROBERT CODIE

FACILITIES CONSTRUCTION & MANAGEMENT

EHAB GUIRGUIS, P.E.

CONSTRUCTION PLANS
FOR



FORT MYERS BEACH ACCESS 41
VARIOUS BOARDWALK REPAIRS

FEMA DI : 1291090

FEMA PROJECT # : 702317

SECTION 24, TOWNSHIP 46 S., RANGE 23 E.

LEE COUNTY, FLORIDA

INDEX OF PLANS

SHEET NO.	DESCRIPTION
C01	COVER
C02	GENERAL NOTES & ABBREVIATIONS
C03	AERIAL KEY MAP
C04	FLUCFCS AND SOILS MAP
C05	EXISTING CONDITIONS AND SITE PLAN

WEILER ENGINEERING CORP.
201 WEST MARION AVENUE SUITE
1306 PUNTA GORDA, FLORIDA 33950
PHONE: (941) 505-1700
FAX: (941) 505-1702



JOHNSON ENGINEERING, LLC
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901 PHONE:
(239) 334-0046
E.R. #642 & L.B. #642



NOTICE TO ALL
CONTRACTORS

IT'S THE LAW IN FLORIDA
2 BUSINESS DAYS BEFORE
YOU DIG
CALL SUNSHINE
1-800-432-4770

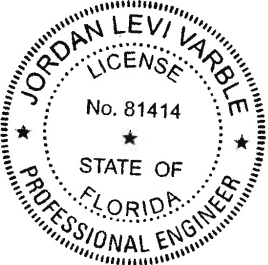
STATE, COUNTIES & CITIES
ARE "NOT" PART OF THE
ONE CALL SYSTEM. THEY
MUST BE CALLED
INDIVIDUALLY.



REGISTERED PROFESSIONAL ENG
FLORIDA LICENSE NO. 81414

JORDAN LEVI VARBLE, PE

DATE



This item has been digitally
signed and sealed by Jordan
L. Varble, P.E., on the date
adjacent to the seal.
Printed copies of this
document are not
considered signed and
sealed and the signature
must be verified on any
electronic copies.

OCTOBER 2025

2025.10.16 10:45:52-04'00'

BEACH ACCESS 41

ESTERO BLVD.

SAN CARLOS BLVD.

ESTERO BLVD.

LOCATION MAP

0 300 600 1200

INTENDED DISPLAY SCALE:
22"X34" PLAN 1"=600'
11"X17" PLAN 1"=1200'

SHEET NUMBER
C01

\\\\ftms01\\drawings\\2023\\20236180-000\\Engineering\\Drawings\\00\\Fort Myers Beach\\236180-007 C

AC ACRE
 AL APPROX.
 ASE ASBESTOS
 BM BENCH MARK
 BMS BUILDING
 BOT BOTTOM
 CF CATCH BASIN
 CFC CUBIC FEET
 CPM CUBIC FEET PER MINUTE
 CS CAST IRON
 CIP CAST IRON PIPE
 CJ CAST IRON JOINT
 CMP CORRUGATED METAL PIPE
 CL CLEANOUT
 CV CHECK VALVE
 CY CUBIC YARD
 CLKG CENTER LINE
 CLF CHAIN LINK FENCE
 COL COLUMN, COLOR
 CON CONCRETE
 CONST CONSTRUCTION
 CONT CONTINUOUS
 COT CONTOR
 CTRS CENTERS
 CU COPPER
 CUB CUBIC INCH
 DIA. ϕ DIAMETER
 DIAGONAL
 DIM DIMENSION
 DIS DISTANCE
 DP DUCTILE IRON PIPE
 DRE DRAINAGE EASEMENT
 DRW DRAWING
 E EAST
 EL/ELEV ELEVATION
 EQ EQUIPMENT
 ERCP ELLIPTICAL REINFORCED C
 ESMT EASEMENT
 EX EXISTING
 FND FINISHED FLOOR
 FFE FINISHED FLOOR ELEVATIO
 FM FORCE MAIN
 FID FIRE PROTECTING CONNE
 FDN FOUNDATION
 FIN FINISH
 FRB FIBERGLASS REINFORCED
 FT FEET
 G NATURAL GAS
 GC GENERAL CONTRACTOR
 GI GALVANIZED IRON
 GPW GALLONS PER MINUTE
 GV GATE VALVE
 GA GAUGE
 GAL GALLON
 GALV GALVANIZED
 HD HIGH DENSITY
 HDPE HIGH DENSITY POLYETHYL
 HOR HORIZONTAL
 HYDRA HYDRAULIC
 ID INSIDE DIAMETER
 IDD INVA DRAINAGE DISTRICT
 IRR IRRIGATION
 L LAKE ACCESS EASEMENT
 LCU LEE COUNTY UTILITY EAS
 LEE LEE COUNTY UTILITY EAS
 LME LAKE MAINTENANCE TRAC
 LMT LAKE MAINTENANCE TRAC
 MLL MILLI GALLONS PER
 M MANHOLE
 MJ MECHANICAL JOINT
 MAX MAXIMUM
 MECH MECHANICAL
 MFR MITERED END SECTION
 MFS MANUFACTURER
 MIN MINIMUM
 MISG MISCELLANEOUS
 N NORTH
 NE NORTHEAST
 NW NORTHWEST
 NPW NON POTABLE WATER
 NT NOT TO SCALE
 N NUMBER
 NOM NOMINAL
 NG NATURAL GAS
 ON ON CENTERS
 OCW ON CENTER EACH WAY
 ODI ON DIAMETER
 PCF POUNDS PER CUBIC FOOT
 PSF POUNDS PER SQUARE FO
 PV PUG VALVE
 PFS POUND PER SQUARE INCH
 PVC POLYVINYL CHLORIDE
 PVL POLYETHYLENE
 PAV PAVEMENT
 PC POINT OF CURVATURE
 PRO PROPOSED GRADE LINE
 PL PROPERTY LINE
 PLB PLUMBING
 PLWD PLYWOOD
 POT POTABLE WATER
 PT POINT OF TANGENCY
 PUE PUBLIC UTILITY EASEMENT
 PVT POINT OF VERTICAL INTER
 Q QUANTITY
 R RADIUS
 RD ROAD
 RCP REINFORCED CONCRETE P
 REQ REQUIRED
 ROW RIGHT OF WAY
 RU REUSE LINE
 R RIGHT OF WAY
 S SOUTH
 SE SOUTHEAST
 SOUT SOUTHWEST
 SS SANITARY SEWER
 SAN SANITARY
 SCH SCHEDULE
 SECT SECTION
 SEW SEWER
 SH SHEET
 SPEC SPECIFICATION
 SQ SQUARE
 ST STREET
 STA STATION
 STL STEEL
 STD STANDARD
 SURD SURFACE
 SYM SYMMETRICAL
 TOE TOE OF SLOPE
 TOP TOP OF BANK
 THK THICK
 TEL TELEPHONE
 TEMPERATURE
 TRANS TRANSFORMER
 TYP TYPICAL
 UE UTILITY EASEMENT
 V VERTICAL
 W WATER
 WM WATER MAIN
 WITH WITH
 W/O WITHOUT
 W WOOD
 WGT WEIGHT
 WV WATER VALVE
 WH WALK HYDRANT

	GATE VALVE		IRRIGATION SERVICE (DOUBLE)
	TEE ASSEMBLY		IRRIGATION SERVICE (SINGLE)
	REDUCER		SEWER SERVICE (DOUBLE)
	BLOW OFF		SEWER SERVICE (SINGLE)
	FIRE HYDRANT		WATER SERVICE (DOUBLE)
	FIRE HYDRANT ASSEMBLY W/ GATE VALVE		WATER SERVICE (SINGLE)
	MITERED END SECTION		HEADWALL
	MAN-HOLE W/ NUMBER		DRAINAGE INLET (SEE PLAN FOR TYPES)
	THROAT INLET		FLARED END SECTION
	PLUG VALVE		

	WETLAND		EXISTING LAKE TO BE FILLED
	UPLAND BUFFER		PROPOSED LAKE
	UPLAND PRESERVE		LITTORAL SHELF AREA
	INDIGENOUS AREA		COMPENSATING LITTORAL PLANTING AREA
	NATURAL AREA		RIPRAP / GRAVEL
	FILTER MARSH		BRICK PAVERS
	EXISTING LAKE	NOTE: HATCH PATTERNS ARE FOR ILLUSTRATIVE PURPOSES ONLY. ACTUAL HATCH PATTERNS ON DRAWING MAY VARY IN SCALE & ANGLE	

	EXISTING	PROPOSED
RIGHT-OF-WAY LINE	_____	_____
CENTER LINE	_____	_____
PAVEMENT MAINTENANCE EASEMENT	-----	-----
PUBLIC UTILITY EASEMENT	-----	-----
DRAINAGE EASEMENT	-----	-----
WETLAND BOUNDARY	_____	_____
FORCE MAIN	_____ FM _____	_____ FM _____
SANITARY SEWER	_____ SS -----	_____ SS _____
WATER MAIN	_____ WM -----	_____ WM _____
IRRIGATION MAIN	_____ IRR -----	_____ IRR _____
RE-USE MAIN	_____ RU -----	_____ RU _____
PERMETER BERM	> > > >	> > > >
FENCE LINE	x x	x x x x
SILT FENCE	△ △ △	△ △ △ △ △ △
BULKHEAD	_____	_____
STRUCTURAL BUFFER	_____	_____

1. ELEVATIONS REFERENCE TO NAVD 1988. CONVERSION TO NGVD 1929 IS: NAVD 1988 + 1.18 = NGVD 1929.

- THE GENERAL NOTES MUST BE PART OF THIS ENTIRE DOCUMENT PACKAGE AND ARE PART OF THE CONTRACT DOCUMENTS. THE GENERAL NOTES ARE REFERENCED HEREIN AND MUST BE REFERRED TO BY THE CONTRACTOR. THE CONTRACTOR MUST BE FAMILIAR WITH AND ACKNOWLEDGE FAMILIARITY WITH ALL THE GENERAL NOTES AND ALL OF THE PLANS SPECIFICATION NOTES.
3. CONTRACTOR MUST VERIFY ALL DIMENSIONS INCLUDED WITHIN THE PLAN SET AND SHOULD NOT SCALE OFF THE DRAWINGS DUE TO POTENTIAL PRINTING INACCURACIES. ALL DIMENSIONS ARE TO BE CHECKED AND CONFIRMED BY THE GENERAL CONTRACTOR PRIOR TO PREPARATION OF SHOP DRAWINGS, FABRICATION/ORDERING OF PARTS AND MATERIALS AND START OF SITE WORK.
4. JOHNSON ENGINEERING, LLC, IS NOT RESPONSIBLE FOR AND HAVE NO CONTRACTUAL LEGAL OR OTHER RESPONSIBILITIES FOR JOB SITE SAFETY, JOB SITE SUPERVISION, OR ANYTHING RELATED TO THE SAME. JOHNSON ENGINEERING, INC, IS NOT RESPONSIBLE TO IDENTIFY OR REPORT ANY JOB SITE SAFETY ISSUES OR ANY JOB SITE CONDITIONS, AT ANY TIME.
5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, STANDARD PLANS (LATEST EDITION), LEE COUNTY DEVELOPMENT STANDARDS AND SPECIFICATIONS AND LEE COUNTY UTILITIES REQUIREMENTS.
6. CONTRACTOR SHALL RETAIN, ON THE WORK SITE, COPIES OF ANY PERMITS NECESSARY FOR CONSTRUCTION.
7. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ANY REQUIRED TREE REMOVAL PERMITS.
8. THE SITE CONTRACTOR SHALL BECOME FAMILIAR WITH THE GEOTECHNICAL REPORT IF ONE WAS PREPARED. THE CONTRACTOR SHALL COMPLY WITH ALL THE SITE PREPARATION AND OTHER SITE RELATED ITEMS, RECOMMENDATIONS AND PROCEDURES.
9. CONTRACTOR ACKNOWLEDGES THAT CONSTRUCTION SITE IS WITHIN A PUBLIC USE AREA AND SHALL MAINTAIN A SAFE AND SECURE WORK AREA.
10. CONTRACTOR IS REQUIRED TO OBTAIN FROM THE ENGINEER AND OWNER WRITTEN APPROVAL FOR ANY DEVIATIONS FROM THE PLANS AND/OR SPECIFICATIONS.
11. EXISTING OFF-SITE DRAINAGE PATTERNS SHALL BE MAINTAINED DURING CONSTRUCTION.
12. ANY PUBLIC LAND CORNER WITHIN THE LIMITS OF CONSTRUCTION IS TO BE PROTECTED, IF A CORNER MONUMENT IS IN DANGER OF BEING DESTROYED AND HAS NOT BEEN PROPERLY REFERENCED, THE CONTRACTOR SHOULD NOTIFY THE OWNER/ENGINEER WITHOUT DELAY.
13. THE LOCATION OF EXISTING UTILITIES, PAVEMENT, VEGETATION, AND MISCELLANEOUS IMPROVEMENTS ARE APPROXIMATE ONLY. THE EXACT LOCATIONS SHALL BE FIELD VERIFIED BY THE CONTRACTOR.
14. CONTRACTOR SHALL NOTIFY THE LEE COUNTY DIVISION OF DEVELOPMENT REVIEW A MINIMUM OF 72 HOURS PRIOR TO ALL REQUIRED INSPECTIONS.
15. CONTRACTOR TO PROVIDE SILT FENCE AND OTHER APPROPRIATE MEASURES TO AFFECT THE FILTRATION OF SURFACE WATER FLOWS AND TO PROVIDE EROSION PROTECTION DURING CONSTRUCTION ACTIVITIES. PROTECTION IS TO BE MAINTAINED DURING THE CONSTRUCTION PERIOD UNTIL DISTURBED SOILS HAVE BEEN STABILIZED WITH VEGETATION OR SUITABLE EROSION PROTECTION TREATMENT.
16. DURING CONSTRUCTION, GRATE INLET AND JUNCTION BOX OPENINGS SHALL BE COVERED WITH FILTER FABRIC (MIRAFIL 140N OR APPROVED EQUAL) TO PREVENT DEBRIS AND FILL FROM WASHING INTO THE INLET.
17. CONTRACTOR SHALL USE DESIGNATED CONSTRUCTION ENTRANCES FOR EMPLOYEES AND DELIVERY OF MATERIALS.
18. ALL CONSTRUCTION DEBRIS AND OTHER WASTE MATERIAL SHALL BE DISPOSED OF OFF-SITE IN ACCORDANCE WITH APPLICABLE REGULATION. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE SITE IS CLEAN ONCE CONSTRUCTION IS FINISHED.
19. CONTRACTOR SHALL PROMPTLY REPORT ALL FIELD CHANGES TO THE ENGINEER.
20. THE CONTRACTOR SHALL ACCURATELY PLOT THE LOCATIONS AND DEPTHS OF ALL IMPROVEMENTS INSTALLED ON A FINAL SET OF RECORDED DRAWINGS WHICH SHALL BE DELIVERED TO THE ENGINEER.
21. CONTRACTOR SHALL INCORPORATE BEST MANAGEMENT PRACTICES TO PREVENT CONSTRUCTION DEBRIS, DUST, AND OTHER MATERIALS FROM LEAVING THE IMMEDIATE WORK AREA AND ENTERING LOCAL WATERS. THIS INCLUDES TURBIDITY CONTROLS AND MONITORING FOR IN-WATER WORK AND OTHER LAND-DISTURBING ACTIVITIES. TURBIDITY CONTROLS AND MONITORING SHALL BE IN ACCORDANCE WITH PROJECT PERMITS.
22. ALL PILES SHALL ACHIEVE EMBEDMENT AS SHOWN IN PLANS.
23. CONSTRUCTION OF BOARDWALK DESIGN MAY REQUIRE MINOR GRADING BY CONTRACTOR TO ACHIEVE DESIRED GRADES. CONTRACTOR MUST RECEIVE WRITTEN APPROVAL FROM ENGINEER PRIOR TO GRADING COMMENCEMENT.
24. UNLESS OTHERWISE NOTED, PILES SHALL BE INSTALLED IN THE SAME LOCATIONS AS PREVIOUS PILES TO MINIMIZE ENVIRONMENTAL IMPACT.
25. REMOVAL OF VEGETATION SHALL ONLY BE ALLOWED WITHIN BOARDWALK LIMITS. REMOVAL OF VEGETATION OUTSIDE BOARDWALK LIMITS SHALL REQUIRE PRIOR APPROVAL FROM COUNTY OR ENGINEER.
26. ALL CONSTRUCTION MATERIALS SHALL BE PER PLAN DETAILS.
27. ALL PILES SHALL BE CUT OFF BELOW DECK. WATERPROOF PILE TOPS WITH DENSFO 35 TAPE.
28. BEVEL TOP EDGE OF STANCHIONS, RAILS, AND DECKING TO REMOVE SHARP EDGES AND SPLINTERS.
29. CONTRACTOR SHALL ENSURE RAILING IS FREE OF BURRS AND SHARP EDGES.
30. CONTRACTOR SHALL CONDUCT CLEANUP ON A DAILY BASIS.

1. ANY SITE DEMOLITION IS BASED ON AVAILABLE INFORMATION PROVIDED TO ENGINEER AND MAY NOT COVER ALL ASPECTS OF THE PROJECT. IT IS THE CONTRACTOR'S RESPONSIBILITY TO COVER ALL EXISTING INFRASTRUCTURE TO BE REMOVED IN THEIR DEMOLITION BUDGET.

1. CONTRACTOR TO CONTACT "SUNSHINE 811" FOR LOCATES TWO BUSINESS DAYS BEFORE YOU DIG, 1-800-432-4770. STATE, COUNTIES, AND CITIES ARE NOT PART OF THE ONE CALL SYSTEM, THEY MUST BE CALLED INDIVIDUALLY.

1. ALL ACCESSIBLE (A.K.A. ADA) COMPONENTS AND ACCESSIBLE ROUTES MUST BE CONSTRUCTED TO MEET, AT A MINIMUM THE MOST STRINGENT OF: (A) THE REQUIREMENTS OF THE "AMERICANS WITH DISABILITIES ACT" (ADA) CODE (42 U.S.C. § 12101 ET SEQ. AND 42 U.S.C. § 4151 ET SEQ.); AND (B) ANY APPLICABLE LOCAL AND STATE GUIDELINES, AND ANY AND ALL AMENDMENTS TO BOTH, WHICH ARE IN EFFECT AT THE TIME OF CONSTRUCTION.

1. CONTRACTOR SHALL COMPLY WITH THE "STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE, REVISED AUGUST 2013" DOCUMENT.

1. CONTRACTOR SHALL COMPLY WITH THE "STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE, REVISED AUGUST 2013" DOCUMENT.

STATE OF FLORIDA E&SC DESIGNER & REVIEWER MANUAL, LATEST EDITION: JULY 2013

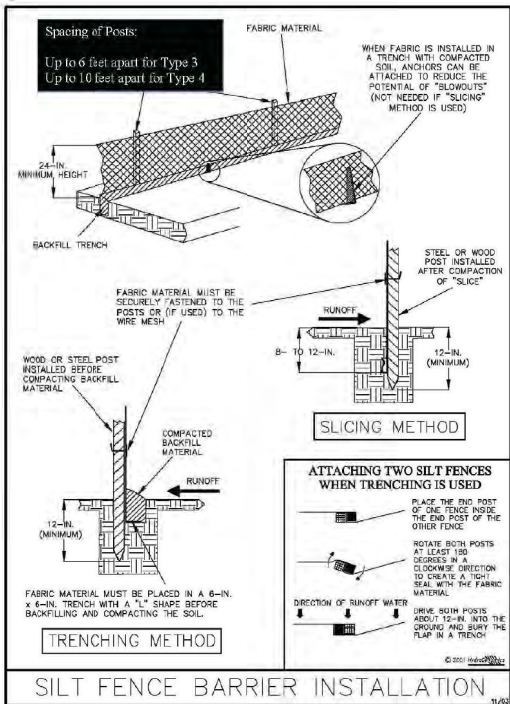
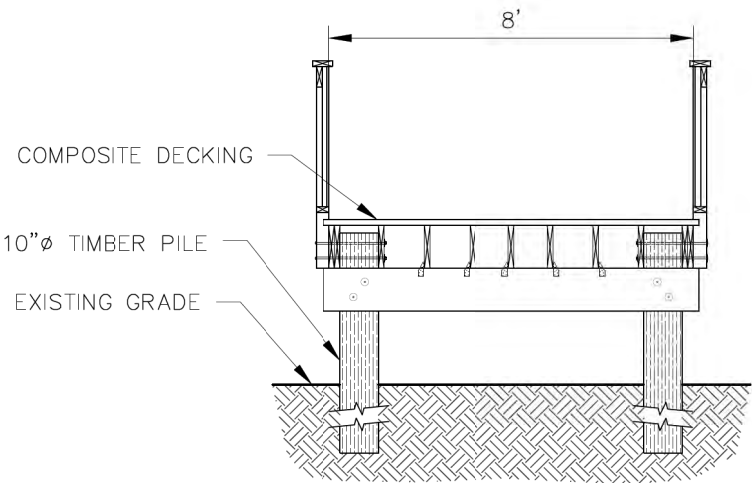


Figure V-2: Illustration of a Silt Fence Barrier

Permission is given by HydrDynamics Incorporated to copy and reproduce this data

y-2



N.T.S

FOR STRUCTURAL DETAILS,
SEE PLANS BY WEILER ENGINEERING CORP.

JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.R. #642 & L.B. #642

WEILER ENGINEERING CORPORATION

WEC
An Apex Company

WEILER ENGINEERING CORP.
201 WEST MARION AVENUE SUITE
1306 PUNTA GORDA, FLORIDA 33950
PHONE: (941) 505-1700
FAX: (941) 505-1702

JORDAN LEVI VARBLE, PE
FL License No. 81414

JORDAN LEVI VARBLE, PE
FL License No. 81414



Lee County
Southwest Florida

FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

[illegible]

DATE: OCTOBER 2025

PROJECT NO. 20236180-000

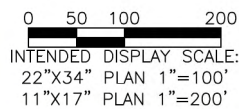
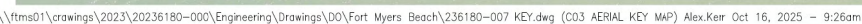
FILE NO. 24-46-23

SCALE: AS SHOWN

GENERAL NOTES & ABBREVIATIONS

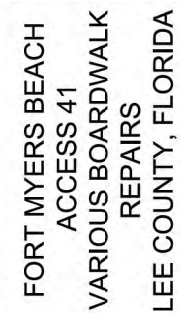
SHEET NUMBER

C02



WEILER ENGINEERING CORP.
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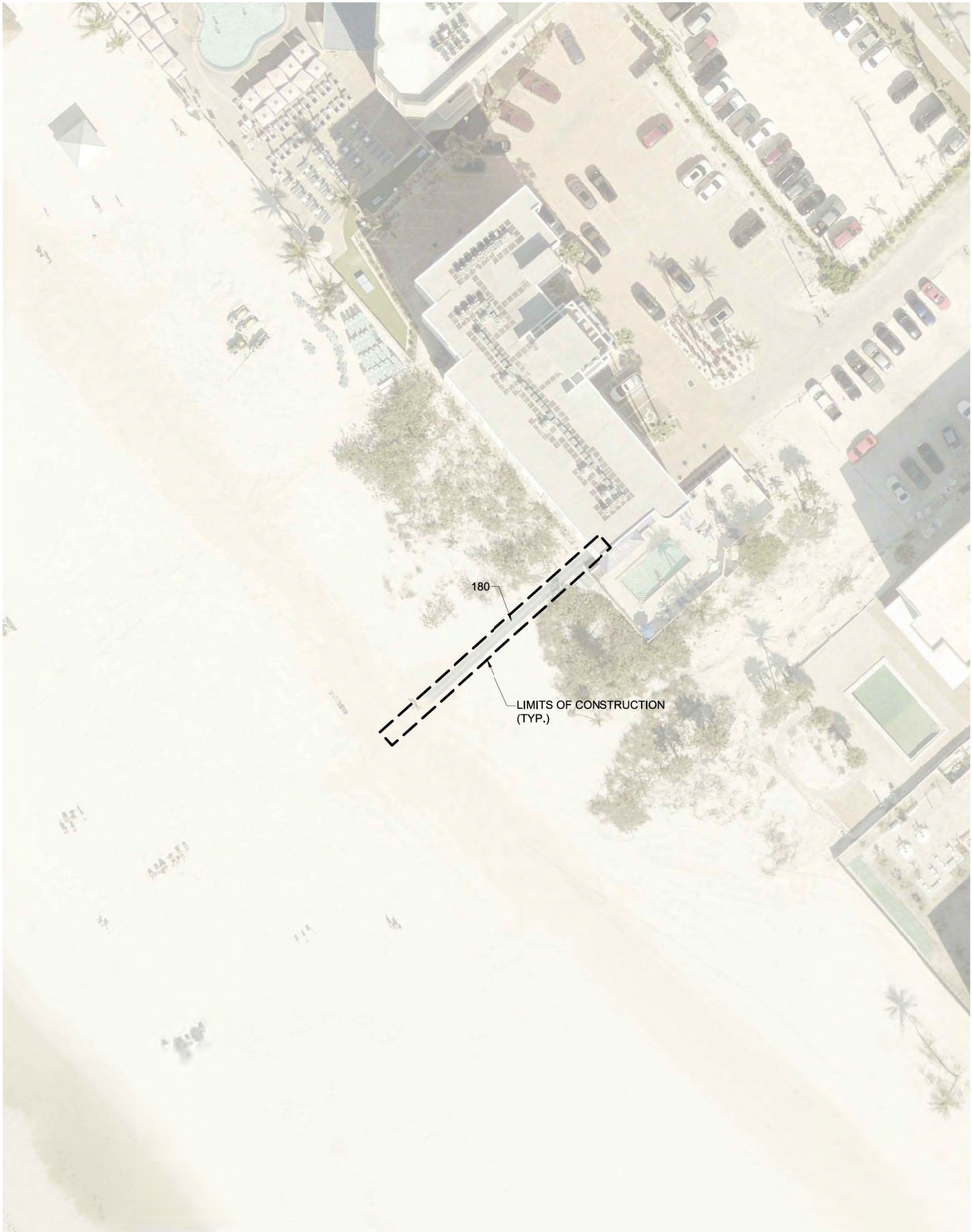
JORDAN LEVI VARBLE, PE
FL License No. 81414



DATE: OCTOBER 2025
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

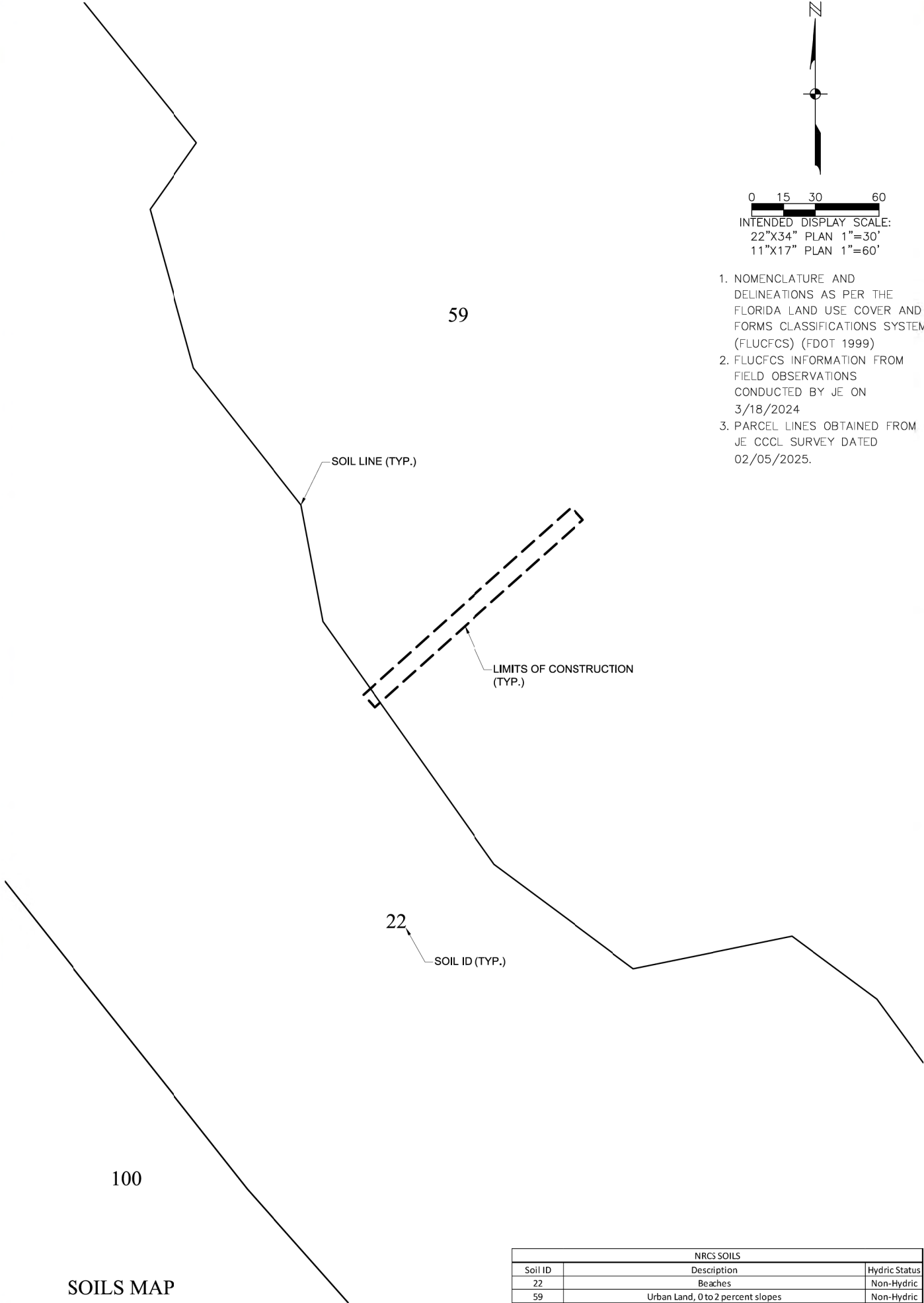
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C03



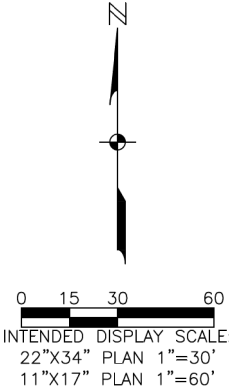
FLUCFCS Code	Description	Status	Area in Acres
180	Recreational Beach Access	N	0.03
Total Site			0.03
Legend			
N = Non Wetlands			Total N 0.03
W = Wetlands			Total W 0.00
SW = Surface Waters			Total SW 0.00
Total Site			0.03

FLUCFCS MAP



NRCS SOILS		
Soil ID	Description	Hydric Status
22	Beaches	Non-Hydric
59	Urban Land, 0 to 2 percent slopes	Non-Hydric

SOILS MAP



- INTENDED DISPLAY SCALE:
22"x34" PLAN 1"=30'
11"x17" PLAN 1"=60'
1. NOMENCLATURE AND DELINEATIONS AS PER THE FLORIDA LAND USE COVER AND FORMS CLASSIFICATIONS SYSTEM (FLUCFCS) (FDOT 1999)
 2. FLUCFCS INFORMATION FROM FIELD OBSERVATIONS CONDUCTED BY JE ON 3/18/2024
 3. PARCEL LINES OBTAINED FROM JE CCCL SURVEY DATED 02/05/2025.

JOHNSON
ENGINEERING
— An Apex Company —
JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.R. #642 & L.B. #642

WEILER ENGINEERING CORPORATION
WEC
An Apex Company
WEILER ENGINEERING CORP.
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FL License No. 81414



FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

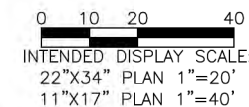
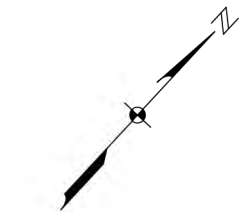
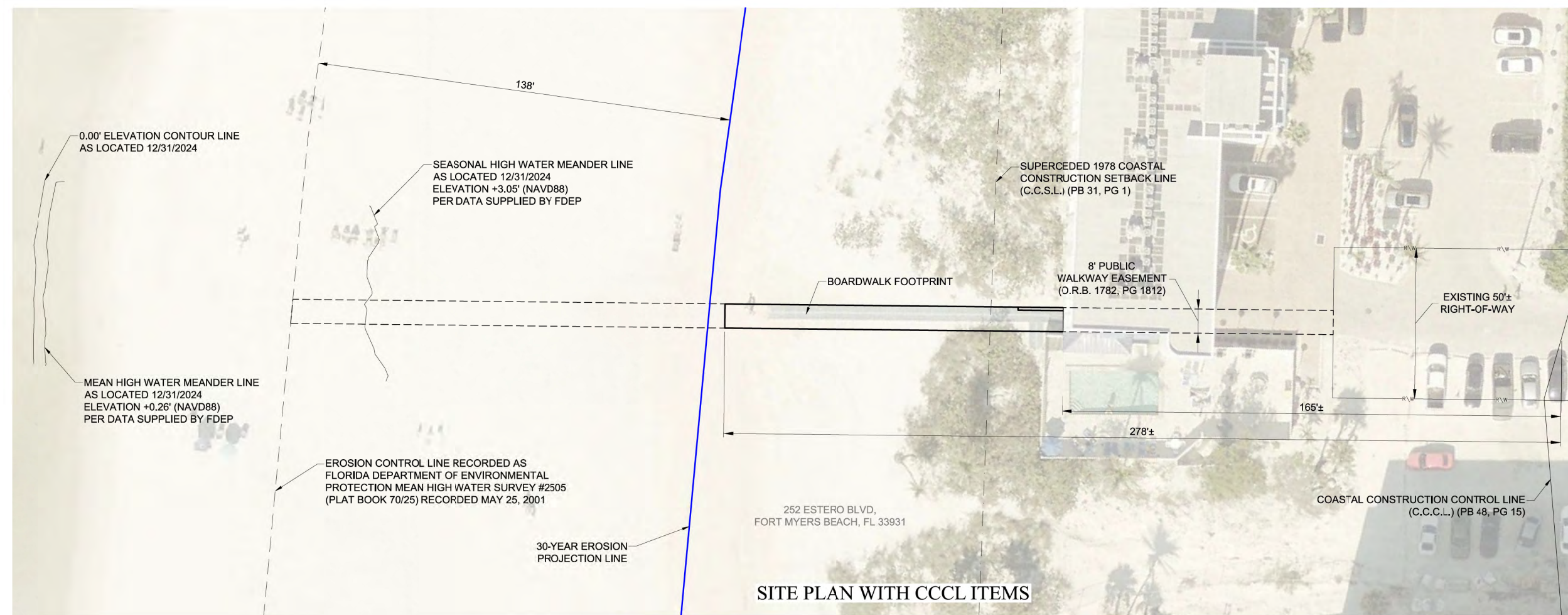
REVISIONS	DATE
DESCRIPTION	
NO.	

DATE: OCTOBER 2025
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

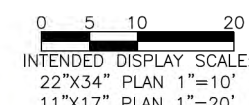
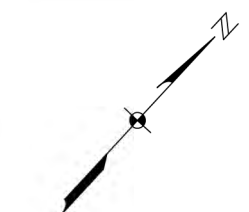
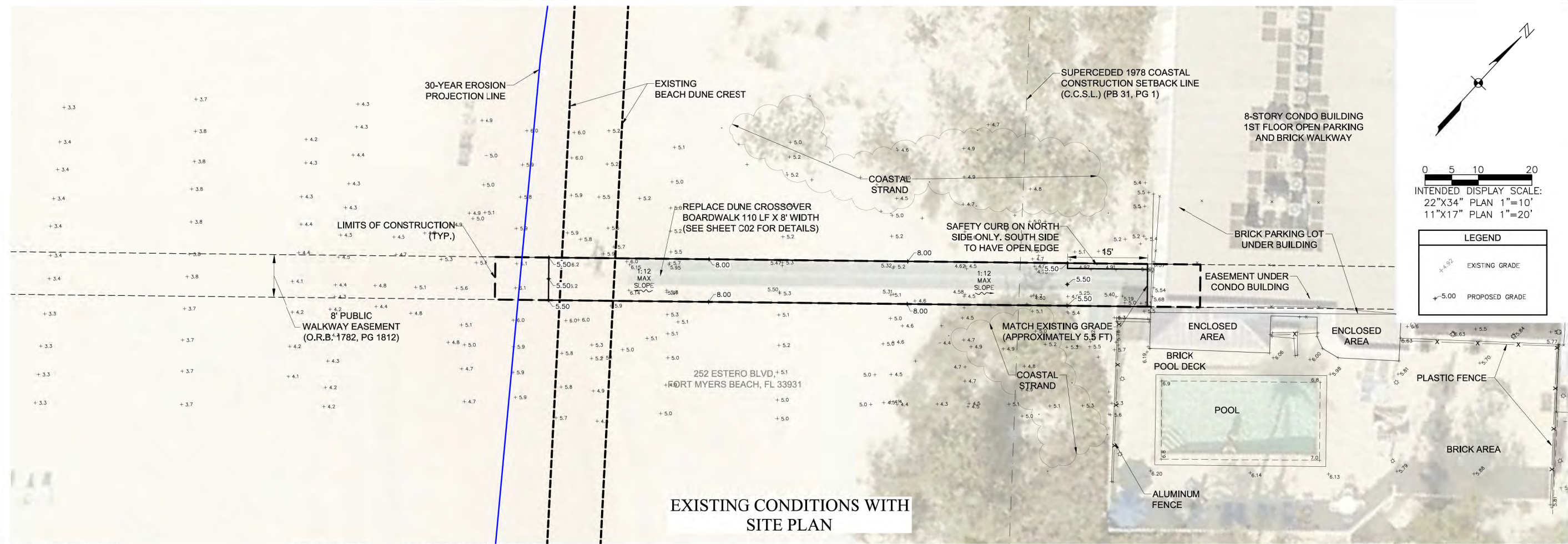
FLUCFCS AND
SOILS MAP

SHEET NUMBER

C04



1. ELEVATIONS REFERENCE TO NAVD 1988. CONVERSION TO NGVD 1929
 $IS: NAVD 1988 + 1.18 = NGVD 1929$.
2. PARCEL LINES OBTAINED FROM JE CCCL SURVEY DATED 02/05/2025.
3. CONTRACTOR MAY STAGE EQUIPMENT WITHIN LIMITS OF CONSTRUCTION, PROVIDED EXISTING VEGETATION IS PROTECTED.
4. CONTRACTOR SHALL NOT DISRUPT TRAFFIC ON ESTERO BLVD.



LEGEND	
	EXISTING GRADE
	PROPOSED GRADE

JOHNSON
ENGINEERING
— An Apex Company —

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F.R. #642 & I.B. #642



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FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

[illegible]

DATE: OCTOBER 2025
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

EXISTING
CONDITIONS AND
SITE PLAN

SHEET NUMBER

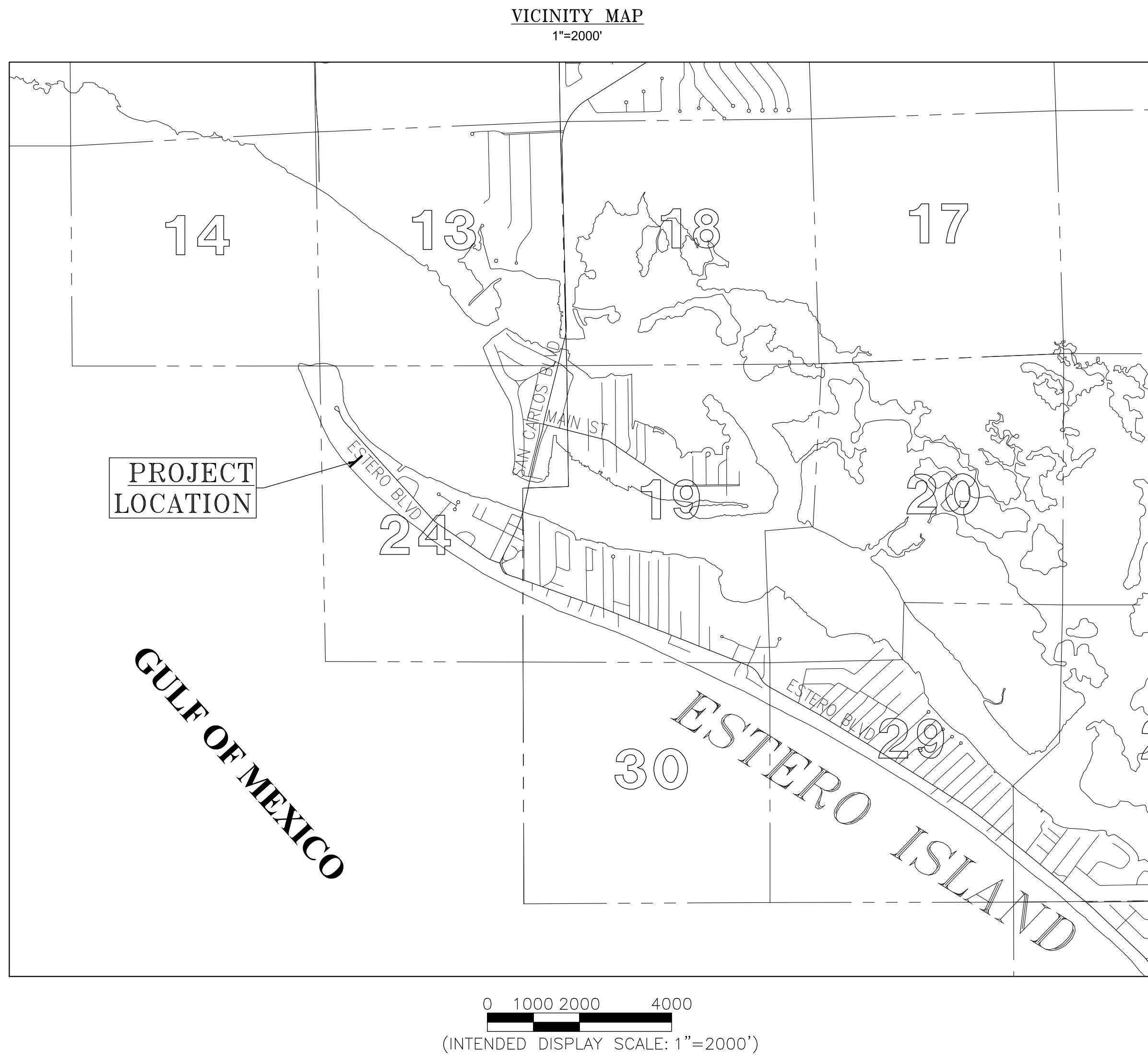
C05

**BOUNDARY, TOPOGRAPHIC AND
MEAN HIGH WATER LINE SURVEY
FOR
FORT MYERS BEACH ACCESS #41
GULFSHORE SUBDIVISION
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
CITY OF FORT MYERS BEACH, LEE COUNTY, FLORIDA**

NOTES:

- DATE OF LAST FIELD SURVEY: DECEMBER 31, 2024.
- SURVEYED PARCEL LIES OVER 252 ESTERO BLVD., FORT MYERS BEACH, FL, 33931
- BEARINGS SHOWN HEREON ARE BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983, ADJUSTMENT OF 2011 (NAD83/2011), WHEREIN THE MEASURED BEARING BETWEEN BEARING FROM ORIGINAL COASTAL CONSTRUCTION MONUMENTS "A25A" AND "A37A" BEARS SOUTH 49°13'01" EAST.
- COORDINATES SHOWN HEREON ARE IN UNITS OF U.S. SURVEY FEET AND ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM (NAD83/2011) FOR THE WEST ZONE OF FLORIDA AND WERE ESTABLISHED UTILIZING TRIMBLE RTK GPS REDUNDANT OBSERVATION PROCEDURES FROM A FIXED BASE STATION OF KNOWN GEODETIC POSITION AND A REDUNDANT CHECK TO A FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) COASTAL CONSTRUCTION SURVEY MONUMENT OF KNOWN GEODETIC POSITION. THE BASE STATION USED IS THE RECORD OF THE TRIMBLE VRS NOW NETWORK (VRS). THE BASE STATION AND SURVEY MONUMENT HAVE THE CORRECT POSITION LISTED BELOW:

STATION	LATITUDE	LONGITUDE	STATE PLANE COORDINATES (FT)
FTM(V)RS	N26°38'20.41934"	W81°52'25.49756"	N 837,971.29060 E 697,406.83738
FDEP COASTAL CONSTRUCTION MONUMENT "A25A"	N26°27'10.3174"	W81°58'18.7055"	N 770,294.918 E 670,825.675
- ELEVATIONS SHOWN HEREON ARE IN FEET RELATIVE TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), AND ARE BASED ON A CLOSED LEVEL LOOP ORIGINATING FROM NATIONAL GEODETIC SURVEY (NGS) BENCHMARK 872 5366 F (PID 4078552) HAVING A PUBLISHED ELEVATION OF +22.60.
- THE PROXISION CONTROL LINE RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IS THIS BOUNDARY BETWEEN THE GULF OF MEXICO (STATE OF FLORIDA) AND THE EASEMENT INTERIOR OF THE SUBJECT PARCEL (LEE COUNTY, FLORIDA).
- THE LOCATION OF THE MEAN HIGH WATER LINE WAS DETERMINED BY USING THE MEAN HIGH WATER ELEVATION OF +0.26 FEET NAVD88, AS PROVIDED BY STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION PER TIDAL WATER SURVEY APPROVAL LETTER DATED 4/17/2024 AND WAS LOCATED FOR COASTAL CONSTRUCTION PURPOSES.
- THIS SURVEY COMPLIES WITH THE REQUIREMENTS FOR SURVEYS PER CHAPTER 62B-33.0081, FLORIDA ADMINISTRATIVE CODE.
- THE SURVEYED PARCEL LIES IN F.E.M.A. FLOOD ZONE VE, HAVING A BASE FLOOD ELEVATION OF (+13') (+F.L.) AND (+15') ACCORDING TO THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD RATE MAP (FIRM) PANEL NUMBER 12071C0554G WITH AN EFFECTIVE DATE OR NOVEMBER 17, 2022.
- THIS SURVEY MEETS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:7,500)
- THE LOCATION OF THE 1990 COASTAL CONSTRUCTION WAS BASED ON FOUND ORIGINAL MONUMENTS "A25A" AND "A37A" PER THE PLAT RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA.
- THE LOCATION OF THE 1978 COASTAL CONSTRUCTION SETBACK LINE WAS BASED ON FOUND ORIGINAL MONUMENTS PER THE PLAT RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
- SUBSTANTIAL VISIBLE IMPROVEMENTS OTHER THAN THOSE SHOWN, NOT LOCATED. UNDERGROUND IMPROVEMENTS, ENCROACHMENTS AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
- THIS SURVEY DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.
- NO ENVIRONMENTAL ASSESSMENT OR AUDIT WAS PERFORMED ON THE SURVEYED PARCEL BY THIS FIRM.
- THIS SURVEY DOES NOT PURPORT TO DELINEATE THE REGULATORY JURISDICTION OF ANY FEDERAL, STATE OR LOCAL AGENCY.
- THIS SURVEY DOES NOT DETERMINE PROPERTY OWNERSHIP OR PROPERTY RIGHTS. THIS SURVEY LOCATED THE BOUNDARY IN ACCORDANCE WITH AND IN RELATION TO THE LEGAL DESCRIPTION.
- ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.
- AREA OF SURVEYED PARCEL IS 2.765 SQUARE FEET OR 0.06 ACRES, MORE OR LESS.
- THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. A TITLE COMMITMENT AND/OR ABSTRACT OF TITLE WAS NOT PROVIDED TO THE SURVEYOR.
- AERIAL PHOTOGRAPHY SHOWN HEREON WAS OBTAINED FROM LEE COUNTY AND IS DATED 2024. IT IS INCLUDED FOR ORIENTATION PURPOSES ONLY.



PROPERTY OWNER: LEE COUNTY

DESCRIPTION

(FORT MYERS BEACH ACCESS #41)
PER OFFICIAL RECORDS BOOK 1782, PAGE 1812

AN 8' (EIGHT FOOT) EASEMENT FOR PUBLIC WALKWAY: THE CENTERLINE BEING THE COMMON LINE BETWEEN LOTS 2 & 3, GULFSHORE SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, LEE COUNTY FLORIDA, PUBLIC RECORDS.

REVISIONS	
DATE	DESCRIPTION
05/14/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE: 4/1/2024

PROJECT NO. 20236180-000

FILE NO. 24-46-23

SCALE: AS SHOWN

THIS SURVEY HAS BEEN DIGITALLY SIGNED BY:
RICHARD G. DANIELS (FOR THE FIRM L.B. 642)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 7229
ON THE DATE ADJACENT TO THE SEAL.

THIS CERTIFICATION IS TO THE DATE OF LAST FIELD WORK AS SHOWN IN NOTE 1 AND NOT THE SIGNATURE DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED, AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

COVER SHEET

1 OF 3

REVISIONS	
DATE	DESCRIPTION
05/14/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE: 4/1/24

FILE NO. 24-46-23

SCALE: AS SHOWN

C.C.C.L. DETAIL AND BOUNDARY SURVEY

SHEET NUMBER

2 OF 3



AERIAL PHOTOGRAPHY SHOWN HEREON WAS OBTAINED FROM LEE COUNTY AND IS DATED 2024.
IT IS INCLUDED FOR ORIENTATION PURPOSES ONLY.

(INTENDED DISPLAY SCALE: 1"=30')

BOUNDARY SURVEY

1"=30'

SEE SHEET 3 OF 3 FOR
IMPROVEMENTS AND
TOPOGRAPHIC DATA

LEGEND

FDEP = FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION	
ORI = OFFICIAL RECORDS BOOK/PAGE	$\times^{SLO}$ = EXISTING ELEVATION
C.C.C.L. = COASTAL CONSTRUCTION CONTROL LINE	 = CATCH BASIN
C.C.S.L. = COASTAL CONSTRUCTION SETBACK LINE	
ID = IDENTIFICATION	 = IRRIGATION CONTROL VALVE
UR = UNREADABLE	 = GUY ANCHOR
TYP. = TYPICAL	 = TELEPHONE BOX
F.F. = FINISHED FLOOR ELEVATION	 = SIGN
CONC. = CONCRETE	 = GATE/GUARD POST
PLS = LICENSED SURVEYOR	 = ELECTRIC SERVICE BOX
LB = LICENSED BUSINESS	 = LIGHT POLE
(D) = DEED DIMENSION	 = SEWER VALVE
(P) = PLAT DIMENSION	 = WOOD UTILITY POLE
(C) = CALCULATED DIMENSION	 = FIRE HYDRANT
(M) = MEASURED DIMENSION OR COORDINATES	 = WATER METER
(R) = RECORD PLAT/MAP DIMENSION OR PUBLISHED COORDINATES	 = WATER VALVE
$\overline{LEV}$ = CENTER LINE	-OHE- = OVERHEAD UTILITY LINE
LEV = ELEVATION	STA = STATION
MES = MITERED END SECTION	INV. = INVERT ELEVATION
R/W = RIGHT-OF-WAY	 = LANDSCAPE LIGHT
BM = BENCHMARK	
CS = SANITARY SEWER MANHOLE	
CS = SEWER CLEANOUT	
RCP = REINFORCED CONCRETE PIPE	

O:\2023\20236180-000\Surveying\Surveys\Fort Myers Beach\FM Beach Access 41 Revised 2025 01 06.dwg (SHEET 2) Mathew.Beaudoin Feb 04, 2025 - 1:49pm

"FORT MYERS BEACH ACCESS #41"

PORTION OF LOTS 2 & 3,

(PLAT BOOK 9, PAGE 88.)

PUBLIC RECORDS OF LEE COUNTY, FLORIDA
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
CITY OF FORT MYERS BEACH, LEE COUNTY FLORIDA

REVISIONS	
DATE	DESCRIPTION
05/1/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE:	4/1/24
PROJECT NO.	20236180-000
FILE NO.	24-46-23
SCALE:	1"=20'

SHEET NUMBER

3 OF 3





Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20250261

CASE NAME: Beach Access #41; requesting a variance from LDC Section 34-652(f)(2)c., to allow an 8-foot-wide dune walkover where a maximum 6-foot-wide dune walkover is permitted for uses other than single family residential in the EC zoning district.

LPA

HEARING DATE: November 12, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi, LEED AP ND/ Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Lee County

Request: A variance from LDC Section 34-652(f)(2)c., to allow an 8-foot-wide dune walkover where a maximum 6-foot-wide dune walkover is permitted for uses other than single family residential in the EC zoning district.

The request is to allow like-for-like replacement of the elevated dune walkover, similar to pre-storm conditions on the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd.

Subject property: See attached site plan

Physical Address: 252 Estero Blvd, Beach Access #41

STRAP #: 24-46-23-W1-03600.00CE

FLU: Recreational

Zoning: Environmentally Critical (EC)

Adjacent zoning and land uses:

North:	Estero Blvd; Commercial Planned Development and Environmentally Critical zoning; Mixed Residential and Recreation FLUM; Multi-family residential
South:	Gulf of Mexico
East:	Residential Planned Development and Environmentally Critical zoning; Mixed Residential and Recreation FLUM; vacant residential
West:	Commercial Planned Development and Environmentally Critical zoning; Mixed Residential and Recreation FLUM; Multi-family residential

II. BACKGROUND AND ANALYSIS

Background:

Ehab Guirguis on behalf of Lee County, the owner of the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd, is requesting a 2-foot variance from the Town's LDC Section 34-652(f)(2)c., which permits a maximum of 6-foot-wide dune walkover for all uses other than single family residential in the EC zoning district to provide an 8-foot-wide and 110-foot-long dune walkover similar to pre-Ian conditions.

Replacement of structures, including dune walkovers, in the EC zoning district may only be approved through the Special Exception process. The Applicant has simultaneously applied for SEZ20250241, a special exception request to allow like-for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the Environmentally Critical (EC) zoning district.

Analysis:

The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan. The proposed replacement of the 8-foot-wide and 110-foot-long elevated dune walkover will be situated on the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd. The proposed dune walkover will be elevated 3 feet above the ground. The property has supported an 8-foot-wide elevated dune walkover in this location prior to 1998 and was destroyed during hurricane Ian in 2022. The Applicant is now proposing a like-for-like reconstruction of the 8-foot-wide and

110-foot-long elevated dune walkover in the EC zoning district and beyond the 1978 CCCL.

Neighborhood Compatibility:

The 8-foot-wide and 110-foot-long elevated dune walkover has been at this location with this layout prior to 1998. The proposed replacement of the elevated dune walkover is similar to pre-Ian conditions. Granting a variance of 2 feet to allow an 8-foot-wide elevated dune walkover where a maximum 6-foot-wide dune walkover is permitted in the EC zoning district would not impact the character of the neighborhood.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The Applicant is proposing a like-for-like replacement of the existing 8-foot-wide dune walkover that was destroyed during Hurricane Ian. The walkover existed in this location prior to 1998. The requested 2-foot variance is de minimis and maintains the historical footprint without introducing exceptional or extraordinary conditions.

- b. *That the conditions justifying the variance **are/are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

As mentioned earlier, the previously existing 8-foot-wide elevated dune walkover was destroyed during Hurricane Ian in 2022. The Applicant is now proposing like-for-like replacement of the 8-foot-wide and 110-foot-long elevated dune walkover.

- c. *That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The request is for a de minimis variance and granting this variance will allow the Applicant like-for-like replacement of the 8-foot-wide elevated dune walkover.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/are **not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

III. RECOMMENDATION

Staff has reviewed the requested variance from LDC Section 34-652(f)(2) c., *to allow 8-foot-wide dune walkover where a maximum 6-foot-wide dune walkover is permitted for uses other than single family residential in the EC zoning district* and find that the variance request does meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **APPROVAL WITH CONDITIONS** of VAR20250261, request to vary by 2 feet to allow like-for-like replacement of 8-foot-wide dune walkover for Beach Access #41.

IV. CONDITIONS

If approval of the request is granted, the following conditions should be considered for incorporation into the resolution of approval.

1. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. This Variance is contingent to the Special exception approval SEZ20250241, to allow reconstruction of a minor structure including elevated dune walkover on the subject property. Any violation of the conditions of approval for the special exception will render this variance approval null and void.
3. The variance shall only apply to the dune walkover as shown on the provided site plan. Demolition or substantial damage to the walkover shall render the variance to be null and void.
4. This variance applies to the proposed dune walkover in the subject property only. Any additional modification or additional construction on subject property must comply with all applicable regulations or seek a new variance.

V. EXHIBITS

Exhibit A: Site Plan

Exhibit B: Survey

Exhibit C: Deed for Estero Island Beach Condominiums
(Public Access Easement visible on Pg 41/90)

Exhibit D: Applicant's narrative and Application packet

9099
406.50 R

This instrument prepared by
and return to:

✓
Andrew T. Marcus, Esq.
BAKER & HOSTETLER
2300 Sun Bank Center
200 South Orange Avenue
Post Office Box 112
Orlando, Florida 32802
(407) 649-4000

3725525

OR2574 P60734

DECLARATION OF CONDOMINIUM

OF

ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM

ARTICLE I

PREAMBLE, NAME AND LEGAL DESCRIPTION

The undersigned, FLORIDA INCOME FUND III, LIMITED PARTNERSHIP, a Delaware limited partnership, whose address is 13391 McGregor Boulevard S.W., Fort Myers, Florida 33919 ("Developer"), being the owner of fee simple title of record to those certain lands located and situate in Lee County, Florida, and more particularly described hereinafter, does hereby submit fee simple title to the property described in Paragraph 1.2 below together with the improvements thereon to the condominium form of ownership in accordance with the provisions of Chapter 718, Florida Statutes, and the following provisions:

1.1 Name. The name by which this condominium is to be identified is ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM (the "Condominium").

1.2 Legal Description. The property that is hereby submitted to the condominium form of ownership under this Declaration of Condominium consists of that certain real property situate in Lee County, Florida, that is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, together with those easements more specifically described in Article IV herein and described on attached Exhibit "A."

• RECORD VERIFIED - CHARLIE GREEN, CLERK •
• BY: C. KELLER, D.C. •

0R2574 P60735

ARTICLE II

DEFINITIONS

The terms used in this Declaration and in its exhibits, including the Articles of Incorporation and Bylaws of the Association, shall be defined in accordance with the provisions of Chapter 718 and as follows unless the context otherwise requires:

2.1 Ad Valorem Real Estate Taxes shall mean those real property taxes assessed against the Units and their respective undivided interests in the Common Elements by Lee County, Florida.

2.2 Articles of Incorporation shall mean the Articles of Incorporation of the Association, as they may be amended from time to time. A copy of the present Articles of Incorporation are attached hereto as Exhibit "B" and incorporated herein by reference.

2.3 Association means Estero Island Beach Villas Condominium Association, Inc., a non-profit Florida corporation, and its successors, which is responsible for the operation of the Condominium.

2.4 Association Property shall mean all real and personal property owned by the Association, including but not limited to all furnishings, fixtures and other personal property contained within the Condominium Property that are not the property of an individual Owner.

2.5 Bylaws shall mean the Bylaws of the Association, as they may be amended from time to time. A copy of the present Bylaws are attached hereto as Exhibit "C" and are incorporated herein by this reference.

2.6 Chapter 718 shall mean the provisions of Chapter 718, Florida Statutes, as the same is constituted on the date of the recording of this Declaration.

2.7 Common Elements shall mean all of those items defined in Chapter 718 as Common Elements and those items hereinafter declared to be included within the Common Elements.

2.8 Common Expenses shall include:

(a) Expenses of administration and management of the Condominium Property, and of the Association, including but not limited to compensation paid by the Association to a manager, accountant, attorney, or other employee or independent contractor.

(b) Expenses of maintenance, operation, repair and replacement of the Common Elements and Limited Common Elements, as well as all other costs and expenses properly incurred by the Association.

(c) Expenses declared Common Expenses by the provisions of this Declaration or the Condominium Documents or Chapter 718.

(d) Any valid charge against the Condominium Property as a whole.

(e) All costs and expenses incurred by the Association in connection with regulatory compliance.

(f) All reserves for replacement and maintenance of the Condominium Property as required by Chapter 718.

Common Expenses shall not include Ad Valorem Real Estate Taxes assessed against each Condominium Parcel but shall include any and all taxes assessed against Association Property.

2.9 Common Surplus shall mean any excess of all receipts of the Association over the amount of Common Expenses.

2.10 Condominium shall mean and refer to Estero Island Beach Villas, a condominium.

2.11 Condominium Documents shall include this Declaration together with all exhibits attached hereto and all other documents expressly incorporated herein by reference, as the same may be amended from time to time.

2.12 Condominium Parcel is a Unit together with the undivided share in the Common Elements and Common Surplus which are appurtenant to the Unit.

2.13 Condominium Property means and includes the lands, leaseholds, easements and personal property that are subjected to

condominium ownership from time to time as part of this Condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.

2.14 Condominium Rules and Regulations shall mean and refer to the rules and regulations concerning the use of Condominium Property as may be promulgated and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws. A copy of the initial Condominium Rules and Regulations are attached hereto as Exhibit "F."

2.15 Declaration shall mean this Declaration of Condominium of Estero Island Beach Villas, a condominium, as it may lawfully be amended from time to time, pursuant to the provisions hereof.

2.16 Developer shall mean Florida Income Fund III, Limited Partnership, a Delaware limited partnership, its successors and assigns.

2.17 Limited Common Elements means and includes those Common Elements which are reserved for the use of a certain Unit to the exclusion of other Units.

2.18 Management Company shall mean Mariner Capital Management, Inc., a Florida corporation, its successors or assigns, or any other entity engaged to manage the Condominium, pursuant to the Management Contract.

2.19 Management Contract shall mean the agreement between the Association and any Management Company which provides for the ongoing management of the Condominium.

2.20 Mortgagee shall mean the Developer (and any successor in interest to the Developer as to a purchase-money mortgage), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or any trust, savings and loan association, credit union, mortgage company, bank, insurance company, or commercial loan company licensed to do business in the State of Florida, to the extent that any of the same hold a first mortgage encumbering any Unit.

2.21 Owner means the owner of a Unit.

2.22 Unit means a condominium unit as that term is defined in Chapter 718 and in Article V of this Declaration and refers to that part of the Condominium Property which is subject to exclusive ownership by one or more persons.

2.23 Utility Services shall include but not be limited to electric power, water, garbage and sewage disposal and telephone service, and all other public service and convenience facilities.

ARTICLE III

EXHIBITS

The Exhibits referred to in this Declaration shall include the following:

3.1 Exhibit "A." A legal description and a survey of the land committed to the condominium form of ownership pursuant to this Declaration, together with a graphic description of the Units located therein in a plot plan which, together with this Declaration, are of sufficient detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. As set forth in Exhibit "A", each Unit is identified by a number so that no Unit bears the same designation as any other Unit.

3.2 Exhibit "B." The Articles of Incorporation of the Association.

3.3 Exhibit "C." The Bylaws of the Association.

3.4 Exhibit "D." Percentage Interest in the Common Elements.

3.5 Exhibit "E." The Management Contract.

3.6 Exhibit "F." The Condominium Rules and Regulations.

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ARTICLE IV

EASEMENTS

The following easements are hereby expressly reserved or have been granted:

4.1 General Easements. Non-exclusive easements over, across and under the Condominium Property are expressly provided for and reserved in favor of the Developer and the Owners, and their respective lessees, guests and invitees, as follows:

(a) Utilities. Easements are reserved over, across and under the Condominium Property as may be required for Utility Service in order to serve the Condominium adequately; including, but not limited to, easements for the purpose of allowing such access rights as are necessary to utilize and service any lift station or utility transformer boxes located within the Condominium Property. Specific utility easements that exist on the Condominium Property are set forth in the survey contained in Exhibit "A" attached hereto.

(b) Encroachments. In the event that any Unit shall encroach upon any of the Common Elements or upon any other Unit, or in the event any Common Element shall encroach upon any Unit, then an easement shall exist to permit such encroachment so long as the same shall exist.

(c) Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, and other portions of the Common Elements as may be from time to time intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, and such easements shall be for the use and benefit of the Owners within this Condominium and those claiming by, through or under the aforesaid; provided, however, nothing herein shall be construed to give or create in any person the right to park any vehicle upon any portion of the Condominium Property except to the extent that space may be specifically designated and assigned for parking purposes. In addition, further easements shall exist for ingress and egress over such streets, walks and other rights of way serving the Units as shall be necessary to provide for reasonable access to the public ways.

4.2 Association Easements. Except as limited by Section 718.111(10), Florida Statutes, the Association may grant easements from time to time over the Common Elements.

4.3 Developer Easements. The Developer hereby reserves the following exclusive easements and rights to grant easements:

(a) Marketing, Sales and Rental. The Developer reserves exclusive easement rights over and across the Condominium Property for the purpose of marketing, sales and rental of Units and other accommodations owned or operated by the Developer on adjoining properties which are not part of the Condominium.

(b) Governmental Requirements. The Developer hereby reserves the right to grant such easements, from time to time, as may be required by any government agency. Such easements shall specifically include, but not be limited to, any environmental easements required by state or federal environmental agencies, for so long as the Developer holds any interest in any Unit subject to this Declaration.

(c) Developer Easements. The Developer reserves unto itself, for so long as it holds any interest in any Unit (including leaseholds), specific easement rights over and across the Condominium Property as it may deem necessary for its use from time to time.

(d) Linen Closets. For so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes) the Developer or such affiliated entity shall have an exclusive easement for the use, possession and occupancy of the linen closet (as shown on the floor plans contained in Exhibit "A") located on each floor of the building.

4.4 Public Easement. An eight foot non-exclusive walkway easement from Estero Boulevard to the Gulf of Mexico exists on the Condominium Property in favor of the general public. The specific location of this easement is shown on the survey contained in Exhibit "A" attached hereto.

4.5 Other Easements. Other easements may have been granted over the Condominium Property as set forth in the survey contained in Exhibit "A" attached hereto.

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ARTICLE V

UNITS

5.1 Description of Units. Each Unit shall include that part of a building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimeter boundaries:

(1) Upper Boundaries. The imaginary horizontal plane through the highest point of the interior unfinished surface of the concrete ceiling of the Unit.

(2) Lower Boundaries. The imaginary horizontal plane through the lowest point of the upper surface of the undecorated concrete floor of the Unit.

(b) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the imaginary vertical planes along and coincident with the interior surfaces of perimeter walls, or where no wall exists, an imaginary vertical plane along and coincident with the sides of the perimeter of such Unit.

5.2 Limited Common Elements. Limited Common Elements shall be comprised of the balcony and patio appurtenant to any Unit, as well as the air-conditioner compressor located on the roof of the building which serves such Unit.

5.3 Warranty Limitation. EXCEPT FOR THOSE WARRANTIES REQUIRED BY CHAPTER 718, FLORIDA STATUTES, THE DEVELOPER DOES NOT MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THE DEVELOPER HEREBY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE OWNERS AND THE ASSOCIATION ASSUME ALL RISK AND LIABILITY RESULTING FROM THE USE OF THIS PROPERTY.

ARTICLE VI

APPURTENANCES

6.1 Appurtenant Interests. Each Unit, regardless of Unit-type, shall have as an appurtenance thereto an equal undivided

share of the Common Elements and Common Surplus as more specifically described on Exhibit "D" attached hereto and by this reference incorporated herein. The Owner of each Unit shall be liable for that share of the Common Expenses which equals the percentage interest in the Common Elements and Common Surplus appurtenant to his Unit.

6.2 Partition of Common Elements. The share of the undivided percentage interest in the Common Elements appurtenant to each Unit shall remain undivided, and no Owner shall bring, or have any right to bring, any action for partition or division of same.

ARTICLE VII

MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement, shall be as follows:

7.1 Units.

(a) By the Association. Unless caused by the specific abuse of an Owner or any licensee, guest or tenant of an Owner, the Association shall maintain, repair and replace at the Association's expense:

(1) All Common Elements and Limited Common Elements except as otherwise provided in the Condominium Documents.

(2) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of Utility Services.

(b) By the Owner. The responsibility of the Owner for maintenance, repair and replacement shall be as follows:

(1) To not paint or otherwise decorate or change the appearance of any portion of the Condominium Property without the prior written approval of the Association.

(2) To promptly report to the Association upon discovery any defect or need for repairs for which the Association is responsible.

(3) To bear in their entirety any expenses of repairs or replacements to the Common Elements occasioned by the specific use or abuse by any Owner or any licensee, guest or tenant of said Owner.

(4) To maintain, repair and replace all components, furnishings, carpeting, appliances, and other property, real, personal or mixed, located inside a Unit unless provided otherwise in the Condominium Documents.

7.2 Management Contract. The Association may enter into such management contracts, from time to time, as it deems necessary to engage the services of a management company to carry out all or part of the maintenance and operational duties and obligations of the Association in accordance with this Declaration. The initial Management Company is Mariner Capital Management, Inc., a Florida corporation, pursuant to the terms of the Management Contract attached hereto as Exhibit "E." In the event that the Management Contract is terminated, the maintenance duties and other obligations of the Condominium will once again be the responsibility of the Association.

7.3 Association's Access to Units. The Association has the irrevocable right of access to each Unit whenever necessary for maintaining the Condominium Property or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit.

7.4 Common Elements and Limited Common Elements. The Association shall maintain, repair and replace all Common Elements and Limited Common Elements.

ARTICLE VIII

ASSESSMENTS AND COMMON EXPENSES

8.1 Common Expenses. In addition to those items defined as Common Expenses in Article 2.8 above, Common Expenses shall include the following:

(a) Repair, replacement and upkeep of the Common Elements;

(b) Casualty, and/or liability insurance on the Condominium Property;

(d) Utility Services for the Condominium Property not attributable to individual Units;

(e) Taxes on Association Property and any other applicable taxes other than Ad Valorem Real Estate Taxes assessed against individual Condominium Parcels; and

(f) Any other expenses incurred in the normal operation and maintenance of the Condominium which cannot be attributed to a particular Owner.

8.2 Assessments. The mailing and collection of assessments against each Owner for Common Expenses, for the costs or expenses for which an individual Owner may be solely responsible pursuant to the terms of the Condominium Documents, and for reserves as may from time to time be established by the Association, shall be pursuant to the Bylaws of the Association, subject to the following provisions:

(a) Interest: Application of Payments. Assessments and installments on such assessments paid on or before five (5) days after the date when due shall not bear interest, but all sums not paid on or before five (5) days after the date when due shall bear interest at the maximum legal rate from the date when due until paid. A late charge equal to the greater of \$25.00 or 5% of the delinquent payment shall also be due on delinquent accounts. All payments on accounts shall be first applied to any interest that has accrued, then to any late charge, then to any costs and reasonable attorneys' fees incurred in collection, and then to the assessment payment first due. The board of directors shall have the discretion to increase or decrease the amount of late charge and/or interest rate within the limits imposed by law; provided, however, that such increase or decrease shall be made effective by amending the Condominium Rules and Regulations and notifying the Owners of same by regular mail addressed to each Owner at his last known address.

(b) Lien for Assessments. The Association shall have a lien against each Unit for any unpaid assessments and for interest accruing thereon, which lien shall also secure any late charges and reasonable attorneys' fees and costs incurred by the Association incident to the collection of such assessment or enforcement of such lien, whether or not legal proceedings are initiated. The lien is effective from and after recording a claim of lien in the Public Records of Lee County, Florida stating the legal description of the Unit, the name of the Owner of record, the

amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Association, or by an authorized agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared by and recorded at such party's expense. All such liens shall be subordinate to any mortgage recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien. Pursuant to §718.116(1)(a), Florida Statutes, in the event a Mortgagee shall obtain title to a Unit as a result of the foreclosure of its mortgage, or in the event such Mortgagee shall obtain title to a Unit as the result of a conveyance in lieu of foreclosure of its mortgage, such Mortgagee shall be liable for the unpaid Common Expenses and assessments that became due prior to the Mortgagee's acquisition of title. However, the Mortgagee's liability is limited to a period not exceeding 6 months, but in no event does the Mortgagee's liability exceed 1 percent of the original mortgage debt. The Mortgagee's liability for such expenses or assessments does not commence until 30 days after the date the Mortgagee received the last payment of principal or interest. In no event shall the Mortgagee be liable for more than 6 months of the Units unpaid Common Expenses or assessments accrued before the acquisition of the title to the Unit by the Mortgagee or 1 percent of the original mortgage debt, whichever is less. Nothing contained herein shall be construed as a modification of any rights or remedies of the Association pursuant to Chapter 718, except to the extent that the Condominium Documents allow additional remedies to those expressly set forth in said statute and to the extent that such additional remedies are permitted by said statute.

(c) Personal Liability for Unpaid Assessments.

Each Owner of a Unit is personally liable for all assessments made against the Unit pursuant to this Declaration and Chapter 718, and the Association may bring an action for a money judgment against a delinquent Owner to collect all sums due the Association, including interest, late charges, costs and reasonable attorneys' fees. In the event a Unit is owned by more than one person or entity, such owners shall be jointly and severally liable for all assessments made against the Unit.

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(d) Payments of Assessments. No Owner may withhold payment of any regular assessment or special assessment or any portion thereof because of any dispute which may exist between that Owner and the Association, the directors of the Association, the Management Company or the Developer or among any of them, but rather each Owner shall pay all assessments when due pending resolution of any dispute.

8.3 Common Surplus. Each Owner shall own a share of the Common Surplus attributable to each Unit owned in accordance with Article 6.1 above.

8.4 Refunds of Common Surplus. If the Association shall refund all or a portion of any Common Surplus to the Owners for any fiscal year in which the Developer paid any assessment, such refund shall be prorated as of the date of closing of any sale of a Unit upon which the sale was closed by the Developer during such year, and the prorated amount allocable to the period of time of the Developer's ownership shall be refunded directly to the Developer by the Association.

8.5 Certificate. Any Owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit. The holder of a mortgage or other lien shall have the same right as to any Unit upon which it has a lien. Any person who relies upon such certificate shall be protected thereby.

ARTICLE IX

THE ASSOCIATION

The operation of the Condominium shall be by the Association, which shall fulfill its functions pursuant to the following provisions:

9.1 Membership in Association. Membership of each Owner in the Association shall be acquired pursuant to the provisions of the Articles of Incorporation and Bylaws of the Association. Each Unit shall have one (1) vote in the Association. Where a Unit is owned by more than one owner, the cotenants of the Unit shall file a voting certificate with the Association, in accordance with the Articles and Bylaws of the Association, setting forth which cotenant is designated to cast the vote for that Unit.

9.2 Articles of Incorporation. A copy of the present Articles of Incorporation of the Association, which set forth its powers and duties, are attached hereto as Exhibit "B" and are incorporated herein by reference.

9.3 Bylaws. A copy of the present Bylaws of the Association are attached hereto as Exhibit "C" and are incorporated herein by reference.

9.4 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair portions of the Condominium Property, the Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other Owners or persons.

9.5 Restraint upon Assignment of Shares and Assets. Each Owner's share in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

9.6 Transfer of Control of Association. Owners other than the Developer shall be entitled to elect members of the board of directors of the Association at such times as are prescribed by Section 718.301, Florida Statutes.

9.7 Management Contract. A copy of the present agreement between the Association and the Management Company for the management of the Condominium is attached hereto as Exhibit "E."

ARTICLE X

INSURANCE

The insurance other than title insurance, if any, that shall be carried upon the Condominium Property shall be governed by the following provisions:

10.1 Authority to Purchase; Named Insured. All insurance policies upon the Condominium Property shall be purchased by the Association from a fiscally responsible company authorized to do business in the State of Florida and shall have a minimum term of one year. The named insured shall be the Association

individually and as agent for the Owners, without naming them, and as agent for their Mortgagees. In addition, for so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), the Developer or entity affiliated with the Developer shall be named as an additional insured on all insurance policies obtained for the Condominium Property. Provisions shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Owners upon request. Such policies shall provide that payments by the insurer for losses shall be made to the Association or the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Association or the Insurance Trustee.

10.2 Personal Property of Owners. If desired, each Owner shall obtain insurance coverage upon his personal property at his own expense, and such insurance shall not be the responsibility of the Association.

10.3 Coverage.

(a) Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount equal to one hundred percent (100%) of the current replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from coverage, and all personal property owned by the Association shall be insured for its current replacement cost, all as shall be determined from time to time by the board of directors of the Association. All such coverage, including the amount thereof and the insurance company issuing same, shall be subject to the approval of the Mortgagee holding the greatest dollar amount of first mortgages against Units in the Condominium. Such approval shall be conclusively deemed given if such Mortgagee fails to notify the Association otherwise within ten (10) days of being notified by the Association of the proposed coverage amount and insurance company. Coverage shall afford protection against:

(1) Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement;

(2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Property, including floods and all perils normally covered by the

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standard "all risk" endorsement where such is available, including but not limited to vandalism and malicious mischief.

(b) Public Liability. Public liability insurance shall be carried in such amounts and with such coverage as shall be required by the board of directors of the Association from time to time; provided, however, that such coverage shall in no event be in an amount less than One Million (\$1,000,000.00) per occurrence. Wherever and whenever it is possible and economically feasible to do so, the board of directors shall attempt to obtain adequate insurance protection in reasonably prudent coverages. Except as required herein, nothing in this Declaration shall be construed to require the board of directors to obtain such coverage as a condition precedent to the Association conducting business.

(c) Worker's Compensation. Worker's compensation insurance shall be carried to the extent necessary to meet the requirements of law.

(d) Fidelity Bond. Fidelity insurance coverage shall be carried in the name of the Association for all officers, directors and employees of the Association and all other persons handling or responsible for funds of the Association. The total amount of fidelity bond coverage required shall be in the amount required for each such officer, director or employee as set forth in Section 718.112(2)(j), Florida Statutes.

(e) Business Interruption. If obtainable, the board of directors of the Association may obtain business interruption or loss of use insurance, on all Units. The named insured shall be the Association individually and as agent for the Owners, without naming them, and as agent for the Mortgagees as their interests may appear. In addition, for so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), the Developer or entity affiliated with the Developer shall be named as an additional insured on any business interruption or loss of use insurance policy obtained by the Association.

(f) Other. Such other insurance may be carried as the board of directors of the Association shall determine from time to time to be desirable.

10.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

10.5 Insurance Trustee; Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and any Mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to a named Insurance Trustee (the "Insurance Trustee") if the board of directors shall so elect. All references to an Insurance Trustee herein shall apply to the Association if the board of directors elects not to appoint an Insurance Trustee. Any Insurance Trustee appointed by the board of directors shall be a commercial bank with trust powers authorized to do business in Florida or another entity acceptable to the board of directors of the Association. The Insurance Trustee (other than the Association) shall not be liable for payment of premiums nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes stated herein for the benefit of the Owners and any Mortgagees in the following shares; provided, however, that such shares need not be set forth on the records of the Insurance Trustee:

(a) Proceeds on Account of Damage to Common Elements and Limited Common Elements. Proceeds on account of damage to Common Elements and Limited Common Elements shall be held in undivided shares for each Owner, such share being the same as the undivided share in the Common Elements and Limited Common Elements appurtenant to each Unit.

(b) Units. Proceeds on account of damage to Units when the building or Unit is not to be restored, shall be held in undivided shares for each Owner of those Units or Unit, such share being the same as the undivided share in the Common Elements appurtenant to each Owner's interest.

(c) Mortgagees. In the event a Mortgagee endorsement has been issued, any share for the Owner shall be held in trust for the Mortgagee and the Owner as their interests may appear; provided, however, that no Mortgagee shall have the right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except

distributions of such proceeds made to the Owner and Mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the Mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged interest in any of the following events:

(1) When its mortgage is not in good standing and is in default; or

(2) When insurance proceeds are insufficient to restore or repair the Unit to the condition existing prior to the loss and additional monies are not available for such purpose.

10.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners of such proceeds in the following manner:

(a) All expenses of the Insurance Trustee shall be paid first or provisions made for such payment.

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

(c) If it is determined in the manner provided herein that the damage for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to Owners and any Mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, any Mortgagee.

(d) In making distribution to Owners and any Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the Owners and their respective shares of the distribution.

10.7 Association as Agent and Attorney-in-Fact. The Association is hereby irrevocably appointed agent and attorney-in-fact for each Owner, to adjust all claims arising under the

insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

ARTICLE XI

RECONSTRUCTION OR REPAIR AFTER CASUALTY

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

(a) Common Elements and Limited Common Elements. If the damaged improvement is a Common Element or a Limited Common Element, then the damaged property shall be reconstructed or repaired, unless it is determined that the Condominium shall be terminated because of damage to Units as set forth in Article 11.1(b) below.

(b) Units.

(1) Minor Damage. If the damage is to Units and if less than fifty percent (50%) of the Units are found by the board of directors of the Association to be untenable, the damaged property shall be reconstructed or repaired.

(2) Major Damage. If the damage is to Units and if fifty percent (50%) or more of the Units are found by the board of directors of the Association to be untenable, then the damaged property will be reconstructed or repaired unless within sixty (60) days after the casualty, the holders of ninety percent (90%) of all of the votes of the Association agree in writing to not reconstruct or repair and to terminate the Condominium.

(c) Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its president and attested by its secretary as to whether or not the damaged property is to be reconstructed or repaired.

11.2 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the damaged property as originally constituted, or in lieu thereof, according to the plans and specifications approved by the board of directors of the Association.

11.3 Estimates of Cost. Prior to rebuilding or repairing damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

11.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair or upon completion of reconstruction and repair, the funds from insurance for the payment of the costs of reconstruction and repair are insufficient, special assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs. Such special assessments shall be in proportion to the Owners' respective obligations for Common Expenses.

11.5 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association or the Insurance Trustee and funds collected by the Association through assessments against Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association. If the total of assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair that are the responsibility of the Association is more than Fifty Thousand Dollars (\$50,000.00), then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee (if other than the Association). In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

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

(1) Association - Minor Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed

in payment of such costs upon the order of the board of directors of the Association; provided however, that upon request by a Mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(2) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair that are the responsibility of the Association is more than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be applied by the Insurance Trustee to the payment of such costs, and shall be paid to or for the account of the Association from time to time as the work progresses, but not more frequently than once in any calendar month. The Insurance Trustee shall make payments upon the written request of the Association for withdrawal of insurance proceeds accompanied by a certificate, dated not more than fifteen (15) days prior to such request, signed by an officer of the Association and by an architect in charge of the work, who shall be selected by the Association, setting forth that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials and any amounts paid prior to the request, and stating that the sum requested does not exceed the value of the services and material described in the certificate; that except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the person signing such certificate after due inquiry, which might become the basis of a vendor's, mechanic's, materialmen's or similar lien upon such work against the Common Elements or any Unit; and that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of insurance proceeds or other funds remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

(3) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund; except, however, that only those portions of distribution to the

beneficial owners in excess of assessments paid by an Owner to the construction fund shall be made payable to any Mortgagee.

(4) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether sums paid by the Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a Certificate of the Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided, that when a Mortgagee is required in this instrument to be named payee, the Insurance Trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to an Owner; and further provided, that when the Association, or a Mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association prior to disbursements in payment of costs of reconstruction and repair.

11.6 Eminent Domain. The Association is hereby empowered to defend and/or settle any action or threatened action with respect to the taking in condemnation of any portion of the Common Elements or any Unit or portion of any Unit. Upon obtaining knowledge of such action or threatened action, the Association shall notify all affected Mortgagees of record of same.

(a) Common Elements. Any award or settlement made as a result of such a taking of all or a portion of the Common Elements shall be made payable to the Association. In the event any repair or restoration of the Common Elements is necessary in the opinion of a majority of the board of directors of the Association on account of such taking, or in the event a majority of the voting interests at a duly called and constituted meeting of the Association promptly approve such restoration or repair, the board of directors shall arrange for same and shall disburse such of the proceeds of such award or settlement as shall reasonably be necessary to effect such restoration or repair to the contractors engaged for such purpose in appropriate progress payments. The balance of such proceeds, or all of such proceeds if no

determination to repair or restore is made, shall be disbursed by the Association in the same manner as insurance proceeds under Article 10.6 above where there is no repair or restoration of the damage.

(b) Units. Any award or settlement for the taking in condemnation of a Unit shall be made payable to the Association for the benefit of the Owners thereof. In the event any repair or restoration of the Unit is necessary in the event a majority of the voting interests appurtenant to that Unit at a duly called and constituted meeting of the Association promptly approve such restoration or repair, the board of directors shall arrange for same and shall disburse such of the proceeds of such award or settlement as shall reasonably be necessary to effect such restoration or repair to the contractors engaged for such purpose in appropriate progress payments. The balance of such proceeds, or all of such proceeds if no determination to repair or restore is made, shall be disbursed by the Association as to the Owners of that Unit in the same manner as insurance proceeds under Article 10.6 above. If a temporary taking in condemnation of use (but not title) of a Unit occurs, the entire award or settlement for such temporary taking shall be paid to the Association for the benefit of the Owners of such Unit.

ARTICLE XII

USE RESTRICTIONS

The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists:

12.1 Subdivision of Units. No Unit may be divided or subdivided into a smaller Unit.

12.2 Common Elements and Limited Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment and personal use of the Owners, their guests and lessees, and other authorized occupants of Units. To the extent that the Developer or an entity affiliated with the Developer has an exclusive easement to use, possess and occupy the linen closet located on each floor of the building as provided in Article 4.3(d) above, the Developer or affiliated entity may use such linen closets for any lawful purpose, personal

or commercial, as it deems appropriate in its sole discretion from time to time.

12.3 Nuisances. No nuisance shall be allowed upon the Condominium Property or within a Unit, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Owners. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No Owner shall permit any use of a Unit or make or permit any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

12.4 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Unit, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property or a Unit shall be the same as the responsibility for the maintenance and repair of the property concerned.

12.5 Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Common Elements, Limited Common Elements, or Units, except that the right is specifically reserved to the Developer to place and maintain "For Sale" or "For Rent" signs on the Condominium Property for as long as the Developer may have Units to sell. The right to place and maintain "For Sale" or "For Rent" signs on the Condominium Property is also specifically reserved to the Developer or an entity affiliated with the Developer for so long as the Developer or affiliated entity is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes).

12.6 Bicycles and Motorcycles. Bicycles and motorcycles shall not be stored on the Condominium Property except in such areas designated for this purpose.

12.7 Condominium Rules and Regulations. Reasonable rules and regulations concerning the use of Condominium Property may be promulgated and amended from time to time by the board of directors of the Association in the manner provided by its Articles of Incorporation and Bylaws. A copy of the present Condominium Rules and Regulations is attached hereto as Exhibit "F".

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12.8 Developer's Use. The Developer or an entity affiliated with the Developer may make such use of the Common Elements and the Units as may facilitate the sale or rental of Units, including, but not limited to, showing of the property and the display of signs and other promotional devices.

12.9 Antennas. No antennas of any type designed to serve a Unit shall be allowed on the Common Elements or Limited Common Elements, except as may be provided by the Association to serve as a master antenna for the benefit and use of the Condominium. No electrical or other equipment may be operated on the Condominium Property which interferes with television signal reception.

ARTICLE XIII

ALIENABILITY OF UNITS

13.1 Alienability Restrictions; Developer's Right of First Refusal to Purchase. The right of an Owner to sell, transfer, assign or hypothecate his Unit shall not be subject to the approval of the Association. Accordingly, a proper transfer or conveyance of such Unit shall not require the written approval of the Association. However, in the event an Owner desires to sell, transfer, assign or hypothecate his Unit, the Developer shall have a "right of first offer" to purchase the Unit before it is offered for sale to any third party for so long as the Developer has any interests to sell in the Condominium, or the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes). Specifically, any Owner wishing to sell his Unit must first offer the Unit to the Developer at a reasonable price that the Owner in good faith would be willing to accept. The Developer shall have 10 days from the receipt of Owner's good faith offer to accept, reject or present a counter-offer. Failure by the Developer to accept the offer or present a counter-offer within the 10-day period shall be deemed a rejection by the Developer. Any counter-offer made by the Developer may be immediately rejected by the Owner, who would then have the right to offer the Unit for sale to third parties. Any permitted sale between an Owner and a third party shall be deemed to contain a provision requiring that any sums due to the Association as assessments must be paid in full as a condition of closing of the sale. In any and all events, the Developer's "right of first offer" as set forth above shall always be a requirement of any

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successor in title to an Owner, the same being a covenant running with the land.

13.2 Leasing and Rental Restrictions. The right of an Owner to lease or rent his Unit shall not be subject to the approval of the Association; however, any leasing or rental arrangement must be in writing and must be in conformance with the form lease or rental agreement approved by the board of directors of the Association from time to time. Such leasing or rental agreements must set forth an acknowledgment and consent on the part of the lessee-sublessee-tenant to use, occupy and possess such Unit in conformance and compliance with the provisions of this Declaration, as well as the Articles of Incorporation, Bylaws, and the Condominium Rules and Regulations. In the event an Owner fails to secure a written leasing or rental agreement, the Association shall have the right to request the lessee-sublessee-tenant to execute an acknowledgment to use and occupy the rented or leased Unit in conformance with the Condominium Documents, the Condominium Rules and Regulations, and the approved lease or rental form. Any lease or rental agreement shall be deemed to contain a provision requiring that any sums due to the Association as assessments must be deducted from the gross rentals and paid directly to the Association. Notwithstanding anything in this paragraph to the contrary, for so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), the Developer or entity affiliated with the Developer shall be the exclusive rental and leasing agent of Units in the Condominium. Moreover, any leasing or rental arrangement involving the Developer or an entity affiliated with the Developer which is connected with the operation of said public lodging establishment shall not be subject to approval of the board of directors of the Association.

ARTICLE XIV

COMPLIANCE AND DEFAULT

14.1 Compliance and Default. Each Owner shall be governed by and shall comply with the terms of the Condominium Documents and the Condominium Rules and Regulations adopted pursuant to those documents, and as they may be amended from time to time. Failure of an Owner to comply with the provisions of such documents and regulations shall entitle the Association or other Owners to pursue any and all legal and equitable remedies for the

enforcement of such provisions, including but not limited to an action for damages, an action for injunctive relief or an action for declaratory judgment. All provisions of this Declaration shall be enforceable equitable servitudes and shall run with the land and shall be effective until the Condominium is terminated.

14.2 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the terms of the Condominium Documents, or the Condominium Rules and Regulations adopted pursuant to them, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as may be awarded by the Court, including all appeals and all proceedings in bankruptcy.

14.3 No Waiver of Rights. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of Chapter 718, the Condominium Documents, or the Condominium Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

14.4 Injunctive Relief. The Association may seek an injunction from a court of equity to compel or prohibit compliance or violation of the Condominium Documents regardless of whether an adequate remedy at law exists.

14.5 Governing Law; Waiver of Jury Trial; Venue of Actions. This Declaration shall be governed by, and shall be construed in accordance with, the laws of the State of Florida. The Association, an Owner or Owners, the Developer, the Management Company, and any other party claiming rights or obligations by, through, or under this Declaration, or two or more of the foregoing, each hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the others concerning the interpretation, construction, validity, enforcement or performance of this Declaration or any other agreement or instrument executed in connection with this Declaration. In the event any such suit or legal action is commenced by any party, the other parties hereby agree, consent and submit to the personal jurisdiction of the Circuit Court of the Twentieth Judicial Circuit of Florida in and for Lee County, Florida, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to

object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

ARTICLE XV

AMENDMENTS

15.1 By Owners. Except as otherwise provided herein, the Declaration of Condominium may be amended in the following manner:

(a) Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

(b) Resolution. A resolution for the adoption of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

(c) Adoption. A resolution amending the Declaration shall be adopted in the following manner:

(1) Board of Directors. Until the first election of a majority of the directors of the Association by Owners other than the Developer, proposal of any amendment and approval thereof shall require only the affirmative action of two-thirds (2/3) of the entire membership of the board of directors of the Association, and no meeting of the owners nor any approval thereof need be had. However, no amendment may change the configuration or size of any Unit in any material fashion, may alter or modify the appurtenances to the Unit, or may change the proportion or percentage by which the Owner shares the Common Expenses and owns the Common Surplus, unless specifically approved as provided in Article 15.1(c)(2) below.

(2) Board of Directors and Owners. In addition to the procedure set forth above and after the first election of a majority of the directors of the Association by Owners other than the Developer, a resolution for the adoption of a proposed amendment may be proposed by the board of directors of the Association or by the Owners. Owners may propose such an amendment by instrument in writing directed to the president or

secretary of the board signed by not less than holders of thirty-three percent (33%) of all of the votes of the Association. Amendments may be proposed by the board of directors by action of a majority of the board at any regularly constituted meeting thereof. Upon an amendment being proposed as herein provided, the president, or, in the event of his refusal or failure to act, the board of directors, shall call a meeting of the Owners to be held not sooner than fifteen (15) days nor later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and Owners not present at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the secretary at or prior to the meeting. Except as provided herein, such approvals must be by:

(i) Not less than two-thirds (2/3rds) of the entire membership of the board of directors and not less than a majority of the votes of the Association; or

(ii) Not less than two-thirds (2/3rds) of the votes of the Association; or

(iii) An agreement signed and acknowledged by all Owners in the manner required for the execution of a deed.

Any amendment which would adversely affect Mortgagees must have the prior written consent of every Mortgagee which holds a mortgage on any portion of the Condominium Property.

For so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), any amendment which would adversely affect the operation of said public lodging establishment shall require the prior written consent of the Developer or entity affiliated with the Developer, whichever is applicable.

(d) Execution and Recording. Each amendment shall be attached to or shall contain a certificate certifying that the amendment was duly adopted, and the certificate shall be executed by the president of the Association and attested by the secretary with the formalities of a deed, and said amendment shall be effective upon recordation of the amendment and certificate in the Public Records of Lee County, Florida.

15.2 By the Developer. The Developer reserves the right at any time, so long as it owns any of the Units in the

Condominium, to unilaterally amend this Declaration as it may deem appropriate, in its sole discretion, to carry out the purposes of the project, or as may be required by any lending institution, title insurance company or public body or as may be necessary to conform the same to the requirements of law or to facilitate the operation and management of the Condominium or the sale of Units in the Condominium. Any amendments to this Declaration which may be unilaterally made by the Developer shall become effective upon the recording in the Public Records of Lee County, Florida, of an instrument executed solely by the Developer, setting forth the text of such amendment in full, together with the appropriate recording data of this Declaration. No amendment of this Declaration unilaterally made by the Developer shall be permitted if such amendment would change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner shares the Common Expenses and owns the Common Surplus.

ARTICLE XVI

TERMINATION

The Condominium may be terminated in the following manners, in addition to the manner provided by Chapter 718:

16.1 Agreement. The Condominium may be terminated at any time by the approval in writing of all Owners and all Mortgagees of record. Notice of a meeting at which the proposed termination is to be considered shall be given not less than thirty (30) days prior to the date of such meeting.

16.2 Termination Through Condemnation. The Condominium shall only be terminated by virtue of a condemnation action if all Condominium Property is taken in condemnation. If less than all of the Condominium Property is taken in condemnation, the Condominium shall continue as to those portions of the Condominium Property not so taken.

16.3 Certificate. Termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying to the facts effecting the termination, said certificate to become effective upon being recorded in the Public Records of Lee County, Florida.

16.4 Shares of Owners after Termination. After termination of the Condominium, each Owner shall own an undivided share of the Condominium Property and all assets of the Association as a tenant in common in accordance with Exhibit "D."

ARTICLE XVII

PHASE DEVELOPMENT

17.1 Description of Phasing. It is the intention of the Developer to develop the Condominium in phases in accordance with Chapter 718. Phase 1 of the Condominium will consist of 1 building with 6 floors, each floor containing 6 Units (a total of 36 Units). With the approval of local building and zoning authorities, the Developer may, in its discretion, develop Phase 2, which will consist of an additional floor built above the 6 floors making up Phase 1, containing 6 additional Units. The proposed phasing plan including the proposed phasing order is set forth in the chart below. The Common Expense, Common Surplus and Common Element ownership reallocation caused by the proposed phasing plan is set forth in Exhibit "D" attached hereto and by this reference incorporated herein.

<u>Phase</u>	<u>Est. Date of Completion</u>	<u># of Buildings</u>	<u># of Units</u>	<u>Amenities</u>
1	2/15/95	1	36	See Exhibit "A"
2	2/15/95	N/A	6	

17.2 Impact of Phasing; Change in Ownership of Common Elements and Common Surplus and Share of Common Expenses. The impact which the completion of Phase 2 would have upon the Condominium would be to increase the number of floors in the Condominium building from 6 to 7, and to increase the number of Units and Owners in the Condominium from 36 to 42. The change in ownership of Common Elements and Common Surplus and the change in the share of Common Expenses attributable to each Unit by the addition of Phase 2 shall be determined in accordance with the formula set forth in Exhibit "D" attached hereto.

17.3 Completion of Phases. The Developer will submit Phase 2, if at all, to condominium ownership in its sole discretion. While Florida law allows the Developer up to seven (7) years from the date of recording of this Declaration to complete construction of Phase 2 and declare it as part of the Condominium,

it is the Developer's intent that Phase 2, if constructed, be completed and declared at approximately the same time as Phase 1. The Developer specifically reserves the right not to build Phase 2. The Developer also specifically reserves the right to amend this Declaration and Exhibit "A" attached hereto, without the approval of the Owners, to change the estimated completion dates of either phase and/or to change any of the items required to be included in this Declaration for either phase by Section 718.403(2), Florida Statutes.

17.4 Association Membership and Voting. Each Unit shall have one (1) vote in the Association. Where a Unit is owned by more than one owner, the cotenants of the Unit shall file a voting certificate with the Association, in accordance with the Articles and Bylaws of the Association, setting forth which cotenant is designated to cast the vote for that Unit.

17.5 Recreational Areas, Facilities and Parking Spaces. The recreational areas, facilities and Parking Spaces located within Phase 1 and Phase 2 are described in the attached Exhibit "A."

17.6 Notice. The Developer shall notify Owners of the decision not to add Phase 2. Notice shall be sent by regular mail addressed to each Owner at his last known address.

17.7 Amendment. Phase 2 may be added to this Condominium by the execution of an amendment to this Declaration executed by the Developer, its successors or assigns only, and such amendment shall not require the execution or consent of any Owners other than the Developer.

17.8 Minimum and Maximum Numbers and General Size of Units; Handicapped-Accessible Units. There will be a minimum number of 36 Units and a maximum number of 42 Units in the Condominium. As set forth in Exhibit "A," there are three types of Units in the following general sizes: Type "A.1" Units will have 2 bedrooms and 2 bathrooms, and will contain approximately 987 square feet of air-conditioned space, in addition to a screened enclosure containing approximately 112 square feet. Type "A.2" thru "A.5" Units will have 2 bedrooms and 2 bathrooms, and will contain approximately 981 square feet of air-conditioned space, in addition to a screened enclosure containing approximately 110 square feet. Type "B.1" Units will have 2 bedrooms and 2 bathrooms, and will contain approximately 1056 square feet of air-conditioned space, in addition to a screened enclosure containing approximately

160 square feet. Minor variations to the floor plans and square footages of Units 702, 706 and 606 will be made to make these Units more accessible to handicapped persons in accordance with applicable local, state and federal laws, including, but not limited to, the Americans With Disabilities Act.

ARTICLE XVIII

SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any article, section, subsection, sentence, clause, phrase or word, or other provision of the Condominium Documents and the Condominium Rules and Regulations shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration this 8 day of February, 1995.

FLORIDA INCOME FUND III,
LIMITED PARTNERSHIP, a Delaware
limited partnership

WITNESSES:

By: MARINER CAPITAL
MANAGEMENT, INC., a Florida
corporation and general partner

Linda L. Brown
Print Name LINDA L. BROWN

By: Lawrence A. Raymond
Print Name LAWRENCE A. RAYMOND

Phumey Fortnator
Print Name PHUMEY FORTNATOR

As its: PRESIDENT

STATE OF FLORIDA)
) SS.
COUNTY OF LEE)

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared LAWRENCE A. RAIMONDI, known to me to be the PRESIDENT of Mariner Capital Management, Inc., a Florida corporation as the general partner of Florida Income Fund III, Limited Partnership, a Delaware limited partnership, and HE acknowledged that HE executed the foregoing instrument on behalf of the corporation pursuant to due authority therefrom. HE is personally known to me or has produced _____ as identification and did (did not) take an oath.

WITNESS my hand and seal this 8 day of February, 1995.

Linda L. Brown
(Notary Signature)

(NOTARY SEAL)

LINDA L. BROWN
(Notary Name Printed)
NOTARY PUBLIC
Commission No. _____



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1/16/95.atm

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CONSENT OF MORTGAGEE
TO DECLARATION OF CONDOMINIUM

THIS CONSENT made and entered into this 8th day of February, 1995, by BARNETT BANK OF LEE COUNTY, N.A., ("Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagee is the owner and holder of: (1) that certain Mortgage and Security Agreement dated April 2, 1990, recorded in Official Records Book 2139, Page 2391, as modified by that certain Partial Subordination of Mortgage Agreement, dated June 17, 1994, recorded in Official Records Book 2511, Page 1776, and rerecorded in Official Records Book 2516, Page 0256, and that certain Mortgage Modification Agreement, dated June 17, 1994, recorded in Official Records Book 2511, Page 1778, all of the Public Records of Lee County, Florida; and (2) that certain Mortgage and Security Agreement dated June 17, 1994, recorded in Official Records Book 2511, Page 1752, Public Records of Lee County, Florida (collectively referred to hereinafter as the "Mortgages");

WHEREAS, the Mortgages encumber the land and the improvements located thereon (the "Property"), described in the Declaration of Condominium of Estero Island Beach Villas, a Condominium, hereinafter referred to as the "Declaration," to which this Consent is attached; and

WHEREAS, Mortgagee has agreed to consent to the Declaration.

NOW, THEREFORE, Mortgagee agrees as follows:

1. Mortgagee does hereby consent to the recordation of the Declaration, provided, however, no amendment to the Declaration shall be effective against Mortgagee unless Mortgagee has executed a joinder and consent as to said amendment.

2. Mortgagee agrees that the lien of the Mortgages, as the same apply to and encumber the Property, shall be upon the Condominium Parcels of Estero Island Beach Villas, a Condominium.

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3. This Consent shall apply and be effective solely to the Property, and nothing herein contained shall otherwise affect, alter or modify in any manner whatsoever the terms and conditions, lien, operation, effect and priority of the Mortgages as to both the Condominium Parcels in Estero Island Beach Villas, a Condominium, and any other land or improvements encumbered by the Mortgages.

IN WITNESS WHEREOF, Mortgagee has caused this instrument to be executed by its duly authorized officer the day and year first above written.

"MORTGAGEE"

BARNETT BANK OF LEE COUNTY,
N.A.

Linda L. Brown

Print Name LINDA L. BROWN

Susan M. Palmer

Print Name SUSAN M. PALMER

By: [Signature]

As its: Vice President

STATE OF FLORIDA)
COUNTY OF Lee) SS.

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared Charles S. Flint, known to me to be the Vice President of Barnett Bank of Lee County, N.A., and he acknowledged that he executed the foregoing instrument on behalf of the bank pursuant to due authority therefrom. He is

personally known to me or has produced _____
as identification and did (did not) take an oath.

1995. WITNESS my hand and seal this 8 day of February.

Susan M. Palmer
(Notary Signature)

(NOTARY SEAL)

SUSAN M. PALMER
(Notary Name Printed)
NOTARY PUBLIC
Commission No. _____



Exhibit "A"

RECORDER'S MEMO
Legibility of Writing, Typing or Printing Unaffected
except in This Document Where Specified.

OR2574 PG0771

ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM (Phases 1+2)

DESCRIPTION

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3, 4, 8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88, ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 297 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG SAID MEAN HIGH WATERLINE FOR 150 FEET MORE OR LESS TO THE INTERSECTION WITH A LINE THAT BEARS S.47°52'35"W. FROM THE POINT OF BEGINNING; THENCE N.47°52'35"E. FOR 410 FEET MORE OR LESS ALONG THE SOUTHEASTERLY LOT LINE OF LOT 2 OF SAID GULFSHORE SUBDIVISION TO THE POINT OF BEGINNING.

CONTAINING 1.8 ACRES MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS OR RIGHTS OF WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTERLINE OF GULFSHORE COURT BEING N.47°52'35"E.

0R2574 P60772

RECORDER'S MEMO
(Legibility of Writing, Typing or Printing Unaffected by
Factor in This Document When Received.)

PHASE I, ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM

✓ DESCRIPTION

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3, 4, 8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88, ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE FOR GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 51.94 FEET; THENCE S.47°52'35"W. FOR 23.82 FEET; THENCE S.68°56'12"W. FOR 47.37 FEET; THENCE S.48°42'33"W. FOR 66.00 FEET; THENCE S.41°17'27"E. FOR 11.23 FEET; THENCE S.48°42'33"W. FOR 13.37 FEET; THENCE S.40°09'10"E. FOR 7.98 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 270 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG SAID MEAN HIGH WATER LINE 150 FEET MORE OR LESS TO THE INTERSECTION WITH A LINE THAT BEARS S.47°52'35"W. FROM THE POINT OF BEGINNING; THENCE N.47°52'35"E. FOR 390 FEET MORE OR LESS ALONG THE SOUTHEASTERLY LOT LINE OF LOT 2 OF SAID GULFSHORE SUBDIVISION TO THE POINT OF BEGINNING;

CONTAINING 1.6 ACRES MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS, OR RIGHTS OF WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTERLINE OF GULFSHORE COURT BEING N.47°52'35"E.

RECORDER'S MEMO
 Legibility of Writing, Typing or Printing Unsettled
 Factors in This Document When Received.

PHASE 2, ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM
DESCRIPTION

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOT 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

FROM THE POINT OF COMMENCEMENT BEING THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULF SHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF GULF SHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULF SHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'54"W. FOR 50.00 FEET TO THE POINT OF BEGINNING. THENCE CONTINUE N.42°07'25"W. FOR 1.94 FEET; THENCE S.47°52'35"W. FOR 23.82 FEET; THENCE S.68°56'12"W. FOR 47.37 FEET; THENCE S.48°42'33"W. FOR 66.00 FEET; THENCE S.41°17'27"E. FOR 11.23 FEET; THENCE S.48°42'33"W. FOR 13.37 FEET; THENCE N.40°09'10"W. FOR 23.55 FEET; THENCE N.48°42'33"E. FOR 77.19 FEET; THENCE N.29°58'13"E. FOR 29.45 FEET; THENCE S.58°42'37"E. FOR 3.31 FEET; THENCE N.30°21'33"E. FOR 15.24 FEET; THENCE N.59°17'29"W. FOR 2.30 FEET; THENCE N.39°40'35"E. FOR 31.50 FEET; THENCE S.59°22'01"E. FOR 20.32 FEET; THENCE S.50°19'25"E. FOR 27.57 FEET; THENCE S.40°31'28"W. FOR 14.49 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.089 ACRES MORE OR LESS.

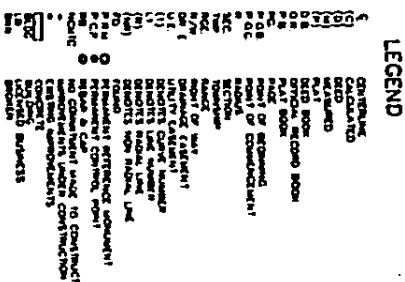
SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS, OR RIGHTS OF WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTERLINE OF GULF SHORE COURT BEING N.47°52'35"E.

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

RECEIVED

DATE: 09-21-93
JOB NO. 8888
FILE NO. 8888VS1-
SHEET: 1 OF 4



SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

ISTIBO ISLAND BEACH VILLAS, A CONDOMINIUM

THE UNIVERSITY OF CHICAGO

TRACT OR VESSEL OF LAND LING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, 12E COUNTY, FLORIDA, ALSO BEING PART OF LOTS 3, 2 4, 5 AND 9 OF CHESAPEAKE SUBDIVISION, PLAT BOOK 9, PAGE 88, ALL 3 PART OF LOTS 23 AND 24 OF ISLAND BEACHS TRACT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF THE COUNTY, FLORIDA WHICH IS DECLARED AS FOLLOWS:

[illegible]

CONTAINING 1.8 ACRES MORE OR LESS

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS OR RIGHTS OF
WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTRLINE OF GULFSHORE COUNT BEING N.47°52'39"E.

THE UNIVERSITY OF CHICAGO

2000-2001 BLACK VILLAGE COMMUNITY

[illegible]

ESTERO BLAND BEACH
VIA A. CROOKSMILL

THE INVESTING FIRM

COLLEEN D. KIRBY
PROFESSIONAL LAND SURVEYOR
FLORIDA CERTIFICATE NO. 2894

PAGE 2, LETTER FROM REAGAN TO VILLAS, A CONDOMINIUM

THE UNIVERSITY OF CHICAGO PRESS

SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3, 4, 8 AND 9 OF GULFWOOD SUBDIVISION, PLAT BOOK 9, PAGE 88. ALSO PART OF LOTS 23 AND 24 OF BEACH ESTATES TRACT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH DISCLOSED AS FOLLOWS:

CONTAINING 1.4 ACRES MORE OR LESS.

SUBJECT TO ANY EMBARGOS, RESTRICTED BY THE ISSUING OFFICE.

REAGINS NOTION ARE RELATIVE TO GRID NORTH BASED ON THE

CENTROLINE OF OUTSMOKE COURT BEING N.47°32'38"E.

PHASE 2, ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM

100

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46,
SOUTH, RANGE 23 EAST, 1ST COUNTY, FLORIDA, ALSO AING PART OF
LOT 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 8, PAGE 27 OF
THE PUBLIC RECORDS OF 1ST COUNTY, FLORIDA WHICH IS DESCRIBED
AS FOLLOWS:

[illegible]

CONFIDENTIAL 8-000 ADVICE NOTED ON LHM.

SUBJECT TO ANY EXEMPTIONS, RESTRICTIONS, RESERVATIONS, OR RIGHTS OF WAY OF THIRD.

NAKHOUS UNDER ARE RELATIVE TO GRID BEING BASED ON THE SECTOR PLANE COORDINATE SYSTEM FOR THE WEST BOUND OF FLORIDA WITH THE CENTERLINE OF EQUINOXIAL CROSS SECTION 8.47°43'38"E.

CONDOMINIUM PLAT BOOK **PAGE**

SCALE IN FEET

DATE: 09-21-93 (12-3-93)
JOB NO. 8888
FILE NO. 8888V4
SHEET: 2 OF 4

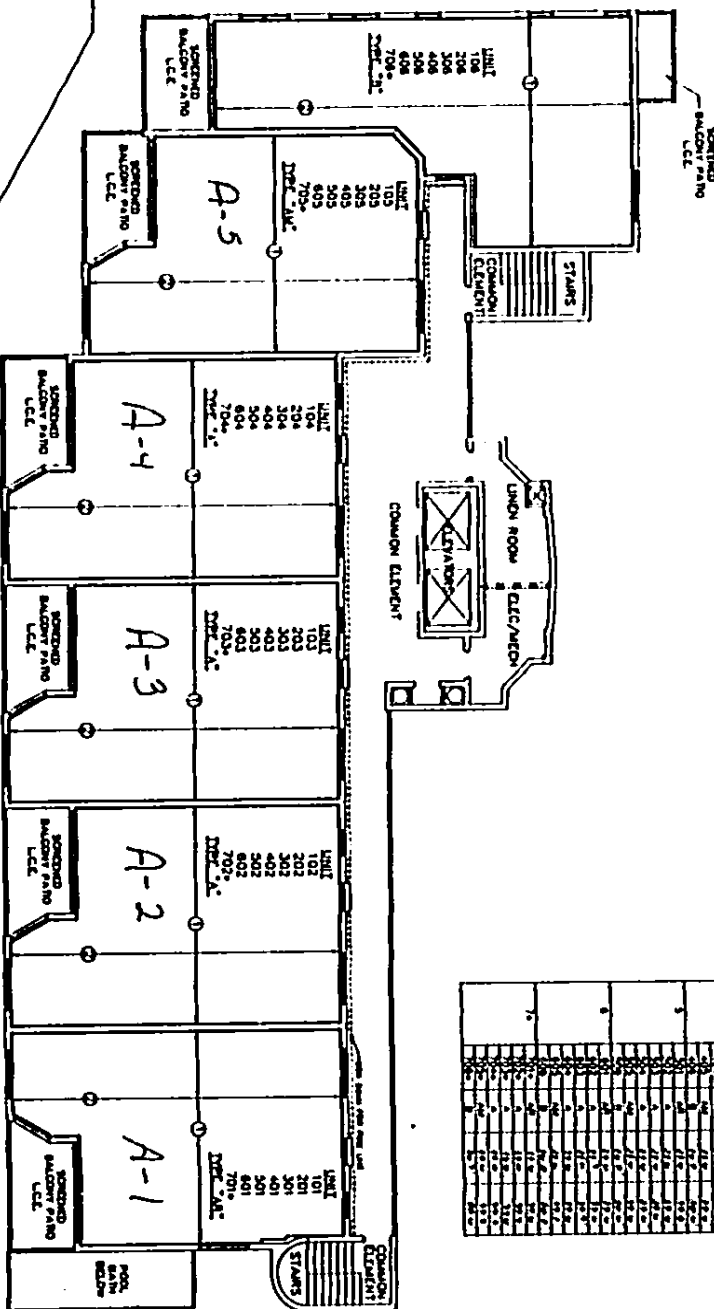
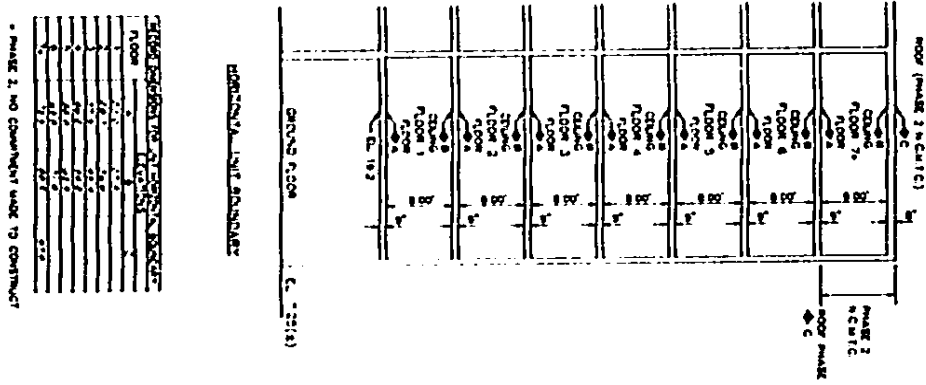
1. THE BUILDING IS MADE TO A STANDARD SUPPLY OF THE PNEUMATIC TRACT, PREPARED BY THE CONSTRUCTION, INC. DATED JUNE 11, 1972.
2. LINED IS IN FLOOD ZONE "NO. 1", ELEVATION 15.0 BASED UPON F.S.N.A. FLOOD INSURANCE RATE MAP NO. 17313-D-1, DATED 4-1-70.
3. ONLY ABOVE GRADE VISIBLE ENCROACHMENTS DRAIN OR FLOW ADJACENT AND PROPERTY ARE SHOWED. ENCROACHMENTS BEHIND THE DRUMS SURROUND AND THOSE WHICH ARE NOT VISIBLE BY AERIAL OBSERVATION ARE NOT SHOWN FOR THE REASONS SHOWN HEREIN AND BASED ON STATE PLANS SUBMITTED FOR DEVELOPMENT OF THE PROJECT.
4. DEVELOPMENT SHOWN ARE ESTABLISHED AND EXISTING GEODETIC VERTICAL DATA AND REFERRED TO F.S.N.A. RESPONSE IS ELEV. 5.101.
5. LIVING ROOMS HEREIN WERE NOT STRUCTURED FOR EARTHQUAKE, SEISMOLOGICAL, RESTRICTIONS, RECONSTRUCTIONS, OR RIGHTS OF WAY RECORDS.
6. THIS SURVEY WAS CONDUCTED FOR THE PURPOSES OF A CONDOMINIUM ONLY AND IS NOT INTENDED TO DELINEATE THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOUND, COMBINATION OF OTHER BUILDING PLANS.
7. THE LOCATION OF THE IMPROVEMENTS AS SHOWN ON THIS RIGHT TO REMEDY IS NOT INTENDED TO BE THE DETERMINATION OF THE RIGHT TO REMEDY OR THE IMPROVEMENTS, WITHOUT NOTICE OR DEFERRED ADVISABLE ON RECORD.
8. THE EARTHQUAKE SHOWN ON NOTED HEREIN ARE ONLY THOSE SHOWN TO BE PARTICIPATED BY THE UNDERGROUND. ADDITIONAL EARTHQUAKES MAY EXIST ON MAY BE CHARTED AS PROVIDED FOR IN THE DECLARATION OF CONDOMINIUM.
9. THE IMPROVEMENTS SHOWN HEREIN ARE EMPLOYED UNDER CONDOMINIUM, THE IMPOUNDMENT. THE UNIT DIMENSIONS SHOWN HEREIN ARE APPROXIMATE, THE INTERIOR WALLS, ROOM SIZES, DOORWAYS, AND WINDOWS ARE NOT SHOWN FOR ARCHITECTURAL PLANS PROVIDED BY ARCHITECT, BUT ARE SUBJECT TO THE ACTUAL CONSTRUCTION.
10. THE IMPROVEMENTS SHOWN ARE NOT TO BE CONSIDERED AS THE ACTUAL CONSTRUCTION.
11. PRACTICAL MEASUREMENT, DRAINAGE, SEWER, WATER, ELECTRIC, TELEPHONE, TELEVISION, UTILITIES, CABLE, LANDSCAPED & OTHER WHICH IMPROVEMENTS ARE NOT SHOWN.
12. UNIT DIMENSIONS ARE AS DESCRIBED ON SHOWN ON EXHIBIT "A", SUBJECT TO THE DECLARATION OF CONDOMINIUM.
13. COMMON ELEMENTS ARE DEFINED AS THOSE PORTIONS OF THE CONDOMINIUM PROPERTY NOT INCLUDED IN THE UNITS AS PROVIDED FOR IN THE DECLARATION OF CONDOMINIUM.
14. LIMITED COMMON ELEMENTS ARE DEFINED AS THOSE COMMON ELEMENTS WHICH ARE USED BY ONE OR MORE OF THE UNITS BUT ARE NOT USED BY ALL OF THE UNITS OF OTHER UNITS, AS PROVIDED FOR IN THE DECLARATION OF CONDOMINIUM.
15. AIR CONDITIONING, STORM, STORAGE AND SCHEDULED PAVEMENT AND LIMITED COMMON ELEMENTS.
16. THIS CERTIFICATION IS ONLY FOR THE LANDS AS DESCRIBED HEREON. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
17. THIS SURVEY IS NOT VALID UNLESS RECORDED WITH AN EMPLOYED SURVEYOR'S SEAL.
18. USE OF PROPERTY WILL BE RESIDENTIAL.

THE ENGINEERING, INC.
4320 BEAUFORT
N.W. WILM, FLORIDA

CONDOMINIUM PLAT, EXHIBIT "A" TO CONDOMINIUM DECLARATION
**ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM**

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

COMMON ELEMENTS			
FLOOR	UNIT	TYPE	AREA
1	101	CONDO	1,110
1	102	CONDO	1,110
1	103	CONDO	1,110
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COMMON ELEMENTS			
FLOOR	UNIT	TYPE	AREA
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DATE: 09-21-13
JOB NO: 8888
FILE NO: 8888-23
SHEET: 3 OF 4

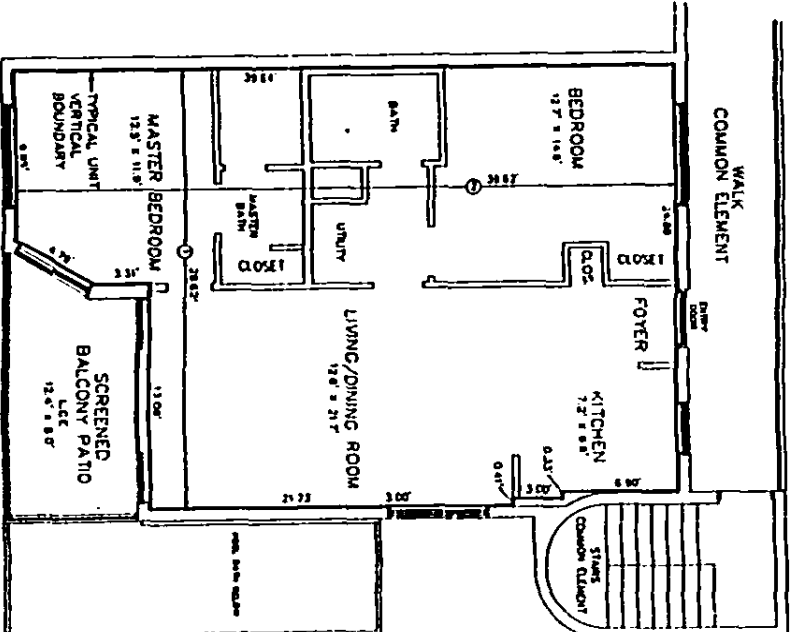
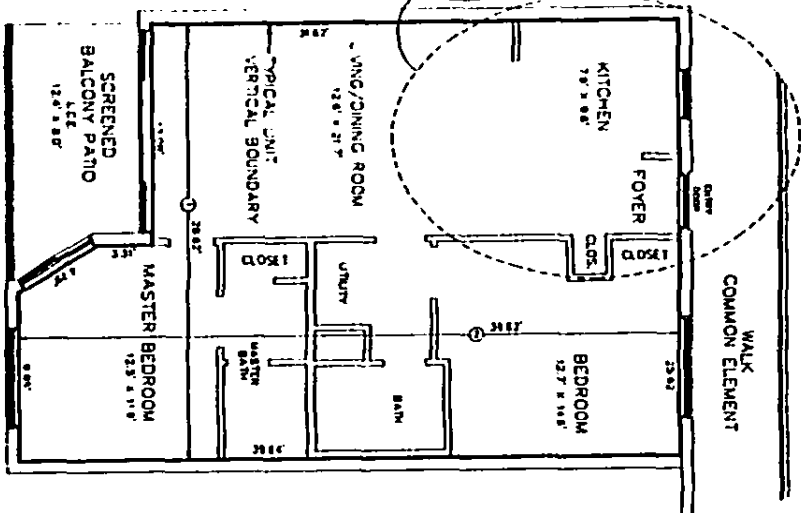
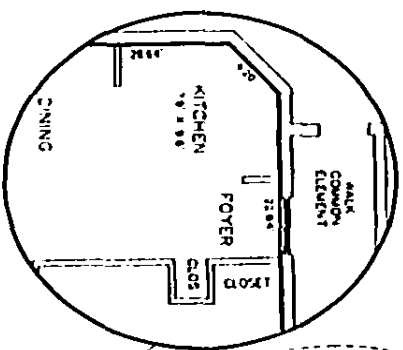
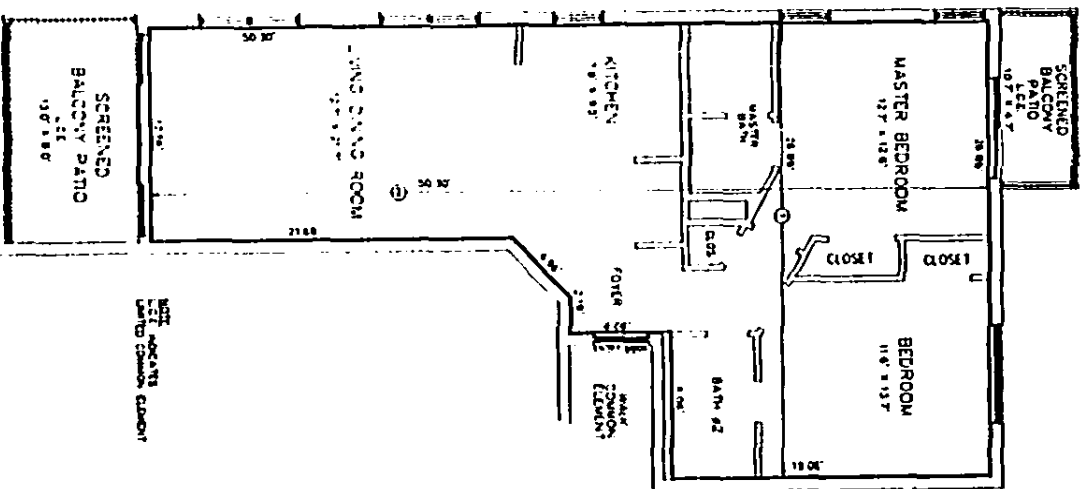
GRAPHIC SCALE
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IMK ENGINEERING, INC.
6320 BEAU DR.
N. FT. MYERS, FLORIDA

CONDOMINIUM PLAT, EXHIBIT "A" TO CONDOMINIUM DECLARATION
**ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM**

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

DATE: 09-21-83
JOB NO. 8888
FILE NO. 8888V54
SHEET: 4 OF 4

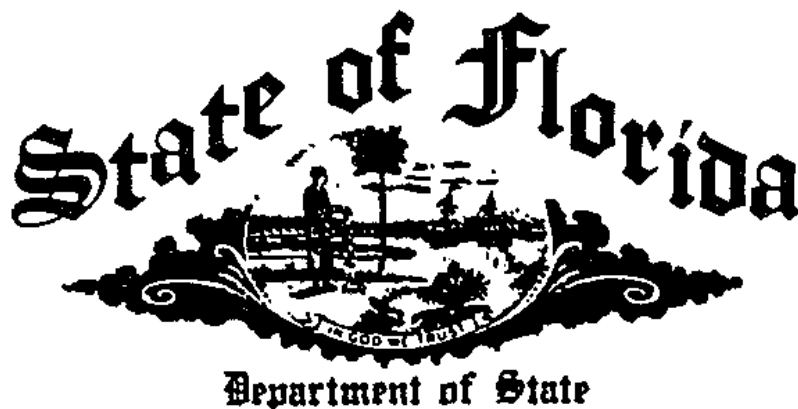


UNIT TYPES

A	102	103	104
B	105	106	107
C	108	109	110
D	111	112	113
E	114	115	116
F	117	118	119
G	120	121	122
H	123	124	125
I	126	127	128
J	129	130	131
K	132	133	134
L	135	136	137
M	138	139	140
N	141	142	143
O	144	145	146
P	147	148	149
Q	150	151	152
R	153	154	155
S	156	157	158
T	159	160	161
U	162	163	164
V	165	166	167
W	168	169	170
X	171	172	173
Y	174	175	176
Z	177	178	179
AA	180	181	182
AB	183	184	185
AC	186	187	188
AD	189	190	191
AE	192	193	194
AF	195	196	197
AG	198	199	200

MAKE 2, NO COMMENTS
MADE TO CORRECT

TYPICAL UNIT FLOOR PLAN



I certify the attached is a true and correct copy of the Articles of Incorporation of ESTERO ISLAND BEACH VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on January 10, 1995, as shown by the records of this office.

The document number of this corporation is N95000000113.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Tenth day of January, 1995



CR2EO22 (2-91)

Sandra B. Northam

Sandra B. Northam
Secretary of State

**ARTICLES OF INCORPORATION
OF
ESTERO ISLAND BEACH VILLAS
CONDOMINIUM ASSOCIATION, INC.**

FILED
95 JAN 10 AM 10:46
SECRET
TALLAHASSEE, FLORIDA

OR2574 PG0779

THE UNDERSIGNED hereby associate themselves together for the purpose of forming a corporation not-for-profit under Chapter 617, Florida Statutes, and certify as follows:

ARTICLE I

Name

The name of the corporation shall be Estero Island Beach Villas Condominium Association, Inc. For convenience this corporation shall be referred to as the "Association."

ARTICLE II

Purposes

1. The purpose for which the Association is organized is to manage, operate and maintain the condominium to be known as Estero Island Beach Villas, a Condominium, hereinafter referred to as the "Condominium," in accordance with the Declaration of Condominium of Estero Island Beach Villas, a Condominium (the "Declaration"). All terms used in these Articles of Incorporation shall have the same meaning as the identical terms utilized in the Declaration, unless the context otherwise requires.

2. The Association shall have no capital stock and shall make no distribution of income or profit to its members, directors or officers.

ARTICLE III

Powers

1. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles.

2. The Association shall have all of the powers reasonably necessary to implement the purpose of the Association, including but not limited to the following:

a. To adopt a budget and make and collect assessments against members to defray the costs of the Condominium.

b. To use the proceeds of assessments in the exercise of its powers and duties.

c. To maintain, manage, repair, replace and operate the Condominium Property.

d. To reconstruct improvements after casualty and construct further improvements to the Condominium Property.

e. To promulgate and amend the Condominium Rules and Regulations respecting the use of Condominium Property.

f. To enforce by legal means the provisions of the various Condominium Documents, these Articles, the Bylaws of the Association and the Condominium Rules and Regulations.

g. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the various Condominium Documents and applicable law to have approval of the board of directors or the members of the Association.

h. To serve as the association for condominiums other than the Condominium in the discretion of the board of directors, in which case the terms "Unit" and "Owner" as used in these Articles and the Bylaws shall refer to Units and Owners in any condominium operated by this Association.

3. All funds and the titles to all property acquired by the Association and the proceeds thereof shall be held only for the benefit of the members in accordance with the provisions of the Condominium Documents.

4. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

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ARTICLE IV

Members

The qualifications of members, the manner of their admission, and voting by members shall be as follows:

1. All Owners shall be members of this Association, and no other persons or entities shall be entitled to membership. An Owner shall be entitled to one (1) vote for each Unit which he may own.
2. Changes in membership in the Association shall be established by the recording in the Public Records of the county in which the Condominium is situated, a deed or other instrument establishing a change of record title to a Unit in the Condominium and the delivery to the Association of a copy of such recorded instrument. The new Owner designated by such instrument shall thereby become a member of the Association. The membership of the prior Owner shall be thereby terminated.
3. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

ARTICLE V

Directors

1. The affairs of the Association will be managed by a board of directors of not less than three (3) nor more than seven (7) directors as shall be determined by the Bylaws, and in the absence of such determination shall consist of three (3) directors.
2. Directors of the Association shall be appointed or elected at the annual meeting of the members in the manner determined by the Bylaws.
3. The following persons shall serve as directors until their successors are elected or appointed as provided in the Bylaws:

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<u>Name</u>	<u>Address</u>
Timothy R. Bogott	12800 University Place Suite 350 Fort Myers, Florida 33907
Teresa L. Zagaria	12800 University Place Suite 350 Fort Myers, Florida 33907
John B. Naylor	13391 McGregor Blvd. Fort Myers, Florida 33919

ARTICLE VI

Officers

The affairs of the Association shall be administered by a president, a vice-president, a secretary, a treasurer, and as many assistant vice-presidents, assistant secretaries and assistant treasurers as the board of directors shall from time to time determine. Such officers shall be elected by the board of directors at its first meeting following each annual meeting of the members of the Association. Officers shall serve without compensation at the pleasure of the board of directors. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the offices of president and vice-president shall not be held by the same person, nor shall the offices of president and secretary or assistant secretary or treasurer or assistant treasurer be held by the same person. The names and addresses of the officers who shall serve until their successors are designated by the board of directors are as follows:

President:	Timothy R. Bogott 12800 University Drive Suite 350 Fort Myers, Florida 33907
Vice President:	Teresa L. Zagaria 12800 University Drive Suite 350 Fort Myers, Florida 33907

Secretary/
Treasurer:

John B. Naylor
13391 McGregor Blvd.
Fort Myers, Florida 33919

ARTICLE VII

Indemnification

Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the board of directors has approved such settlement and reimbursement as being in the best interests of the Association. The foregoing indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

ARTICLE VIII

Bylaws

The Bylaws shall be adopted by the board of directors and may be altered, amended or rescinded by not less than two-thirds (2/3rds) of all the directors until the first election of a majority of directors by Owners other than the Developer. Thereafter, the Bylaws may be altered, amended or rescinded as provided therein.

ARTICLE IX

Amendments

Amendments to these Articles of Incorporation shall be proposed and adopted in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

2. Until the first election of a majority of directors by members other than the Developer, proposal of an amendment and approval thereof shall require the affirmative action of two-thirds (2/3rds) of the entire membership of the board of directors, and no meeting of the members nor any approval thereof need be had.

3. After the first election of a majority of directors by members other than the Developer, a resolution approving a proposed amendment may be proposed by either the board of directors or by the members of the Association, and after being proposed and approved by one of such bodies, requires the approval of the other body. Except as otherwise provided herein, such approvals must be by not less than two-thirds (2/3rds) of all the directors and by not less than a three-fourths (3/4) vote of the members of the Association at a duly called meeting of the Association. Directors and the members not present at the meeting considering the amendment may express their approval in writing ten (10) days after such meeting.

4. An amendment when adopted shall be effective when filed with the Secretary of State of the State of Florida and recorded in the Public Records of county in which the Condominium is situated.

5. Notwithstanding the foregoing, these Articles may be amended by the Developer without the approval of the board of directors or the membership of the Association as may be required by any governmental entity or institutional lender, or as may be necessary to conform these Articles to any governmental statutes.

ARTICLE X

Term

The term of the Association shall be the life of the Condominium. The Association shall be terminated by the termination of the Condominium in accordance with the Declaration.

ARTICLE XI**Special Meetings**

Special members' meetings shall be held whenever called by the president or vice president or by a majority of the board of directors and must be called by such officers upon receipt of a written request from fifty percent (50%) of the members of the Association, unless otherwise provided by law.

ARTICLE XII**Incorporator**

The name and residence of the incorporator to these Articles of Incorporation is as follows:

<u>Name</u>	<u>Address</u>
Florida Income Fund III, Limited Partnership	13391 McGregor Blvd Fort Myers, Florida 33919

ARTICLE XIII**Registered Agent**

The Association hereby appoints Mariner Capital Management, Inc. as its Registered Agent to accept service of process within this state, with the Registered Office located at 13391 McGregor Blvd, Fort Myers, Florida 33919.

ARTICLE XIV**Principal Office**

The address of the principal office of the Association is 275 Estero Blvd., Fort Myers Beach, Florida 33931.

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IN WITNESS WHEREOF the incorporator has hereto affixed its signature this 4 day of JANUARY, 1995.

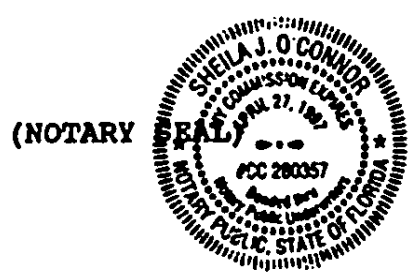
FLORIDA INCOME FUND III,
LIMITED PARTNERSHIP, a Delaware
limited partnership

By: MARINER CAPITAL
MANAGEMENT, INC., a Florida
corporation and general partner

By: Lawrence A. Ramondi
President

STATE OF FLORIDA)
) SS.
COUNTY OF Lee)

The foregoing instrument was acknowledged before me this 4th day of January, 1995, by Lawrence A. Ramondi as President of Mariner Capital Management, Inc., a Florida corporation, the general partner of Florida Income Fund III, Limited Partnership, a Delaware limited partnership, on behalf of the limited partnership. He/She is personally known to me or has produced as identification and ~~did~~ (did not) take an oath.



Sheila J. O'Connor
(Notary Signature)

Sheila J O'Connor
(Notary Name Printed)
NOTARY PUBLIC
Commission No. CC 280357

ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT

The undersigned hereby accepts the appointment to serve as the initial Registered Agent of Estero Island Beach Villas Condominium Association, Inc.

MARINER CAPITAL MANAGEMENT, INC.

By: Lawrence A. Ramondi
President

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BYLAWS

OF

ESTERO ISLAND BEACH VILLAS
CONDOMINIUM ASSOCIATION, INC.

a corporation not-for-profit
under the laws of the State of Florida

I. IDENTITY

These are the Bylaws of Estero Island Beach Villas Condominium Association, Inc., a corporation not-for-profit under the laws of the State of Florida, hereinafter referred to as the "Association," and under the Articles of Incorporation (the "Articles") which have been filed in the office of the Secretary of State. The Association has been organized for the purpose of administering a condominium upon certain lands in Lee County, Florida known as Estero Island Beach Villas, a Condominium (the "Condominium"), in accordance with the Declaration of Condominium for Estero Island Beach Villas, a Condominium (the "Declaration").

1. The office of the Association shall be at 275 Estero Blvd., Fort Myers Beach, Florida 33931, or at such other place as may be designated by the board of directors from time to time.

2. The fiscal year of the Association shall be the calendar year.

3. The seal of the corporation shall bear the name of the corporation, the word "Florida," the words "Corporation Not-for-Profit," and the year of incorporation.

4. The terms used in these Bylaws shall have the same meaning as the identical terms utilized in the Declaration, unless the context otherwise requires.

II. MEMBERS' MEETINGS

1. The annual members' meeting shall be held at such time, place and date as may be designated by the board of directors, for the purpose of electing directors and of transacting any other business authorized to be transacted by the members.

2. As set forth in Article XI of the Articles, special members' meetings shall be held whenever called by the president or vice-president or by a majority of the board of directors and must be called by such officers upon receipt of a written request

from fifty percent (50%) of the voting interests except as provided for in Article III below. Unless otherwise set forth in the notice of special meeting, as provided for above, all special meetings shall be held in Lee County, Florida.

3. Notice of all members' meetings stating the time and place and the agenda for which the meeting is called shall be mailed by the president or secretary, unless waived in writing. Such notice shall be sent in writing to each member at his address as it appears on the books of the Association and shall be sent by mail to each member not less than fourteen (14) days nor more than sixty (60) days prior to the date of the meeting. The post office certificate of mailing shall be retained in the records of the Association as proof of such mailing. In addition, a notice of the meeting shall be posted at a conspicuous place on the Condominium Property or Association Property, which location shall be duly adopted by rule by the board, upon notice to the Unit Owners, for fourteen (14) continuous days prior to said meeting; however, if there is no Condominium Property or Association Property upon which notices can be posted, this requirement does not apply. Members may waive notice of specific meetings and may take action by written agreement without meetings. Mortgagees, as that term is defined in the Declaration, shall, upon prior written request, be entitled to receive notice of all members' meetings. Failure to provide such notice shall not invalidate any action taken at an otherwise properly noticed meeting. Where assessments against members are to be considered for any reason at a members' meeting, the notice shall contain a statement that assessments will be considered and shall specify the nature of any such assessment.

4. The presence in person or by proxy of members representing a majority of the total voting interests eligible to vote shall constitute a quorum, and decisions shall be made by the vote of a majority of the members at a meeting at which a quorum is present.

5. Each Unit shall be entitled to one (1) vote at Association meetings. Votes for Units owned by more than one person or by a corporation or other entity shall be cast by the voting representative for the Unit as named in a voting certificate signed by all of the Owners of that Unit and filed with the secretary of the Association. Each voting certificate shall be valid until revoked by a subsequent voting certificate.

6. Votes may be cast in person or by proxy in accordance with applicable law. Any proxy given shall be effective

only for the specific meeting for which originally given and any lawfully adjourned meetings thereof and must be filed with the secretary at or before the appointed time of the meeting. Each proxy shall specifically set forth the name of the person voting by proxy, the name of the person authorized to vote the proxy for him, and the date the proxy was given. Each proxy shall contain the date, time and place of the meeting for which the proxy is given, and if a limited proxy, set forth those items which the holder of the proxy may vote and the manner in which the vote is cast. In no event shall any proxy be valid for a period of longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it. If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in his place. If such provision is not made, substitution is not authorized.

7. Approval or disapproval of a member upon any matter, whether or not the subject of an Association meeting, shall be by the same person, corporation or other entity who would cast the vote of such member if in an Association meeting.

8. If any meeting of members cannot be organized because a quorum has not been achieved, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

9. The order of business at annual members' meetings and, as far as practicable at all other members' meetings, shall be:

- A. Call to order.
- B. Election of chairman of the meeting.
- C. Calling of the roll and certifying of proxies.
- D. Proof of notice of meeting or waiver of notice.
- E. Reading and disposal of any unapproved minutes.
- F. Report of officers.
- G. Report of committees.
- H. Election of directors.

- I. Unfinished business.
- J. New business.
- K. Adjournment.

10. For so long as the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

A. Assessment of the Developer as the Owner of Units for capital improvements; and,

B. Any action by the Association that would be detrimental to the sale of Units by the Developer.

For so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as part of a hotel operation, the Association shall not take any action that would interfere with or be detrimental to said hotel operation.

III. DIRECTORS

1. The affairs of the Association shall be managed by a board of directors who shall be members of the Association, excepting that the first board of directors and their successors appointed by the remaining directors (in the event of vacancies occurring before the first election of a majority of directors by members) need not be members. The initial board of directors shall consist of three (3) directors, and thereafter the membership of the board shall consist of not less than three (3) nor more than seven (7) directors. Within these limits, the board of directors may from time to time increase or decrease the number of persons to serve on the board, except that the board shall always contain an odd number of members. Where Units are owned by corporations, the officers, directors, employees or other appointed representatives of said corporations shall be eligible to serve on the board of directors of the Association on behalf of the corporation.

2. Election of directors shall be conducted in the following manner:

A. Members of the board of directors shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of directors, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless specifically allowed by Chapter 718, Florida Statutes. Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. The board shall hold a meeting within 5 days after the deadline for a candidate to provide notice to the association of intent to run. At this meeting, the board shall accept additional nominations. Any Unit Owner or other eligible person may nominate himself or may nominate another unit owner or eligible person, if he has permission in writing to nominate the other person. Any Unit Owner or other eligible person desiring to be a candidate for the board of directors must give written notice to the Association not less than 40 days before a scheduled election. Not less than 30 days before the election, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, to be included with the mailing of the ballot, with costs of mailing and copying to be borne by the Association. However, the Association shall have no liability for the contents of the information sheets prepared by the candidates. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least 20% of the eligible voters must cast a ballot in order to have a valid election of members of the board of directors.

B. Vacancies on the board of directors may be filled by majority of the remaining directors, even though a quorum may not exist, subject to the provisions of Paragraph 2(C) of this Article. A director appointed to fill a vacancy in office shall serve the remainder of the term of the office to which he is appointed.

C. The directors named in the Articles of Incorporation shall serve until the first election of directors, and any vacancies in office occurring before the first election shall be filled by the remaining directors. In the event there are no remaining directors then any such vacancies shall be filled by

the Developer. Owners of Units other than the Developer will be entitled to elect members of the board of directors as follows:

(1) At such time as fifteen percent (15%) or more of the Units that will be operated ultimately by the Association are owned by Owners other than the Developer, the Owners of Units other than the Developer shall be entitled to elect not less than one third (1/3) of the members of the board of directors of the Association.

(2) Owners of Units other than the Developer shall be entitled to elect not less than a majority of the members of the board of directors of the Association upon the earliest of:

(a) three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; or

(b) three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; or

(c) when all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; or

(d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or

(e) seven years after recordation of the Declaration of Condominium creating Phase 1 of the Condominium.

(3) The Developer shall be entitled to elect not less than one (1) member of the board of directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units that will be operated ultimately by the Association.

(4) As to the election of directors pursuant to Subparagraphs (1), (2) and (3) above, within seventy-five (75) days after Owners other than the Developer are entitled to elect a member or members of the board of directors of the Association,

the Association shall call and give not less than sixty (60) days notice of an election for the members of the board. The election shall proceed pursuant to Article III, Section 2, above.

(5) Nothing in this subparagraph shall be construed so as to preclude the Developer from relinquishing control of the board of directors at any time the Developer may so elect.

3. Members of the board of directors who are elected by Owners other than the Developer at the annual meeting of members shall serve for one (1) year until the next annual meeting of the members and thereafter, unless and until his successor is duly elected or qualified or until he is removed in the manner elsewhere provided.

4. The organizational meeting of a newly elected board of directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary provided that a quorum is present.

5. Regular meetings of the board of directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph at least three (3) days prior to the date named for such meeting unless such notice is waived. Notice of all meetings of the board shall be posted in a conspicuous place on the Condominium Property for the benefit of members at least forty-eight (48) continuous hours in advance of such meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Upon notice to the Unit Owners, the board shall by duly adopted rule designate a specific location on the Condominium Property or Association Property upon which all notices of board meetings shall be posted. If there is no Condominium Property or Association Property upon which notices can be posted, notices of board meetings shall be mailed or delivered at least 14 days before the meeting to the Owner of each Unit. All meetings of the board of directors shall be open to all Unit Owners, who shall have the right to speak with reference to all designated agenda items subject to reasonable

rules governing the frequency, duration, and manner of Unit Owner statements.

6. Special meetings of the directors may be called by the president and must be called by the secretary at the written request of one-third (1/3) of the votes of the board. Not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

7. Any director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Any director's attendance at a meeting shall constitute a waiver of the notice of that meeting.

8. A quorum at directors' meetings shall consist of the directors entitled to cast a majority of the votes of the entire board. The acts of the board approved by a majority of votes present shall constitute the acts of the board of directors except as specifically otherwise provided in the Declaration. If at any meeting of the board of directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At the adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. The presiding officer at board of directors' meetings shall be the president of the Association. In the absence of the president the vice-president shall preside.

10. Directors' fees, if any, shall be determined by the members of the Association, and no director shall receive a fee prior to the election of a majority of the members of the board of directors by Owners other than the Developer.

11. Owner directors may be removed from the board of directors pursuant to Section 718.112(2)(k), Florida Statutes.

12. Anything to the contrary contained herein notwithstanding, any director who is appointed by the Developer may be removed by the Developer at any time. Upon such removal, the Developer shall immediately appoint a replacement director and notify the remaining directors, if any, of such removal and appointment.

IV. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Association shall be exercised by the board of directors including those existing under the common law, statutes, the Articles and the Condominium Documents. Such powers and duties of the directors shall be exercised in accordance with the provisions of the Declaration which governs the use of the land, and shall include but not be limited to the following:

1. To adopt a budget and to make and collect assessments against Owners to defray the costs of operating the Condominium.

2. To use the proceeds of assessments in the exercise of its powers and duties.

3. To maintain, manage, repair, replace and operate the Condominium property, including but not limited to, obtaining and maintaining adequate insurance to protect the Association and the Condominium property.

4. To reconstruct improvements after casualty and to construct further improvements to the Condominium property.

5. To promulgate and amend the Condominium Rules and Regulations respecting the use of Condominium Property. Such rules and regulations may be promulgated by the board of directors at any duly noticed meeting of the board or of the members.

6. To enforce by legal means the provisions of the Condominium Documents, the Articles, these Bylaws, and the Condominium Rules and Regulations.

7. To contract for management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the Condominium Documents or applicable law to have approval of the board of directors or members of the Association.

8. To pay taxes and assessments which are liens against any part of the Condominium Property other than individual Units and the appurtenances thereto, and to assess the same against the Unit Owner subject to such liens.

9. To pay the cost of all power, water, sewer and other utility services rendered to the Condominium and not billed to Owners of individual Units.

10. To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association, including but not limited to accountants and attorneys.

11. To bond any or all employees, officers and directors of the Association, for which the Association shall bear the costs.

12. To maintain all books and records concerning the Condominium including, but not limited to, the maintenance of a complete list of the names and addresses of all Owners of Units, a copy of which shall be provided to the Division of Florida Land Sales, Condominiums and Mobile Homes upon request.

V. OFFICERS

1. The executive officers of the corporation shall be a president, a vice-president, a secretary, and a treasurer, all of whom shall be directors who shall be elected annually by the board of directors at any meeting. Any person may hold two or more offices except that the president shall not also be the vice-president, secretary or treasurer, or assistant secretary or assistant treasurer. The board of directors shall from time to time elect such other officers and designate their powers and duties as the board determines necessary to manage the affairs of the Association.

2. The president shall be the chief executive of the Association. He shall have all of the powers and duties which are usually vested in the office of president including, but not limited to, the power of appointing committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

3. The vice-president shall in the absence of or disability of the president exercise the powers and duties of the president. He shall also generally assist the president and exercise such other powers and perform such other duties as shall be prescribed by the directors.

4. The secretary shall keep the minutes of the proceedings of the directors and the members in a book available for inspection by the directors or members, or their authorized representatives, at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. He shall attend to the giving and serving of all notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall have custody of all property of the Association, including financial records, funds, securities and evidences of indebtedness. He shall keep the financial records of the Association and shall keep the assessment rolls, the accounts of the members, and the books of the Association in accordance with generally accepted accounting practices. He shall perform all other duties incident to the office of secretary of an Association and as may be required by the directors or the president.

5. The compensation of all employees of the Association shall be fixed by the directors. This provision shall not preclude the board of directors from employing a director or officer as an employee of the Association nor preclude the contracting with a director for the management of the Condominium.

VI. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration and the Articles shall be supplemented by the following provisions:

1. Assessments.

A. The board of directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses of the Condominium. Common Expenses shall include the expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, and any other expenses designated as Common Expenses from time to time by the board of directors of the Association, or under the provisions of the Declaration. The board of directors is specifically empowered, on behalf of the Association, to make and collect assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium. Funds for the payment

of Common Expenses shall be assessed against the members in the proportions of percentages of sharing Common Expenses, as provided in the Declaration. Assessments for Units shall become due as determined by the board of directors from time to time, and shall be considered delinquent if payment has not been received on or before the fifteenth day after the due date, unless otherwise ordered by the board of directors. Special assessments, should such be required by the board of directors, shall be levied in the same manner as provided for regular assessments, and shall be payable in the manner determined by the board of directors. If a member shall be in default in the payment of any assessment due on his Unit, the Association shall have all collection rights available to it under Chapters 718, Florida Statutes. If any unpaid share of Common Expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or assessments shall be Common Expenses collectible from all the Owners.

B. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such an account shall designate the name and address of the members or member, the dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due upon assessments. Assessments shall be made against members in an amount not less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. In the absence of a determination by the directors as to the frequency of assessments, assessments shall be due and payable quarterly. The personal liability of a member for assessments shall survive the termination of such member's membership in the Association.

C. Any member shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit. The holder of a mortgage or other lien shall have the same right as to any Unit upon which he has a lien. Any person who relies upon such certificate shall be protected thereby.

D. Notice of any meeting, whether a meeting of the board of directors or of the members of the Association, at which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.

2. Budget.

A. The board of directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association and estimates of the income of the Association. The proposed annual budget of Common Expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. These reserve accounts may be waived annually, or less adequate reserves established by a majority vote of the voting interests present at a duly called meeting of the Association. The budget shall include but not be limited to the following items:

(a) Common Expense Budget

- i. Administration of the Association.
- ii. Management fees.
- iii. Maintenance.
- iv. Rent for recreational and other commonly used facilities (if applicable).
- v. Taxes upon Association property.
- vi. Taxes upon leased areas (if applicable).
- vii. Insurance.
- viii. Security provisions.
- ix. Operating capital.
- x. Reserves.

xi. Fees payable to the Division of Florida Land Sales, Condominiums and Mobile Homes.

xii. Other expenses.

(b) Proposed assessments against each member, together with an annual total of assessments.

B. Copies of the proposed budget and proposed assessments shall be transmitted to each member at least fourteen (14) days prior to the meeting at which the budget is to be considered, together with a notice of the meeting which shall state the time and place of the meeting. The meeting shall be open to all members. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member. If an adopted budget requires assessment against the members in any fiscal or calendar year in excess of 115% of the assessments for the preceding year, the board of directors, upon written application of 10% of the voting interests of the Association to the board of directors, shall call a special meeting of the members of the Association within thirty (30) days, upon not less than ten (10) days written notice to each member of the Association. At the special meeting, members shall consider and enact a budget. The adoption of the budget at such a special meeting shall require a vote of a majority of all voting interests. The board of directors may propose a budget which exceeds 115% of the assessments for the preceding year to the members at a meeting of the members or in writing, and if the budget or proposed budget is approved at the meeting or by a majority of all voting interests in writing, the budget shall be adopted. If a meeting of the Unit Owners has been called and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the board of directors shall go into effect as scheduled. In determining whether assessments exceed 115% of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacements of the Condominium Property, expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or assessments for capital improvements to the Condominium Property shall be excluded from the computation. However, as long as the Developer is in control of the board of directors, the board of directors shall not impose an assessment for any year greater than 115% of the prior fiscal or calendar years assessment without approval of a majority of all voting interests of the Association.

3. The depository of the Association shall be such bank or other institution permitted by applicable law, as shall be designated from time to time by the board of directors and from which the monies in such accounts shall be withdrawn only by checks signed by such persons as are authorized by the board of directors.

4. Within sixty (60) days following the end of the Association's fiscal year, the board of directors shall mail or furnish by personal delivery to each member a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall also be furnished to any mortgagee upon written request. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to the following:

- A. Cost for security.
- B. Professional and management fees and expenses.
- C. Taxes.
- D. Cost for recreational facilities.
- E. Expenses for refuse collection and utility services.
- F. Expenses for lawn care.
- G. Cost for building maintenance and repair.
- H. Insurance costs.
- I. Administrative and salary expenses.
- J. General reserves, maintenance reserves and depreciation reserves.

In lieu of sending the financial report to the owners as set forth above, the board of directors shall be permitted to send a complete set of financial statements to the owners within ninety (90) days following the end of the previous fiscal year as permitted under Section 718.111(14), Florida Statutes.

5. The board of directors shall obtain fidelity bonding of all officers and directors who control or disburse funds of the

Association, as defined in Section 718.112(2)(j); Florida Statutes. The amount of such bonds shall be determined in accordance with Section 718.112 (2)(j), Florida Statutes. The premiums on such bonds shall be paid by the Association as a common expense.

VII. PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with the Articles and Bylaws or with the statutes of the state of Florida.

VIII. AMENDMENTS

Amendments to the Bylaws shall be proposed and adopted in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

2. An amendment may be proposed by either the board of directors or by the membership of the Association. Except as otherwise provided herein, a resolution adopting a proposed amendment must receive approval of not less than two-thirds (2/3rds) of all the directors until the first election of a majority of directors by Owners other than the Developer. Thereafter, the Bylaws may be amended by not less than two-thirds (2/3rds) of all the directors and by not less than a majority vote of the members of the Association at a duly called meeting of the Association. Directors and members not present at the meeting considering the amendment may express their approval in writing within ten (10) days after such meeting.

3. An amendment when adopted shall become effective only after being recorded in the Public Records of Lee County, Florida.

4. These Bylaws shall be amended by the Developer, if necessary, to make the same consistent with the provisions of the Declaration, to meet the requirements of any governmental entity or statute, and as may be in the best interests of the Association. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the

full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language "Substantial rewording of Bylaw. See Bylaw . . . for present text." Nonmaterial errors or omissions in the bylaw amendment process shall not invalidate an otherwise properly promulgated amendment.

IX. SEVERABILITY AND CONFORMITY TO STATE LAW

These Bylaws are to be governed by and construed according to the laws of the State of Florida. If it should appear that any of the provisions hereof are in conflict with the Declaration or any rule of law or statutory provision of the state of Florida, then such provisions of these Bylaws shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to the Declaration or such rule of law.

X. MANDATORY NON-BINDING ARBITRATION

Internal disputes arising from the operation of the Condominium among the Developer, the Association, the Owners, their respective agents and assigns, or any or all of them, must be submitted first for resolution through non-binding arbitration pursuant to Florida law.

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CERTIFICATE

The undersigned hereby certifies that he is the duly elected and acting secretary of the Association named herein and that the foregoing is a true copy of the Bylaws of said Association duly adopted by action of the sole Directors dated _____, 199__, and hereby further certifies that such Bylaws have not been amended or rescinded and remain in full force and effect at the date hereof.

DATED this _____ day of _____, 199__.

Secretary

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EXHIBIT "D" TO
DECLARATION OF CONDOMINIUM

PERCENTAGE INTEREST IN COMMON ELEMENTS

Appurtenant to each Unit in the Condominium shall be an equal undivided ownership interest in the Common Elements, as well as an equal percentage share of the Common Expenses and Common Surplus.

If only Phase 1 is constructed and declared, then there will be a total of 36 Units in the Condominium. Under such circumstances, each Unit will have appurtenant to it an undivided 1/36th ownership interest in the Common Elements, as well as a 1/36th percentage share of the Common Expenses and Common Surplus.

If Phase 2 is constructed and declared, then there will be a total of 42 Units in the Condominium. Under such circumstances, each Unit will have appurtenant to it an undivided 1/42nd ownership interest in the Common Elements, as well as a 1/42nd percentage share of the Common Expenses and Common Surplus.

Type "A.1" Units, Type "A.2" thru "A.5" Units and Type "B" Units shall all have the same ownership interest in the Common Elements and percentage share of the Common Expenses and Common Surplus.

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MANAGEMENT CONTRACT

THIS MANAGEMENT CONTRACT (the "Contract") is made and entered into this 7th day of February, 1995, by and between Estero Island Beach Villas Condominium Association, Inc., a Florida not-for-profit corporation whose address is 275 Estero Blvd., Fort Myers Beach, Florida 33931 (the "Association"), and Mariner Capital Management, Inc., a Florida corporation whose address is 13391 McGregor Blvd. S.W., Fort Myers, Florida 33919 (the "Management Company") and the legal representatives, successors and assigns of the parties hereto.

W I T N E S S E T H:

WHEREAS, the Association is the entity responsible for operation of Estero Island Beach Villas, a condominium (the "Condominium"); and

WHEREAS, the Association is desirous of entering into this Contract for the management of the Condominium; and

WHEREAS, the Management Company is desirous of furnishing such management services to the Condominium for the Association.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and Ten and No/100 dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. **Recitals and Terms.** The above recitals are true and correct. The terms used in this Contract shall be defined in accordance with the Declaration of Condominium for the Condominium (the "Declaration") unless the context otherwise requires.

2. **Employment.** The Association does hereby employ the Management Company as the manager of the Condominium and Management Company hereby accepts such employment.

3. **Term.** The term of this Contract shall commence as of the date hereof and have effect for a period of three (3) years from the date of execution hereof (hereinafter referred to as "initial term"). The Association shall have the right to terminate this Contract pursuant to Chapter 718, Florida Statutes. The Management Company shall have the unequivocal right, at any time either during

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the initial term or thereafter, to cancel this Contract upon sixty (60) days' written notice to the Association.

4. **Renewal.** This Contract shall automatically renew itself for successive periods of three (3) years each, unless either party hereto shall give the other written notice of a non-renewal three (3) months prior to the date of renewal or unless sooner terminated in accordance with its terms.

5. **Management Company's Responsibilities.** The Management Company shall be responsible for the efficient and satisfactory management, operation and maintenance of the Association, Condominium Property and Association Property. The Association hereby acknowledges and agrees that pursuant to the terms of this Contract and in consideration of the management fee described in paragraph 14 below, the Management Company, in its sole discretion, shall perform itself, hire personnel to perform or procure providers to perform all services necessary for the operation and the maintenance of the Condominium in a reasonable and professional manner, and shall supervise the performance of all services provided to, or on behalf of the Association pursuant to this Contract.

a. **Employees.** The Management Company shall hire, pay and supervise the necessary employees to properly, adequately, safely and economically perform the duties and responsibilities of the Management Company set forth herein. Any persons actually hired by the Management Company shall be the employees of the Management Company rather than of the Association, unless the Management Company specifically hires the employees to be employees of the Association. The Management Company, in its absolute discretion, may determine and cause to be discharged any employee so hired. Pursuant to Section 718.3025(1)(d) Florida Statutes, the Management Company shall employ a minimum of one person to perform its duties pursuant to this Contract, and shall hire and supervise such additional employees as may be required from time to time in its sole discretion. All matters pertaining to the employment, interviewing and screening process, supervision, compensation, promotion and discharge of employees of the Management Company and the Association are the responsibility of the Management Company.

b. **Procurement of Separate Providers of Services.** The parties expressly agree that the Management Company may procure necessary or additional services for the Condominium from third parties, from the Developer, or may provide such services itself. All such services procured by the Management Company, regardless of source, shall be provided on a flat fee per service basis;

provided, however, those services which cannot practicably be provided on a flat fee per service basis, as determined by the Management Company in its sole discretion, will be provided directly by the Management Company on a cost basis.

In procuring providers of specific services from any source pursuant to its authority hereunder, the Management Company shall enter into service agreements on behalf of the Association based upon the following factors:

- (1) the quality of work obtainable for the desired level of service, and
- (2) a reasonable practicable price for the service obtainable in the local market.

The Management Company shall use its best judgment in evaluating these factors with respect to each proposed service; provided, however, nothing contained herein shall require the Management Company to obtain the lowest price available as to any service, material or purchase, or in instances where bids are obtained, to accept the lowest bid.

The Management Company shall have the authority to enter into (and cancel) any service agreements contemplated pursuant to this section, in either the Association's or the Management Company's name, as determined by the Management Company in its sole discretion. Furthermore, the Association hereby agrees to execute on its own behalf such service agreements as are deemed necessary by the Management Company from time to time to effectuate the obligations set forth in this Contract. Any agreements entered into by the Management Company pursuant to this section shall be a Common Expense of the Association.

6. **Power and Duties.** To meet its obligations set forth in paragraph 5 above, the Management Company shall have all the powers and duties of the Association as set forth in the Condominium Documents (except such thereof as are specifically required to be exercised by the Association's directors and/or members). By way of illustration and not of limitation, the Management Company's powers and duties hereunder shall include the following:

a. Condominium Operations. The Management Company shall be responsible for the general operation of the physical properties that constitute the Association, the Condominium Property and the Association Property. The Management Company

shall ensure that Condominium operation services are performed as required.

b. Maintenance and Repair. The Management Company shall be responsible for the maintenance and repair of the Condominium Property and the Association Property, including the Common Elements of the Condominium to the extent that the Association is required to maintain and repair same, as provided in the Condominium Documents. Maintenance and repair services shall be performed as required.

c. Accounting and Financial Reporting. The Management Company shall have the following powers and shall be responsible for the following duties concerning accounting and financial reporting services for the Condominium:

(1) Establishment and Administration of Association Bank Accounts. The Management Company shall ensure that all funds collected from the assessment of Owners or otherwise accruing to the Association are deposited in bank accounts in the name of the Association with suitable designations indicating the source of the funds. The Management Company shall ensure that all funds collected are kept separately, and not commingled with similar funds collected on behalf of other condominiums or clients of the Management Company. The Management Company is authorized to draw on the Association accounts for any payments to be made by the Management Company to discharge any liabilities or obligations incurred pursuant to this Contract, for the payment of the Management Fee (as defined herein) or any other disbursements properly incurred on the Association's behalf. Services to be performed pursuant to this paragraph shall be performed as required.

(2) Maintenance of Books and Records. The Management Company shall ensure that the Association's financial records, books, accounts and other official records are maintained as provided by Chapter 718 and the Condominium Documents, and that certificates of account are issued to members, their mortgagees and lienors upon request without liability for errors unless made as a result of gross negligence. Such records shall be kept at the Condominium and shall be available for inspection by Association members or their authorized representatives at reasonable times. Upon reasonable notice, the Management Company shall produce copies of any such records at the Association's expense for members of the board of directors. All books and financial records of the Association shall be made available by the Management Company to the Division of Florida Land Sales, Condominiums and Mobile Homes

(the "Division") for inspection upon request at the Association's expense. Services to be performed pursuant to this paragraph shall be performed quarterly, or more often if necessary, with the exception of the issuance of certificates of account which shall be performed as required.

(3) Annual Financial Report and Audit. The Management Company shall ensure that a financial report is rendered to the Association for each calendar year no later than March 1st of the following year and that a copy of the annual financial report is sent to each member of the Association to the extent required by Chapter 718. The Management Company shall also ensure that any annual audits required by Chapter 718 are conducted by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and the rules of the Board of Accountancy of the Department of Professional Regulation. A copy of any such audits shall be filed with the Division and forwarded to the board of directors of the Association. Services to be performed pursuant to this paragraph shall be performed annually.

(4) Preparation of Annual Tax Returns. The Management Company shall ensure that competent, professional assistance is engaged, as necessary, for the preparation of any tax returns or forms or other filings required by any local, state or federal agency, and the Management Company will provide any assistance necessary in the compilation of financial data from the books and records of the Association required for the completion of these filings and returns. Services to be performed pursuant to this paragraph shall be performed annually.

(5) Maintenance of Owners' List. The Management Company shall maintain among its records and provide to the Division upon request a complete list of the names and addresses of all Owners of Units in the Condominium.

d. Annual Budget. Annual budget services shall include the preparation of a recommended annual budget for review by the board of directors, which shall in turn either adopt a final annual budget or refer such adoption to a meeting of the Association in compliance with Chapter 718 and the Condominium Documents. Should a special assessment be required during the year, it shall be recommended and presented to the board of directors or the Association for adoption in compliance with Chapter 718 and the Condominium Documents. The Management Company shall ensure that annual and special assessments are collected from the members for each Unit in accordance with Chapter 718 and the Condominium

Documents. Services to be performed pursuant to this paragraph shall be performed annually or as needed.

e. Compliance with Laws. The Management Company is authorized to and shall be responsible for taking such action as may be necessary to comply with all laws, statutes, ordinances, and rules of all appropriate governmental authorities and with the rules and regulations of the National Board of Fire Underwriters (or in the event it shall terminate its present functions, those of any other body exercising similar functions). Services to be performed pursuant to this paragraph shall be performed as required.

f. Coordination of Annual and Special Meetings of Owners.

(1) A representative of the Management Company shall attend all meetings of the Owners and ensure that notices of said meetings are delivered via U.S. mail or personal delivery to all Owners at the last address shown in the Association's official records and in accordance with the Association's Bylaws.

(2) The Management Company shall be responsible for providing assistance to the board of directors in preparing an agenda for all such meetings and in preparing any reports, charts or other materials for presentation at such meetings that are requested by the board of directors. The Management Company shall also be responsible for preparing a draft of the minutes of all such meetings for review and approval by the Association's secretary.

(3) Services to be performed pursuant to this subsection f. shall be performed as required.

g. Coordination of All Board of Directors' Meetings.

(1) A representative of the Management Company shall attend all meetings of the board of directors and shall ensure that notices of said meetings are delivered via U.S. mail or personal delivery to all members of the board of directors.

(2) The Management Company shall be responsible for providing assistance to the board of directors in preparing an agenda for all such meetings and any reports, charts or other materials for presentation at such meetings that are requested by the board of directors. The Management Company shall also be

responsible for preparing a draft of the minutes of all such meetings for review and approval by the Association's secretary.

(3) Services to be performed pursuant to this subsection g. shall be performed as required.

h. Rules and Regulations. The Management Company shall be responsible for the promulgation, adoption and amendment of all rules and regulations as it deems advisable for the use and occupancy of the Condominium Property and any Association Property, and shall be responsible for enforcing the same, all subject to the approval of the board of directors. Services to be performed pursuant to this paragraph shall be performed as required.

i. Alterations and Additions. The Management Company shall be responsible for ensuring that such alterations and/or additions to the Common Elements or Limited Common Elements of the Condominium Property or Association Properties are made as authorized by the board of directors and the Association's members where required, pursuant to and in accordance with the Condominium Documents. Services to be performed pursuant to this paragraph shall be performed as required.

j. Employment of Professionals. The Management Company shall retain and employ such professionals and such other experts whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder and shall employ same on such basis as it deems most beneficial. Services to be performed pursuant to this paragraph shall be performed as required.

k. Insurance. The Management Company shall be responsible for ensuring that all insurance policies required to be obtained by the Association pursuant to Chapter 718 and the Condominium Documents are obtained and maintained. The Management Company is hereby authorized to act as agent for the Association, each Owner, and for each owner of any other insured interest and, further, to adjust all claims arising under the insurance policies subject to the provisions of the Condominium Documents. The Management Company is also authorized to file lawsuits and deliver releases upon payments of claims; to otherwise exercise all of the rights, powers and privileges of the insured parties, and to receive on behalf of the insured parties, all insurance proceeds, subject to the provisions of the Condominium Documents. The cost of all insurance obtained hereunder shall be a Common Expense of the Association. Services to be performed pursuant to this paragraph shall be performed as required.

1. Liens for Assessments. The Management Company is authorized to file liens on behalf of the Association against the Unit of any Owner who fails to pay his assessments as required and provided in the Condominium Documents. The Association further authorizes the Management Company to assign any such liens to a third party as it deems advisable in the Association's best interest. Services to be performed pursuant to this paragraph shall be performed as required.

7. Fiduciary Duty. The Management Company shall act in a fiduciary capacity with respect to the proper protection of and the accounting for the Association's assets. In this capacity, the Management Company shall deal at arm's length with all third parties and shall serve the Association's interests at all times. This Contract shall not be construed as prohibiting the Management Company, or any firm or corporation or any related person or entity controlled by the Management Company, from conducting or possessing an interest in any other business or activity, including, but not limited to, the ownership, financing, leasing, operation, development, management and brokerage of real property.

8. Authority to Purchase Materials and Supplies. The Management Company shall have the authority to purchase equipment, tools, vehicles, appliances, goods, supplies and materials as shall be reasonably necessary to perform its duties and responsibilities pursuant to this Contract. Purchases shall be in the name of the Association and shall be a Common Expense of the Association. All purchases made pursuant to this paragraph shall be made on an as required basis. Notwithstanding anything contained herein to the contrary, all personal property of the Management Company, including property acquired by the Management Company with its own funds, during the term of this Contract, shall remain the property of the Management Company regardless of the use of such property in carrying out the Management Company's duties and obligations under this Contract.

9. Independent Contractor. The parties hereby agree and acknowledge that the Management Company is an independent contractor of the Association. The Association hereby releases any right of control over the method, manner or means by which the Management Company performs its duties and responsibilities under this Contract.

10. Common Expenses. All assessments, including the Management Company's fee, overhead and expenses, made by the

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Management Company pursuant to this Contract shall be Common Expenses of the Condominium.

11. **Application of Assessments.** The Management Company shall, in its sole discretion, apply assessments collected in such a manner as to properly discharge its obligations under this Contract.

12. **Aid and Assistance.** The Association shall aid and assist the Management Company, in any reasonable manner requested by the Management Company, in collecting assessments and effectuating the purposes of this Contract.

13. **Deficits.** Notwithstanding any provision contained in this Contract or the Condominium Documents to the contrary, the Management Company shall not be required to undertake to pay any costs or expenses for the benefit of the Association and/or its members from its own funds, and shall only be required to perform its services and make disbursements to the extent that, and as long as, the payments of assessments received from the Association and/or its members are sufficient to pay said costs and expenses in full. If it shall appear to the Management Company that said assessments are insufficient to pay the same, and to adequately provide full reserves, the Management Company shall timely advise the board of directors accordingly.

14. **Management Fee.** The Management Company shall provide the services required of it hereunder, for which the Association shall pay to the Management Company a management fee equal to \$24,000 for the first year that this Management Agreement is in effect. For each subsequent year that this Management Agreement is in effect, either during the initial term or any renewal hereof, the management fee may be increased 5% annually at the sole discretion of the Management Company. The management fee shall be payable in monthly installments unless the Management Company notifies the Association otherwise.

Notwithstanding the provisions of the foregoing, the parties understand and agree that the provisions of this paragraph which, subject to its terms, fix the fees hereunder for a specified time, are made in recognition of the fact that all of the active functions of the Association have been delegated to the Management Company hereunder. However, if the Association undertakes any action or incurs any expense in addition to those actions or expenses incurred by the Management Company, or as set forth in the budget prepared by the Management Company, the same shall be paid by the Association.

15. **Interference.** For so long as this Contract remains in effect and is not properly terminated by the Association as herein provided, the Association shall not unlawfully interfere nor permit, allow or cause any of its officers, directors or members to unlawfully interfere with the Management Company in the performance of its duties or the exercise of any of its powers hereunder.

16. **Indemnification.** The Management Company shall not be liable to the Association or Owners for any loss or damage not caused by the gross negligence or willful misconduct of the Management Company, its employees, officers, directors or agents. The Association, its members and employees will, and do hereby indemnify and save harmless the Management Company from and against any such liability for damages, costs and expenses, including attorneys' fees, for the administration of its duties hereunder or from injury to any person or property in and about, or in connection with the Condominium from any cause whatsoever, unless such loss or injury shall be solely caused by the gross negligence or willful misconduct of the Management Company, its employees, officers, directors or agents. The Management Company shall be designated as an additional insured in the comprehensive public liability policy obtained by or for the benefit of the Association, and any additional premium therefor shall be the responsibility of the Association.

17. **Assignment.** The Management Company may assign this Contract to an affiliate or other company under common management or control with Management Company without the consent of the Association. Upon such assignment and assumption the Management Company shall be released from any and all obligations hereunder. Thirty (30) days advance notice of the assignment shall be delivered to the Association.

18. **Amendments of Documents.** The board of directors shall not propose that any amendments be made to the Condominium Documents which impair or prejudice the rights of the Management Company without the prior written consent of the Management Company.

19. **Relationship Between Management Company and Developer.** The Management Company is also the managing general partner of the developer of the Condominium, Florida Income Fund III, a Delaware limited partnership.

20. **Vehicular Parking and Storage.** The Management Company shall have the power to regulate all vehicular parking. The Management Company shall regulate the use of the storage areas on the Condominium Property, if any.

21. **Governing Law; Waiver of Jury Trial; Venue of Actions.** This Contract shall be governed by, and shall be construed in accordance with, the laws of the State of Florida. The parties hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the other concerning the interpretation, construction, validity, enforcement or performance of this Contract or any other agreement or instrument executed in connection with this Contract. In the event any such suit or legal action is commenced by either party, the other party hereby agrees, consents and submits to the personal jurisdiction of the Circuit Court of the Twentieth Judicial Circuit of Florida in and for Lee County, Florida, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

22. **Waiver.** No waiver of a breach of any of the covenants contained in this Contract shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

23. **Time of the Essence.** Except as otherwise specifically set forth herein, time is of the essence for all terms of this Contract.

24. **Modification.** No modification, release, discharge or waiver of any provision hereof shall be of any force, effect or value unless in writing and signed by the parties to this Contract.

25. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto, and neither has been induced by the other by representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein that are not expressly contained herein or in the Condominium Documents.

26. **Partial Invalidation.** The invalidity in whole or in part of any covenant, promise or undertaking, or any section, subsection, sentence, clause, phrase or words, or of any provision of this Contract shall not affect the validity of the remaining portions hereof.

27. **Gender and Number.** Whenever the context hereof so permits, the use of plural will include the singular, the singular the plural, and the use of any gender will be deemed to include all genders.

28. **Notices.** Except as may be otherwise provided herein, any notice, demand, request, consent, approval or communication under this Contract shall be in writing and shall be deemed duly given or made: (i) when deposited, postage prepaid, in the U.S. mail, certified or registered mail with a return receipt requested, addressed to the party at the address shown above; (ii) when delivered personally to the party at the address specified above; or (iii) when deposited with a reliable overnight courier service, fee prepaid, with receipt of confirmation requested, addressed to the party as specified above. A party may designate a different address for receiving notices hereunder by notice to the other parties.

29. **Default by Association.** If the Association or its members shall interfere with the Management Company in the performance of its duties and exercise of its powers hereunder, or if the Association shall fail to promptly do any of the things required of it hereunder, then the Management Company may, fifteen (15) days after having given written notice to any officer or director of the Association, declare this Contract in default if such default remains then uncured or incapable of being cured. Upon default, the Management Company may, in addition to any other remedy given it by agreement or in law or equity, (i) bring an action against the Association for damages and/or injunctive relief, and (ii) the Association shall be liable for the Management Company's reasonable attorneys' fees and costs incurred thereby. All rights of the Management Company, upon default, shall be cumulative and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other additional remedy.

30. **Default by Management Company.** Failure of the Management Company to substantially perform its duties and obligations under this Contract shall be grounds for the Association to cancel this Contract as its sole remedy, provided said termination is accomplished pursuant to Chapter 718. In no event shall the

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Management Company be liable to the Association or Owners for damages, except as heretofore provided.

31. **Excusable Delays.** In the event that the Management Company shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or any other reason beyond the Management Company's control, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

32. **Termination of Condominium.** If the Condominium shall be terminated as set forth in the Declaration, then this Contract shall automatically terminate.

IN WITNESS WHEREOF, the parties have executed this Contract the day and date first above written.

Estero Island Beach Villas
Condominium Association, Inc.,
a Florida not-for-profit
corporation

Linda L. Brown
Witness LINDA L. BROWN

By: [Signature]
As its: President

(CORPORATE SEAL)

Jenny Foreman
Witness JENNY FOREMAN

Mariner Capital Management
Inc., a Florida corporation

JAR

Linda L. Brown
Witness LINDA L. BROWN

By: Samuel A. Raymond
As its: PRESIDENT

(CORPORATE SEAL)

Jenny Foreman
Witness JENNY FOREMAN

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CONDOMINIUM RULES AND REGULATIONS

ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM

Each Owner shall be governed by and shall comply with the terms of the Condominium Documents and these Condominium Rules and Regulations adopted pursuant to those documents. All terms used in these Condominium Rules and Regulations shall have the same meaning as the identical terms used in the Declaration of Condominium for Estero Island Beach Villas, a condominium. Failure of an Owner to comply with the provisions of the Condominium Documents and these Condominium Rules and Regulations shall entitle the Association or other Owners to pursue any and all legal and equitable remedies for the enforcement of such provisions, including but not limited to an action for damages, an action for injunctive relief or an action for declaratory judgment.

1. Common Elements and Limited Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners, their guests and lessees. To the extent that the Developer or an entity affiliated with the Developer has an exclusive easement to use, possess and occupy the linen closet located on each floor of the building as provided in Article 4.3(d) of the Declaration, the Developer or affiliated entity may use such linen closets for any lawful purpose, personal or commercial, as it deems appropriate in its sole discretion from time to time.

2. Nuisances. No nuisance shall be allowed upon the Condominium Property or within a Unit, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Owners. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No Owner shall permit any use of a Unit or make or permit any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

3. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Unit, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

4. Leasing of Units. All of the terms and provisions of the Condominium Documents and these Condominium Rules and Regulations pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Unit as a tenant to the

same extent as against an Owner. Any lease or rental agreement, whether oral or written and whether specifically expressed in such agreement or not, shall be deemed to contain a covenant upon the part of each such Owner and tenant designating the Association as the Owner's agent for the purpose of and with the authority to terminate any such lease or rental agreement in the event of violations by the tenant of the terms and provisions of the Condominium Documents or Condominium Rules and Regulations. The right of an Owner to lease or rent his Unit shall be restricted as described in the Declaration.

5. Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Common Elements, Limited Common Elements, or Units, except that the right is specifically reserved to the Developer to place and maintain "For Sale" or "For Rent" signs on the Condominium Property for as long as the Developer may have Units to sell. The right to place and maintain "For Sale" or "For Rent" signs on the Condominium Property is also specifically reserved to the Developer or an entity affiliated with the Developer for so long as the Developer or affiliated entity is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes).

6. Prohibited Vehicles. No motorcycles, trailers or commercial vehicles (excluding those vehicles owned or authorized by the Developer or the Management Company) shall be parked in any parking space, except such temporary parking spaces provided for the purpose as may be necessary to effectuate deliveries to the Condominium, the Association or the Owners. Bicycles and motorcycles shall not be stored on the Condominium Property except in such areas designated for this purpose.

7. Exterior Appearance. No Owner shall decorate or alter any part of a Unit so as to affect the appearance of the Unit from the exterior. Such decoration or alteration shall include, but not be limited to, painting or illumination of the exterior of a Unit, display of plants or other objects upon patios, balconies, railings or exterior window sills or ledges, reflective film or other window treatments, draperies, window shades, screen doors and lights. The Association shall have the sole discretion, which may be based on aesthetic principles only, to determine compliance with this provision.

8. Antennas. No antennas of any type designed to serve a Unit shall be allowed on the Common Elements or Limited Common Elements, except as may be provided by the Association to serve as a master antenna for the benefit and use of the Condominium. No electrical or other equipment may be operated on the Condominium Property which interferes with television signal reception.

9. Noise. Should noise transmission create a disturbance or a nuisance, the responsibility is with the Owner to abate the noise transmission and not the Association. In order to insure

the comfort of all Owners and authorized users, radio, hi-fi and television sets, and any and all other such audio equipment generating noise should be turned down to a minimum volume so as not to disturb other persons between the hours of 11:00 p.m. and 8:00 a.m. All other unnecessary noises between these hours should be avoided.

10. Obstructions. Sidewalks, entrances, driveways, passages, patios, courts, stairways, corridors, halls and/or all other areas intended for common use must be kept open and shall not be obstructed in any manner. Rugs or mats, except those either permitted or placed by the Association, must not be placed outside of doors in corridors. No sign, notice or advertisement shall be inscribed or exposed on or at any window of a Unit or any part of the Condominium Property, except such as shall have been approved in writing by the Association or is permitted by the Condominium Documents; nor shall anything be projected out of any window on the Condominium Property. All personal property of Owners shall be stored within the Unit.

11. Children. Children are to play only in areas either designated or clearly intended for play, and they are not to play in public halls, on stairways, or other common areas which would cause an obstruction. Reasonable supervision by parents or guardians must be exercised at all times when children are playing on the Condominium Property.

12. Balconies. Plants, pots, receptacles and other movable objects must not be kept, placed or maintained on ledges or balconies. No objects shall be hung from balconies or window sills. No cloth, clothing, rugs or mops shall be hung up or shaken from windows, doors or balconies. No cooking shall be permitted on any balcony of a Unit. Owners shall not allow anything to be thrown or to fall from windows, doors, balconies or the interior of the building from hall doors.

13. Hallways. Bicycles, garbage cans, laundry, dry cleaning, supplies or other articles shall not be placed in the halls or on staircase landings without prior authorization from the board of directors or the Management Company. No Owner shall allow doors to the corridor to remain open for any purpose other than for immediate ingress and egress.

14. Entry for Emergencies. In case of emergency originating in or threatening any Unit, regardless of whether or not the Owner is present at the time of such emergency, the board of directors of the Association, the Management Company or any other person authorized by them, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such

emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the Association or its designee shall be allowed to retain a key for each Unit.

15. Plumbing. Plumbing shall not be used for any other purpose than those for which it was constructed, and no sweepings, rubbish, rags or other foreign substances shall be deposited into plumbing. The cost of any damage resulting from misuse shall be borne by the Owner.

16. Roof. Owners are not permitted on the roof of any building within the Condominium Property for any purpose without the express approval of the board of directors or Management Company.

17. Solicitation. There shall be no solicitation by any person anywhere on the Condominium Property for any cause, charity or purpose whatsoever, unless specifically authorized in writing by the board of directors or the Management Company, except for solicitation by the Developer or an entity affiliated with the Developer in marketing the sale or rental of Units.

18. Parking. No vehicle belonging to any Owner or to a member of the family of an Owner or guest, tenant or employee of an Owner shall be parked in any unauthorized area or in such manner as to impede or prevent access to another Owner's or authorized user's parking space or any fire lanes. The Owners, their employees, agents, visitors, licensees and the Owner's family will obey all posted parking regulations. Vehicles parked in any unauthorized areas or impeding another Owner's or authorized user's parking space or any fire lanes are subject to being towed away at the Owner's or authorized user's sole expense. No repair of vehicles shall be made within the Condominium Property. No Owner shall store or leave boats, trailers, mobile homes, recreational vehicles and the like on the Condominium Property, except in areas, if any, designated by the board of directors for same. No commercial trucks or buses may be parked anywhere on Condominium Property, except for those owned or authorized by the Developer or the Management Company, if any. Parking spaces are not assigned as appurtenances to particular Units. As such, each space may be used by any Owner, family member, lessee or guest. Owners may not park vehicles in spaces designated for handicapped persons, unless they fall within this category of individuals, and the Association or Management Company shall have the right to notify local authorities of any such violations. Vehicles should be parked within the painted lines.

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19. Use of Swimming Pool. Owners and authorized users of the swimming pool do so at their own risk. All users shall obey the rules posted by the Management Company.

20. Storage of Dangerous Items. No inflammable, combustible, or explosive fluid, chemical or substance, shall be kept in any Unit, Common Element or Limited Common Element except as are required for normal household use.

21. Employees/Agents Control and Entry of Units for Maintenance. Employees and/or agents of the Association or Management Company, and employees and/or agents of the Developer's or affiliated entity's on-going sales or rental programs, shall not be sent off the Condominium Property by any Owner or authorized user at any time for any purpose. No Owner or authorized user shall direct, supervise or in any manner attempt to assert any control over the employees of the Management Company or the Association. Violations of these Rules and Regulations, or other matters of concern, should be brought to the attention of the Management Company for proper resolution. Employees or agents of the Management Company shall be permitted to enter Units for maintenance and repairs during reasonable hours.

22. Complaints. Complaints regarding the service of the Condominium shall be made in writing to the Management Company, as long as the Management Contract remains in effect, and thereafter, to the board of directors.

23. Payment of Maintenance Fees, Special Charges and Fines. Payment of maintenance fees and other duly authorized charges and assessments shall be made at the office of the Management Company, as designated in the Management Contract. Payments made in the form of checks shall be made to the order of such party as the Management Company shall designate.

24. Weapons. No explosives, firearms, knives or weapons of any kind shall be permitted in any Unit or anywhere on the Condominium Property.

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Fort Myers Beach Access 41 Boardwalk Replacement - Land Development Code Narrative

Request:

Ehab Guirguis (Lee County, applicant) is requesting a special exception for 252 Estero Blvd., Fort Myers Beach 33931 (STRAP: 24-46-23-W1-03600.00CE) to allow for the replacement of the existing boardwalk at Fort Myers Beach Access 41 within a zoned EC (project location) and CPD area. A concept plan showing the proposed layout of the boardwalk is included within this submittal.

History/ Background:

The applicant is the easement holder where the proposed boardwalk is located along the south side of 252 Estero Blvd. This lot is currently zoned EC and CPD. The proposed boardwalk is located exclusively along the EC portion. The Future Land Use (FLUM) categories of the subject property are Recreation and Mixed Residential. The proposed boardwalk is located exclusively along the Recreation portion. The subject property and surrounding properties are developed. The boardwalk is located at Fort Myers Beach Access North 41.



Narrative:

It is the Applicant's desire to submit a Special Exception request to allow for the design, permitting, and construction of a boardwalk within the zoned Environmentally Critical (EC) area. The property is located at 252 Estero Blvd., FL. The proposed project area and the properties surrounding the subject parcel are currently developed. This use is consistent with the existing easement use. The intent is to replace the

previously existing boardwalk which was destroyed during Hurricane Ian with a newer and more resilient structure. The proposed boardwalk will be located within the same footprint. The traffic generated by the proposed Special Exception will remain the same since public access already exists. The proposed project will not impact stormwater runoff and will not require a stormwater system.

The proposed project area (STRAP: 24-46-23-W1-03600.00CE) had a boardwalk which was destroyed by Hurricane Ian. No further structures are located within this easement, and no additional structures are being proposed. The area has already been cleared of all debris post hurricane and no impact on any vegetation is anticipated.

The intent of this project is to recreate the previously existing ADA access to Fort Myers Beach, to improve the post-hurricane conditions and to bring them back to pre-hurricane conditions. The proposed improvements will only improve the experience of all beach visitors. The construction of the new boardwalk will have a positive impact on the community and does not propose any changes in use or any improvements that did not exist in the past.

The subject easement does not and will not have a stormwater management system since it only consists of a boardwalk. The proposed project does not include any water or sewer improvements. Landscaping improvements are part of a separate project through Lee County. No lighting improvements are being proposed. No further improvements are included within this scope.

The proposed project is currently being reviewed by the Florida Department of Environmental Protection CCCL Program. All improvements will be consistent with the CCCL and FWC requirements as shown on the proposed civil and structural plans.

Reasons for Request:

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

The approval of this request is both necessary and appropriate to facilitate the restoration of this beach access following the extensive damage sustained during Hurricane Ian in September 2022. Ensuring the safety and welfare of the general public remains a primary consideration in moving this project forward. Given that the property is zoned EC (Environmentally Critical), the proposed improvements cannot proceed without the granting of a Special Exception, making this approval an essential step toward recovery and the continued safe use of the site.

b) "Whether the request is consistent with the goals, objective, policies, and intent of the Fort Myers Beach Comp Plan."

The property is designated "Recreation" on the Future Land Use map. Beach access points is a permitted use.

c) "Whether the request meets or exceeds all performance and locational standards for the proposed use."

Beach Access 41 is an existing beach access strategically located to allow all beach visitors with a safe and accessible route to the beach. Open space requirements and preservation, and the level of service will not change since the beach access already exists.

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

The boardwalk replacement will incorporate environmentally sensitive design measures to safeguard native habitats, ensure long-term preservation of beaches, preserve and Gulf-front ecosystems.

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

Beach Access 41 has existed for many years and will continue to serve the community. The use remains consistent with environmental sensitivity.

f) “Whether a request use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the LDC.”

The existing and proposed use of the property fully complies with the applicable zoning provisions and regulations outlined in Chapter 34 of the LDC. The site is designated EC, a zoning classification that expressly permits beach accesses and boardwalks. The proposed improvements are consistent with these permitted uses and maintain the intended character and purpose of the EC zoning district.

Special Exception Standards:

I. “In accordance with Section 34-652(e)(6) of the Fort Myers Beach Land Development Code (LDC), a perpendicular dune walkover may be permitted within the Environmentally Critical (EC) zoning district as a special exception, provided it is required to protect indigenous plant communities and elevation change exists. The proposed walkover must also comply with the open space requirements found in § 10-415(b) and the construction requirements in Section 34-652(f) of the LDC. “

The proposed dune walkover is designed in accordance with Section 34-652(e)(6) of the Fort Myers Beach Land Development Code (LDC), which permits construction of perpendicular dune walkovers within the Environmentally Critical (EC) zoning district as a special exception, provided that the structure is necessary to protect indigenous plant communities and that a change in elevation exists. The proposed design meets both conditions.

Prior to Hurricane Ian, an elevated structure existed in this location and provided public access across the dunes without disturbing the natural vegetation. That original structure was destroyed during the storm event, along with the surrounding vegetation and dune community. Since then, the area has been recovering, and the County seeks to reestablish responsible public access while minimizing impacts to the environment and preserving the natural dune rebuilding process.

The current proposal involves a new elevated boardwalk that has been carefully designed to protect existing and future plant communities by minimizing ground disturbance and maintaining vertical clearance above the dune surface. The boardwalk alignment follows a perpendicular orientation as required by code and terminates landward of the 30-Year Erosion Projection (30-YEP) line, in full compliance with Florida Department of Environmental Protection (FDEP) Coastal Construction Control Line (CCCL) regulations.

Elevation data shown on the civil plans confirms that the walkover spans an area with natural grade elevations increasing from approximately 4.5 feet to 6.2 feet NAVD, demonstrating the elevation change required by Section 34-652(e)(6). This elevation gradient justifies the need for an elevated access structure to protect sensitive topography and allow for future dune stabilization and revegetation.

To minimize environmental impact and maintain compliance with all regulatory thresholds, the proposed boardwalk has been shortened and repositioned during the design phase. While the original concept

extended seaward of the 30-YEP line, the revised design terminates just beyond the dune crest, ensuring no encroachment seaward of the 30-YEP. This adjustment reduces the footprint of the structure while still restoring equitable public access, which was lost post-storm.

Furthermore, the project has been designed to meet the open space requirements outlined in LDC Section 10-415(b) and adheres to the construction standards of Section 34-652(f), including provisions for elevation, minimal disturbance, and materials compatible with the coastal environment.

In summary, the proposed walkover is consistent with all applicable sections of the Fort Myers Beach LDC and is essential for restoring public access in a manner that preserves dune integrity, protects plant communities, and ensures regulatory compliance with both local and state environmental guidelines.

II. Open space requirements Sec 10-415(b): "Indigenous plant communities. The major indigenous plant communities in the town are listed in Sec. 10-413 of this LDC. Dune vegetation and landward line of dune vegetation are defined in Sec. 14-1 of this LDC. These plant communities must be identified in each application for a development order on the existing conditions drawing (see Sec. 10-154 of this LDC)."

The proposed dune walkover complies with the open space requirements of Section 10-415(b) of the Fort Myers Beach Land Development Code (LDC), which requires identification of indigenous plant communities on the existing conditions drawing submitted with a development order application.

At the time of site evaluation, the project area no longer contains any identifiable indigenous vegetation. The site was severely impacted by Hurricane Ian, which resulted in the complete loss of vegetative cover and the destruction of the prior elevated walkover structure. The current site conditions consist exclusively of unvegetated sand and dune formations, as documented in the project's existing conditions plan prepared in accordance with Section 10-154.

Although the area presently lacks the plant communities listed in Section 10-413 of the LDC, the proposed boardwalk design has been developed with a strong emphasis on future environmental recovery. Lee County is working on a separate project in this location to restore the lost vegetation. Once completed, the new boardwalk and established vegetation will restore the area to be more similar to pre-hurricane conditions. By elevating the walkover structure above grade and minimizing physical disturbance to the dune, the design allows for passive natural regeneration of native dune vegetation over time. The elevated structure avoids compaction or shading of potential growth zones and thus preserves the conditions necessary for future colonization by indigenous species, as defined in Section 14-1.

Additionally, the proposed walkover spans a defined change in dune elevation—from approximately 4.5 feet to 6.2 feet NAVD, as detailed in the civil plans—further justifying the necessity of the elevated access in this location. The project maintains compliance with applicable coastal construction and open space guidelines by ensuring that no fill, grading, or hardening is introduced within the dune system.

Although no indigenous vegetation is currently present at the project location due to the extensive damage caused by Hurricane Ian, the proposed dune walkover complies with the requirements of Section 10-415(b) by accurately documenting existing site conditions and preserving the natural dune topography. The structure has been designed to avoid any further disruption to the area and to maintain the open space necessary for natural recovery. Its elevated configuration ensures that any future recolonization by native plant species can occur without interference. By restoring public access in a manner that is

environmentally sensitive and forward-looking, the project supports both the ecological and community resilience goals outlined in the Land Development Code.

III. Sec. 34-652. - Environmentally Critical (EC) zoning district.

(2) Any dune walkover must be state approved and constructed consistent with the following requirements:

a. "Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover."

The proposed boardwalk is located in the same footprint as the pre-existing walkover that was destroyed during Hurricane Ian. Its alignment remains perpendicular to the dune system and complies with the spacing requirement, as no other walkovers exist within 150 feet of the proposed structure.

b. "Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete."

The structural plans include embedded post depths that have been engineered to ensure stability and compliance with wind and load requirements. No posts will be encased in concrete, consistent with local code and environmental protection standards.

c. "Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance. "

The proposed boardwalk will have a width of eight feet, matching the pre-storm footprint. The boardwalk is intended to serve as a public access point and replaces a previously existing public walkover that was destroyed during Hurricane Ian. The width of the proposed structure has been intentionally matched to the original configuration to maintain continuity with the historical use of the site, accommodate safe and accessible passage for users of all abilities, and comply with current public infrastructure standards. The boardwalk is located within an established public right-of-way and designated beach access, and as such, the proposed width supports the Town's efforts to restore safe, equitable, and resilient access to the beach without exceeding code limitations or requiring a variance.

d. "Walkovers must be elevated at least two feet, and no more than three feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation."

The proposed boardwalk extends to the crest of the existing dune and terminates landward of the 30-Year Erosion Projection (30-YEP) line, in compliance with Florida Department of Environmental Protection (FDEP) Coastal Construction Control Line (CCCL) Program regulations, which prohibit major structures seaward of this line. The walkover does not achieve a full two-foot clearance above the dune crest at its seaward end, this is due to the combined constraints of ADA-compliant slope requirements and the proximity of the 30-YEP line, which limits the allowable length of the structure. The design represents a careful balance between regulatory compliance, public accessibility, and environmental sensitivity. The structure remains elevated throughout, supported by deep foundation piles and designed to avoid dune disturbance, while still providing functional and resilient beach access for the public.

Although no vegetation currently exists within the project footprint due to storm-related impacts, the elevated design intentionally avoids grading or compaction of the substrate, thereby preserving the conditions necessary for natural dune recovery and future colonization by native vegetation. The

boardwalk's configuration allows sunlight, airflow, and sand movement beneath the structure, supporting long-term stabilization and regrowth of the dune system. The design reflects a balanced approach that meets regulatory constraints, ensures public accessibility, and promotes the ecological restoration of the coastal environment.

e. "Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings."

The proposed walkover follows the same alignment as the previously existing structure, which minimizes further disturbance to the dune area. While the site currently contains no vegetation due to storm impacts, any native vegetation encountered during construction will be restored using appropriate beach-stabilizing species to comply with replanting requirements.

f. "Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31)."

Construction of the proposed boardwalk will be scheduled entirely outside of the sea turtle nesting season, ensuring full compliance with seasonal environmental restrictions.

g. Walkovers may not be attached to any other structures.

The proposed walkover is a stand-alone structure and will not be attached to any other buildings or improvements.

IV. Comprehensive Plan Consistency

The following is an analysis of how the proposed improvements are consistent with the goals, objectives, and policies of the Comprehensive Plan:

"GOAL 1: To continually improve the appearance and functioning of transportation corridors, commercial areas, and links to natural and recreational areas."

The proposed boardwalk directly supports this goal by restoring and enhancing a vital public connection between Estero Boulevard and the Gulf-front recreational and natural areas of Fort Myers Beach. Located within an existing, designated public access corridor, the new structure will reestablish a safe, resilient, and visually appealing pedestrian link that was lost during Hurricane Ian. In addition to restoring function, the boardwalk has been designed with durable materials and a clean, minimal profile that will improve the overall aesthetic quality of the area, contributing to the long-term revitalization of the beachside environment and surrounding public realm.

"POLICY 1-A-1: Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping scaled to people rather than high-speed traffic."

The proposed improvements contribute to the intent of Estero Boulevard functioning as a true boulevard—pedestrian-oriented, attractive, and engaging. By reconstructing the public boardwalk at Beach Access 41, the project enhances the pedestrian experience at a key node along the corridor. The location—consistent with the previously existing access—provides an inviting transition from the street to the beach and encourages walkability. The boardwalk is elevated and ADA-compliant, providing safe

and equitable access for all users. Its placement and design reflect human scale and public use, reinforcing the boulevard character through enhanced connectivity and coastal identity.

“POLICY 1-A-2 (iv): Priorities should include positive impacts on: improving pedestrian crossings (...) and beach accesses.”

The proposed reconstruction of the boardwalk at Beach Access 41 represents a direct investment in improving one of the town’s designated public beach access points. Before being destroyed by Hurricane Ian, this access was ADA-compliant and provided an important route for individuals with mobility challenges to enjoy the beach. The proposed project restores this accessibility, enabling safe and equitable use of the shoreline for all residents and visitors. By rebuilding this access with compliance to modern standards, the project enhances the public realm and positively contributes to the town’s overall network of pedestrian-friendly beach connections.

“Sec. 34-88 – Special Exceptions

(b) Considerations. In reaching its decision, the town council shall consider the following whenever applicable:”

“(5) Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.”

“Future Land Use Element, Policy 4-A-6: The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment, when necessary, can increase both. Frequent beach accesses are essential to the town’s character and shall be maintained and expanded where possible.”

The proposed special exception aligns directly with the intent of Policy 4-A-6 by facilitating the reconstruction of a previously existing boardwalk along a designated public beach access path (Beach Access 41). This access point served the public prior to its destruction during Hurricane Ian and remains a critical part of the Town’s established network of frequent beach access corridors. By restoring this infrastructure, the Town is actively maintaining an essential component of its coastal identity, in line with its stated goal of preserving and, where possible, expanding beach access. In addition to improving public access to the recreational and environmental resources of the beach, the project enhances the community’s connection to the shoreline in a way that is consistent with the character and values outlined in the Comprehensive Plan. The proposal reinforces equitable and resilient access for all users, including individuals with disabilities, supporting the broader vision of inclusive coastal recreation and long-term shoreline stewardship.

“Future Land Use Element, POLICY 5-D-1-ii: ... Dune walkovers should be constructed where they do not exist, and existing structures should be maintained.”

This project directly supports Policy 5-D-1-ii by pursuing the reconstruction of an existing dune walkover that was lost during a major storm event. Rather than representing new development or expansion into undisturbed dune areas, the proposed boardwalk is designed to recreate previously existing conditions and reestablish public access through the same location where a permitted structure once stood. The Town recognizes the importance of maintaining functional dune walkovers as a means of protecting fragile dune systems while enabling safe and controlled public passage to the beach. By reinstating this structure, the project meets the dual objectives of preserving coastal ecosystems and upholding public access, in full alignment with the policy’s guidance. Additionally, the project includes an elevated design that supports the future recovery of dune vegetation and minimizes disturbance, further advancing the

Town's goals of environmentally responsible infrastructure maintenance and long-term resilience.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Site Address: 252 Estero Blvd., Fort Myers Beach 33931

STRAP Number: 24-46-23-W1-03600.00CE

Applicant: Lee County Phone: 239-533-8838

Contact Name: Ehab Guirguis Phone: 239-533-8838

Email: EGuirguis@leegov.com Fax: N/A

Current Zoning District: EC (project location), CPD

Future Land Use Map (FLUM) Category: Recreation (project location), Mixed Residential

FLUM Density Range: N/A Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☒ Special Exception

☒ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Lee County Phone: 239-533-8838

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 1500 Monroe St, Fort Myers, FL 33901

Email: EGuirguis@leegov.com Fax: N/A

Contact Name: Ehab Guirguis Phone: 239-533-8838



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☒ Other* (please indicate) <u>Easement Holder</u> | |

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

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

Name: Jordan Varble Phone: 239-334-0046
Address: 2122 Johnson St, Fort Myers FL 33901
Email: jlv@johnsoneng.org Fax: N/A

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

Name: Robin Palmer Phone: 941-505-1700
Address: 201 W. Marion Ave, Punta Gorda FL 33950
Email: rpalmer@weilerengineering.org Fax: N/A

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☒ Variance from LDC Section 34 - 652 (f)
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III – Waivers

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

Code Section: N/A Description: N/A

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Kathy Loomis Phone: 239-707-7033

Mailing Address: 1500 Monroe St, Fort Myers, FL 33901

Email: LOOMISKA@leegov.com Fax: N/A

AFFIDAVIT APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

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

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

Kathy Loomis
Signature

Kathy Loomis, Deputy Director
Printed Name

STATE OF Florida COUNTY OF Lee

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

presence OR ☐ online notarization, this 24 day of October, 2025, by

Kathy Loomis ☒ who is personally known to me OR ☐ who has produced



KRISTIE LAVENDER
as identification
Commission # HH 578444
Expires December 6, 2028

Kristie Lavender
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W1-03600.00CE

Property Address: 252 Estero Blvd., Fort Myers Beach 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

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

B. Boundary Survey:

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 165 feet
Depth (please provide an average width if irregular in shape) 425 feet
Frontage on street: 100 feet. Frontage on waterbody: 165 feet
Total land area: 1.8 ☒ acres ☐ square feet

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

From Big Carlos Pass Bridge: Head west on Estero Blvd. Turn right onto Crescent
St., and left onto Second St. Then turn left onto Old San Carlos Blvd, and right onto
Estero Blvd. Turn left onto Gulfshore Ct.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

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

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☒ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a “variance report” from the Map Sales Office at the Lee County Property Appraiser’s Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan’s Future Land Use Map, and whether the property is located in the “platted overlay” on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

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

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

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

Case Number:
Project Name: Fort Myers Beach Access 41
Authorized Applicant: Lee County
LeePA STRAP Number: 24-46-23-W1-03600.00CE

Current Property Status: Existing Beach Access 41	
Current Zoning: EC (project location), CPD	
Future Land Use Map (FLUM) Category: Recreation (project location), Mixed Residential	
Comp Plan Density: N/A	Platted Overlay? ☒ Yes ☒ No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
LDC Section 34-652 (f)	Environmentally Critical (EC) zoning district.

Complete the narrative statements below for EACH variance requested.

PART I Narrative Statements

Request for variance from _____ (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
LDC Section 34-652 (f), Walkovers cannot exceed six feet in width.

Reasons for request

Explain why the variance is needed:
The variance is needed because the current Town code limits the width of pedestrian boardwalks to a
maximum of 6 feet, while the previously existing boardwalk at Beach Access 41 was constructed at 8 feet
wide. The boardwalk was destroyed during Hurricane Ian, and the County intends to replace it within the
same footprint and to its original width in order to restore safe and accessible public beach access.
Beach Access 41 lies within an 8-foot-wide public easement constrained by surrounding coastal dunes.
Reducing the boardwalk to 6 feet would effectively narrow the usable access width, limiting accessibility.

Explain the possible effect the variance, if granted, would have on surrounding properties:

Granting this variance to allow the reconstruction of an 8-foot-wide boardwalk at Beach Access 41 will not have any adverse effect on surrounding properties. The restored boardwalk will continue to serve the same purpose as before—providing safe public pedestrian access to the beach—and will not alter drainage patterns, increase noise, or impact neighboring dune systems or vegetation. Because the structure is located within a an existing easement and separated from private properties, no changes to the character, privacy, or use of adjacent properties are anticipated. In fact, restoring the boardwalk to its original width will benefit surrounding properties and the public by improving accessibility, safety, and storm recovery efforts. Maintaining adequate pedestrian space reduces congestion at the access point, which helps minimize trespassing or informal paths across private property. Overall, approval of this variance will help restore a community amenity to its pre-storm condition while preserving the existing appearance, function, and compatibility of the surrounding area.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

The hardship arises from the unique location of Beach Access 41, a narrow public corridor through sensitive coastal dunes. This site serves as a primary public access point, requiring safe two-way pedestrian and ADA-compliant movement. The surrounding natural features and limited width of the access area restrict design flexibility. Reconstruction to only six feet would create congestion and safety issues for users. The original 8-foot boardwalk existed lawfully before being destroyed by Hurricane Ian. Rebuilding to that width restores the pre-storm condition without expanding disturbance. A reduced width would require redesign or relocation outside the existing disturbed footprint. This would increase environmental impacts and diminish accessibility. The property's physical constraints and public use demands create a practical hardship. Relief from the 6-foot limit is necessary to restore safe, functional, and compliant beach access. Reducing the boardwalk to 6 feet would effectively narrow the usable access width, limiting accessibility.

[illegible]

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

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

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

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

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

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2026-97**

1. Request:

Meeting Date: November 12, 2025

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250241 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF A 8 FEET WIDE AND 110 FEET LONG ELEVATED DUNE WALKOVER IN ENVIRONMENTALLY CRITICAL ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #41) RECORDED FOR THE REAL PROPERTY LOCATED AT 252 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The LPA will make recommendations to the Town Council regarding the special exception request. If Ordinance 25-19 is adopted at the November 3 Town Council meeting, LPA may approve the special exception request unanimously.

What the action accomplishes:

The LPA recommendation will be forwarded on to the Town Council. If Ordinance 25-19 is adopted at the November 3 Town Council meeting, LPA may serve as final agency action if the request is approved unanimously.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

Ehab Guirguis on behalf of Lee County, the owner of the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd, is requesting a special exception to allow like-for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Section 34-652(e) of the Town's LDC allows reconstruction of minor structures like elevated dune walkovers into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the EC zoning district.

The Applicant has simultaneously applied for VAR20250261, a variance from (LDC) Section 34-652(f)(2)c., to allow an 8-foot-wide dune walkover where a maximum 6-foot-wide dune walkover is permitted for uses other than single family residential in the EC zoning district.

Attachments:

1. Resolution 25-20, SEZ 20250241 for Beach Access #41
2. SEZ 20250241 for Beach Access 41- Staff report
3. Exhibit A - Site plan
4. Exhibit B- Survey
5. Exhibit C- Estero Island Wind beach Villas deed and recorded easement for BA #41
6. Exhibit D- Applicant's narrative and application packet

Financial Impact:

Unknown

6. **Alternative Action**

Approval/ Denial

7. **Staff Recommendations:**

Approval with conditions

8. **Recommended Approval:**

Georgina Cid, Community Development Manager

Date: November 04, 2025

Frankie Kropacek, Community Development Director

Date: November 04, 2025

nancy stuparich, Town Attorney

Date: November 04, 2025

Amy Baker, Town Clerk

Date: November 04, 2025

RESOLUTION NUMBER 25-20

A RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20250241 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF A 8 FEET WIDE AND 110 FEET LONG ELEVATED DUNE WALKOVER IN ENVIRONMENTALLY CRITICAL ZONING DISTRICT SEAWARD OF 1978 CCCL, FOR THE PUBLIC ACCESS EASEMENT (BEACH ACCESS #41) RECORDED FOR THE REAL PROPERTY LOCATED AT 252 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

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

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

WHEREAS, Ehab Guirguis on behalf of owner Lee County, is requesting a special exception to allow like-for-like replacement of an 8 feet wide and 110 feet long elevated dune walkover in Environmentally Critical zoning district seaward of 1978 CCCL; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-03600.00CE; and

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

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

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on November 12, 2025, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a Special Exception, the LPA makes the following findings and conclusions:

- A. Changed or changing conditions which make approval of the request appropriate.

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

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

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

WHEREAS, eligible members of the LPA voted ___ to ___ by roll call vote to approve/ approve with conditions/ deny the requested special exception with the following conditions:

1. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
2. Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
3. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

WHEREAS, Ordinance 25-19 amended Section 34-232(b) of the LDC to provide that:

(b) *Owner-initiated requests.* Owner-initiated requests for rezonings, certain special exceptions and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council. Owner-initiated requests for variances and special exceptions to replace a lawful and permitted structure(s) in the Environmentally Critical (EC) zoning district that was in effect prior to a natural disaster, which is unanimously approved by the local planning agency and there is no request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 calendar days after the date of the local planning agency decision, excluding holidays, only requires one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. SEZ20250241, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on November 12, 2025.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____
Member Don Sudduth	_____
Member John McLean	_____
Member James Dunlap	_____

DULY PASSED AND ADOPTED THIS ____ day of _____, 2025.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____

Anita Cereceda, LPA Chair

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of ____, 2025.

Attachment:

Exhibit A: Site Plan

Exhibit B: Survey



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20250241

CASE NAME: Special Exception for like-to-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in EC zoning district, on the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd.

LPA

HEARING DATE: November 12, 2025

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Sakshi, LEED AP ND/ Jason Green, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Lee County

Request: To allow like-for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the Environmentally Critical zoning district.

Subject property: See attached site plan

Physical Address: 252 Estero Boulevard, Beach Access #41

STRAP #: 24-46-23-W1-03600.00CE

FLU: Mixed Residential and Recreation

Zoning: CPD and Environmentally Critical

Adjacent zoning and land uses:

North:	Estero Blvd; Commercial Planned Development and Environmentally Critical zoning; Mixed Residential and Recreation FLUM; Multi-family residential
South:	Gulf of Mexico
East:	Residential Planned Development and Environmentally Critical zoning; Mixed Residential and Recreation FLUM; vacant residential
West:	Commercial Planned Development and Environmentally Critical zoning; Mixed Residential and Recreation FLUM; Multi-family residential

II. BACKGROUND AND ANALYSIS

Background:

Ehab Guirguis on behalf of Lee County, the owner of the public access easement (Beach Access #41) recorded for the real property located at 252 Estero Blvd, is requesting a special exception to allow like-for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Section 34-652(e) of the Town's LDC allows reconstruction of minor structures like elevated dune walkovers into the EC district only by special exception. Therefore, the Applicant is requesting a special exception to allow like- for-like replacement of an 8-foot-wide and 110-foot-long elevated dune walkover in the EC zoning district.

The Applicant has simultaneously applied for VAR20250261, a variance from (LDC) Section 34-652(f)(2)c., to allow an 8-foot-wide dune walkover where a maximum 6-foot-wide dune walkover is permitted for uses other than single family residential in the EC zoning district.

Analysis:

The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan. The proposed replacement of the 8-foot-wide and 110-foot-long elevated dune walkover will be situated on the public access easement (Beach Access #41) recorded for real property located at 252 Estero Blvd. The proposed dune walkover will be elevated 3 feet above the ground. The property has supported an elevated dune walkover in this location prior to 1998 and was destroyed during hurricane Ian in 2022. The Applicant is now proposing a like-for-like reconstruction of the 8-foot-wide and 110-foot-

long elevated dune walkover in the existing public access easement in EC zoning district beyond the 1978 CCCL.

Neighborhood Compatibility:

The 8-foot-wide and 110-foot-long elevated dune walkover has been at this location with this layout prior to 1998. The proposed replacement of the elevated dune walkover is similar to pre-Ian conditions. Granting a special exception for the proposed replacement of the elevated dune walkover will not adversely affect the character of the neighborhood.

Findings and Conclusions:

Special Exception Findings

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

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

1. *Any repairs must comply with all relevant local and state floodplain regulations.*
The development will comply with local and state floodplain requirements.
2. *Repairs may not damage existing dunes or dune vegetation.*
The repairs are proposed in conjunctions with Environmental review to ensure that no dunes or native vegetation will be impacted. Any plantings proposed will be required to be Florida friendly, or otherwise acceptable to the Town and Florida DEP.
3. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*
Sea turtle nesting season begins May 1st and ends on October 31st. Construction will be completed outside of nesting season.
4. *A new special exception must be applied for each time the structure is repaired.*
This is included as one of the conditions for approval.

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

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

The existing elevated dune walkover was damaged during Hurricane Ian.

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

Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of

the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

The proposed like-for-like replacement of the elevated dune walkover does not create any new development or change the location from what previously existed on the site. Therefore, staff believes that this proposed request does not fall within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

The proposed like-for-like replacement of the elevated dune walkover is consistent with the Town's Comprehensive Plan.

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

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

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

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

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

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

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

The proposed reconstruction of the elevated dune walkover will all be completed in compliance with the Town's Land Development Code.

III. RECOMMENDATION

Staff finds that the special exception to replace an 8-foot-wide and 110-foot-long elevated dune walkover in EC zoning district is in compliance with LDC Sec. 34-88(b). Therefore, staff recommends approval with conditions for SEZ20250241, a request for the like-to-like reconstruction of the existing elevated 8-foot-wide and 110-foot-long dune walkover.

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

III. CONDITIONS OF APPROVAL

- 1) Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 2) Each time the structure is repaired, the applicant must request a new special exception approval and permit prior to beginning construction.
- 3) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

IV. EXHIBITS

Exhibit A: Site Plan

Exhibit B: Survey

Exhibit C: Deed for Estero Island Beach Condominiums
(Public Access Easement visible on Pg 41/90)

Exhibit D: Applicant's narrative and Application packet

OWNER

LEE COUNTY
2115 SECOND ST
FORT MYERS, FL 33901
PHONE: (239) 533-2221
FAX: (239) 485-2262

SITE ADDRESS

ESTERO BLVD.
FORT MYERS BEACH, FL 33931

TOTAL PROJECT AREA

0.04 ACRES

BOARD OF COUNTY COMMISSIONERS

KEVIN RUANE	DISTRICT 1
CECIL PENDERGRASS	DISTRICT 2
DAVID MULICKA	DISTRICT 3
BRIAN HAMMAN	DISTRICT 4
MIKE GREENWELL	DISTRICT 5

COUNTY MANAGER

DAVE HARNER

ASSISTANT COUNTY MANAGER

PETER WINTON
CHRISTINE BRADY
GLEN SALYER
MARC MORA
ROBERT CODIE

FACILITIES CONSTRUCTION & MANAGEMENT

EHAB GUIRGUIS, P.E.

CONSTRUCTION PLANS
FOR



FORT MYERS BEACH ACCESS 41
VARIOUS BOARDWALK REPAIRS

FEMA DI : 1291090

FEMA PROJECT # : 702317

SECTION 24, TOWNSHIP 46 S., RANGE 23 E.

LEE COUNTY, FLORIDA

INDEX OF PLANS

SHEET NO.	DESCRIPTION
C01	COVER
C02	GENERAL NOTES & ABBREVIATIONS
C03	AERIAL KEY MAP
C04	FLUCFCS AND SOILS MAP
C05	EXISTING CONDITIONS AND SITE PLAN

WEILER ENGINEERING CORP.
201 WEST MARION AVENUE SUITE
1306 PUNTA GORDA, FLORIDA 33950
PHONE: (941) 505-1700
FAX: (941) 505-1702



JOHNSON ENGINEERING, LLC
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901 PHONE:
(239) 334-0046
E.R. #642 & L.B. #642



NOTICE TO ALL
CONTRACTORS

IT'S THE LAW IN FLORIDA
2 BUSINESS DAYS BEFORE
YOU DIG
CALL SUNSHINE
1-800-432-4770

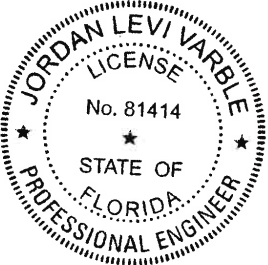
STATE, COUNTIES & CITIES
ARE "NOT" PART OF THE
ONE CALL SYSTEM. THEY
MUST BE CALLED
INDIVIDUALLY.



REGISTERED PROFESSIONAL ENG
FLORIDA LICENSE NO. 81414

JORDAN LEVI VARBLE, PE

DATE



This item has been digitally
signed and sealed by Jordan
L. Varble, P.E., on the date
adjacent to the seal.
Printed copies of this
document are not
considered signed and
sealed and the signature
must be verified on any
electronic copies.

OCTOBER 2025

2025.10.16 10:45:52-04'00'

BEACH ACCESS 41

ESTERO BLVD.

SAN CARLOS BLVD.

ESTERO BLVD.

LOCATION MAP

0 300 600 1200

INTENDED DISPLAY SCALE:
22"X34" PLAN 1"=600'
11"X17" PLAN 1"=1200'

SHEET NUMBER
C01

\\\\ftms01\\drawings\\2023\\20236180-000\\Engineering\\Drawings\\00\\Fort Myers Beach\\236180-007 C

AC ACRE
 AL APPROX.
 ASE ASBESTOS
 BM BENCH MARK
 BMS BUILDING
 BOT BOTTOM
 CF CATCH BASIN
 CFC CUBIC FEET
 CPM CUBIC FEET PER MINUTE
 CS CAST IRON
 CIP CAST IRON PIPE
 CJ CAST JOINT
 CMP CORRUGATED METAL PIPE
 CL CLEANOUT
 CV CHECK VALVE
 CY CUBIC YARD
 CLKG CENTER LINE
 CLF CHAIN LINK FENCE
 COL COLUMN, COLOR
 CON CONCRETE
 CONST CONSTRUCTION
 CONT CONTINUOUS
 COTR CO-TERRACE
 CTRS CENTERS
 CU COPPER
 CUB CUBIC INCH
 DIA. ϕ DIAMETER
 DIAGONAL
 DIM DIMENSION
 DIS DISTANCE
 DP DUCTILE IRON PIPE
 DR DRAINAGE EASEMENT
 DW DRAWING
 E EAST
 EL/ELEV ELEVATION
 EQ EQUIPMENT
 ERCP ELLIPTICAL REINFORCED C
 ESMT EASEMENT
 EX EXISTING
 F1 FINISHED FLOOR
 FFE FINISHED FLOOR ELEVATIO
 FM FORCE MAIN
 FID FIRE PROTECTING CONNE
 FDN FOUNDATION
 FIN FINISH
 FRB FIBERGLASS REINFORCED
 FT FEET
 G NATURAL GAS
 GC GENERAL CONTRACTOR
 GI GALVANIZED IRON
 GPW GALLONS PER MINUTE
 GV GATE VALVE
 GA GAUGE
 GAL GALLON
 GALV GALVANIZED
 HD HIGH DENSITY
 HDPE HIGH DENSITY POLYETHYL
 HOR HORIZONTAL
 HYDRA HYDRAULIC
 ID INSIDE DIAMETER
 IDD INVA DRAINAGE DISTRICT
 IRR IRRIGATION
 LA LAKE ACCESS EASEMENT
 LCU LEE COUNTY UTILITY EAS
 LEE LEE COUNTY UTILITY EAS
 LME LAKE MAINTENANCE TRAC
 LMT LAKE MAINTENANCE TRAC
 MLL MILLI GALLONS PER
 M MANHOLE
 MJ MECHANICAL JOINT
 MAX MAXIMUM
 MECH MECHANICAL
 MFR MITERED END SECTION
 MFS MANUFACTURER
 MIN MINIMUM
 MISG MISCELLANEOUS
 N NORTH
 NE NORTHEAST
 NW NORTHWEST
 NPW NON POTABLE WATER
 NT NOT TO SCALE
 N NUMBER
 NOM NOMINAL
 NG NATURAL GAS
 ON ON CENTERS
 OCW ON CENTER EACH WAY
 O OUTSIDE DIAMETER
 PCF POUNDS PER CUBIC FOOT
 PSF POUNDS PER SQUARE FO
 PV PUG VALVE
 POUND POUND PER SQUARE IN
 PVC POLYVINYL CHLORIDE
 PLYV, PE POLYETHYLENE
 PAVEM PAVEMENT
 PC POINT OF CURVATURE
 PRO PROPOSED GRADE LINE
 PL PROPERTY LINE
 PLB PLUMBING
 PLWD PLYWOOD
 POT POTABLE WATER
 PT POINT OF TANGENCY
 PUE PUBLIC UTILITY EASEMENT
 QU QUANTITY
 R RADIUS
 RD ROAD
 REIN REINFORCED CONCRETE P
 REQ REQUIRED
 ROW RIGHT OF WAY
 RU REUSE LINE
 R RIGHT OF WAY
 S SOUTH
 SE SOUTHEAST
 SOUT SOUTHWEST
 SS SANITARY SEWER
 SAN SANITARY
 SCH SCHEDULE
 SECT SECTION
 SEW SEWER
 SH SHEET
 SPEC SPECIFICATION
 SQ SQUARE
 ST STREET
 STA STATION
 STL STEEL
 STD STANDARD
 SURD SURFACE
 SYM SYMMETRICAL
 TOE TOE OF SLOPE
 TOP TOP OF BANK
 THK THICK
 TEL TELEPHONE
 TEMPERATURE
 TRANS TRANSFORMER
 TYP TYPICAL
 UE UTILITY EASEMENT
 V VERTICAL
 W WATER
 WM WATER MAIN
 WITH WITH
 W/O WITHOUT
 W WOOD
 WGT WEIGHT
 W WATER VULNER
 WH WATER VALVANT

	GATE VALVE		IRRIGATION SERVICE (DOUBLE)
	TEE ASSEMBLY		IRRIGATION SERVICE (SINGLE)
	REDUCER		SEWER SERVICE (DOUBLE)
	BLOW OFF		SEWER SERVICE (SINGLE)
	FIRE HYDRANT		WATER SERVICE (DOUBLE)
	FIRE HYDRANT ASSEMBLY W/ GATE VALVE		WATER SERVICE (SINGLE)
			HEADWALL
	MITERED END SECTION		DRAINAGE INLET (SEE PLAN FOR TYPES)
	MAN-HOLE W/ NUMBER		THROAT INLET
	PLUG VALVE		FLARED END SECTION

	WETLAND		EXISTING LAKE TO BE FILLED
	UPLAND BUFFER		PROPOSED LAKE
	UPLAND PRESERVE		LITTORAL SHELF AREA
	INDIGENOUS AREA		COMPENSATING LITTORAL PLANTING AREA
	NATURAL AREA		RIPRAP / GRAVEL
	FILTER MARSH		BRICK PAVERS
	EXISTING LAKE	NOTE: HATCH PATTERNS ARE FOR ILLUSTRATIVE PURPOSES ONLY. ACTUAL HATCH PATTERNS ON DRAWING MAY VARY IN SCALE & ANGLE	

	EXISTING	PROPOSED
RIGHT-OF-WAY LINE	_____	_____
CENTER LINE	_____	_____
PAVED MAINTENANCE EASEMENT	-----	-----
PUBLIC UTILITY EASEMENT	-----	-----
DRAINAGE EASEMENT	-----	-----
WETLAND BOUNDARY	_____	_____
FORCE MAIN	_____ FM _____	_____ FM _____
SANITARY SEWER	_____ SS _____	_____ SS _____
WATER MAIN	_____ WM _____	_____ WM _____
IRRIGATION MAIN	_____ IRR _____	_____ IRR _____
RE-USE MAIN	_____ RU _____	_____ RU _____
PERMETER BERM	> > > >	> > > >
FENCE LINE	x x	x x x x
SILT FENCE	△ △ △	△ △ △ △ △ △
BULKHEAD	_____	_____
STRUCTURAL BUFFER	_____	_____

1. ELEVATIONS REFERENCE TO NAVD 1988. CONVERSION TO NGVD 1929 IS: NAVD 1988 + 1.18 = NGVD 1929.

- THE GENERAL NOTES MUST BE PART OF THIS ENTIRE DOCUMENT PACKAGE AND ARE PART OF THE CONTRACT DOCUMENTS. THE GENERAL NOTES ARE REFERENCED HEREIN AND MUST BE REFERRED TO BY THE CONTRACTOR. THE CONTRACTOR MUST BE FAMILIAR WITH AND ACKNOWLEDGE FAMILIARITY WITH ALL THE GENERAL NOTES AND ALL OF THE PLANS SPECIFICATION NOTES.
3. CONTRACTOR MUST VERIFY ALL DIMENSIONS INCLUDED WITHIN THE PLAN SET AND SHOULD NOT SCALE OFF THE DRAWINGS DUE TO POTENTIAL PRINTING INACCURACIES. ALL DIMENSIONS ARE TO BE CHECKED AND CONFIRMED BY THE GENERAL CONTRACTOR PRIOR TO PREPARATION OF SHOP DRAWINGS, FABRICATION/ORDERING OF PARTS AND MATERIALS AND START OF SITE WORK.
4. JOHNSON ENGINEERING, LLC, IS NOT RESPONSIBLE FOR AND HAVE NO CONTRACTUAL LEGAL OR OTHER RESPONSIBILITIES FOR JOB SITE SAFETY, JOB SITE SUPERVISION, OR ANYTHING RELATED TO THE SAME. JOHNSON ENGINEERING, INC, IS NOT RESPONSIBLE TO IDENTIFY OR REPORT ANY JOB SITE SAFETY ISSUES OR ANY JOB SITE CONDITIONS, AT ANY TIME.
5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, STANDARD PLANS (LATEST EDITION), LEE COUNTY DEVELOPMENT STANDARDS AND SPECIFICATIONS AND LEE COUNTY UTILITIES REQUIREMENTS.
6. CONTRACTOR SHALL RETAIN, ON THE WORK SITE, COPIES OF ANY PERMITS NECESSARY FOR CONSTRUCTION.
7. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ANY REQUIRED TREE REMOVAL PERMITS.
8. THE SITE CONTRACTOR SHALL BECOME FAMILIAR WITH THE GEOTECHNICAL REPORT IF ONE WAS PREPARED. THE CONTRACTOR SHALL COMPLY WITH ALL THE SITE PREPARATION AND OTHER SITE RELATED ITEMS, RECOMMENDATIONS AND PROCEDURES.
9. CONTRACTOR ACKNOWLEDGES THAT CONSTRUCTION SITE IS WITHIN A PUBLIC USE AREA AND SHALL MAINTAIN A SAFE AND SECURE WORK AREA.
10. CONTRACTOR IS REQUIRED TO OBTAIN FROM THE ENGINEER AND OWNER WRITTEN APPROVAL FOR ANY DEVIATIONS FROM THE PLANS AND/OR SPECIFICATIONS.
11. EXISTING OFF-SITE DRAINAGE PATTERNS SHALL BE MAINTAINED DURING CONSTRUCTION.
12. ANY PUBLIC LAND CORNER WITHIN THE LIMITS OF CONSTRUCTION IS TO BE PROTECTED, IF A CORNER MONUMENT IS IN DANGER OF BEING DESTROYED AND HAS NOT BEEN PROPERLY REFERENCED, THE CONTRACTOR SHOULD NOTIFY THE OWNER/ENGINEER WITHOUT DELAY.
13. THE LOCATION OF EXISTING UTILITIES, PAVEMENT, VEGETATION, AND MISCELLANEOUS IMPROVEMENTS ARE APPROXIMATE ONLY. THE EXACT LOCATIONS SHALL BE FIELD VERIFIED BY THE CONTRACTOR.
14. CONTRACTOR SHALL NOTIFY THE LEE COUNTY DIVISION OF DEVELOPMENT REVIEW A MINIMUM OF 72 HOURS PRIOR TO ALL REQUIRED INSPECTIONS.
15. CONTRACTOR TO PROVIDE SILT FENCE AND OTHER APPROPRIATE MEASURES TO AFFECT THE FILTRATION OF SURFACE WATER FLOWS AND TO PROVIDE EROSION PROTECTION DURING CONSTRUCTION ACTIVITIES. PROTECTION IS TO BE MAINTAINED DURING THE CONSTRUCTION PERIOD UNTIL DISTURBED SOILS HAVE BEEN STABILIZED WITH VEGETATION OR SUITABLE EROSION PROTECTION TREATMENT.
16. DURING CONSTRUCTION, GRATE INLET AND JUNCTION BOX OPENINGS SHALL BE COVERED WITH FILTER FABRIC (MIRAFIL 140N OR APPROVED EQUAL) TO PREVENT DEBRIS AND FILL FROM WASHING INTO THE INLET.
17. CONTRACTOR SHALL USE DESIGNATED CONSTRUCTION ENTRANCES FOR EMPLOYEES AND DELIVERY OF MATERIALS.
18. ALL CONSTRUCTION DEBRIS AND OTHER WASTE MATERIAL SHALL BE DISPOSED OF OFF-SITE IN ACCORDANCE WITH APPLICABLE REGULATION. IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE SITE IS CLEAN ONCE CONSTRUCTION IS FINISHED.
19. CONTRACTOR SHALL PROMPTLY REPORT ALL FIELD CHANGES TO THE ENGINEER.
20. THE CONTRACTOR SHALL ACCURATELY PLOT THE LOCATIONS AND DEPTHS OF ALL IMPROVEMENTS INSTALLED ON A FINAL SET OF RECORDED DRAWINGS WHICH SHALL BE DELIVERED TO THE ENGINEER.
21. CONTRACTOR SHALL INCORPORATE BEST MANAGEMENT PRACTICES TO PREVENT CONSTRUCTION DEBRIS, DUST, AND OTHER MATERIALS FROM LEAVING THE IMMEDIATE WORK AREA AND ENTERING LOCAL WATERS. THIS INCLUDES TURBIDITY CONTROLS AND MONITORING FOR IN-WATER WORK AND OTHER LAND-DISTURBING ACTIVITIES. TURBIDITY CONTROLS AND MONITORING SHALL BE IN ACCORDANCE WITH PROJECT PERMITS.
22. ALL PILES SHALL ACHIEVE EMBEDMENT AS SHOWN IN PLANS.
23. CONSTRUCTION OF BOARDWALK DESIGN MAY REQUIRE MINOR GRADING BY CONTRACTOR TO ACHIEVE DESIRED GRADES. CONTRACTOR MUST RECEIVE WRITTEN APPROVAL FROM ENGINEER PRIOR TO GRADING COMMENCEMENT.
24. UNLESS OTHERWISE NOTED, PILES SHALL BE INSTALLED IN THE SAME LOCATIONS AS PREVIOUS PILES TO MINIMIZE ENVIRONMENTAL IMPACT.
25. REMOVAL OF VEGETATION SHALL ONLY BE ALLOWED WITHIN BOARDWALK LIMITS. REMOVAL OF VEGETATION OUTSIDE BOARDWALK LIMITS SHALL REQUIRE PRIOR APPROVAL FROM COUNTY OR ENGINEER.
26. ALL CONSTRUCTION MATERIALS SHALL BE PER PLAN DETAILS.
27. ALL PILES SHALL BE CUT OFF BELOW DECK. WATERPROOF PILE TOPS WITH DENSFO 35 TAPE.
28. BEVEL TOP EDGE OF STANCHIONS, RAILS, AND DECKING TO REMOVE SHARP EDGES AND SPLINTERS.
29. CONTRACTOR SHALL ENSURE RAILING IS FREE OF BURRS AND SHARP EDGES.
30. CONTRACTOR SHALL CONDUCT CLEANUP ON A DAILY BASIS.

1. ANY SITE DEMOLITION IS BASED ON AVAILABLE INFORMATION PROVIDED TO ENGINEER AND MAY NOT COVER ALL ASPECTS OF THE PROJECT. IT IS THE CONTRACTOR'S RESPONSIBILITY TO COVER ALL EXISTING INFRASTRUCTURE TO BE REMOVED IN THEIR DEMOLITION BUDGET.

1. CONTRACTOR TO CONTACT "SUNSHINE 811" FOR LOCATES TWO BUSINESS DAYS BEFORE YOU DIG, 1-800-432-4770. STATE, COUNTIES, AND CITIES ARE NOT PART OF THE ONE CALL SYSTEM, THEY MUST BE CALLED INDIVIDUALLY.

1. ALL ACCESSIBLE (A.K.A. ADA) COMPONENTS AND ACCESSIBLE ROUTES MUST BE CONSTRUCTED TO MEET, AT A MINIMUM THE MOST STRINGENT OF: (A) THE REQUIREMENTS OF THE "AMERICANS WITH DISABILITIES ACT" (ADA) CODE (42 U.S.C. § 12101 ET SEQ. AND 42 U.S.C. § 4151 ET SEQ.); AND (B) ANY APPLICABLE LOCAL AND STATE GUIDELINES, AND ANY AND ALL AMENDMENTS TO BOTH, WHICH ARE IN EFFECT AT THE TIME OF CONSTRUCTION.

1. CONTRACTOR SHALL COMPLY WITH THE "STANDARD PROTECTION MEASURES FOR THE EASTERN INDIGO SNAKE, REVISED AUGUST 2013" DOCUMENT.

STATE OF FLORIDA E&SC DESIGNER & REVIEWER MANUAL; LATEST EDITION; JULY 2013

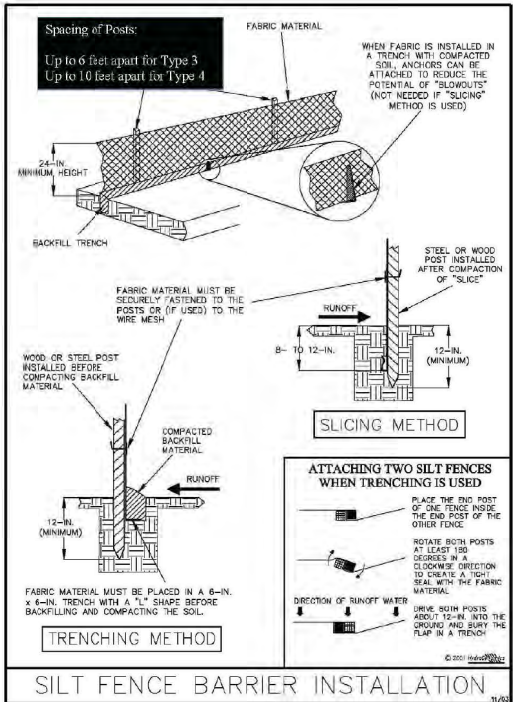
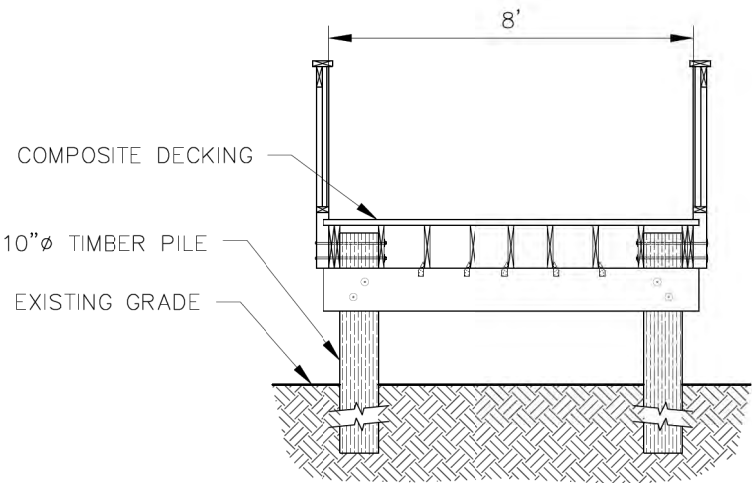


Figure V-2: Illustration of a Silt Fence Barrier

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Y.-



N.T.S

FOR STRUCTURAL DETAILS,
SEE PLANS BY WEILER ENGINEERING CORP.

JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.R. #642 & L.B. #642

WEILER ENGINEERING CORPORATION
WEC
An Apex Company

WEILER ENGINEERING CORP.
201 WEST MARION AVENUE SUITE
1306 PUNTA GORDA, FLORIDA 33950
PHONE: (941) 505-1700
FAX: (941) 505-1702

JORDAN LEVI VARBLE, PE
FL License No. 81414

JORDAN LEVI VARBLE, PE
FL License No. 81414



Lee County
Southwest Florida

FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

[illegible]

DATE: OCTOBER 2025

PROJECT NO. 20236180-000

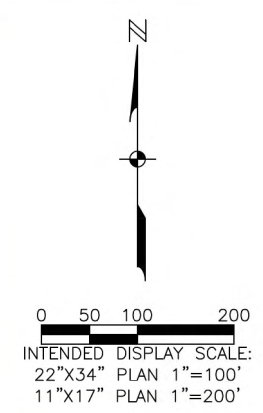
FILE NO. 24-46-23

SCALE: AS SHOWN

GENERAL NOTES & ABBREVIATIONS

SHEET NUMBER

C02



FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

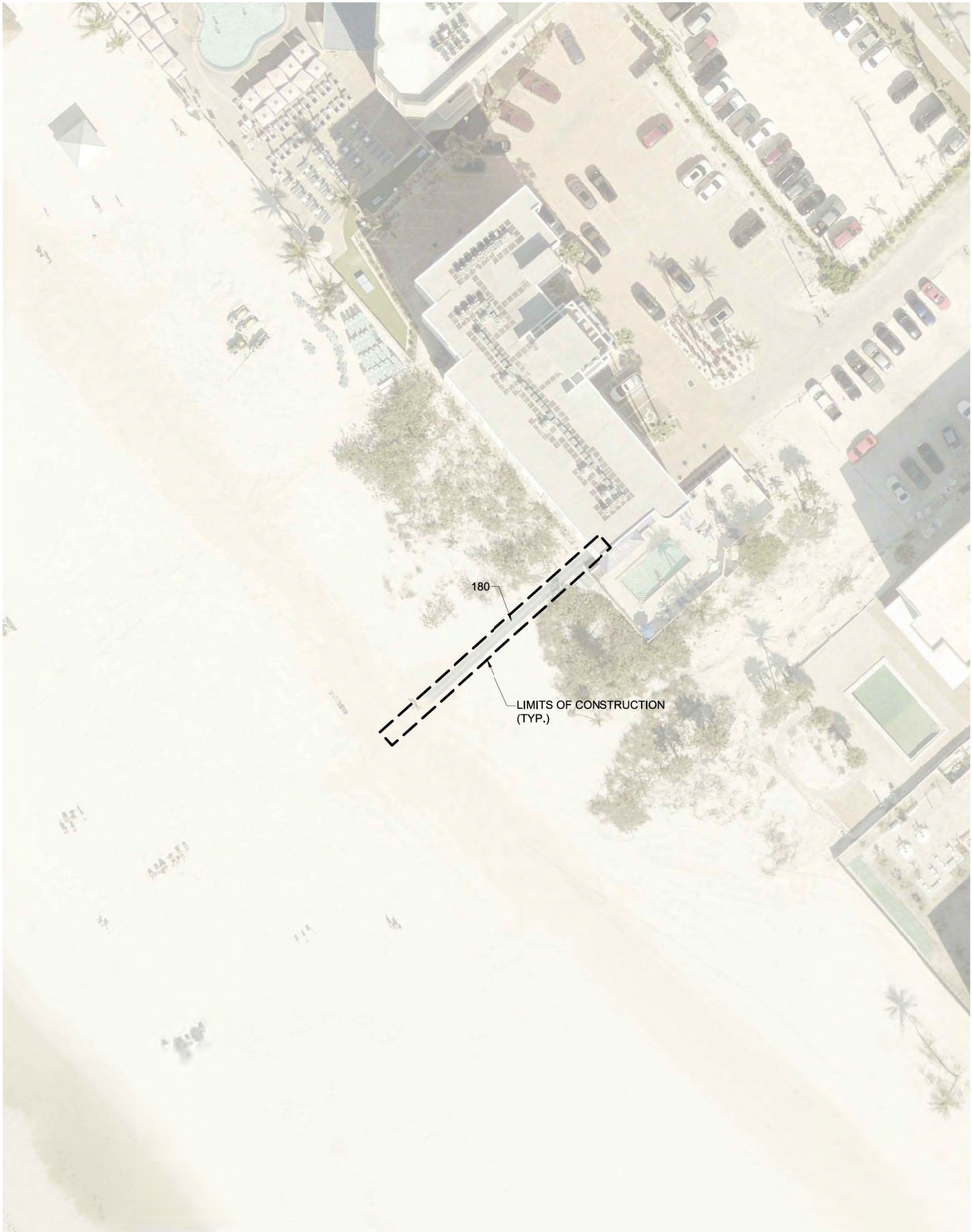
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DATE:	OCTOBER 2025
PROJECT NO.	20236180-000
FILE NO.	24-46-23
SCALE:	AS SHOWN

AERIAL KEY MAP

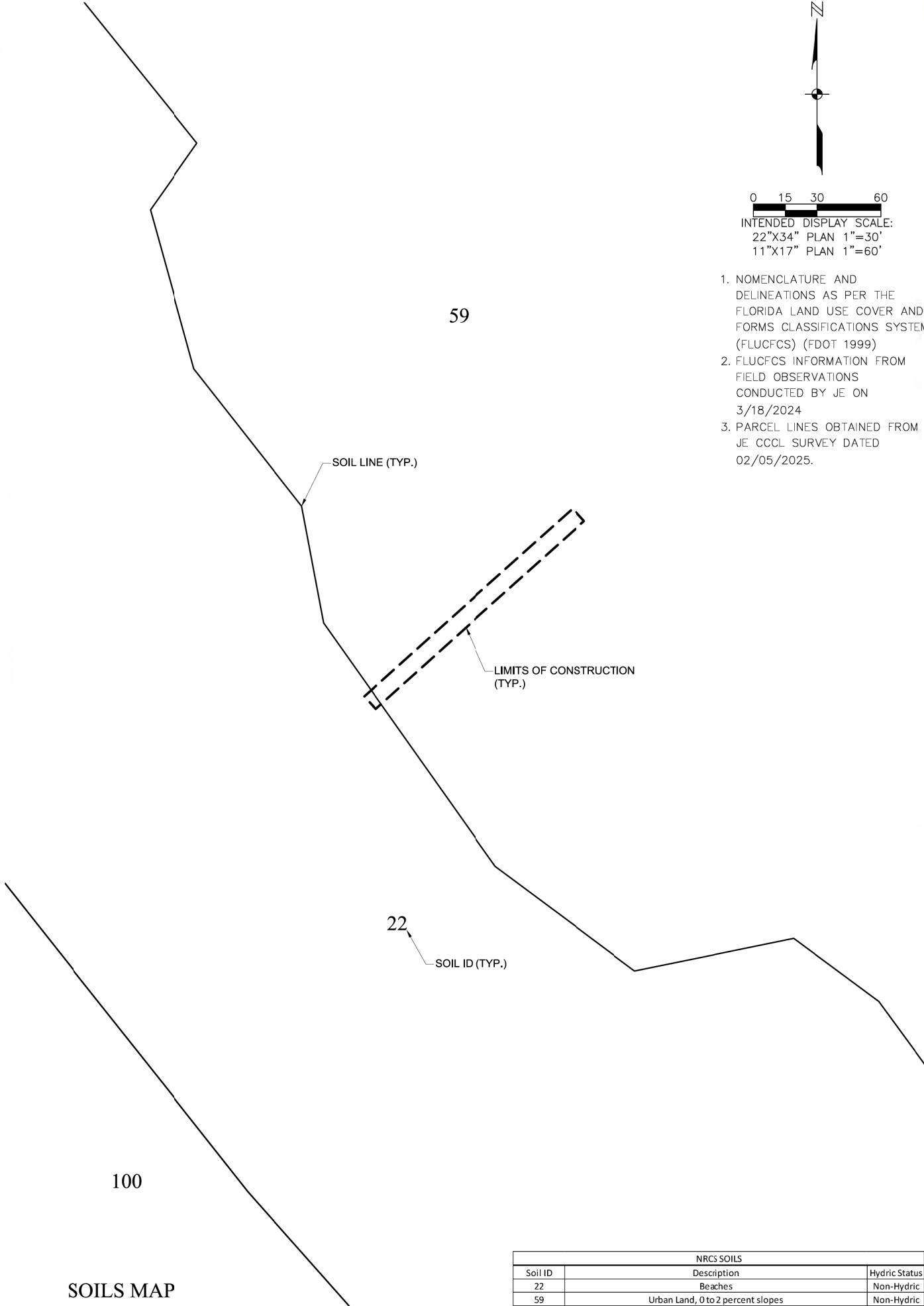
SHEET NUMBER

C03



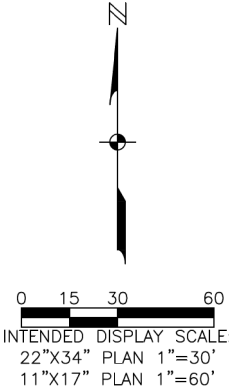
FLUCFCS Code	Description	Status	Area in Acres
180	Recreational Beach Access	N	0.03
Total Site			0.03
Legend			
N = Non Wetlands			Total N 0.03
W = Wetlands			Total W 0.00
SW = Surface Waters			Total SW 0.00
Total Site			0.03

FLUCFCS MAP



NRCS SOILS		
Soil ID	Description	Hydric Status
22	Beaches	Non-Hydric
59	Urban Land, 0 to 2 percent slopes	Non-Hydric

SOILS MAP



1. NOMENCLATURE AND DELINEATIONS AS PER THE FLORIDA LAND USE COVER AND FORMS CLASSIFICATIONS SYSTEM (FLUCFCS) (FDOT 1999)
2. FLUCFCS INFORMATION FROM FIELD OBSERVATIONS CONDUCTED BY JE ON 3/18/2024
3. PARCEL LINES OBTAINED FROM JE CCCL SURVEY DATED 02/05/2025.

JOHNSONENGINEERING

An Apex Company

JOHNSON ENGINEERING, LLC.
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.R. #642 & L.B. #642

WEILER ENGINEERING CORPORATION

WEC

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FL License No. 81414



FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

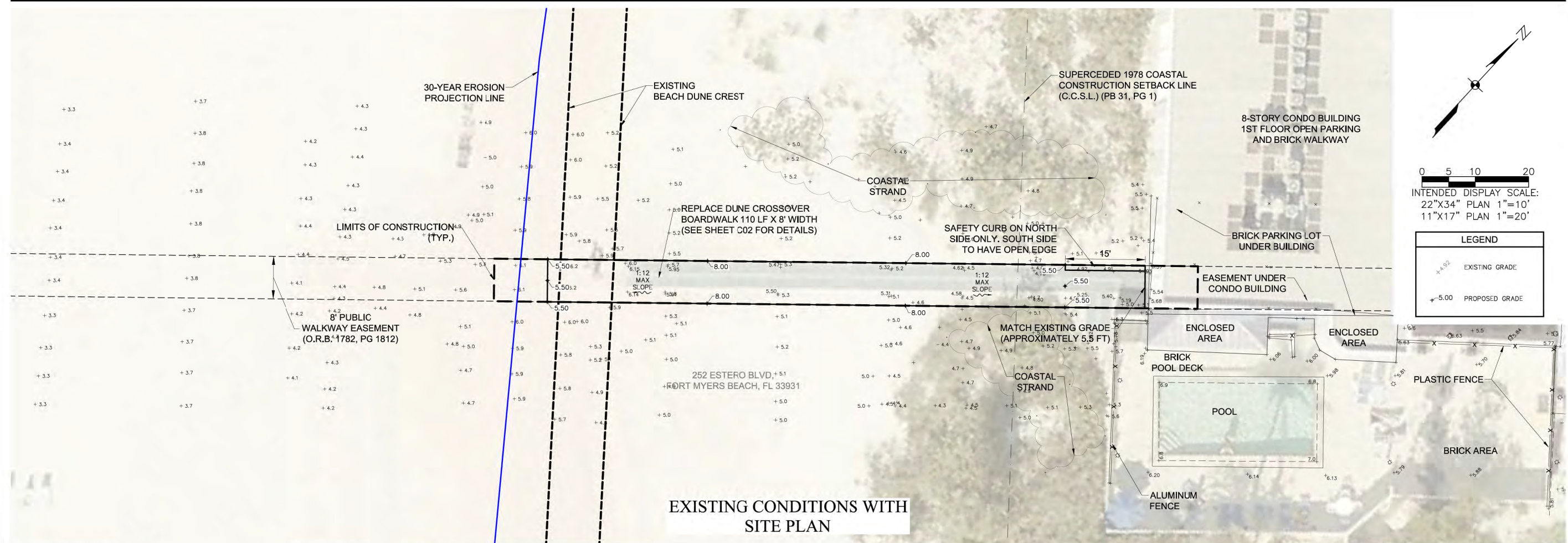
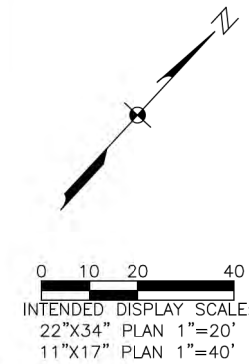
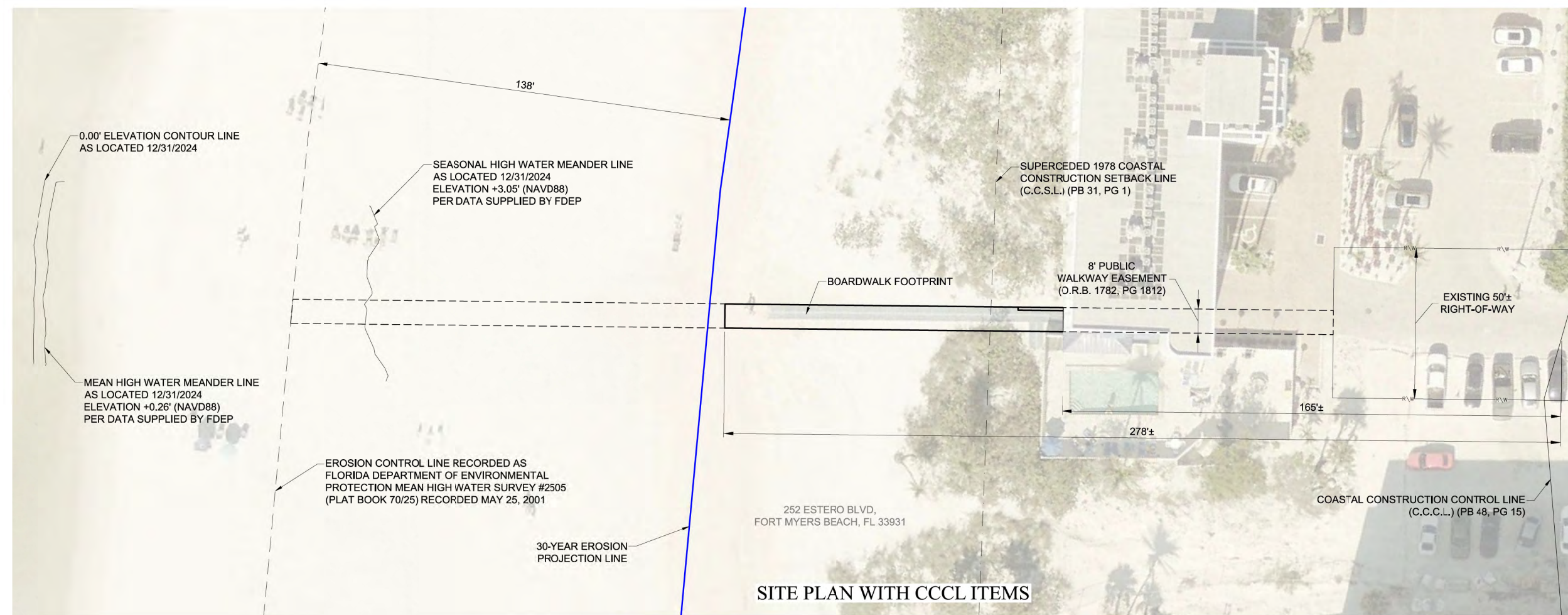
REVISIONS	DATE
DESCRIPTION	
NO.	

DATE:	OCTOBER 2025
PROJECT NO.	20236180-000
FILE NO.	24-46-23
SCALE:	AS SHOWN

FLUCFCS AND
SOILS MAP

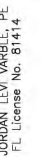
SHEET NUMBER

C04



JOHNSON
ENGINEERING
— An Apex Company —

JOHNSON ENGINEERING, LLC,
2122 JOHNSON STREET
FORT MYERS, FLORIDA 33901
PHONE: (239) 334-0046
E.R. #642 & L.B. #642



FORT MYERS BEACH
ACCESS 41
VARIOUS BOARDWALK
REPAIRS
LEE COUNTY, FLORIDA

[illegible]

EXISTING CONDITIONS AND SITE PLAN

SHEET NUMBER

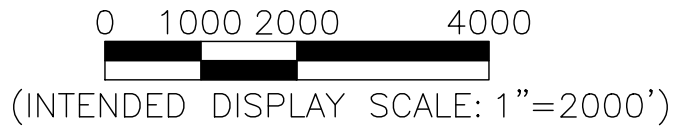
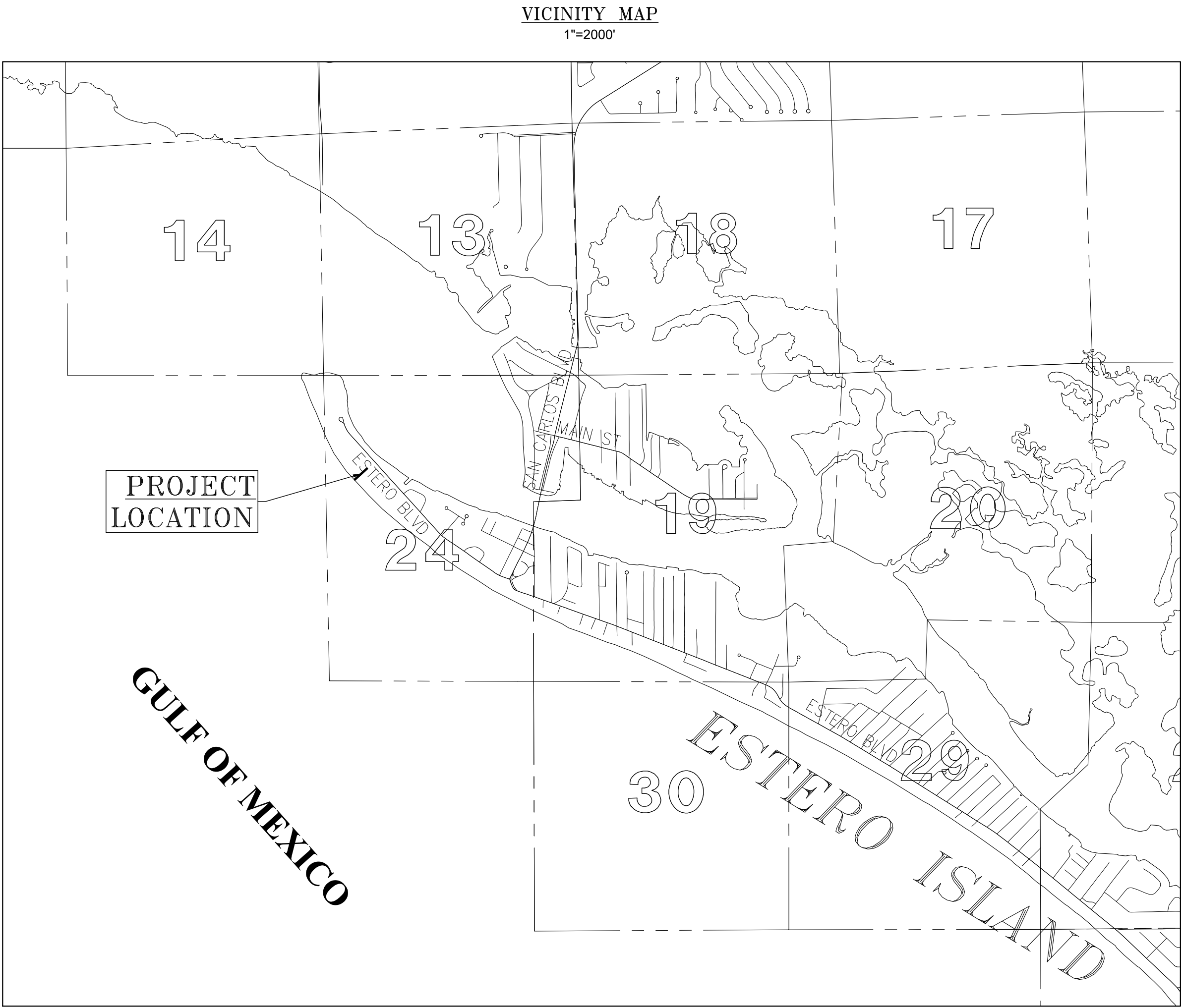
C05

BOUNDARY, TOPOGRAPHIC AND
MEAN HIGH WATER LINE SURVEY
FOR
FORT MYERS BEACH ACCESS #41
GULFSHORE SUBDIVISION
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
CITY OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

NOTES:

- DATE OF LAST FIELDWORK: DECEMBER 31, 2024.
- SURVEYED PARCEL LIES OVER 252 ESTERO BLVD, FORT MYERS BEACH, FL., 33931
- BEARINGS SHOWN HEREON ARE BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983, ADJUSTMENT OF 2011 (NAD83/2011), WHEREIN THE MEASURED BEARING BETWEEN FOUND ORIGINAL COASTAL CONSTRUCTION MONUMENTS "A25A" AND "A37A" BEARS SOUTH 49°13'01" EAST.
- COORDINATES SHOWN HEREON ARE IN UNITS OF U.S. SURVEY FEET AND ARE REFERENCED TO THE FLORIDA STATE PLANE COORDINATE SYSTEM (NAD83/2011) FOR THE WEST ZONE OF FLORIDA AND WERE ESTABLISHED UTILIZING TRIMBLE RTK GPS REDUNDANT OBSERVATION PROCEDURES FROM A FIXED BASE STATION OF KNOWN GEODETIC POSITION AND A REDUNDANT CHECK TO A FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP) COASTAL CONSTRUCTION SURVEY MONUMENT OF KNOWN GEODETIC POSITION. THE BASE STATION USED IS PART OF THE TRIMBLE VRS NOW NETWORK (VRS). THE BASE STATION AND SURVEY MONUMENT HAVE THE RECORD POSITION LISTED BELOW:

STATION	LATITUDE	LONGITUDE	STATE PLANE COORDINATES (FT)	
FTMY(VRS)	N26°38'20.41934"	W81°52'25.49756"	N 837,971.29060	E 697,406.83738
FDEP COASTAL CONSTRUCTION MONUMENT "A25A"	N26°27'10.3174"	W81°57'18.7055"	N 770,294.918	E 670,825.675
- ELEVATIONS SHOWN HEREON ARE IN FEET RELATIVE TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88), AND ARE BASED ON A CLOSED LEVEL LOOP ORIGINATING FROM NATIONAL GEODETIC SURVEY (NGS) BENCHMARK 872 5366 F (PID AD7852) HAVING A PUBLISHED ELEVATION OF +22.60.
- THE EROSION CONTROL LINE RECORDED IN PLAT BOOK 70, PAGE 25 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA IS THE BOUNDARY BETWEEN THE GULF OF MEXICO (STATE OF FLORIDA) AND THE EASEMENT INTEREST OF THE SUBJECT PARCEL (LEE COUNTY, FLORIDA).
- THE LOCATION OF THE MEAN HIGH WATER LINE WAS DETERMINED BY USING THE MEAN HIGH WATER ELEVATION OF +0.26 FEET NAVD88, AS PROVIDED BY STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION PER TIDAL WATER SURVEY APPROVAL LETTER DATED 4/17/2024 AND WAS LOCATED FOR COASTAL CONSTRUCTION PURPOSES.
- THIS SURVEY COMPLIES WITH THE REQUIREMENTS FOR SURVEYS PER CHAPTER 62B-33.0081, FLORIDA ADMINISTRATIVE CODE.
- THE SURVEYED PARCEL LIES IN F.E.M.A. FLOOD ZONE VE, HAVING A BASE FLOOD ELEVATION OF (+13'), (+14'), AND (+15') ACCORDING TO THE NATIONAL FLOOD INSURANCE PROGRAM'S FLOOD RATE MAP (F.I.R.M.) PANEL NUMBER 12071C0554G WITH AN EFFECTIVE DATE OR NOVEMBER 17, 2022.
- THIS SURVEY MEETS THE ACCURACY STANDARDS OF AN URBAN SURVEY (1:7,500)
- THE LOCATION OF THE 1990 COASTAL CONSTRUCTION WAS BASED ON FOUND ORIGINAL MONUMENTS "A25A" AND "A37A" PER THE PLAT RECORDED IN PLAT BOOK 48, PAGES 15 THROUGH 34, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA.
- THE LOCATION OF THE 1978 COASTAL CONSTRUCTION SETBACK LINE WAS BASED ON FOUND ORIGINAL MONUMENTS PER THE PLAT RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
- SUBSTANTIAL VISIBLE IMPROVEMENTS OTHER THAN THOSE SHOWN, NOT LOCATED. UNDERGROUND IMPROVEMENTS, ENCROACHMENTS AND/OR FOUNDATIONS WERE NOT LOCATED UNLESS OTHERWISE NOTED.
- THIS SURVEY DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.
- NO ENVIRONMENTAL ASSESSMENT OR AUDIT WAS PERFORMED ON THE SURVEYED PARCEL BY THIS FIRM.
- THIS SURVEY DOES NOT PURPORT TO DELINEATE THE REGULATORY JURISDICTION OF ANY FEDERAL, STATE OR LOCAL AGENCY.
- THIS SURVEY DOES NOT DETERMINE PROPERTY OWNERSHIP OR PROPERTY RIGHTS. THIS SURVEY LOCATED THE BOUNDARY IN ACCORDANCE WITH AND IN RELATION TO THE LEGAL DESCRIPTION.
- ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR REPORT BY OTHER THAN THE SIGNING PARTY IS PROHIBITED WITHOUT THE WRITTEN CONSENT OF THE SIGNING PARTY.
- AREA OF SURVEYED PARCEL IS 2,765 SQUARE FEET OR 0.06 ACRES, MORE OR LESS.
- THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. A TITLE COMMITMENT AND/OR ABSTRACT OF TITLE WAS NOT PROVIDED TO THE SURVEYOR.
- AERIAL PHOTOGRAPHY SHOWN HEREON WAS OBTAINED FROM LEE COUNTY AND IS DATED 2024. IT IS INCLUDED FOR ORIENTATION PURPOSES ONLY.



PROPERTY OWNER: LEE COUNTY

DESCRIPTION

(FORT MYERS BEACH ACCESS #41)
PER OFFICIAL RECORDS BOOK 1782, PAGE 1812

AN 8' (EIGHT FOOT) EASEMENT FOR PUBLIC WALKWAY; THE CENTERLINE BEING THE COMMON LINE BETWEEN LOTS 2 & 3, GULFSHORE SUBDIVISION AS RECORDED IN PLAT BOOK 9, PAGE 88, LEE COUNTY FLORIDA, PUBLIC RECORDS.

THIS MEAN HIGH WATER LINE SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

THIS SURVEY IS ONLY FOR THE BENEFIT OF:

- LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA

NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY.

I HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472, FLORIDA STATUTES.



THIS SURVEY HAS BEEN DIGITALLY SIGNED BY:
RICHARD G. DANIELS (FOR THE FIRM L.B. 642)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 7229
ON THE DATE ADJACENT TO THE SEAL.

THIS CERTIFICATION IS TO THE DATE OF LAST FIELD WORK AS SHOWN IN NOTE 1 AND NOT THE SIGNATURE DATE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED, AND THE DIGITAL SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.

REVISIONS

DATE	DESCRIPTION
05/14/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE: 4/1/2024
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

COVER SHEET

SHEET NUMBER

1 OF 3

REVISIONS

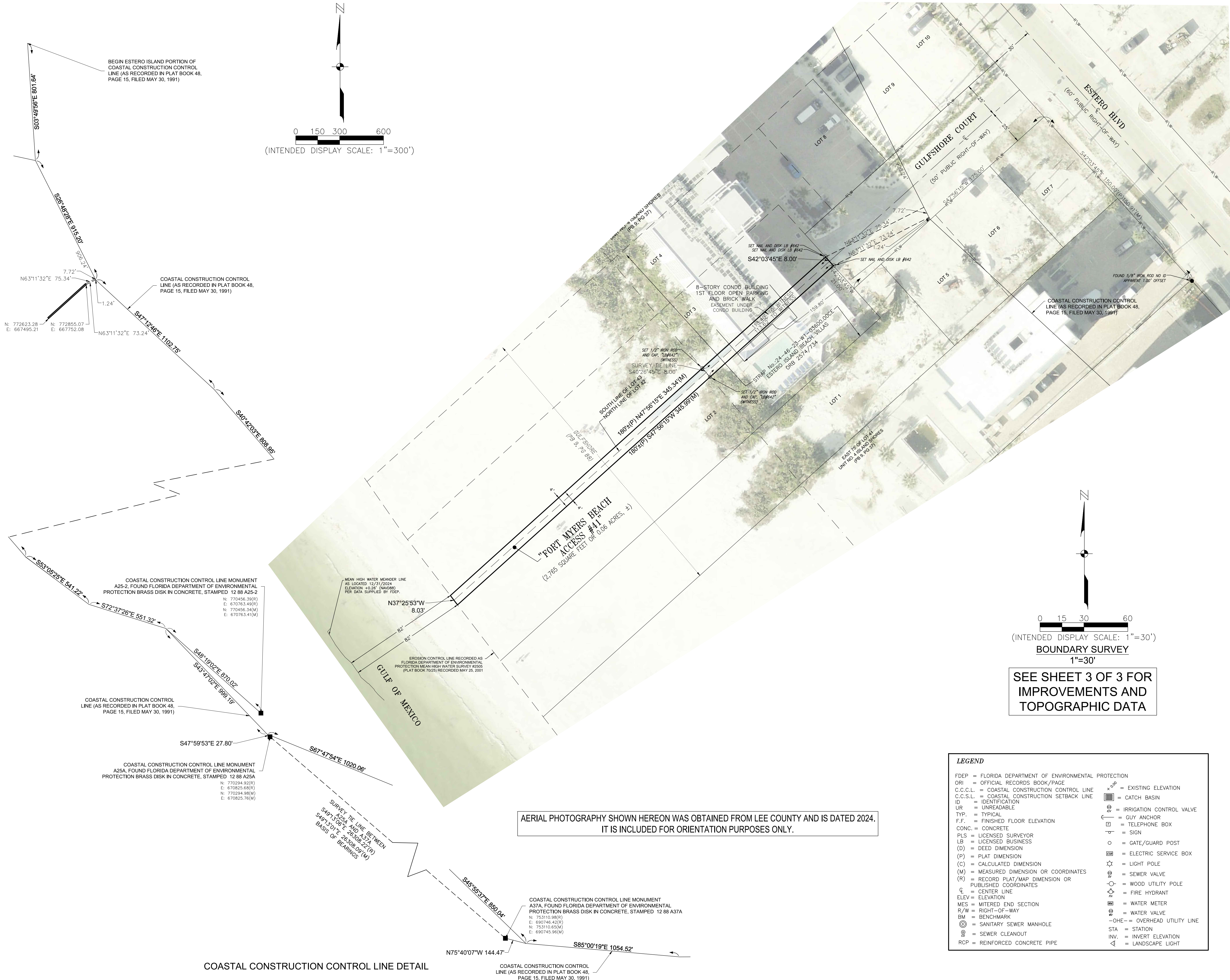
DATE	DESCRIPTION
05/14/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE: 4/1/24
PROJECT NO. 20236180-000
FILE NO. 24-46-23
SCALE: AS SHOWN

C.C.C.L. DETAIL
AND BOUNDARY
SURVEY

SHEET NUMBER

2 OF 3



"FORT MYERS BEACH ACCESS #41"

PORTION OF LOTS 2 & 3,

(PLAT BOOK 9, PAGE 88.)

PUBLIC RECORDS OF LEE COUNTY, FLORIDA

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST

REVISIONS	
DATE	DESCRIPTION
05/1/24	CHANGES TO BEACH DUE TO CONSTRUCTION
12/31/24	CHANGES TO BEACH TOPOGRAPHY

DATE:	4/1/24
PROJECT NO.	20236180-000
FILE NO.	24-46-23
SCALE:	1"=20'

SHEET NUMBER

3 OF 3



9099
406.50 R

This instrument prepared by
and return to:

✓
Andrew T. Marcus, Esq.
BAKER & HOSTETLER
2300 Sun Bank Center
200 South Orange Avenue
Post Office Box 112
Orlando, Florida 32802
(407) 649-4000

3725525

OR2574 P60734

DECLARATION OF CONDOMINIUM

OF

ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM

ARTICLE I

PREAMBLE, NAME AND LEGAL DESCRIPTION

The undersigned, FLORIDA INCOME FUND III, LIMITED PARTNERSHIP, a Delaware limited partnership, whose address is 13391 McGregor Boulevard S.W., Fort Myers, Florida 33919 ("Developer"), being the owner of fee simple title of record to those certain lands located and situate in Lee County, Florida, and more particularly described hereinafter, does hereby submit fee simple title to the property described in Paragraph 1.2 below together with the improvements thereon to the condominium form of ownership in accordance with the provisions of Chapter 718, Florida Statutes, and the following provisions:

1.1 Name. The name by which this condominium is to be identified is ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM (the "Condominium").

1.2 Legal Description. The property that is hereby submitted to the condominium form of ownership under this Declaration of Condominium consists of that certain real property situate in Lee County, Florida, that is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, together with those easements more specifically described in Article IV herein and described on attached Exhibit "A."

• RECORD VERIFIED - CHARLIE GREEN, CLERK •
• BY: C. KELLER, D.C. •

ARTICLE II

DEFINITIONS

The terms used in this Declaration and in its exhibits, including the Articles of Incorporation and Bylaws of the Association, shall be defined in accordance with the provisions of Chapter 718 and as follows unless the context otherwise requires:

2.1 Ad Valorem Real Estate Taxes shall mean those real property taxes assessed against the Units and their respective undivided interests in the Common Elements by Lee County, Florida.

2.2 Articles of Incorporation shall mean the Articles of Incorporation of the Association, as they may be amended from time to time. A copy of the present Articles of Incorporation are attached hereto as Exhibit "B" and incorporated herein by reference.

2.3 Association means Estero Island Beach Villas Condominium Association, Inc., a non-profit Florida corporation, and its successors, which is responsible for the operation of the Condominium.

2.4 Association Property shall mean all real and personal property owned by the Association, including but not limited to all furnishings, fixtures and other personal property contained within the Condominium Property that are not the property of an individual Owner.

2.5 Bylaws shall mean the Bylaws of the Association, as they may be amended from time to time. A copy of the present Bylaws are attached hereto as Exhibit "C" and are incorporated herein by this reference.

2.6 Chapter 718 shall mean the provisions of Chapter 718, Florida Statutes, as the same is constituted on the date of the recording of this Declaration.

2.7 Common Elements shall mean all of those items defined in Chapter 718 as Common Elements and those items hereinafter declared to be included within the Common Elements.

2.8 Common Expenses shall include:

(a) Expenses of administration and management of the Condominium Property, and of the Association, including but not limited to compensation paid by the Association to a manager, accountant, attorney, or other employee or independent contractor.

(b) Expenses of maintenance, operation, repair and replacement of the Common Elements and Limited Common Elements, as well as all other costs and expenses properly incurred by the Association.

(c) Expenses declared Common Expenses by the provisions of this Declaration or the Condominium Documents or Chapter 718.

(d) Any valid charge against the Condominium Property as a whole.

(e) All costs and expenses incurred by the Association in connection with regulatory compliance.

(f) All reserves for replacement and maintenance of the Condominium Property as required by Chapter 718.

Common Expenses shall not include Ad Valorem Real Estate Taxes assessed against each Condominium Parcel but shall include any and all taxes assessed against Association Property.

2.9 Common Surplus shall mean any excess of all receipts of the Association over the amount of Common Expenses.

2.10 Condominium shall mean and refer to Estero Island Beach Villas, a condominium.

2.11 Condominium Documents shall include this Declaration together with all exhibits attached hereto and all other documents expressly incorporated herein by reference, as the same may be amended from time to time.

2.12 Condominium Parcel is a Unit together with the undivided share in the Common Elements and Common Surplus which are appurtenant to the Unit.

2.13 Condominium Property means and includes the lands, leaseholds, easements and personal property that are subjected to

condominium ownership from time to time as part of this Condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.

2.14 Condominium Rules and Regulations shall mean and refer to the rules and regulations concerning the use of Condominium Property as may be promulgated and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws. A copy of the initial Condominium Rules and Regulations are attached hereto as Exhibit "F."

2.15 Declaration shall mean this Declaration of Condominium of Estero Island Beach Villas, a condominium, as it may lawfully be amended from time to time, pursuant to the provisions hereof.

2.16 Developer shall mean Florida Income Fund III, Limited Partnership, a Delaware limited partnership, its successors and assigns.

2.17 Limited Common Elements means and includes those Common Elements which are reserved for the use of a certain Unit to the exclusion of other Units.

2.18 Management Company shall mean Mariner Capital Management, Inc., a Florida corporation, its successors or assigns, or any other entity engaged to manage the Condominium, pursuant to the Management Contract.

2.19 Management Contract shall mean the agreement between the Association and any Management Company which provides for the ongoing management of the Condominium.

2.20 Mortgagee shall mean the Developer (and any successor in interest to the Developer as to a purchase-money mortgage), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or any trust, savings and loan association, credit union, mortgage company, bank, insurance company, or commercial loan company licensed to do business in the State of Florida, to the extent that any of the same hold a first mortgage encumbering any Unit.

2.21 Owner means the owner of a Unit.

2.22 Unit means a condominium unit as that term is defined in Chapter 718 and in Article V of this Declaration and refers to that part of the Condominium Property which is subject to exclusive ownership by one or more persons.

2.23 Utility Services shall include but not be limited to electric power, water, garbage and sewage disposal and telephone service, and all other public service and convenience facilities.

ARTICLE III

EXHIBITS

The Exhibits referred to in this Declaration shall include the following:

3.1 Exhibit "A." A legal description and a survey of the land committed to the condominium form of ownership pursuant to this Declaration, together with a graphic description of the Units located therein in a plot plan which, together with this Declaration, are of sufficient detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. As set forth in Exhibit "A", each Unit is identified by a number so that no Unit bears the same designation as any other Unit.

3.2 Exhibit "B." The Articles of Incorporation of the Association.

3.3 Exhibit "C." The Bylaws of the Association.

3.4 Exhibit "D." Percentage Interest in the Common Elements.

3.5 Exhibit "E." The Management Contract.

3.6 Exhibit "F." The Condominium Rules and Regulations.

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ARTICLE IV

EASEMENTS

The following easements are hereby expressly reserved or have been granted:

4.1 General Easements. Non-exclusive easements over, across and under the Condominium Property are expressly provided for and reserved in favor of the Developer and the Owners, and their respective lessees, guests and invitees, as follows:

(a) Utilities. Easements are reserved over, across and under the Condominium Property as may be required for Utility Service in order to serve the Condominium adequately; including, but not limited to, easements for the purpose of allowing such access rights as are necessary to utilize and service any lift station or utility transformer boxes located within the Condominium Property. Specific utility easements that exist on the Condominium Property are set forth in the survey contained in Exhibit "A" attached hereto.

(b) Encroachments. In the event that any Unit shall encroach upon any of the Common Elements or upon any other Unit, or in the event any Common Element shall encroach upon any Unit, then an easement shall exist to permit such encroachment so long as the same shall exist.

(c) Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies, and other portions of the Common Elements as may be from time to time intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, and such easements shall be for the use and benefit of the Owners within this Condominium and those claiming by, through or under the aforesaid; provided, however, nothing herein shall be construed to give or create in any person the right to park any vehicle upon any portion of the Condominium Property except to the extent that space may be specifically designated and assigned for parking purposes. In addition, further easements shall exist for ingress and egress over such streets, walks and other rights of way serving the Units as shall be necessary to provide for reasonable access to the public ways.

4.2 Association Easements. Except as limited by Section 718.111(10), Florida Statutes, the Association may grant easements from time to time over the Common Elements.

4.3 Developer Easements. The Developer hereby reserves the following exclusive easements and rights to grant easements:

(a) Marketing, Sales and Rental. The Developer reserves exclusive easement rights over and across the Condominium Property for the purpose of marketing, sales and rental of Units and other accommodations owned or operated by the Developer on adjoining properties which are not part of the Condominium.

(b) Governmental Requirements. The Developer hereby reserves the right to grant such easements, from time to time, as may be required by any government agency. Such easements shall specifically include, but not be limited to, any environmental easements required by state or federal environmental agencies, for so long as the Developer holds any interest in any Unit subject to this Declaration.

(c) Developer Easements. The Developer reserves unto itself, for so long as it holds any interest in any Unit (including leaseholds), specific easement rights over and across the Condominium Property as it may deem necessary for its use from time to time.

(d) Linen Closets. For so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes) the Developer or such affiliated entity shall have an exclusive easement for the use, possession and occupancy of the linen closet (as shown on the floor plans contained in Exhibit "A") located on each floor of the building.

4.4 Public Easement. An eight foot non-exclusive walkway easement from Estero Boulevard to the Gulf of Mexico exists on the Condominium Property in favor of the general public. The specific location of this easement is shown on the survey contained in Exhibit "A" attached hereto.

4.5 Other Easements. Other easements may have been granted over the Condominium Property as set forth in the survey contained in Exhibit "A" attached hereto.

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ARTICLE V

UNITS

5.1 Description of Units. Each Unit shall include that part of a building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimeter boundaries:

(1) Upper Boundaries. The imaginary horizontal plane through the highest point of the interior unfinished surface of the concrete ceiling of the Unit.

(2) Lower Boundaries. The imaginary horizontal plane through the lowest point of the upper surface of the undecorated concrete floor of the Unit.

(b) Perimeter Boundaries. The perimeter boundaries of the Unit shall be the imaginary vertical planes along and coincident with the interior surfaces of perimeter walls, or where no wall exists, an imaginary vertical plane along and coincident with the sides of the perimeter of such Unit.

5.2 Limited Common Elements. Limited Common Elements shall be comprised of the balcony and patio appurtenant to any Unit, as well as the air-conditioner compressor located on the roof of the building which serves such Unit.

5.3 Warranty Limitation. EXCEPT FOR THOSE WARRANTIES REQUIRED BY CHAPTER 718, FLORIDA STATUTES, THE DEVELOPER DOES NOT MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THE DEVELOPER HEREBY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE OWNERS AND THE ASSOCIATION ASSUME ALL RISK AND LIABILITY RESULTING FROM THE USE OF THIS PROPERTY.

ARTICLE VI

APPURTENANCES

6.1 Appurtenant Interests. Each Unit, regardless of Unit-type, shall have as an appurtenance thereto an equal undivided

share of the Common Elements and Common Surplus as more specifically described on Exhibit "D" attached hereto and by this reference incorporated herein. The Owner of each Unit shall be liable for that share of the Common Expenses which equals the percentage interest in the Common Elements and Common Surplus appurtenant to his Unit.

6.2 Partition of Common Elements. The share of the undivided percentage interest in the Common Elements appurtenant to each Unit shall remain undivided, and no Owner shall bring, or have any right to bring, any action for partition or division of same.

ARTICLE VII

MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement, shall be as follows:

7.1 Units.

(a) By the Association. Unless caused by the specific abuse of an Owner or any licensee, guest or tenant of an Owner, the Association shall maintain, repair and replace at the Association's expense:

(1) All Common Elements and Limited Common Elements except as otherwise provided in the Condominium Documents.

(2) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of Utility Services.

(b) By the Owner. The responsibility of the Owner for maintenance, repair and replacement shall be as follows:

(1) To not paint or otherwise decorate or change the appearance of any portion of the Condominium Property without the prior written approval of the Association.

(2) To promptly report to the Association upon discovery any defect or need for repairs for which the Association is responsible.

0R2574 P60743

(3) To bear in their entirety any expenses of repairs or replacements to the Common Elements occasioned by the specific use or abuse by any Owner or any licensee, guest or tenant of said Owner.

(4) To maintain, repair and replace all components, furnishings, carpeting, appliances, and other property, real, personal or mixed, located inside a Unit unless provided otherwise in the Condominium Documents.

7.2 Management Contract. The Association may enter into such management contracts, from time to time, as it deems necessary to engage the services of a management company to carry out all or part of the maintenance and operational duties and obligations of the Association in accordance with this Declaration. The initial Management Company is Mariner Capital Management, Inc., a Florida corporation, pursuant to the terms of the Management Contract attached hereto as Exhibit "E." In the event that the Management Contract is terminated, the maintenance duties and other obligations of the Condominium will once again be the responsibility of the Association.

7.3 Association's Access to Units. The Association has the irrevocable right of access to each Unit whenever necessary for maintaining the Condominium Property or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit.

7.4 Common Elements and Limited Common Elements. The Association shall maintain, repair and replace all Common Elements and Limited Common Elements.

ARTICLE VIII

ASSESSMENTS AND COMMON EXPENSES

8.1 Common Expenses. In addition to those items defined as Common Expenses in Article 2.8 above, Common Expenses shall include the following:

(a) Repair, replacement and upkeep of the Common Elements;

(b) Casualty, and/or liability insurance on the Condominium Property;

(d) Utility Services for the Condominium Property not attributable to individual Units;

(e) Taxes on Association Property and any other applicable taxes other than Ad Valorem Real Estate Taxes assessed against individual Condominium Parcels; and

(f) Any other expenses incurred in the normal operation and maintenance of the Condominium which cannot be attributed to a particular Owner.

8.2 Assessments. The mailing and collection of assessments against each Owner for Common Expenses, for the costs or expenses for which an individual Owner may be solely responsible pursuant to the terms of the Condominium Documents, and for reserves as may from time to time be established by the Association, shall be pursuant to the Bylaws of the Association, subject to the following provisions:

(a) Interest: Application of Payments. Assessments and installments on such assessments paid on or before five (5) days after the date when due shall not bear interest, but all sums not paid on or before five (5) days after the date when due shall bear interest at the maximum legal rate from the date when due until paid. A late charge equal to the greater of \$25.00 or 5% of the delinquent payment shall also be due on delinquent accounts. All payments on accounts shall be first applied to any interest that has accrued, then to any late charge, then to any costs and reasonable attorneys' fees incurred in collection, and then to the assessment payment first due. The board of directors shall have the discretion to increase or decrease the amount of late charge and/or interest rate within the limits imposed by law; provided, however, that such increase or decrease shall be made effective by amending the Condominium Rules and Regulations and notifying the Owners of same by regular mail addressed to each Owner at his last known address.

(b) Lien for Assessments. The Association shall have a lien against each Unit for any unpaid assessments and for interest accruing thereon, which lien shall also secure any late charges and reasonable attorneys' fees and costs incurred by the Association incident to the collection of such assessment or enforcement of such lien, whether or not legal proceedings are initiated. The lien is effective from and after recording a claim of lien in the Public Records of Lee County, Florida stating the legal description of the Unit, the name of the Owner of record, the

amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Such claims of lien shall be signed and verified by an officer of the Association, or by an authorized agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared by and recorded at such party's expense. All such liens shall be subordinate to any mortgage recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien. Pursuant to §718.116(1)(a), Florida Statutes, in the event a Mortgagee shall obtain title to a Unit as a result of the foreclosure of its mortgage, or in the event such Mortgagee shall obtain title to a Unit as the result of a conveyance in lieu of foreclosure of its mortgage, such Mortgagee shall be liable for the unpaid Common Expenses and assessments that became due prior to the Mortgagee's acquisition of title. However, the Mortgagee's liability is limited to a period not exceeding 6 months, but in no event does the Mortgagee's liability exceed 1 percent of the original mortgage debt. The Mortgagee's liability for such expenses or assessments does not commence until 30 days after the date the Mortgagee received the last payment of principal or interest. In no event shall the Mortgagee be liable for more than 6 months of the Units unpaid Common Expenses or assessments accrued before the acquisition of the title to the Unit by the Mortgagee or 1 percent of the original mortgage debt, whichever is less. Nothing contained herein shall be construed as a modification of any rights or remedies of the Association pursuant to Chapter 718, except to the extent that the Condominium Documents allow additional remedies to those expressly set forth in said statute and to the extent that such additional remedies are permitted by said statute.

(c) Personal Liability for Unpaid Assessments.

Each Owner of a Unit is personally liable for all assessments made against the Unit pursuant to this Declaration and Chapter 718, and the Association may bring an action for a money judgment against a delinquent Owner to collect all sums due the Association, including interest, late charges, costs and reasonable attorneys' fees. In the event a Unit is owned by more than one person or entity, such owners shall be jointly and severally liable for all assessments made against the Unit.

0R2574 PG0746

(d) Payments of Assessments. No Owner may withhold payment of any regular assessment or special assessment or any portion thereof because of any dispute which may exist between that Owner and the Association, the directors of the Association, the Management Company or the Developer or among any of them, but rather each Owner shall pay all assessments when due pending resolution of any dispute.

8.3 Common Surplus. Each Owner shall own a share of the Common Surplus attributable to each Unit owned in accordance with Article 6.1 above.

8.4 Refunds of Common Surplus. If the Association shall refund all or a portion of any Common Surplus to the Owners for any fiscal year in which the Developer paid any assessment, such refund shall be prorated as of the date of closing of any sale of a Unit upon which the sale was closed by the Developer during such year, and the prorated amount allocable to the period of time of the Developer's ownership shall be refunded directly to the Developer by the Association.

8.5 Certificate. Any Owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit. The holder of a mortgage or other lien shall have the same right as to any Unit upon which it has a lien. Any person who relies upon such certificate shall be protected thereby.

ARTICLE IX

THE ASSOCIATION

The operation of the Condominium shall be by the Association, which shall fulfill its functions pursuant to the following provisions:

9.1 Membership in Association. Membership of each Owner in the Association shall be acquired pursuant to the provisions of the Articles of Incorporation and Bylaws of the Association. Each Unit shall have one (1) vote in the Association. Where a Unit is owned by more than one owner, the cotenants of the Unit shall file a voting certificate with the Association, in accordance with the Articles and Bylaws of the Association, setting forth which cotenant is designated to cast the vote for that Unit.

9.2 Articles of Incorporation. A copy of the present Articles of Incorporation of the Association, which set forth its powers and duties, are attached hereto as Exhibit "B" and are incorporated herein by reference.

9.3 Bylaws. A copy of the present Bylaws of the Association are attached hereto as Exhibit "C" and are incorporated herein by reference.

9.4 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair portions of the Condominium Property, the Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other Owners or persons.

9.5 Restraint upon Assignment of Shares and Assets. Each Owner's share in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

9.6 Transfer of Control of Association. Owners other than the Developer shall be entitled to elect members of the board of directors of the Association at such times as are prescribed by Section 718.301, Florida Statutes.

9.7 Management Contract. A copy of the present agreement between the Association and the Management Company for the management of the Condominium is attached hereto as Exhibit "E."

ARTICLE X

INSURANCE

The insurance other than title insurance, if any, that shall be carried upon the Condominium Property shall be governed by the following provisions:

10.1 Authority to Purchase; Named Insured. All insurance policies upon the Condominium Property shall be purchased by the Association from a fiscally responsible company authorized to do business in the State of Florida and shall have a minimum term of one year. The named insured shall be the Association

individually and as agent for the Owners, without naming them, and as agent for their Mortgagees. In addition, for so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), the Developer or entity affiliated with the Developer shall be named as an additional insured on all insurance policies obtained for the Condominium Property. Provisions shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Owners upon request. Such policies shall provide that payments by the insurer for losses shall be made to the Association or the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Association or the Insurance Trustee.

10.2 Personal Property of Owners. If desired, each Owner shall obtain insurance coverage upon his personal property at his own expense, and such insurance shall not be the responsibility of the Association.

10.3 Coverage.

(a) Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount equal to one hundred percent (100%) of the current replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from coverage, and all personal property owned by the Association shall be insured for its current replacement cost, all as shall be determined from time to time by the board of directors of the Association. All such coverage, including the amount thereof and the insurance company issuing same, shall be subject to the approval of the Mortgagee holding the greatest dollar amount of first mortgages against Units in the Condominium. Such approval shall be conclusively deemed given if such Mortgagee fails to notify the Association otherwise within ten (10) days of being notified by the Association of the proposed coverage amount and insurance company. Coverage shall afford protection against:

(1) Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement;

(2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Property, including floods and all perils normally covered by the

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standard "all risk" endorsement where such is available, including but not limited to vandalism and malicious mischief.

(b) Public Liability. Public liability insurance shall be carried in such amounts and with such coverage as shall be required by the board of directors of the Association from time to time; provided, however, that such coverage shall in no event be in an amount less than One Million (\$1,000,000.00) per occurrence. Wherever and whenever it is possible and economically feasible to do so, the board of directors shall attempt to obtain adequate insurance protection in reasonably prudent coverages. Except as required herein, nothing in this Declaration shall be construed to require the board of directors to obtain such coverage as a condition precedent to the Association conducting business.

(c) Worker's Compensation. Worker's compensation insurance shall be carried to the extent necessary to meet the requirements of law.

(d) Fidelity Bond. Fidelity insurance coverage shall be carried in the name of the Association for all officers, directors and employees of the Association and all other persons handling or responsible for funds of the Association. The total amount of fidelity bond coverage required shall be in the amount required for each such officer, director or employee as set forth in Section 718.112(2)(j), Florida Statutes.

(e) Business Interruption. If obtainable, the board of directors of the Association may obtain business interruption or loss of use insurance, on all Units. The named insured shall be the Association individually and as agent for the Owners, without naming them, and as agent for the Mortgagees as their interests may appear. In addition, for so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), the Developer or entity affiliated with the Developer shall be named as an additional insured on any business interruption or loss of use insurance policy obtained by the Association.

(f) Other. Such other insurance may be carried as the board of directors of the Association shall determine from time to time to be desirable.

10.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

10.5 Insurance Trustee; Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and any Mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to a named Insurance Trustee (the "Insurance Trustee") if the board of directors shall so elect. All references to an Insurance Trustee herein shall apply to the Association if the board of directors elects not to appoint an Insurance Trustee. Any Insurance Trustee appointed by the board of directors shall be a commercial bank with trust powers authorized to do business in Florida or another entity acceptable to the board of directors of the Association. The Insurance Trustee (other than the Association) shall not be liable for payment of premiums nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes stated herein for the benefit of the Owners and any Mortgagees in the following shares; provided, however, that such shares need not be set forth on the records of the Insurance Trustee:

(a) Proceeds on Account of Damage to Common Elements and Limited Common Elements. Proceeds on account of damage to Common Elements and Limited Common Elements shall be held in undivided shares for each Owner, such share being the same as the undivided share in the Common Elements and Limited Common Elements appurtenant to each Unit.

(b) Units. Proceeds on account of damage to Units when the building or Unit is not to be restored, shall be held in undivided shares for each Owner of those Units or Unit, such share being the same as the undivided share in the Common Elements appurtenant to each Owner's interest.

(c) Mortgagees. In the event a Mortgagee endorsement has been issued, any share for the Owner shall be held in trust for the Mortgagee and the Owner as their interests may appear; provided, however, that no Mortgagee shall have the right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except

distributions of such proceeds made to the Owner and Mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the Mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged interest in any of the following events:

(1) When its mortgage is not in good standing and is in default; or

(2) When insurance proceeds are insufficient to restore or repair the Unit to the condition existing prior to the loss and additional monies are not available for such purpose.

10.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners of such proceeds in the following manner:

(a) All expenses of the Insurance Trustee shall be paid first or provisions made for such payment.

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

(c) If it is determined in the manner provided herein that the damage for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to Owners and any Mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, any Mortgagee.

(d) In making distribution to Owners and any Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the Owners and their respective shares of the distribution.

10.7 Association as Agent and Attorney-in-Fact. The Association is hereby irrevocably appointed agent and attorney-in-fact for each Owner, to adjust all claims arising under the

insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

ARTICLE XI

RECONSTRUCTION OR REPAIR AFTER CASUALTY

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

(a) Common Elements and Limited Common Elements. If the damaged improvement is a Common Element or a Limited Common Element, then the damaged property shall be reconstructed or repaired, unless it is determined that the Condominium shall be terminated because of damage to Units as set forth in Article 11.1(b) below.

(b) Units.

(1) Minor Damage. If the damage is to Units and if less than fifty percent (50%) of the Units are found by the board of directors of the Association to be untenable, the damaged property shall be reconstructed or repaired.

(2) Major Damage. If the damage is to Units and if fifty percent (50%) or more of the Units are found by the board of directors of the Association to be untenable, then the damaged property will be reconstructed or repaired unless within sixty (60) days after the casualty, the holders of ninety percent (90%) of all of the votes of the Association agree in writing to not reconstruct or repair and to terminate the Condominium.

(c) Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its president and attested by its secretary as to whether or not the damaged property is to be reconstructed or repaired.

11.2 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the damaged property as originally constituted, or in lieu thereof, according to the plans and specifications approved by the board of directors of the Association.

11.3 Estimates of Cost. Prior to rebuilding or repairing damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

11.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair or upon completion of reconstruction and repair, the funds from insurance for the payment of the costs of reconstruction and repair are insufficient, special assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs. Such special assessments shall be in proportion to the Owners' respective obligations for Common Expenses.

11.5 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association or the Insurance Trustee and funds collected by the Association through assessments against Owners, shall be disbursed in payment of such costs in the following manner:

(a) Association. If the total of assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair that are the responsibility of the Association is more than Fifty Thousand Dollars (\$50,000.00), then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee (if other than the Association). In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

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

(1) Association - Minor Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed

in payment of such costs upon the order of the board of directors of the Association; provided however, that upon request by a Mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(2) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair that are the responsibility of the Association is more than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be applied by the Insurance Trustee to the payment of such costs, and shall be paid to or for the account of the Association from time to time as the work progresses, but not more frequently than once in any calendar month. The Insurance Trustee shall make payments upon the written request of the Association for withdrawal of insurance proceeds accompanied by a certificate, dated not more than fifteen (15) days prior to such request, signed by an officer of the Association and by an architect in charge of the work, who shall be selected by the Association, setting forth that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials and any amounts paid prior to the request, and stating that the sum requested does not exceed the value of the services and material described in the certificate; that except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the person signing such certificate after due inquiry, which might become the basis of a vendor's, mechanic's, materialmen's or similar lien upon such work against the Common Elements or any Unit; and that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of insurance proceeds or other funds remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

(3) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund; except, however, that only those portions of distribution to the

beneficial owners in excess of assessments paid by an Owner to the construction fund shall be made payable to any Mortgagee.

(4) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether sums paid by the Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a Certificate of the Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided, that when a Mortgagee is required in this instrument to be named payee, the Insurance Trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to an Owner; and further provided, that when the Association, or a Mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association prior to disbursements in payment of costs of reconstruction and repair.

11.6 Eminent Domain. The Association is hereby empowered to defend and/or settle any action or threatened action with respect to the taking in condemnation of any portion of the Common Elements or any Unit or portion of any Unit. Upon obtaining knowledge of such action or threatened action, the Association shall notify all affected Mortgagees of record of same.

(a) Common Elements. Any award or settlement made as a result of such a taking of all or a portion of the Common Elements shall be made payable to the Association. In the event any repair or restoration of the Common Elements is necessary in the opinion of a majority of the board of directors of the Association on account of such taking, or in the event a majority of the voting interests at a duly called and constituted meeting of the Association promptly approve such restoration or repair, the board of directors shall arrange for same and shall disburse such of the proceeds of such award or settlement as shall reasonably be necessary to effect such restoration or repair to the contractors engaged for such purpose in appropriate progress payments. The balance of such proceeds, or all of such proceeds if no

determination to repair or restore is made, shall be disbursed by the Association in the same manner as insurance proceeds under Article 10.6 above where there is no repair or restoration of the damage.

(b) Units. Any award or settlement for the taking in condemnation of a Unit shall be made payable to the Association for the benefit of the Owners thereof. In the event any repair or restoration of the Unit is necessary in the event a majority of the voting interests appurtenant to that Unit at a duly called and constituted meeting of the Association promptly approve such restoration or repair, the board of directors shall arrange for same and shall disburse such of the proceeds of such award or settlement as shall reasonably be necessary to effect such restoration or repair to the contractors engaged for such purpose in appropriate progress payments. The balance of such proceeds, or all of such proceeds if no determination to repair or restore is made, shall be disbursed by the Association as to the Owners of that Unit in the same manner as insurance proceeds under Article 10.6 above. If a temporary taking in condemnation of use (but not title) of a Unit occurs, the entire award or settlement for such temporary taking shall be paid to the Association for the benefit of the Owners of such Unit.

ARTICLE XII

USE RESTRICTIONS

The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists:

12.1 Subdivision of Units. No Unit may be divided or subdivided into a smaller Unit.

12.2 Common Elements and Limited Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment and personal use of the Owners, their guests and lessees, and other authorized occupants of Units. To the extent that the Developer or an entity affiliated with the Developer has an exclusive easement to use, possess and occupy the linen closet located on each floor of the building as provided in Article 4.3(d) above, the Developer or affiliated entity may use such linen closets for any lawful purpose, personal

or commercial, as it deems appropriate in its sole discretion from time to time.

12.3 Nuisances. No nuisance shall be allowed upon the Condominium Property or within a Unit, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Owners. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No Owner shall permit any use of a Unit or make or permit any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

12.4 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Unit, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property or a Unit shall be the same as the responsibility for the maintenance and repair of the property concerned.

12.5 Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Common Elements, Limited Common Elements, or Units, except that the right is specifically reserved to the Developer to place and maintain "For Sale" or "For Rent" signs on the Condominium Property for as long as the Developer may have Units to sell. The right to place and maintain "For Sale" or "For Rent" signs on the Condominium Property is also specifically reserved to the Developer or an entity affiliated with the Developer for so long as the Developer or affiliated entity is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes).

12.6 Bicycles and Motorcycles. Bicycles and motorcycles shall not be stored on the Condominium Property except in such areas designated for this purpose.

12.7 Condominium Rules and Regulations. Reasonable rules and regulations concerning the use of Condominium Property may be promulgated and amended from time to time by the board of directors of the Association in the manner provided by its Articles of Incorporation and Bylaws. A copy of the present Condominium Rules and Regulations is attached hereto as Exhibit "F".

12.8 Developer's Use. The Developer or an entity affiliated with the Developer may make such use of the Common Elements and the Units as may facilitate the sale or rental of Units, including, but not limited to, showing of the property and the display of signs and other promotional devices.

12.9 Antennas. No antennas of any type designed to serve a Unit shall be allowed on the Common Elements or Limited Common Elements, except as may be provided by the Association to serve as a master antenna for the benefit and use of the Condominium. No electrical or other equipment may be operated on the Condominium Property which interferes with television signal reception.

ARTICLE XIII

ALIENABILITY OF UNITS

13.1 Alienability Restrictions; Developer's Right of First Refusal to Purchase. The right of an Owner to sell, transfer, assign or hypothecate his Unit shall not be subject to the approval of the Association. Accordingly, a proper transfer or conveyance of such Unit shall not require the written approval of the Association. However, in the event an Owner desires to sell, transfer, assign or hypothecate his Unit, the Developer shall have a "right of first offer" to purchase the Unit before it is offered for sale to any third party for so long as the Developer has any interests to sell in the Condominium, or the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes). Specifically, any Owner wishing to sell his Unit must first offer the Unit to the Developer at a reasonable price that the Owner in good faith would be willing to accept. The Developer shall have 10 days from the receipt of Owner's good faith offer to accept, reject or present a counter-offer. Failure by the Developer to accept the offer or present a counter-offer within the 10-day period shall be deemed a rejection by the Developer. Any counter-offer made by the Developer may be immediately rejected by the Owner, who would then have the right to offer the Unit for sale to third parties. Any permitted sale between an Owner and a third party shall be deemed to contain a provision requiring that any sums due to the Association as assessments must be paid in full as a condition of closing of the sale. In any and all events, the Developer's "right of first offer" as set forth above shall always be a requirement of any

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successor in title to an Owner, the same being a covenant running with the land.

13.2 Leasing and Rental Restrictions. The right of an Owner to lease or rent his Unit shall not be subject to the approval of the Association; however, any leasing or rental arrangement must be in writing and must be in conformance with the form lease or rental agreement approved by the board of directors of the Association from time to time. Such leasing or rental agreements must set forth an acknowledgment and consent on the part of the lessee-sublessee-tenant to use, occupy and possess such Unit in conformance and compliance with the provisions of this Declaration, as well as the Articles of Incorporation, Bylaws, and the Condominium Rules and Regulations. In the event an Owner fails to secure a written leasing or rental agreement, the Association shall have the right to request the lessee-sublessee-tenant to execute an acknowledgment to use and occupy the rented or leased Unit in conformance with the Condominium Documents, the Condominium Rules and Regulations, and the approved lease or rental form. Any lease or rental agreement shall be deemed to contain a provision requiring that any sums due to the Association as assessments must be deducted from the gross rentals and paid directly to the Association. Notwithstanding anything in this paragraph to the contrary, for so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), the Developer or entity affiliated with the Developer shall be the exclusive rental and leasing agent of Units in the Condominium. Moreover, any leasing or rental arrangement involving the Developer or an entity affiliated with the Developer which is connected with the operation of said public lodging establishment shall not be subject to approval of the board of directors of the Association.

ARTICLE XIV

COMPLIANCE AND DEFAULT

14.1 Compliance and Default. Each Owner shall be governed by and shall comply with the terms of the Condominium Documents and the Condominium Rules and Regulations adopted pursuant to those documents, and as they may be amended from time to time. Failure of an Owner to comply with the provisions of such documents and regulations shall entitle the Association or other Owners to pursue any and all legal and equitable remedies for the

enforcement of such provisions, including but not limited to an action for damages, an action for injunctive relief or an action for declaratory judgment. All provisions of this Declaration shall be enforceable equitable servitudes and shall run with the land and shall be effective until the Condominium is terminated.

14.2 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the terms of the Condominium Documents, or the Condominium Rules and Regulations adopted pursuant to them, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding, and recover such reasonable attorneys' fees as may be awarded by the Court, including all appeals and all proceedings in bankruptcy.

14.3 No Waiver of Rights. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of Chapter 718, the Condominium Documents, or the Condominium Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

14.4 Injunctive Relief. The Association may seek an injunction from a court of equity to compel or prohibit compliance or violation of the Condominium Documents regardless of whether an adequate remedy at law exists.

14.5 Governing Law; Waiver of Jury Trial; Venue of Actions. This Declaration shall be governed by, and shall be construed in accordance with, the laws of the State of Florida. The Association, an Owner or Owners, the Developer, the Management Company, and any other party claiming rights or obligations by, through, or under this Declaration, or two or more of the foregoing, each hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the others concerning the interpretation, construction, validity, enforcement or performance of this Declaration or any other agreement or instrument executed in connection with this Declaration. In the event any such suit or legal action is commenced by any party, the other parties hereby agree, consent and submit to the personal jurisdiction of the Circuit Court of the Twentieth Judicial Circuit of Florida in and for Lee County, Florida, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to

object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

ARTICLE XV

AMENDMENTS

15.1 By Owners. Except as otherwise provided herein, the Declaration of Condominium may be amended in the following manner:

(a) Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

(b) Resolution. A resolution for the adoption of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

(c) Adoption. A resolution amending the Declaration shall be adopted in the following manner:

(1) Board of Directors. Until the first election of a majority of the directors of the Association by Owners other than the Developer, proposal of any amendment and approval thereof shall require only the affirmative action of two-thirds (2/3) of the entire membership of the board of directors of the Association, and no meeting of the owners nor any approval thereof need be had. However, no amendment may change the configuration or size of any Unit in any material fashion, may alter or modify the appurtenances to the Unit, or may change the proportion or percentage by which the Owner shares the Common Expenses and owns the Common Surplus, unless specifically approved as provided in Article 15.1(c)(2) below.

(2) Board of Directors and Owners. In addition to the procedure set forth above and after the first election of a majority of the directors of the Association by Owners other than the Developer, a resolution for the adoption of a proposed amendment may be proposed by the board of directors of the Association or by the Owners. Owners may propose such an amendment by instrument in writing directed to the president or

secretary of the board signed by not less than holders of thirty-three percent (33%) of all of the votes of the Association. Amendments may be proposed by the board of directors by action of a majority of the board at any regularly constituted meeting thereof. Upon an amendment being proposed as herein provided, the president, or, in the event of his refusal or failure to act, the board of directors, shall call a meeting of the Owners to be held not sooner than fifteen (15) days nor later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and Owners not present at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the secretary at or prior to the meeting. Except as provided herein, such approvals must be by:

(i) Not less than two-thirds (2/3rds) of the entire membership of the board of directors and not less than a majority of the votes of the Association; or

(ii) Not less than two-thirds (2/3rds) of the votes of the Association; or

(iii) An agreement signed and acknowledged by all Owners in the manner required for the execution of a deed.

Any amendment which would adversely affect Mortgagees must have the prior written consent of every Mortgagee which holds a mortgage on any portion of the Condominium Property.

For so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes), any amendment which would adversely affect the operation of said public lodging establishment shall require the prior written consent of the Developer or entity affiliated with the Developer, whichever is applicable.

(d) Execution and Recording. Each amendment shall be attached to or shall contain a certificate certifying that the amendment was duly adopted, and the certificate shall be executed by the president of the Association and attested by the secretary with the formalities of a deed, and said amendment shall be effective upon recordation of the amendment and certificate in the Public Records of Lee County, Florida.

15.2 By the Developer. The Developer reserves the right at any time, so long as it owns any of the Units in the

Condominium, to unilaterally amend this Declaration as it may deem appropriate, in its sole discretion, to carry out the purposes of the project, or as may be required by any lending institution, title insurance company or public body or as may be necessary to conform the same to the requirements of law or to facilitate the operation and management of the Condominium or the sale of Units in the Condominium. Any amendments to this Declaration which may be unilaterally made by the Developer shall become effective upon the recording in the Public Records of Lee County, Florida, of an instrument executed solely by the Developer, setting forth the text of such amendment in full, together with the appropriate recording data of this Declaration. No amendment of this Declaration unilaterally made by the Developer shall be permitted if such amendment would change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner shares the Common Expenses and owns the Common Surplus.

ARTICLE XVI

TERMINATION

The Condominium may be terminated in the following manners, in addition to the manner provided by Chapter 718:

16.1 Agreement. The Condominium may be terminated at any time by the approval in writing of all Owners and all Mortgagees of record. Notice of a meeting at which the proposed termination is to be considered shall be given not less than thirty (30) days prior to the date of such meeting.

16.2 Termination Through Condemnation. The Condominium shall only be terminated by virtue of a condemnation action if all Condominium Property is taken in condemnation. If less than all of the Condominium Property is taken in condemnation, the Condominium shall continue as to those portions of the Condominium Property not so taken.

16.3 Certificate. Termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying to the facts effecting the termination, said certificate to become effective upon being recorded in the Public Records of Lee County, Florida.

16.4 Shares of Owners after Termination. After termination of the Condominium, each Owner shall own an undivided share of the Condominium Property and all assets of the Association as a tenant in common in accordance with Exhibit "D."

ARTICLE XVII

PHASE DEVELOPMENT

17.1 Description of Phasing. It is the intention of the Developer to develop the Condominium in phases in accordance with Chapter 718. Phase 1 of the Condominium will consist of 1 building with 6 floors, each floor containing 6 Units (a total of 36 Units). With the approval of local building and zoning authorities, the Developer may, in its discretion, develop Phase 2, which will consist of an additional floor built above the 6 floors making up Phase 1, containing 6 additional Units. The proposed phasing plan including the proposed phasing order is set forth in the chart below. The Common Expense, Common Surplus and Common Element ownership reallocation caused by the proposed phasing plan is set forth in Exhibit "D" attached hereto and by this reference incorporated herein.

<u>Phase</u>	<u>Est. Date of Completion</u>	<u># of Buildings</u>	<u># of Units</u>	<u>Amenities</u>
1	2/15/95	1	36	See Exhibit "A"
2	2/15/95	N/A	6	

17.2 Impact of Phasing; Change in Ownership of Common Elements and Common Surplus and Share of Common Expenses. The impact which the completion of Phase 2 would have upon the Condominium would be to increase the number of floors in the Condominium building from 6 to 7, and to increase the number of Units and Owners in the Condominium from 36 to 42. The change in ownership of Common Elements and Common Surplus and the change in the share of Common Expenses attributable to each Unit by the addition of Phase 2 shall be determined in accordance with the formula set forth in Exhibit "D" attached hereto.

17.3 Completion of Phases. The Developer will submit Phase 2, if at all, to condominium ownership in its sole discretion. While Florida law allows the Developer up to seven (7) years from the date of recording of this Declaration to complete construction of Phase 2 and declare it as part of the Condominium,

it is the Developer's intent that Phase 2, if constructed, be completed and declared at approximately the same time as Phase 1. The Developer specifically reserves the right not to build Phase 2. The Developer also specifically reserves the right to amend this Declaration and Exhibit "A" attached hereto, without the approval of the Owners, to change the estimated completion dates of either phase and/or to change any of the items required to be included in this Declaration for either phase by Section 718.403(2), Florida Statutes.

17.4 Association Membership and Voting. Each Unit shall have one (1) vote in the Association. Where a Unit is owned by more than one owner, the cotenants of the Unit shall file a voting certificate with the Association, in accordance with the Articles and Bylaws of the Association, setting forth which cotenant is designated to cast the vote for that Unit.

17.5 Recreational Areas, Facilities and Parking Spaces. The recreational areas, facilities and Parking Spaces located within Phase 1 and Phase 2 are described in the attached Exhibit "A."

17.6 Notice. The Developer shall notify Owners of the decision not to add Phase 2. Notice shall be sent by regular mail addressed to each Owner at his last known address.

17.7 Amendment. Phase 2 may be added to this Condominium by the execution of an amendment to this Declaration executed by the Developer, its successors or assigns only, and such amendment shall not require the execution or consent of any Owners other than the Developer.

17.8 Minimum and Maximum Numbers and General Size of Units; Handicapped-Accessible Units. There will be a minimum number of 36 Units and a maximum number of 42 Units in the Condominium. As set forth in Exhibit "A," there are three types of Units in the following general sizes: Type "A.1" Units will have 2 bedrooms and 2 bathrooms, and will contain approximately 987 square feet of air-conditioned space, in addition to a screened enclosure containing approximately 112 square feet. Type "A.2" thru "A.5" Units will have 2 bedrooms and 2 bathrooms, and will contain approximately 981 square feet of air-conditioned space, in addition to a screened enclosure containing approximately 110 square feet. Type "B.1" Units will have 2 bedrooms and 2 bathrooms, and will contain approximately 1056 square feet of air-conditioned space, in addition to a screened enclosure containing approximately

160 square feet. Minor variations to the floor plans and square footages of Units 702, 706 and 606 will be made to make these Units more accessible to handicapped persons in accordance with applicable local, state and federal laws, including, but not limited to, the Americans With Disabilities Act.

ARTICLE XVIII

SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any article, section, subsection, sentence, clause, phrase or word, or other provision of the Condominium Documents and the Condominium Rules and Regulations shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration this 8 day of February, 1995.

FLORIDA INCOME FUND III,
LIMITED PARTNERSHIP, a Delaware
limited partnership

WITNESSES:

By: MARINER CAPITAL
MANAGEMENT, INC., a Florida
corporation and general partner

Linda L. Brown
Print Name LINDA L. BROWN

By: Lawrence A. Raymond
Print Name LAWRENCE A. RAYMOND

Phumey Fortnator
Print Name PHUMEY FORTNATOR

As its: PRESIDENT

STATE OF FLORIDA)
COUNTY OF LEE) SS.

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared LAWRENCE A. RAIMONDI, known to me to be the PRESIDENT of Mariner Capital Management, Inc., a Florida corporation as the general partner of Florida Income Fund III, Limited Partnership, a Delaware limited partnership, and HE acknowledged that HE executed the foregoing instrument on behalf of the corporation pursuant to due authority therefrom. HE is personally known to me or has produced _____ as identification and did (did not) take an oath.

WITNESS my hand and seal this 8 day of February, 1995.

Linda L. Brown
(Notary Signature)

(NOTARY SEAL)

LINDA L. BROWN
(Notary Name Printed)
NOTARY PUBLIC
Commission No. _____



1633atm\23490\92001\amend\deccon-1.cln
1/16/95.atm

**CONSENT OF MORTGAGEE
TO DECLARATION OF CONDOMINIUM**

THIS CONSENT made and entered into this 8th day of February, 1995, by BARNETT BANK OF LEE COUNTY, N.A., ("Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagee is the owner and holder of: (1) that certain Mortgage and Security Agreement dated April 2, 1990, recorded in Official Records Book 2139, Page 2391, as modified by that certain Partial Subordination of Mortgage Agreement, dated June 17, 1994, recorded in Official Records Book 2511, Page 1776, and rerecorded in Official Records Book 2516, Page 0256, and that certain Mortgage Modification Agreement, dated June 17, 1994, recorded in Official Records Book 2511, Page 1778, all of the Public Records of Lee County, Florida; and (2) that certain Mortgage and Security Agreement dated June 17, 1994, recorded in Official Records Book 2511, Page 1752, Public Records of Lee County, Florida (collectively referred to hereinafter as the "Mortgages");

WHEREAS, the Mortgages encumber the land and the improvements located thereon (the "Property"), described in the Declaration of Condominium of Estero Island Beach Villas, a Condominium, hereinafter referred to as the "Declaration," to which this Consent is attached; and

WHEREAS, Mortgagee has agreed to consent to the Declaration.

NOW, THEREFORE, Mortgagee agrees as follows:

1. Mortgagee does hereby consent to the recordation of the Declaration, provided, however, no amendment to the Declaration shall be effective against Mortgagee unless Mortgagee has executed a joinder and consent as to said amendment.

2. Mortgagee agrees that the lien of the Mortgages, as the same apply to and encumber the Property, shall be upon the Condominium Parcels of Estero Island Beach Villas, a Condominium.

OR2574 PG0769

3. This Consent shall apply and be effective solely to the Property, and nothing herein contained shall otherwise affect, alter or modify in any manner whatsoever the terms and conditions, lien, operation, effect and priority of the Mortgages as to both the Condominium Parcels in Estero Island Beach Villas, a Condominium, and any other land or improvements encumbered by the Mortgages.

IN WITNESS WHEREOF, Mortgagee has caused this instrument to be executed by its duly authorized officer the day and year first above written.

"MORTGAGEE"

BARNETT BANK OF LEE COUNTY,
N.A.

Linda L. Brown

Print Name LINDA L. BROWN

Susan M. Palmer

Print Name SUSAN M. PALMER

By: [Signature]

As its: Vice President

STATE OF FLORIDA)
COUNTY OF Lee) SS.

BEFORE ME, the undersigned authority authorized to take acknowledgments in the state and county aforesaid, appeared Charles S. Flint, known to me to be the Vice President of Barnett Bank of Lee County, N.A., and he acknowledged that he executed the foregoing instrument on behalf of the bank pursuant to due authority therefrom. He is

personally known to me or has produced _____
as identification and did (did not) take an oath.

1995. WITNESS my hand and seal this 8 day of February.

Susan M. Palmer
(Notary Signature)

(NOTARY SEAL)

SUSAN M. PALMER
(Notary Name Printed)
NOTARY PUBLIC
Commission No. _____



OR2574 PG0770

Exhibit "A"

RECORDER'S MEMO
Legibility of Writing, Typing or Printing Unaffected
except in This Document Where Specified.

OR2574 PG0771

ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM (Phases 1+2)

DESCRIPTION

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3, 4, 8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88, ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 50.00 FEET; THENCE N.40°31'28"E. FOR 14.49 FEET; THENCE N.50°19'25"W. FOR 27.57 FEET; THENCE N.59°22'01"W. FOR 20.23 FEET; THENCE S.39°40'35"W. FOR 31.50 FEET; THENCE S.59°17'28"E. FOR 2.30 FEET; THENCE S.30°21'33"W. FOR 15.24 FEET; THENCE N.58°42'37"W. FOR 3.31 FEET; THENCE S.29°58'13"W. FOR 29.45 FEET; THENCE S.48°42'33"W. FOR 77.19 FEET; THENCE S.40°09'10"E. FOR 31.53 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 297 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG SAID MEAN HIGH WATERLINE FOR 150 FEET MORE OR LESS TO THE INTERSECTION WITH A LINE THAT BEARS S.47°52'35"W. FROM THE POINT OF BEGINNING; THENCE N.47°52'35"E. FOR 410 FEET MORE OR LESS ALONG THE SOUTHEASTERLY LOT LINE OF LOT 2 OF SAID GULFSHORE SUBDIVISION TO THE POINT OF BEGINNING.

CONTAINING 1.8 ACRES MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS OR RIGHTS OF WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTERLINE OF GULFSHORE COURT BEING N.47°52'35"E.

RECORDER'S MEMO
 Legibility of Writing, Typing or Printing Unaffected
 in This Document When Received.

PHASE I, ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM

X DESCRIPTION

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3, 4, 8 AND 9 OF GULFSHORE SUBDIVISION, PLAT BOOK 9, PAGE 88, ALSO PART OF LOTS 33 AND 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULFSHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE FOR GULFSHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULFSHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 51.94 FEET; THENCE S.47°52'35"W. FOR 23.82 FEET; THENCE S.68°56'12"W. FOR 47.37 FEET; THENCE S.48°42'33"W. FOR 66.00 FEET; THENCE S.41°17'27"E. FOR 11.23 FEET; THENCE S.48°42'33"W. FOR 13.37 FEET; THENCE S.40°09'10"E. FOR 7.98 FEET; THENCE S.07°36'21"E. FOR 57.08 FEET; THENCE S.47°52'35"W. FOR 270 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE GULF OF MEXICO; THENCE SOUTHEASTERLY ALONG SAID MEAN HIGH WATER LINE 150 FEET MORE OR LESS TO THE INTERSECTION WITH A LINE THAT BEARS S.47°52'35"W. FROM THE POINT OF BEGINNING; THENCE N.47°52'35"E. FOR 390 FEET MORE OR LESS ALONG THE SOUTHEASTERLY LOT LINE OF LOT 2 OF SAID GULFSHORE SUBDIVISION TO THE POINT OF BEGINNING;

CONTAINING 1.6 ACRES MORE OR LESS.

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS, OR RIGHTS OF WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTERLINE OF GULFSHORE COURT BEING N.47°52'35"E.

RECORDER'S MEMO
 Legibility of Writing, Typing or Printing Unsettled
 Factors in This Document When Received.

**PHASE 2, ESTERO ISLAND BEACH VILLAS, A CONDOMINIUM
 DESCRIPTION**

TRACT OR PARCEL OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOT 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

FROM THE POINT OF COMMENCEMENT BEING THE NORTHEASTERLY CORNER OF LOT 2 OF SAID GULF SHORE SUBDIVISION; THENCE N.42°07'25"W. FOR 77.00 FEET ALONG THE SOUTHWESTERLY RIGHT OF WAY LINE OF GULF SHORE COURT; THENCE N.47°52'35"E. FOR 76.76 FEET ALONG THE NORTHWESTERLY RIGHT OF WAY OF GULF SHORE COURT; THENCE N.42°07'25"W. FOR 24.00 FEET; THENCE S.47°52'35"W. FOR 2.50 FEET; THENCE N.42°07'25"W. FOR 43.54 FEET; THENCE N.47°52'35"E. FOR 2.50 FEET; THENCE N.42°07'54"W. FOR 50.00 FEET TO THE POINT OF BEGINNING. THENCE CONTINUE N.42°07'25"W. FOR 1.94 FEET; THENCE S.47°52'35"W. FOR 23.82 FEET; THENCE S.68°56'12"W. FOR 47.37 FEET; THENCE S.48°42'33"W. FOR 66.00 FEET; THENCE S.41°17'27"E. FOR 11.23 FEET; THENCE S.48°42'33"W. FOR 13.37 FEET; THENCE N.40°09'10"W. FOR 23.55 FEET; THENCE N.48°42'33"E. FOR 77.19 FEET; THENCE N.29°58'13"E. FOR 29.45 FEET; THENCE S.58°42'37"E. FOR 3.31 FEET; THENCE N.30°21'33"E. FOR 15.24 FEET; THENCE N.59°17'29"W. FOR 2.30 FEET; THENCE N.39°40'35"E. FOR 31.50 FEET; THENCE S.59°22'01"E. FOR 20.32 FEET; THENCE S.50°19'25"E. FOR 27.57 FEET; THENCE S.40°31'28"W. FOR 14.49 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.089 ACRES MORE OR LESS.

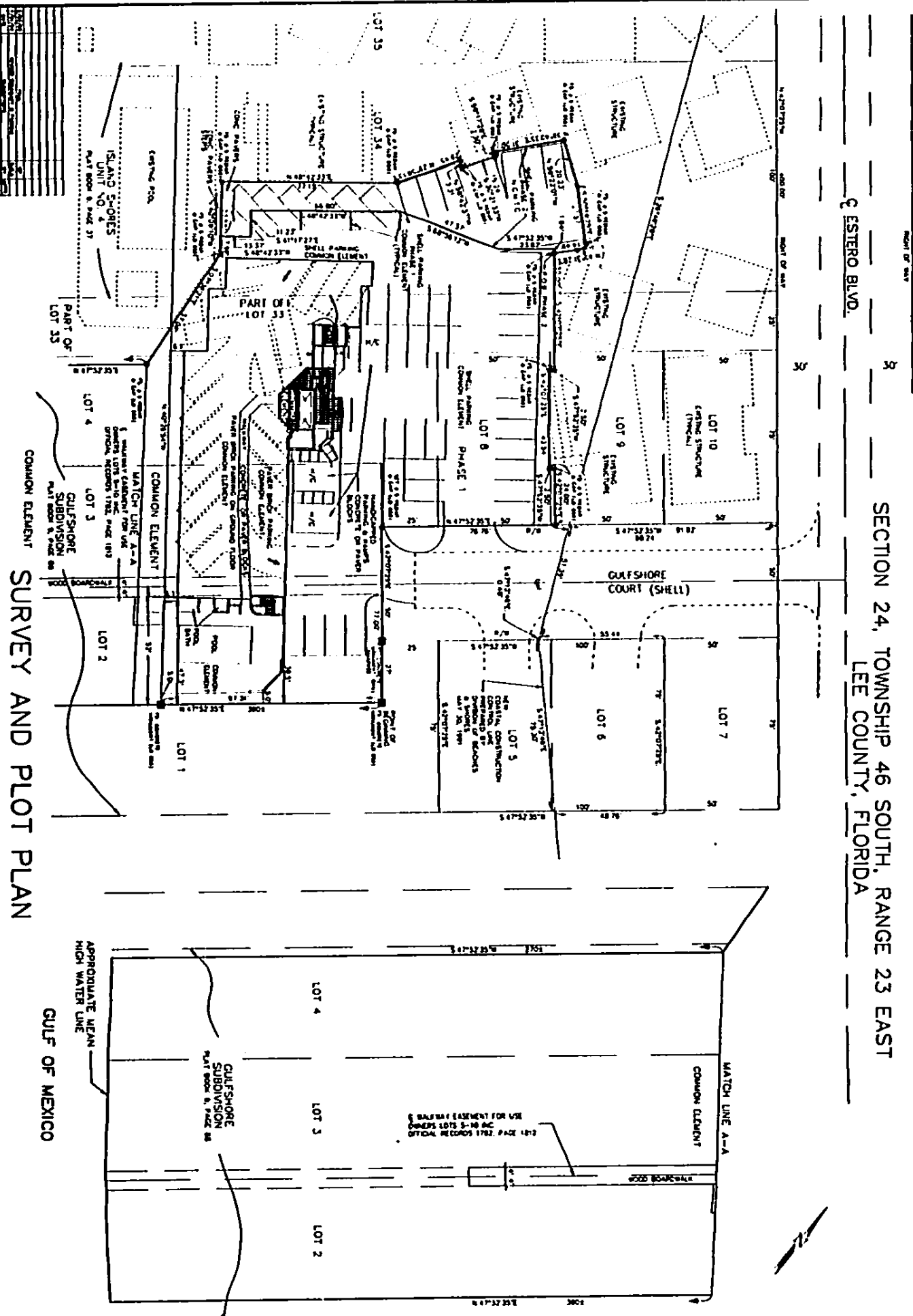
SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS, OR RIGHTS OF WAY OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTERLINE OF GULF SHORE COURT BEING N.47°52'35"E.

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

RECEIVED

DATE: 09-21-93
JOB NO. 8888
FILE NO. 8888VS1-
SHEET: 1 OF 4



LEGEND

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SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

ISTHMO ISLAND BEACH VILLAS, A CONDOMINIUM

01 26 00 00 00 00 00 00 00 00 00

TRACT OR VESSEL OF LAND LING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, 12E COUNTY, FLORIDA, ALSO BEING PART OF LOTS 3, 2 4, 5 AND 9 OF CHESAPEAKE SUBDIVISION, PLAT BOOK 9, PAGE 81, ALSO PART OF LOTS 23 AND 24 OF ISLAND BEACHES TRACT NO. 4, PLAT BOOK 9, PAGE 37 OF THE PUBLIC RECORDS OF THE COUNTY, FLORIDA WHICH IS DECLARED AS FOLLOWS:

BEGINNING AT THE NORTHWESTLY CORNER OF LOT 3 OF SAID OUTLOT
 DESCRIBED IN THE FOREGOING, THENCE S. 76.09 FEET ALONG THE
 SOUTHERLY LINE OF SAID OUTLOT, THENCE E. 41.51 FEET
 ALONG THE EASTERLY LINE OF SAID OUTLOT, THENCE N. 47.93-13.25"
 OF CURVED RADIUS, THENCE N. 32.07-13.25" FOR 34.00 FEET, THENCE
 S. 87.93-13.25" FOR 2.10 FEET, THENCE N. 43.07-13.25" FOR 41.54 FEET,
 THENCE N. 47.93-13.25" FOR 2.80 FEET, THENCE N. 43.07-13.25" FOR
 50.00 FEET, THENCE N. 40.11-21.28" FOR 15.49 FEET, THENCE
 S. 87.93-13.25" FOR 10.00 FEET, THENCE S. 31.04-13.25" FOR 30.13
 FEET, THENCE S. 31.04-13.25" FOR 10.00 FEET, THENCE S. 31.04-13.25"
 FOR 2.30 FEET, THENCE S. 30.11-13.25" FOR 11.24 FEET, THENCE
 N. 89.48-13.25" FOR 3.23 FEET, THENCE S. 89.18-13.25" FOR 39.45 FEET,
 THENCE S. 48.48-13.25" FOR 7.15 FEET, THENCE S. 48.00-10.01" FOR
 11.53 FEET, THENCE S. 07.38-13.25" FOR 37.08 FEET, THENCE
 E. 07.38-13.25" FOR 10.00 FEET, ON LESS TO THE TOWNSHIP WATER
 RIGHT-OF-WAY, THENCE N. 07.38-13.25" FOR 10.00 FEET, THENCE
 W. 07.38-13.25" FOR 10 FEET, MORE OR LESS TO THE INTERSECTION WITH
 MARSHALL FORD RD. 140 FEET, MORE OR LESS TO THE INTERSECTION WITH
 MARSHALL FORD RD. S. 47.93-13.25" FROM THE POINT OF BEGINNING, THENCE
 N. 47.93-13.25" FOR 41 FEET, MORE OR LESS ALONG THE SOUTHWESTLY
 LOT LINE OF LOT 3 OF SAID OUTLOT, THENCE S. 47.93-13.25" TO THE POINT OF
 BEGINNING.

CONTAINING 1.8 ACRES MORE ON L231

SUBJECT TO ANY EASEMENTS, RESTRICTIONS, RESERVATIONS OR RIGHTS OF RECORD.

BEARINGS HEREON ARE RELATIVE TO GRID NORTH BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CENTRLINE OF GULFSHORE COUNT BEING N.47°52'39"E.

Introduction

THE UNIVERSITY OF CHICAGO

1. MEANS OF IDENTIFICATION - THAT THE KNOWLEDGE OF THE REAL PROPERTY OF THE UNITED STATES, AND THE KNOWLEDGE OF THE LOCATION OF THE UNITED STATES, ARE THE ONLY MEANS OF IDENTIFICATION OF THE UNITED STATES, AND THAT THE KNOWLEDGE OF THE LOCATION OF THE UNITED STATES, AND THE KNOWLEDGE OF THE REAL PROPERTY OF THE UNITED STATES, ARE THE ONLY MEANS OF IDENTIFICATION OF THE UNITED STATES.

ESTERO BLIND BRACH
VIA A. CROCONITILU

ZMK Design/Marketing, Inc.

COLEMAN D. NELSON
PROFESSIONAL LAND SURVEYOR
FLORIDA CERTIFICATE NO. 2894

PAUL L. PETERSEN, JR., A CORPORATION

11. 10. 2017

SOUTH, RANGE 33 EAST, LEE COUNTY, FLORIDA, ALSO BEING PART OF LOTS 2, 3, 4, 8 AND 9 OF GULFMOORE SUBDIVISION, PLAT BOOK 9, PAGE 88. ALSO PART OF LOTS 22 AND 24 OF ISLAND ESTATES TRACT NO. 4, PLAT BOOK 9, PAGE 27 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH DESCRIBED AS FOLLOWS:

CONTAINING 1.4 ACRES MORE OR LESS.

SUBJECT TO MY EASMENTS, RESTRICTIONS AND COVENANTS.

BEARINGS WERE ON A RELATIVE TO GRID NORTH BASED ON THE

CENTROLINE OF OUTSMOKE COURT BEING N.47°32'38"E.

PHASE 2: BIRDO ISLAND BEACH VILLAS, A CONDOMINIUM

11

TRACT OR PARTS OF LAND LYING IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA, ALSO SAVING PART OF LOT 34 OF ISLAND SHORES UNIT NO. 4, PLAT BOOK 9, PAGE 27 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH IS DESCRIBED AS FOLLOWS:

[illegible]

CONFIDENTIAL - NO FORN DISSEM.

SUBJECT TO ANY EXEMPTIONS, LIMITATIONS, RESERVATIONS, CONDITIONS OR ANY OF THEM.

NATION'S ENERGY AND RELATIVE TO GRID POWER DEMAND ON THIS SPECIAL PLANT COMPOSITE SYSTEM FOR THE WEST ZONE OF FLORIDA WITH THE CONTRIBUTION OF EQUIPMENT COST \$1.4743/38¢.

CONDOMINIUM PLAT BOOK **PAGE**

SCALE IN FEET

DATE: 09-21-93 (12-3-93)
JOB NO. 8888
FILE NO. 8888V4
SHEET: 2 OF 4

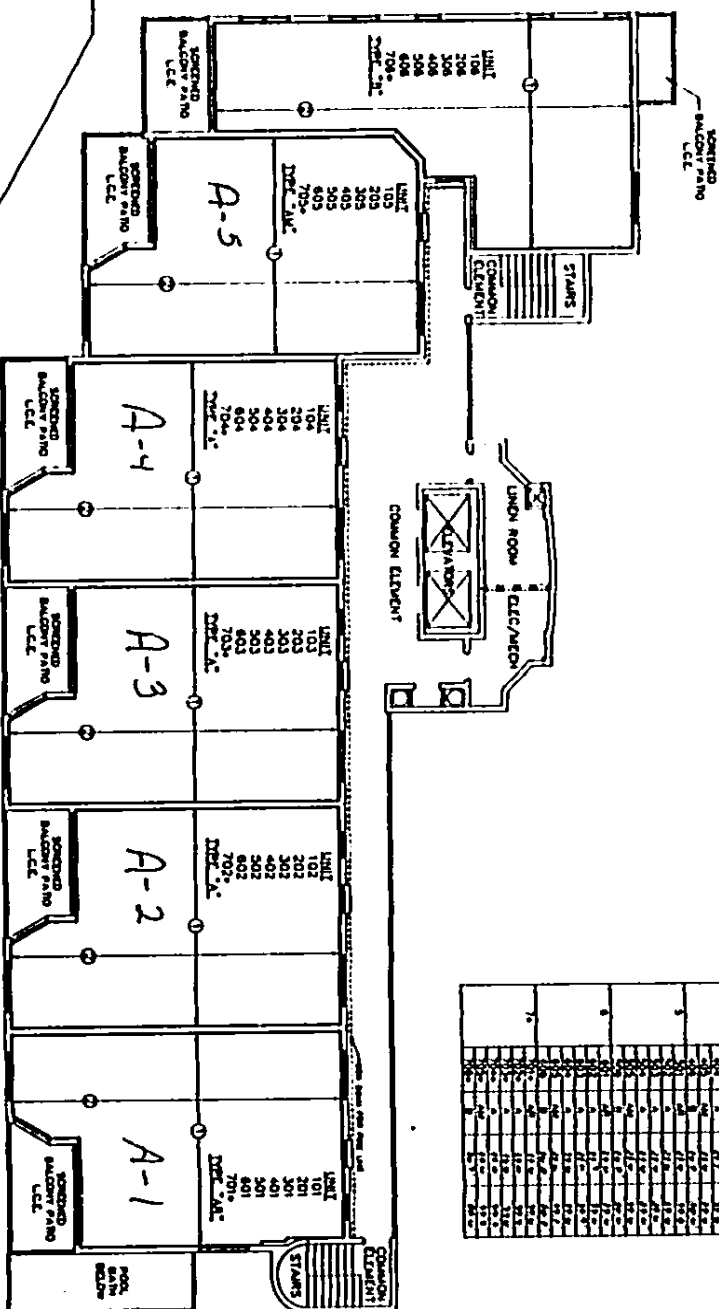
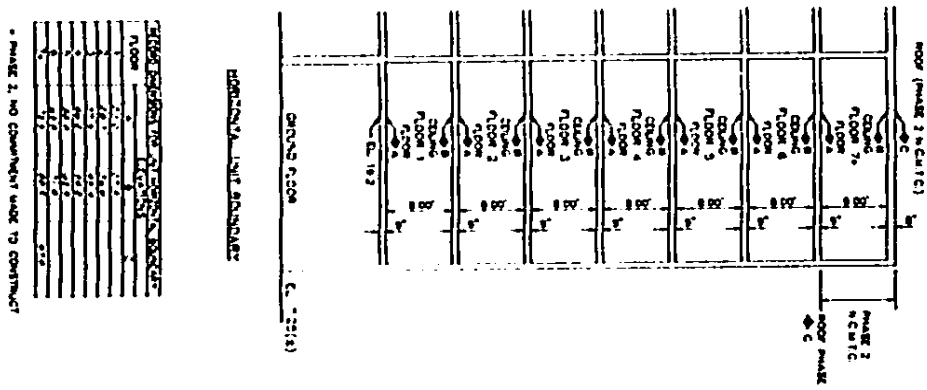
1. THE PROPERTY IS MADE TO A BROADLY SURVEY OF THE PROJECT TRACT, PREPARED BY THE DEVELOPER, INC. DATED JUNE 11, 1972.
2. LOTS 15 IN PLAT 222, "NO. 1, ELEVATION 15.0, BASED UPON U.S.N.S. FLOOD INSURANCE RATE NO. 1, 1913-1915 & DATED 4-1-1915.
3. ONLY ABOVE GROUND VISIBLE DISCREPANCIES DATED ON FROM ADJOINING PROPERTY ARE SHOWN. DISCREPANCIES REGARDING THE DRUGS AND GROUND AND THOSE WHICH ARE NOT VISIBLE BY AERIAL OBSERVATION ARE NOT SHOWN.
4. THE BOUNDARY BETWEEN HEREIN AND BASED ON STATE PLAT 222, "NO. 1, ELEVATION 15.0, BASED UPON U.S.N.S. FLOOD INSURANCE RATE NO. 1, 1913-1915 & DATED 4-1-1915.
5. THE BOUNDARY BETWEEN HEREIN AND BASED ON STATE PLAT 222, "NO. 1, ELEVATION 15.0, BASED UPON U.S.N.S. FLOOD INSURANCE RATE NO. 1, 1913-1915 & DATED 4-1-1915.
6. LOTS 15 IN PLAT 222, "NO. 1, ELEVATION 15.0, BASED UPON U.S.N.S. FLOOD INSURANCE RATE NO. 1, 1913-1915 & DATED 4-1-1915.
7. THIS SURVEY WAS CONDUCTED FOR THE PURPOSES OF A CONDOMINIUM ONLY AND IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
8. THE LOCATION OF THE IMPROVEMENTS AS SHOWN ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
9. THE IMPROVEMENTS, WITHOUT NOTICE AS ORDERED AVAILABLE ON RECORD.
10. THE ELEVATIONS SHOWN ON THIS SURVEY AND ONLY THESE SHOWN TO PARTICIPATE IN THE UNDERGROUND. ADDITIONAL ELEVATIONS MAY EXIST ON THE SURVEY AS PROVIDED FOR IN THE DECLARATION OF CONDOMINIUM.
11. THE IMPROVEMENTS SHOWN HEREIN ARE EMPLOYED UNDER THE PROVISIONS OF THE INTERIOR WALLS, ROOF SIZES, DOORWAYS, AND WINDOWS AND BASED ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
12. THE LOCATION OF THE IMPROVEMENTS AS SHOWN ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
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14. THE IMPROVEMENTS SHOWN HEREIN ARE EMPLOYED UNDER THE PROVISIONS OF THE INTERIOR WALLS, ROOF SIZES, DOORWAYS, AND WINDOWS AND BASED ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
15. THE LOCATION OF THE IMPROVEMENTS AS SHOWN ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
16. THE ELEVATIONS SHOWN ON THIS SURVEY AND ONLY THESE SHOWN TO PARTICIPATE IN THE UNDERGROUND. ADDITIONAL ELEVATIONS MAY EXIST ON THE SURVEY AS PROVIDED FOR IN THE DECLARATION OF CONDOMINIUM.
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18. THE LOCATION OF THE IMPROVEMENTS AS SHOWN ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.
19. THE ELEVATIONS SHOWN ON THIS SURVEY AND ONLY THESE SHOWN TO PARTICIPATE IN THE UNDERGROUND. ADDITIONAL ELEVATIONS MAY EXIST ON THE SURVEY AS PROVIDED FOR IN THE DECLARATION OF CONDOMINIUM.
20. THE IMPROVEMENTS SHOWN HEREIN ARE EMPLOYED UNDER THE PROVISIONS OF THE INTERIOR WALLS, ROOF SIZES, DOORWAYS, AND WINDOWS AND BASED ON THE SURVEY, PLAN OR MAP, IS NOT INTENDED TO DELIVER THE JURISDICTION OF FEDERAL, STATE, FEDERAL, OR LOCAL AGENCY, BOARD, COMMISSION OR OTHER ENTITY, PLAN OR MAP.

NEW ENGLAND, INC.
6130 BEAU DR.
N FT MYERS, FLORIDA

CONDOMINIUM PLAT. EXHIBIT "A" TO CONDOMINIUM DECLARATION
ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM

SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
LEE COUNTY, FLORIDA

FLOOR	UNIT	TYPE	TEMP.	
			IN	OUT
1	10	2B	72.0	70.0
	11	2B	72.0	70.0
	12	2B	72.0	70.0
	13	2B	72.0	70.0
	14	2B	72.0	70.0
	15	2B	72.0	70.0
	16	2B	72.0	70.0
	17	2B	72.0	70.0
	18	2B	72.0	70.0
	19	2B	72.0	70.0
2	20	2B	72.0	70.0
	21	2B	72.0	70.0
	22	2B	72.0	70.0
	23	2B	72.0	70.0
	24	2B	72.0	70.0
	25	2B	72.0	70.0
	26	2B	72.0	70.0
	27	2B	72.0	70.0
	28	2B	72.0	70.0
	29	2B	72.0	70.0
3	30	2B	72.0	70.0
	31	2B	72.0	70.0
	32	2B	72.0	70.0
	33	2B	72.0	70.0
	34	2B	72.0	70.0
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	36	2B	72.0	70.0
	37	2B	72.0	70.0
	38	2B	72.0	70.0
	39	2B	72.0	70.0
4	40	2B	72.0	70.0
	41	2B	72.0	70.0
	42	2B	72.0	70.0
	43	2B	72.0	70.0
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5	50	2B	72.0	70.0
	51	2B	72.0	70.0
	52	2B	72.0	70.0
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	59	2B	72.0	70.0

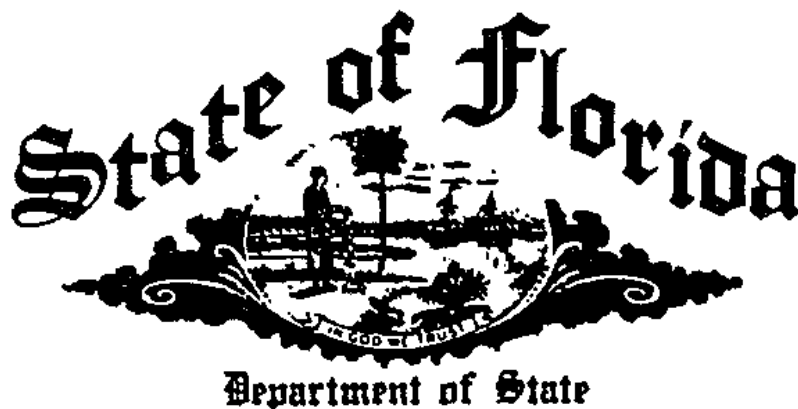


BUILDING FLOOR PLAN

	PAGE
CONDOMINIUM PLAT BOOK	

DATE: 08-21-03
JOB NO. 8848
FILE NO. 8886V2
PAGES 3 OF 4

GRAPHIC SCALE



I certify the attached is a true and correct copy of the Articles of Incorporation of ESTERO ISLAND BEACH VILLAS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on January 10, 1995, as shown by the records of this office.

The document number of this corporation is N95000000113.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Tenth day of January, 1995



CR2EO22 (2-91)

Sandra B. Northam

Sandra B. Northam
Secretary of State

**ARTICLES OF INCORPORATION
OF
ESTERO ISLAND BEACH VILLAS
CONDOMINIUM ASSOCIATION, INC.**

FILED
95 JAN 10 AM 10:46
SECRET
TALLAHASSEE, FLORIDA

OR2574 PG0779

THE UNDERSIGNED hereby associate themselves together for the purpose of forming a corporation not-for-profit under Chapter 617, Florida Statutes, and certify as follows:

ARTICLE I

Name

The name of the corporation shall be Estero Island Beach Villas Condominium Association, Inc. For convenience this corporation shall be referred to as the "Association."

ARTICLE II

Purposes

1. The purpose for which the Association is organized is to manage, operate and maintain the condominium to be known as Estero Island Beach Villas, a Condominium, hereinafter referred to as the "Condominium," in accordance with the Declaration of Condominium of Estero Island Beach Villas, a Condominium (the "Declaration"). All terms used in these Articles of Incorporation shall have the same meaning as the identical terms utilized in the Declaration, unless the context otherwise requires.

2. The Association shall have no capital stock and shall make no distribution of income or profit to its members, directors or officers.

ARTICLE III

Powers

1. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles.

2. The Association shall have all of the powers reasonably necessary to implement the purpose of the Association, including but not limited to the following:

a. To adopt a budget and make and collect assessments against members to defray the costs of the Condominium.

b. To use the proceeds of assessments in the exercise of its powers and duties.

c. To maintain, manage, repair, replace and operate the Condominium Property.

d. To reconstruct improvements after casualty and construct further improvements to the Condominium Property.

e. To promulgate and amend the Condominium Rules and Regulations respecting the use of Condominium Property.

f. To enforce by legal means the provisions of the various Condominium Documents, these Articles, the Bylaws of the Association and the Condominium Rules and Regulations.

g. To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the various Condominium Documents and applicable law to have approval of the board of directors or the members of the Association.

h. To serve as the association for condominiums other than the Condominium in the discretion of the board of directors, in which case the terms "Unit" and "Owner" as used in these Articles and the Bylaws shall refer to Units and Owners in any condominium operated by this Association.

3. All funds and the titles to all property acquired by the Association and the proceeds thereof shall be held only for the benefit of the members in accordance with the provisions of the Condominium Documents.

4. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

OR2574 PG0781

ARTICLE IV

Members

The qualifications of members, the manner of their admission, and voting by members shall be as follows:

1. All Owners shall be members of this Association, and no other persons or entities shall be entitled to membership. An Owner shall be entitled to one (1) vote for each Unit which he may own.

2. Changes in membership in the Association shall be established by the recording in the Public Records of the county in which the Condominium is situated, a deed or other instrument establishing a change of record title to a Unit in the Condominium and the delivery to the Association of a copy of such recorded instrument. The new Owner designated by such instrument shall thereby become a member of the Association. The membership of the prior Owner shall be thereby terminated.

3. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

ARTICLE V

Directors

1. The affairs of the Association will be managed by a board of directors of not less than three (3) nor more than seven (7) directors as shall be determined by the Bylaws, and in the absence of such determination shall consist of three (3) directors.

2. Directors of the Association shall be appointed or elected at the annual meeting of the members in the manner determined by the Bylaws.

3. The following persons shall serve as directors until their successors are elected or appointed as provided in the Bylaws:

OR2574 PG0782

<u>Name</u>	<u>Address</u>
Timothy R. Bogott	12800 University Place Suite 350 Fort Myers, Florida 33907
Teresa L. Zagaria	12800 University Place Suite 350 Fort Myers, Florida 33907
John B. Naylor	13391 McGregor Blvd. Fort Myers, Florida 33919

ARTICLE VI

Officers

The affairs of the Association shall be administered by a president, a vice-president, a secretary, a treasurer, and as many assistant vice-presidents, assistant secretaries and assistant treasurers as the board of directors shall from time to time determine. Such officers shall be elected by the board of directors at its first meeting following each annual meeting of the members of the Association. Officers shall serve without compensation at the pleasure of the board of directors. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the offices of president and vice-president shall not be held by the same person, nor shall the offices of president and secretary or assistant secretary or treasurer or assistant treasurer be held by the same person. The names and addresses of the officers who shall serve until their successors are designated by the board of directors are as follows:

President:	Timothy R. Bogott 12800 University Drive Suite 350 Fort Myers, Florida 33907
Vice President:	Teresa L. Zagaria 12800 University Drive Suite 350 Fort Myers, Florida 33907

Secretary/
Treasurer:

John B. Naylor
13391 McGregor Blvd.
Fort Myers, Florida 33919

ARTICLE VII

Indemnification

Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the board of directors has approved such settlement and reimbursement as being in the best interests of the Association. The foregoing indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

ARTICLE VIII

Bylaws

The Bylaws shall be adopted by the board of directors and may be altered, amended or rescinded by not less than two-thirds (2/3rds) of all the directors until the first election of a majority of directors by Owners other than the Developer. Thereafter, the Bylaws may be altered, amended or rescinded as provided therein.

ARTICLE IX

Amendments

Amendments to these Articles of Incorporation shall be proposed and adopted in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

2. Until the first election of a majority of directors by members other than the Developer, proposal of an amendment and approval thereof shall require the affirmative action of two-thirds (2/3rds) of the entire membership of the board of directors, and no meeting of the members nor any approval thereof need be had.

3. After the first election of a majority of directors by members other than the Developer, a resolution approving a proposed amendment may be proposed by either the board of directors or by the members of the Association, and after being proposed and approved by one of such bodies, requires the approval of the other body. Except as otherwise provided herein, such approvals must be by not less than two-thirds (2/3rds) of all the directors and by not less than a three-fourths (3/4) vote of the members of the Association at a duly called meeting of the Association. Directors and the members not present at the meeting considering the amendment may express their approval in writing ten (10) days after such meeting.

4. An amendment when adopted shall be effective when filed with the Secretary of State of the State of Florida and recorded in the Public Records of county in which the Condominium is situated.

5. Notwithstanding the foregoing, these Articles may be amended by the Developer without the approval of the board of directors or the membership of the Association as may be required by any governmental entity or institutional lender, or as may be necessary to conform these Articles to any governmental statutes.

ARTICLE X

Term

The term of the Association shall be the life of the Condominium. The Association shall be terminated by the termination of the Condominium in accordance with the Declaration.

ARTICLE XI**Special Meetings**

Special members' meetings shall be held whenever called by the president or vice president or by a majority of the board of directors and must be called by such officers upon receipt of a written request from fifty percent (50%) of the members of the Association, unless otherwise provided by law.

ARTICLE XII**Incorporator**

The name and residence of the incorporator to these Articles of Incorporation is as follows:

<u>Name</u>	<u>Address</u>
Florida Income Fund III, Limited Partnership	13391 McGregor Blvd Fort Myers, Florida 33919

ARTICLE XIII**Registered Agent**

The Association hereby appoints Mariner Capital Management, Inc. as its Registered Agent to accept service of process within this state, with the Registered Office located at 13391 McGregor Blvd, Fort Myers, Florida 33919.

ARTICLE XIV**Principal Office**

The address of the principal office of the Association is 275 Estero Blvd., Fort Myers Beach, Florida 33931.

OR2574 PG0786

IN WITNESS WHEREOF the incorporator has hereto affixed its signature this 4 day of JANUARY, 1995.

FLORIDA INCOME FUND III,
LIMITED PARTNERSHIP, a Delaware
limited partnership

By: MARINER CAPITAL
MANAGEMENT, INC., a Florida
corporation and general partner

By: Lawrence A. Ramondi
President

STATE OF FLORIDA)
COUNTY OF Lee) SS.

The foregoing instrument was acknowledged before me this 4th day of January, 1995, by Lawrence A. Ramondi as President of Mariner Capital Management, Inc., a Florida corporation, the general partner of Florida Income Fund III, Limited Partnership, a Delaware limited partnership, on behalf of the limited partnership. He/She is personally known to me or has produced as identification and ~~did~~ (did not) take an oath.



Sheila J. O'Connor
(Notary Signature)

Sheila J O'Connor
(Notary Name Printed)
NOTARY PUBLIC
Commission No. CC 280357

ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT

The undersigned hereby accepts the appointment to serve as the initial Registered Agent of Estero Island Beach Villas Condominium Association, Inc.

MARINER CAPITAL MANAGEMENT, INC.
By: Lawrence A Ramondi
President

1633atm\23490\92001\amend\artic-1.red
12/28/94.atm

BYLAWS

OF

ESTERO ISLAND BEACH VILLAS
CONDOMINIUM ASSOCIATION, INC.

a corporation not-for-profit
under the laws of the State of Florida

I. IDENTITY

These are the Bylaws of Estero Island Beach Villas Condominium Association, Inc., a corporation not-for-profit under the laws of the State of Florida, hereinafter referred to as the "Association," and under the Articles of Incorporation (the "Articles") which have been filed in the office of the Secretary of State. The Association has been organized for the purpose of administering a condominium upon certain lands in Lee County, Florida known as Estero Island Beach Villas, a Condominium (the "Condominium"), in accordance with the Declaration of Condominium for Estero Island Beach Villas, a Condominium (the "Declaration").

1. The office of the Association shall be at 275 Estero Blvd., Fort Myers Beach, Florida 33931, or at such other place as may be designated by the board of directors from time to time.

2. The fiscal year of the Association shall be the calendar year.

3. The seal of the corporation shall bear the name of the corporation, the word "Florida," the words "Corporation Not-for-Profit," and the year of incorporation.

4. The terms used in these Bylaws shall have the same meaning as the identical terms utilized in the Declaration, unless the context otherwise requires.

II. MEMBERS' MEETINGS

1. The annual members' meeting shall be held at such time, place and date as may be designated by the board of directors, for the purpose of electing directors and of transacting any other business authorized to be transacted by the members.

2. As set forth in Article XI of the Articles, special members' meetings shall be held whenever called by the president or vice-president or by a majority of the board of directors and must be called by such officers upon receipt of a written request

from fifty percent (50%) of the voting interests except as provided for in Article III below. Unless otherwise set forth in the notice of special meeting, as provided for above, all special meetings shall be held in Lee County, Florida.

3. Notice of all members' meetings stating the time and place and the agenda for which the meeting is called shall be mailed by the president or secretary, unless waived in writing. Such notice shall be sent in writing to each member at his address as it appears on the books of the Association and shall be sent by mail to each member not less than fourteen (14) days nor more than sixty (60) days prior to the date of the meeting. The post office certificate of mailing shall be retained in the records of the Association as proof of such mailing. In addition, a notice of the meeting shall be posted at a conspicuous place on the Condominium Property or Association Property, which location shall be duly adopted by rule by the board, upon notice to the Unit Owners, for fourteen (14) continuous days prior to said meeting; however, if there is no Condominium Property or Association Property upon which notices can be posted, this requirement does not apply. Members may waive notice of specific meetings and may take action by written agreement without meetings. Mortgagees, as that term is defined in the Declaration, shall, upon prior written request, be entitled to receive notice of all members' meetings. Failure to provide such notice shall not invalidate any action taken at an otherwise properly noticed meeting. Where assessments against members are to be considered for any reason at a members' meeting, the notice shall contain a statement that assessments will be considered and shall specify the nature of any such assessment.

4. The presence in person or by proxy of members representing a majority of the total voting interests eligible to vote shall constitute a quorum, and decisions shall be made by the vote of a majority of the members at a meeting at which a quorum is present.

5. Each Unit shall be entitled to one (1) vote at Association meetings. Votes for Units owned by more than one person or by a corporation or other entity shall be cast by the voting representative for the Unit as named in a voting certificate signed by all of the Owners of that Unit and filed with the secretary of the Association. Each voting certificate shall be valid until revoked by a subsequent voting certificate.

6. Votes may be cast in person or by proxy in accordance with applicable law. Any proxy given shall be effective

only for the specific meeting for which originally given and any lawfully adjourned meetings thereof and must be filed with the secretary at or before the appointed time of the meeting. Each proxy shall specifically set forth the name of the person voting by proxy, the name of the person authorized to vote the proxy for him, and the date the proxy was given. Each proxy shall contain the date, time and place of the meeting for which the proxy is given, and if a limited proxy, set forth those items which the holder of the proxy may vote and the manner in which the vote is cast. In no event shall any proxy be valid for a period of longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it. If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in his place. If such provision is not made, substitution is not authorized.

7. Approval or disapproval of a member upon any matter, whether or not the subject of an Association meeting, shall be by the same person, corporation or other entity who would cast the vote of such member if in an Association meeting.

8. If any meeting of members cannot be organized because a quorum has not been achieved, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

9. The order of business at annual members' meetings and, as far as practicable at all other members' meetings, shall be:

- A. Call to order.
- B. Election of chairman of the meeting.
- C. Calling of the roll and certifying of proxies.
- D. Proof of notice of meeting or waiver of notice.
- E. Reading and disposal of any unapproved minutes.
- F. Report of officers.
- G. Report of committees.
- H. Election of directors.

- I. Unfinished business.
- J. New business.
- K. Adjournment.

10. For so long as the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

A. Assessment of the Developer as the Owner of Units for capital improvements; and,

B. Any action by the Association that would be detrimental to the sale of Units by the Developer.

For so long as the Developer or an entity affiliated with the Developer is leasing Units in the Condominium from Owners for use as part of a hotel operation, the Association shall not take any action that would interfere with or be detrimental to said hotel operation.

III. DIRECTORS

1. The affairs of the Association shall be managed by a board of directors who shall be members of the Association, excepting that the first board of directors and their successors appointed by the remaining directors (in the event of vacancies occurring before the first election of a majority of directors by members) need not be members. The initial board of directors shall consist of three (3) directors, and thereafter the membership of the board shall consist of not less than three (3) nor more than seven (7) directors. Within these limits, the board of directors may from time to time increase or decrease the number of persons to serve on the board, except that the board shall always contain an odd number of members. Where Units are owned by corporations, the officers, directors, employees or other appointed representatives of said corporations shall be eligible to serve on the board of directors of the Association on behalf of the corporation.

2. Election of directors shall be conducted in the following manner:

A. Members of the board of directors shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the board of directors, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless specifically allowed by Chapter 718, Florida Statutes. Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate association mailing or included in another association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. The board shall hold a meeting within 5 days after the deadline for a candidate to provide notice to the association of intent to run. At this meeting, the board shall accept additional nominations. Any Unit Owner or other eligible person may nominate himself or may nominate another unit owner or eligible person, if he has permission in writing to nominate the other person. Any Unit Owner or other eligible person desiring to be a candidate for the board of directors must give written notice to the Association not less than 40 days before a scheduled election. Not less than 30 days before the election, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate not less than 35 days before the election, to be included with the mailing of the ballot, with costs of mailing and copying to be borne by the Association. However, the Association shall have no liability for the contents of the information sheets prepared by the candidates. Elections shall be decided by a plurality of those ballots cast. There shall be no quorum requirement; however, at least 20% of the eligible voters must cast a ballot in order to have a valid election of members of the board of directors.

B. Vacancies on the board of directors may be filled by majority of the remaining directors, even though a quorum may not exist, subject to the provisions of Paragraph 2(C) of this Article. A director appointed to fill a vacancy in office shall serve the remainder of the term of the office to which he is appointed.

C. The directors named in the Articles of Incorporation shall serve until the first election of directors, and any vacancies in office occurring before the first election shall be filled by the remaining directors. In the event there are no remaining directors then any such vacancies shall be filled by

the Developer. Owners of Units other than the Developer will be entitled to elect members of the board of directors as follows:

(1) At such time as fifteen percent (15%) or more of the Units that will be operated ultimately by the Association are owned by Owners other than the Developer, the Owners of Units other than the Developer shall be entitled to elect not less than one third (1/3) of the members of the board of directors of the Association.

(2) Owners of Units other than the Developer shall be entitled to elect not less than a majority of the members of the board of directors of the Association upon the earliest of:

(a) three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; or

(b) three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; or

(c) when all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; or

(d) when some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business; or

(e) seven years after recordation of the Declaration of Condominium creating Phase 1 of the Condominium.

(3) The Developer shall be entitled to elect not less than one (1) member of the board of directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units that will be operated ultimately by the Association.

(4) As to the election of directors pursuant to Subparagraphs (1), (2) and (3) above, within seventy-five (75) days after Owners other than the Developer are entitled to elect a member or members of the board of directors of the Association,

the Association shall call and give not less than sixty (60) days notice of an election for the members of the board. The election shall proceed pursuant to Article III, Section 2, above.

(5) Nothing in this subparagraph shall be construed so as to preclude the Developer from relinquishing control of the board of directors at any time the Developer may so elect.

3. Members of the board of directors who are elected by Owners other than the Developer at the annual meeting of members shall serve for one (1) year until the next annual meeting of the members and thereafter, unless and until his successor is duly elected or qualified or until he is removed in the manner elsewhere provided.

4. The organizational meeting of a newly elected board of directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary provided that a quorum is present.

5. Regular meetings of the board of directors may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of regular meetings shall be given to each director, personally or by mail, telephone or telegraph at least three (3) days prior to the date named for such meeting unless such notice is waived. Notice of all meetings of the board shall be posted in a conspicuous place on the Condominium Property for the benefit of members at least forty-eight (48) continuous hours in advance of such meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. Upon notice to the Unit Owners, the board shall by duly adopted rule designate a specific location on the Condominium Property or Association Property upon which all notices of board meetings shall be posted. If there is no Condominium Property or Association Property upon which notices can be posted, notices of board meetings shall be mailed or delivered at least 14 days before the meeting to the Owner of each Unit. All meetings of the board of directors shall be open to all Unit Owners, who shall have the right to speak with reference to all designated agenda items subject to reasonable

rules governing the frequency, duration, and manner of Unit Owner statements.

6. Special meetings of the directors may be called by the president and must be called by the secretary at the written request of one-third (1/3) of the votes of the board. Not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

7. Any director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Any director's attendance at a meeting shall constitute a waiver of the notice of that meeting.

8. A quorum at directors' meetings shall consist of the directors entitled to cast a majority of the votes of the entire board. The acts of the board approved by a majority of votes present shall constitute the acts of the board of directors except as specifically otherwise provided in the Declaration. If at any meeting of the board of directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At the adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

9. The presiding officer at board of directors' meetings shall be the president of the Association. In the absence of the president the vice-president shall preside.

10. Directors' fees, if any, shall be determined by the members of the Association, and no director shall receive a fee prior to the election of a majority of the members of the board of directors by Owners other than the Developer.

11. Owner directors may be removed from the board of directors pursuant to Section 718.112(2)(k), Florida Statutes.

12. Anything to the contrary contained herein notwithstanding, any director who is appointed by the Developer may be removed by the Developer at any time. Upon such removal, the Developer shall immediately appoint a replacement director and notify the remaining directors, if any, of such removal and appointment.

IV. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Association shall be exercised by the board of directors including those existing under the common law, statutes, the Articles and the Condominium Documents. Such powers and duties of the directors shall be exercised in accordance with the provisions of the Declaration which governs the use of the land, and shall include but not be limited to the following:

1. To adopt a budget and to make and collect assessments against Owners to defray the costs of operating the Condominium.

2. To use the proceeds of assessments in the exercise of its powers and duties.

3. To maintain, manage, repair, replace and operate the Condominium property, including but not limited to, obtaining and maintaining adequate insurance to protect the Association and the Condominium property.

4. To reconstruct improvements after casualty and to construct further improvements to the Condominium property.

5. To promulgate and amend the Condominium Rules and Regulations respecting the use of Condominium Property. Such rules and regulations may be promulgated by the board of directors at any duly noticed meeting of the board or of the members.

6. To enforce by legal means the provisions of the Condominium Documents, the Articles, these Bylaws, and the Condominium Rules and Regulations.

7. To contract for management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the Condominium Documents or applicable law to have approval of the board of directors or members of the Association.

8. To pay taxes and assessments which are liens against any part of the Condominium Property other than individual Units and the appurtenances thereto, and to assess the same against the Unit Owner subject to such liens.

9. To pay the cost of all power, water, sewer and other utility services rendered to the Condominium and not billed to Owners of individual Units.

10. To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association, including but not limited to accountants and attorneys.

11. To bond any or all employees, officers and directors of the Association, for which the Association shall bear the costs.

12. To maintain all books and records concerning the Condominium including, but not limited to, the maintenance of a complete list of the names and addresses of all Owners of Units, a copy of which shall be provided to the Division of Florida Land Sales, Condominiums and Mobile Homes upon request.

V. OFFICERS

1. The executive officers of the corporation shall be a president, a vice-president, a secretary, and a treasurer, all of whom shall be directors who shall be elected annually by the board of directors at any meeting. Any person may hold two or more offices except that the president shall not also be the vice-president, secretary or treasurer, or assistant secretary or assistant treasurer. The board of directors shall from time to time elect such other officers and designate their powers and duties as the board determines necessary to manage the affairs of the Association.

2. The president shall be the chief executive of the Association. He shall have all of the powers and duties which are usually vested in the office of president including, but not limited to, the power of appointing committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

3. The vice-president shall in the absence of or disability of the president exercise the powers and duties of the president. He shall also generally assist the president and exercise such other powers and perform such other duties as shall be prescribed by the directors.

4. The secretary shall keep the minutes of the proceedings of the directors and the members in a book available for inspection by the directors or members, or their authorized representatives, at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. He shall attend to the giving and serving of all notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall have custody of all property of the Association, including financial records, funds, securities and evidences of indebtedness. He shall keep the financial records of the Association and shall keep the assessment rolls, the accounts of the members, and the books of the Association in accordance with generally accepted accounting practices. He shall perform all other duties incident to the office of secretary of an Association and as may be required by the directors or the president.

5. The compensation of all employees of the Association shall be fixed by the directors. This provision shall not preclude the board of directors from employing a director or officer as an employee of the Association nor preclude the contracting with a director for the management of the Condominium.

VI. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration and the Articles shall be supplemented by the following provisions:

1. Assessments.

A. The board of directors of the Association shall fix and determine from time to time the sum or sums necessary and adequate for the Common Expenses of the Condominium. Common Expenses shall include the expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, and any other expenses designated as Common Expenses from time to time by the board of directors of the Association, or under the provisions of the Declaration. The board of directors is specifically empowered, on behalf of the Association, to make and collect assessments and to lease, maintain, repair and replace the Common Elements and Limited Common Elements of the Condominium. Funds for the payment

of Common Expenses shall be assessed against the members in the proportions of percentages of sharing Common Expenses, as provided in the Declaration. Assessments for Units shall become due as determined by the board of directors from time to time, and shall be considered delinquent if payment has not been received on or before the fifteenth day after the due date, unless otherwise ordered by the board of directors. Special assessments, should such be required by the board of directors, shall be levied in the same manner as provided for regular assessments, and shall be payable in the manner determined by the board of directors. If a member shall be in default in the payment of any assessment due on his Unit, the Association shall have all collection rights available to it under Chapters 718, Florida Statutes. If any unpaid share of Common Expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or assessments shall be Common Expenses collectible from all the Owners.

B. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such an account shall designate the name and address of the members or member, the dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due upon assessments. Assessments shall be made against members in an amount not less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. In the absence of a determination by the directors as to the frequency of assessments, assessments shall be due and payable quarterly. The personal liability of a member for assessments shall survive the termination of such member's membership in the Association.

C. Any member shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit. The holder of a mortgage or other lien shall have the same right as to any Unit upon which he has a lien. Any person who relies upon such certificate shall be protected thereby.

D. Notice of any meeting, whether a meeting of the board of directors or of the members of the Association, at which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of such assessments.

2. Budget.

A. The board of directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association and estimates of the income of the Association. The proposed annual budget of Common Expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, roof replacement, building painting and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. These reserve accounts may be waived annually, or less adequate reserves established by a majority vote of the voting interests present at a duly called meeting of the Association. The budget shall include but not be limited to the following items:

(a) Common Expense Budget

- i. Administration of the Association.
- ii. Management fees.
- iii. Maintenance.
- iv. Rent for recreational and other commonly used facilities (if applicable).
- v. Taxes upon Association property.
- vi. Taxes upon leased areas (if applicable).
- vii. Insurance.
- viii. Security provisions.
- ix. Operating capital.
- x. Reserves.

xi. Fees payable to the Division of Florida Land Sales, Condominiums and Mobile Homes.

xii. Other expenses.

(b) Proposed assessments against each member, together with an annual total of assessments.

B. Copies of the proposed budget and proposed assessments shall be transmitted to each member at least fourteen (14) days prior to the meeting at which the budget is to be considered, together with a notice of the meeting which shall state the time and place of the meeting. The meeting shall be open to all members. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member. If an adopted budget requires assessment against the members in any fiscal or calendar year in excess of 115% of the assessments for the preceding year, the board of directors, upon written application of 10% of the voting interests of the Association to the board of directors, shall call a special meeting of the members of the Association within thirty (30) days, upon not less than ten (10) days written notice to each member of the Association. At the special meeting, members shall consider and enact a budget. The adoption of the budget at such a special meeting shall require a vote of a majority of all voting interests. The board of directors may propose a budget which exceeds 115% of the assessments for the preceding year to the members at a meeting of the members or in writing, and if the budget or proposed budget is approved at the meeting or by a majority of all voting interests in writing, the budget shall be adopted. If a meeting of the Unit Owners has been called and a quorum is not attained or a substitute budget is not adopted by the Unit Owners, the budget adopted by the board of directors shall go into effect as scheduled. In determining whether assessments exceed 115% of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacements of the Condominium Property, expenses by the Association which are not anticipated to be incurred on a regular or annual basis, or assessments for capital improvements to the Condominium Property shall be excluded from the computation. However, as long as the Developer is in control of the board of directors, the board of directors shall not impose an assessment for any year greater than 115% of the prior fiscal or calendar years assessment without approval of a majority of all voting interests of the Association.

3. The depository of the Association shall be such bank or other institution permitted by applicable law, as shall be designated from time to time by the board of directors and from which the monies in such accounts shall be withdrawn only by checks signed by such persons as are authorized by the board of directors.

4. Within sixty (60) days following the end of the Association's fiscal year, the board of directors shall mail or furnish by personal delivery to each member a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall also be furnished to any mortgagee upon written request. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to the following:

- A. Cost for security.
- B. Professional and management fees and expenses.
- C. Taxes.
- D. Cost for recreational facilities.
- E. Expenses for refuse collection and utility services.
- F. Expenses for lawn care.
- G. Cost for building maintenance and repair.
- H. Insurance costs.
- I. Administrative and salary expenses.
- J. General reserves, maintenance reserves and depreciation reserves.

In lieu of sending the financial report to the owners as set forth above, the board of directors shall be permitted to send a complete set of financial statements to the owners within ninety (90) days following the end of the previous fiscal year as permitted under Section 718.111(14), Florida Statutes.

5. The board of directors shall obtain fidelity bonding of all officers and directors who control or disburse funds of the

Association, as defined in Section 718.112(2)(j); Florida Statutes. The amount of such bonds shall be determined in accordance with Section 718.112 (2)(j), Florida Statutes. The premiums on such bonds shall be paid by the Association as a common expense.

VII. PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with the Articles and Bylaws or with the statutes of the state of Florida.

VIII. AMENDMENTS

Amendments to the Bylaws shall be proposed and adopted in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

2. An amendment may be proposed by either the board of directors or by the membership of the Association. Except as otherwise provided herein, a resolution adopting a proposed amendment must receive approval of not less than two-thirds (2/3rds) of all the directors until the first election of a majority of directors by Owners other than the Developer. Thereafter, the Bylaws may be amended by not less than two-thirds (2/3rds) of all the directors and by not less than a majority vote of the members of the Association at a duly called meeting of the Association. Directors and members not present at the meeting considering the amendment may express their approval in writing within ten (10) days after such meeting.

3. An amendment when adopted shall become effective only after being recorded in the Public Records of Lee County, Florida.

4. These Bylaws shall be amended by the Developer, if necessary, to make the same consistent with the provisions of the Declaration, to meet the requirements of any governmental entity or statute, and as may be in the best interests of the Association. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the

full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language "Substantial rewording of Bylaw. See Bylaw . . . for present text." Nonmaterial errors or omissions in the bylaw amendment process shall not invalidate an otherwise properly promulgated amendment.

IX. SEVERABILITY AND CONFORMITY TO STATE LAW

These Bylaws are to be governed by and construed according to the laws of the State of Florida. If it should appear that any of the provisions hereof are in conflict with the Declaration or any rule of law or statutory provision of the state of Florida, then such provisions of these Bylaws shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to the Declaration or such rule of law.

X. MANDATORY NON-BINDING ARBITRATION

Internal disputes arising from the operation of the Condominium among the Developer, the Association, the Owners, their respective agents and assigns, or any or all of them, must be submitted first for resolution through non-binding arbitration pursuant to Florida law.

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CERTIFICATE

The undersigned hereby certifies that he is the duly elected and acting secretary of the Association named herein and that the foregoing is a true copy of the Bylaws of said Association duly adopted by action of the sole Directors dated _____, 199__, and hereby further certifies that such Bylaws have not been amended or rescinded and remain in full force and effect at the date hereof.

DATED this _____ day of _____, 199__.

Secretary

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9/22/93.atm

EXHIBIT "D" TO
DECLARATION OF CONDOMINIUM

PERCENTAGE INTEREST IN COMMON ELEMENTS

Appurtenant to each Unit in the Condominium shall be an equal undivided ownership interest in the Common Elements, as well as an equal percentage share of the Common Expenses and Common Surplus.

If only Phase 1 is constructed and declared, then there will be a total of 36 Units in the Condominium. Under such circumstances, each Unit will have appurtenant to it an undivided 1/36th ownership interest in the Common Elements, as well as a 1/36th percentage share of the Common Expenses and Common Surplus.

If Phase 2 is constructed and declared, then there will be a total of 42 Units in the Condominium. Under such circumstances, each Unit will have appurtenant to it an undivided 1/42nd ownership interest in the Common Elements, as well as a 1/42nd percentage share of the Common Expenses and Common Surplus.

Type "A.1" Units, Type "A.2" thru "A.5" Units and Type "B" Units shall all have the same ownership interest in the Common Elements and percentage share of the Common Expenses and Common Surplus.

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MANAGEMENT CONTRACT

THIS MANAGEMENT CONTRACT (the "Contract") is made and entered into this 7th day of February, 1995, by and between Estero Island Beach Villas Condominium Association, Inc., a Florida not-for-profit corporation whose address is 275 Estero Blvd., Fort Myers Beach, Florida 33931 (the "Association"), and Mariner Capital Management, Inc., a Florida corporation whose address is 13391 McGregor Blvd. S.W., Fort Myers, Florida 33919 (the "Management Company") and the legal representatives, successors and assigns of the parties hereto.

W I T N E S S E T H:

WHEREAS, the Association is the entity responsible for operation of Estero Island Beach Villas, a condominium (the "Condominium"); and

WHEREAS, the Association is desirous of entering into this Contract for the management of the Condominium; and

WHEREAS, the Management Company is desirous of furnishing such management services to the Condominium for the Association.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and Ten and No/100 dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. **Recitals and Terms.** The above recitals are true and correct. The terms used in this Contract shall be defined in accordance with the Declaration of Condominium for the Condominium (the "Declaration") unless the context otherwise requires.

2. **Employment.** The Association does hereby employ the Management Company as the manager of the Condominium and Management Company hereby accepts such employment.

3. **Term.** The term of this Contract shall commence as of the date hereof and have effect for a period of three (3) years from the date of execution hereof (hereinafter referred to as "initial term"). The Association shall have the right to terminate this Contract pursuant to Chapter 718, Florida Statutes. The Management Company shall have the unequivocal right, at any time either during

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the initial term or thereafter, to cancel this Contract upon sixty (60) days' written notice to the Association.

4. **Renewal.** This Contract shall automatically renew itself for successive periods of three (3) years each, unless either party hereto shall give the other written notice of a non-renewal three (3) months prior to the date of renewal or unless sooner terminated in accordance with its terms.

5. **Management Company's Responsibilities.** The Management Company shall be responsible for the efficient and satisfactory management, operation and maintenance of the Association, Condominium Property and Association Property. The Association hereby acknowledges and agrees that pursuant to the terms of this Contract and in consideration of the management fee described in paragraph 14 below, the Management Company, in its sole discretion, shall perform itself, hire personnel to perform or procure providers to perform all services necessary for the operation and the maintenance of the Condominium in a reasonable and professional manner, and shall supervise the performance of all services provided to, or on behalf of the Association pursuant to this Contract.

a. **Employees.** The Management Company shall hire, pay and supervise the necessary employees to properly, adequately, safely and economically perform the duties and responsibilities of the Management Company set forth herein. Any persons actually hired by the Management Company shall be the employees of the Management Company rather than of the Association, unless the Management Company specifically hires the employees to be employees of the Association. The Management Company, in its absolute discretion, may determine and cause to be discharged any employee so hired. Pursuant to Section 718.3025(1)(d) Florida Statutes, the Management Company shall employ a minimum of one person to perform its duties pursuant to this Contract, and shall hire and supervise such additional employees as may be required from time to time in its sole discretion. All matters pertaining to the employment, interviewing and screening process, supervision, compensation, promotion and discharge of employees of the Management Company and the Association are the responsibility of the Management Company.

b. **Procurement of Separate Providers of Services.** The parties expressly agree that the Management Company may procure necessary or additional services for the Condominium from third parties, from the Developer, or may provide such services itself. All such services procured by the Management Company, regardless of source, shall be provided on a flat fee per service basis;

provided, however, those services which cannot practicably be provided on a flat fee per service basis, as determined by the Management Company in its sole discretion, will be provided directly by the Management Company on a cost basis.

In procuring providers of specific services from any source pursuant to its authority hereunder, the Management Company shall enter into service agreements on behalf of the Association based upon the following factors:

- (1) the quality of work obtainable for the desired level of service, and
- (2) a reasonable practicable price for the service obtainable in the local market.

The Management Company shall use its best judgment in evaluating these factors with respect to each proposed service; provided, however, nothing contained herein shall require the Management Company to obtain the lowest price available as to any service, material or purchase, or in instances where bids are obtained, to accept the lowest bid.

The Management Company shall have the authority to enter into (and cancel) any service agreements contemplated pursuant to this section, in either the Association's or the Management Company's name, as determined by the Management Company in its sole discretion. Furthermore, the Association hereby agrees to execute on its own behalf such service agreements as are deemed necessary by the Management Company from time to time to effectuate the obligations set forth in this Contract. Any agreements entered into by the Management Company pursuant to this section shall be a Common Expense of the Association.

6. **Power and Duties.** To meet its obligations set forth in paragraph 5 above, the Management Company shall have all the powers and duties of the Association as set forth in the Condominium Documents (except such thereof as are specifically required to be exercised by the Association's directors and/or members). By way of illustration and not of limitation, the Management Company's powers and duties hereunder shall include the following:

a. Condominium Operations. The Management Company shall be responsible for the general operation of the physical properties that constitute the Association, the Condominium Property and the Association Property. The Management Company

shall ensure that Condominium operation services are performed as required.

b. Maintenance and Repair. The Management Company shall be responsible for the maintenance and repair of the Condominium Property and the Association Property, including the Common Elements of the Condominium to the extent that the Association is required to maintain and repair same, as provided in the Condominium Documents. Maintenance and repair services shall be performed as required.

c. Accounting and Financial Reporting. The Management Company shall have the following powers and shall be responsible for the following duties concerning accounting and financial reporting services for the Condominium:

(1) Establishment and Administration of Association Bank Accounts. The Management Company shall ensure that all funds collected from the assessment of Owners or otherwise accruing to the Association are deposited in bank accounts in the name of the Association with suitable designations indicating the source of the funds. The Management Company shall ensure that all funds collected are kept separately, and not commingled with similar funds collected on behalf of other condominiums or clients of the Management Company. The Management Company is authorized to draw on the Association accounts for any payments to be made by the Management Company to discharge any liabilities or obligations incurred pursuant to this Contract, for the payment of the Management Fee (as defined herein) or any other disbursements properly incurred on the Association's behalf. Services to be performed pursuant to this paragraph shall be performed as required.

(2) Maintenance of Books and Records. The Management Company shall ensure that the Association's financial records, books, accounts and other official records are maintained as provided by Chapter 718 and the Condominium Documents, and that certificates of account are issued to members, their mortgagees and lienors upon request without liability for errors unless made as a result of gross negligence. Such records shall be kept at the Condominium and shall be available for inspection by Association members or their authorized representatives at reasonable times. Upon reasonable notice, the Management Company shall produce copies of any such records at the Association's expense for members of the board of directors. All books and financial records of the Association shall be made available by the Management Company to the Division of Florida Land Sales, Condominiums and Mobile Homes

(the "Division") for inspection upon request at the Association's expense. Services to be performed pursuant to this paragraph shall be performed quarterly, or more often if necessary, with the exception of the issuance of certificates of account which shall be performed as required.

(3) Annual Financial Report and Audit. The Management Company shall ensure that a financial report is rendered to the Association for each calendar year no later than March 1st of the following year and that a copy of the annual financial report is sent to each member of the Association to the extent required by Chapter 718. The Management Company shall also ensure that any annual audits required by Chapter 718 are conducted by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and the rules of the Board of Accountancy of the Department of Professional Regulation. A copy of any such audits shall be filed with the Division and forwarded to the board of directors of the Association. Services to be performed pursuant to this paragraph shall be performed annually.

(4) Preparation of Annual Tax Returns. The Management Company shall ensure that competent, professional assistance is engaged, as necessary, for the preparation of any tax returns or forms or other filings required by any local, state or federal agency, and the Management Company will provide any assistance necessary in the compilation of financial data from the books and records of the Association required for the completion of these filings and returns. Services to be performed pursuant to this paragraph shall be performed annually.

(5) Maintenance of Owners' List. The Management Company shall maintain among its records and provide to the Division upon request a complete list of the names and addresses of all Owners of Units in the Condominium.

d. Annual Budget. Annual budget services shall include the preparation of a recommended annual budget for review by the board of directors, which shall in turn either adopt a final annual budget or refer such adoption to a meeting of the Association in compliance with Chapter 718 and the Condominium Documents. Should a special assessment be required during the year, it shall be recommended and presented to the board of directors or the Association for adoption in compliance with Chapter 718 and the Condominium Documents. The Management Company shall ensure that annual and special assessments are collected from the members for each Unit in accordance with Chapter 718 and the Condominium

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Documents. Services to be performed pursuant to this paragraph shall be performed annually or as needed.

e. Compliance with Laws. The Management Company is authorized to and shall be responsible for taking such action as may be necessary to comply with all laws, statutes, ordinances, and rules of all appropriate governmental authorities and with the rules and regulations of the National Board of Fire Underwriters (or in the event it shall terminate its present functions, those of any other body exercising similar functions). Services to be performed pursuant to this paragraph shall be performed as required.

f. Coordination of Annual and Special Meetings of Owners.

(1) A representative of the Management Company shall attend all meetings of the Owners and ensure that notices of said meetings are delivered via U.S. mail or personal delivery to all Owners at the last address shown in the Association's official records and in accordance with the Association's Bylaws.

(2) The Management Company shall be responsible for providing assistance to the board of directors in preparing an agenda for all such meetings and in preparing any reports, charts or other materials for presentation at such meetings that are requested by the board of directors. The Management Company shall also be responsible for preparing a draft of the minutes of all such meetings for review and approval by the Association's secretary.

(3) Services to be performed pursuant to this subsection f. shall be performed as required.

g. Coordination of All Board of Directors' Meetings.

(1) A representative of the Management Company shall attend all meetings of the board of directors and shall ensure that notices of said meetings are delivered via U.S. mail or personal delivery to all members of the board of directors.

(2) The Management Company shall be responsible for providing assistance to the board of directors in preparing an agenda for all such meetings and any reports, charts or other materials for presentation at such meetings that are requested by the board of directors. The Management Company shall also be

responsible for preparing a draft of the minutes of all such meetings for review and approval by the Association's secretary.

(3) Services to be performed pursuant to this subsection g. shall be performed as required.

h. Rules and Regulations. The Management Company shall be responsible for the promulgation, adoption and amendment of all rules and regulations as it deems advisable for the use and occupancy of the Condominium Property and any Association Property, and shall be responsible for enforcing the same, all subject to the approval of the board of directors. Services to be performed pursuant to this paragraph shall be performed as required.

i. Alterations and Additions. The Management Company shall be responsible for ensuring that such alterations and/or additions to the Common Elements or Limited Common Elements of the Condominium Property or Association Properties are made as authorized by the board of directors and the Association's members where required, pursuant to and in accordance with the Condominium Documents. Services to be performed pursuant to this paragraph shall be performed as required.

j. Employment of Professionals. The Management Company shall retain and employ such professionals and such other experts whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder and shall employ same on such basis as it deems most beneficial. Services to be performed pursuant to this paragraph shall be performed as required.

k. Insurance. The Management Company shall be responsible for ensuring that all insurance policies required to be obtained by the Association pursuant to Chapter 718 and the Condominium Documents are obtained and maintained. The Management Company is hereby authorized to act as agent for the Association, each Owner, and for each owner of any other insured interest and, further, to adjust all claims arising under the insurance policies subject to the provisions of the Condominium Documents. The Management Company is also authorized to file lawsuits and deliver releases upon payments of claims; to otherwise exercise all of the rights, powers and privileges of the insured parties, and to receive on behalf of the insured parties, all insurance proceeds, subject to the provisions of the Condominium Documents. The cost of all insurance obtained hereunder shall be a Common Expense of the Association. Services to be performed pursuant to this paragraph shall be performed as required.

1. Liens for Assessments. The Management Company is authorized to file liens on behalf of the Association against the Unit of any Owner who fails to pay his assessments as required and provided in the Condominium Documents. The Association further authorizes the Management Company to assign any such liens to a third party as it deems advisable in the Association's best interest. Services to be performed pursuant to this paragraph shall be performed as required.

7. Fiduciary Duty. The Management Company shall act in a fiduciary capacity with respect to the proper protection of and the accounting for the Association's assets. In this capacity, the Management Company shall deal at arm's length with all third parties and shall serve the Association's interests at all times. This Contract shall not be construed as prohibiting the Management Company, or any firm or corporation or any related person or entity controlled by the Management Company, from conducting or possessing an interest in any other business or activity, including, but not limited to, the ownership, financing, leasing, operation, development, management and brokerage of real property.

8. Authority to Purchase Materials and Supplies. The Management Company shall have the authority to purchase equipment, tools, vehicles, appliances, goods, supplies and materials as shall be reasonably necessary to perform its duties and responsibilities pursuant to this Contract. Purchases shall be in the name of the Association and shall be a Common Expense of the Association. All purchases made pursuant to this paragraph shall be made on an as required basis. Notwithstanding anything contained herein to the contrary, all personal property of the Management Company, including property acquired by the Management Company with its own funds, during the term of this Contract, shall remain the property of the Management Company regardless of the use of such property in carrying out the Management Company's duties and obligations under this Contract.

9. Independent Contractor. The parties hereby agree and acknowledge that the Management Company is an independent contractor of the Association. The Association hereby releases any right of control over the method, manner or means by which the Management Company performs its duties and responsibilities under this Contract.

10. Common Expenses. All assessments, including the Management Company's fee, overhead and expenses, made by the

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Management Company pursuant to this Contract shall be Common Expenses of the Condominium.

11. **Application of Assessments.** The Management Company shall, in its sole discretion, apply assessments collected in such a manner as to properly discharge its obligations under this Contract.

12. **Aid and Assistance.** The Association shall aid and assist the Management Company, in any reasonable manner requested by the Management Company, in collecting assessments and effectuating the purposes of this Contract.

13. **Deficits.** Notwithstanding any provision contained in this Contract or the Condominium Documents to the contrary, the Management Company shall not be required to undertake to pay any costs or expenses for the benefit of the Association and/or its members from its own funds, and shall only be required to perform its services and make disbursements to the extent that, and as long as, the payments of assessments received from the Association and/or its members are sufficient to pay said costs and expenses in full. If it shall appear to the Management Company that said assessments are insufficient to pay the same, and to adequately provide full reserves, the Management Company shall timely advise the board of directors accordingly.

14. **Management Fee.** The Management Company shall provide the services required of it hereunder, for which the Association shall pay to the Management Company a management fee equal to \$24,000 for the first year that this Management Agreement is in effect. For each subsequent year that this Management Agreement is in effect, either during the initial term or any renewal hereof, the management fee may be increased 5% annually at the sole discretion of the Management Company. The management fee shall be payable in monthly installments unless the Management Company notifies the Association otherwise.

Notwithstanding the provisions of the foregoing, the parties understand and agree that the provisions of this paragraph which, subject to its terms, fix the fees hereunder for a specified time, are made in recognition of the fact that all of the active functions of the Association have been delegated to the Management Company hereunder. However, if the Association undertakes any action or incurs any expense in addition to those actions or expenses incurred by the Management Company, or as set forth in the budget prepared by the Management Company, the same shall be paid by the Association.

15. **Interference.** For so long as this Contract remains in effect and is not properly terminated by the Association as herein provided, the Association shall not unlawfully interfere nor permit, allow or cause any of its officers, directors or members to unlawfully interfere with the Management Company in the performance of its duties or the exercise of any of its powers hereunder.

16. **Indemnification.** The Management Company shall not be liable to the Association or Owners for any loss or damage not caused by the gross negligence or willful misconduct of the Management Company, its employees, officers, directors or agents. The Association, its members and employees will, and do hereby indemnify and save harmless the Management Company from and against any such liability for damages, costs and expenses, including attorneys' fees, for the administration of its duties hereunder or from injury to any person or property in and about, or in connection with the Condominium from any cause whatsoever, unless such loss or injury shall be solely caused by the gross negligence or willful misconduct of the Management Company, its employees, officers, directors or agents. The Management Company shall be designated as an additional insured in the comprehensive public liability policy obtained by or for the benefit of the Association, and any additional premium therefor shall be the responsibility of the Association.

17. **Assignment.** The Management Company may assign this Contract to an affiliate or other company under common management or control with Management Company without the consent of the Association. Upon such assignment and assumption the Management Company shall be released from any and all obligations hereunder. Thirty (30) days advance notice of the assignment shall be delivered to the Association.

18. **Amendments of Documents.** The board of directors shall not propose that any amendments be made to the Condominium Documents which impair or prejudice the rights of the Management Company without the prior written consent of the Management Company.

19. **Relationship Between Management Company and Developer.** The Management Company is also the managing general partner of the developer of the Condominium, Florida Income Fund III, a Delaware limited partnership.

20. **Vehicular Parking and Storage.** The Management Company shall have the power to regulate all vehicular parking. The Management Company shall regulate the use of the storage areas on the Condominium Property, if any.

21. **Governing Law; Waiver of Jury Trial; Venue of Actions.** This Contract shall be governed by, and shall be construed in accordance with, the laws of the State of Florida. The parties hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the other concerning the interpretation, construction, validity, enforcement or performance of this Contract or any other agreement or instrument executed in connection with this Contract. In the event any such suit or legal action is commenced by either party, the other party hereby agrees, consents and submits to the personal jurisdiction of the Circuit Court of the Twentieth Judicial Circuit of Florida in and for Lee County, Florida, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to object to the jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

22. **Waiver.** No waiver of a breach of any of the covenants contained in this Contract shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

23. **Time of the Essence.** Except as otherwise specifically set forth herein, time is of the essence for all terms of this Contract.

24. **Modification.** No modification, release, discharge or waiver of any provision hereof shall be of any force, effect or value unless in writing and signed by the parties to this Contract.

25. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto, and neither has been induced by the other by representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein that are not expressly contained herein or in the Condominium Documents.

26. **Partial Invalidation.** The invalidity in whole or in part of any covenant, promise or undertaking, or any section, subsection, sentence, clause, phrase or words, or of any provision of this Contract shall not affect the validity of the remaining portions hereof.

27. **Gender and Number.** Whenever the context hereof so permits, the use of plural will include the singular, the singular the plural, and the use of any gender will be deemed to include all genders.

28. **Notices.** Except as may be otherwise provided herein, any notice, demand, request, consent, approval or communication under this Contract shall be in writing and shall be deemed duly given or made: (i) when deposited, postage prepaid, in the U.S. mail, certified or registered mail with a return receipt requested, addressed to the party at the address shown above; (ii) when delivered personally to the party at the address specified above; or (iii) when deposited with a reliable overnight courier service, fee prepaid, with receipt of confirmation requested, addressed to the party as specified above. A party may designate a different address for receiving notices hereunder by notice to the other parties.

29. **Default by Association.** If the Association or its members shall interfere with the Management Company in the performance of its duties and exercise of its powers hereunder, or if the Association shall fail to promptly do any of the things required of it hereunder, then the Management Company may, fifteen (15) days after having given written notice to any officer or director of the Association, declare this Contract in default if such default remains then uncured or incapable of being cured. Upon default, the Management Company may, in addition to any other remedy given it by agreement or in law or equity, (i) bring an action against the Association for damages and/or injunctive relief, and (ii) the Association shall be liable for the Management Company's reasonable attorneys' fees and costs incurred thereby. All rights of the Management Company, upon default, shall be cumulative and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other additional remedy.

30. **Default by Management Company.** Failure of the Management Company to substantially perform its duties and obligations under this Contract shall be grounds for the Association to cancel this Contract as its sole remedy, provided said termination is accomplished pursuant to Chapter 718. In no event shall the

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Management Company be liable to the Association or Owners for damages, except as heretofore provided.

31. **Excusable Delays.** In the event that the Management Company shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or any other reason beyond the Management Company's control, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

32. **Termination of Condominium.** If the Condominium shall be terminated as set forth in the Declaration, then this Contract shall automatically terminate.

IN WITNESS WHEREOF, the parties have executed this Contract the day and date first above written.

Estero Island Beach Villas
Condominium Association, Inc.,
a Florida not-for-profit
corporation

Linda L. Brown
Witness LINDA L. BROWN

By: [Signature]
As its: President

(CORPORATE SEAL)

Jenny Foreman
Witness JENNY FOREMAN

Mariner Capital Management
Inc., a Florida corporation

JAR

Linda L. Brown
Witness LINDA L. BROWN

By: Samuel A. Raymond
As its: PRESIDENT

(CORPORATE SEAL)

Jenny Foreman
Witness JENNY FOREMAN

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CONDOMINIUM RULES AND REGULATIONS

ESTERO ISLAND BEACH VILLAS,
A CONDOMINIUM

Each Owner shall be governed by and shall comply with the terms of the Condominium Documents and these Condominium Rules and Regulations adopted pursuant to those documents. All terms used in these Condominium Rules and Regulations shall have the same meaning as the identical terms used in the Declaration of Condominium for Estero Island Beach Villas, a condominium. Failure of an Owner to comply with the provisions of the Condominium Documents and these Condominium Rules and Regulations shall entitle the Association or other Owners to pursue any and all legal and equitable remedies for the enforcement of such provisions, including but not limited to an action for damages, an action for injunctive relief or an action for declaratory judgment.

1. Common Elements and Limited Common Elements. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners, their guests and lessees. To the extent that the Developer or an entity affiliated with the Developer has an exclusive easement to use, possess and occupy the linen closet located on each floor of the building as provided in Article 4.3(d) of the Declaration, the Developer or affiliated entity may use such linen closets for any lawful purpose, personal or commercial, as it deems appropriate in its sole discretion from time to time.

2. Nuisances. No nuisance shall be allowed upon the Condominium Property or within a Unit, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Owners. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. No Owner shall permit any use of a Unit or make or permit any use of the Common Elements that will increase the cost of insurance upon the Condominium Property.

3. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Unit, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

4. Leasing of Units. All of the terms and provisions of the Condominium Documents and these Condominium Rules and Regulations pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Unit as a tenant to the

same extent as against an Owner. Any lease or rental agreement, whether oral or written and whether specifically expressed in such agreement or not, shall be deemed to contain a covenant upon the part of each such Owner and tenant designating the Association as the Owner's agent for the purpose of and with the authority to terminate any such lease or rental agreement in the event of violations by the tenant of the terms and provisions of the Condominium Documents or Condominium Rules and Regulations. The right of an Owner to lease or rent his Unit shall be restricted as described in the Declaration.

5. Signs. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the Common Elements, Limited Common Elements, or Units, except that the right is specifically reserved to the Developer to place and maintain "For Sale" or "For Rent" signs on the Condominium Property for as long as the Developer may have Units to sell. The right to place and maintain "For Sale" or "For Rent" signs on the Condominium Property is also specifically reserved to the Developer or an entity affiliated with the Developer for so long as the Developer or affiliated entity is leasing Units in the Condominium from Owners for use as a public lodging establishment (as defined in Chapter 509, Florida Statutes).

6. Prohibited Vehicles. No motorcycles, trailers or commercial vehicles (excluding those vehicles owned or authorized by the Developer or the Management Company) shall be parked in any parking space, except such temporary parking spaces provided for the purpose as may be necessary to effectuate deliveries to the Condominium, the Association or the Owners. Bicycles and motorcycles shall not be stored on the Condominium Property except in such areas designated for this purpose.

7. Exterior Appearance. No Owner shall decorate or alter any part of a Unit so as to affect the appearance of the Unit from the exterior. Such decoration or alteration shall include, but not be limited to, painting or illumination of the exterior of a Unit, display of plants or other objects upon patios, balconies, railings or exterior window sills or ledges, reflective film or other window treatments, draperies, window shades, screen doors and lights. The Association shall have the sole discretion, which may be based on aesthetic principles only, to determine compliance with this provision.

8. Antennas. No antennas of any type designed to serve a Unit shall be allowed on the Common Elements or Limited Common Elements, except as may be provided by the Association to serve as a master antenna for the benefit and use of the Condominium. No electrical or other equipment may be operated on the Condominium Property which interferes with television signal reception.

9. Noise. Should noise transmission create a disturbance or a nuisance, the responsibility is with the Owner to abate the noise transmission and not the Association. In order to insure

the comfort of all Owners and authorized users, radio, hi-fi and television sets, and any and all other such audio equipment generating noise should be turned down to a minimum volume so as not to disturb other persons between the hours of 11:00 p.m. and 8:00 a.m. All other unnecessary noises between these hours should be avoided.

10. Obstructions. Sidewalks, entrances, driveways, passages, patios, courts, stairways, corridors, halls and/or all other areas intended for common use must be kept open and shall not be obstructed in any manner. Rugs or mats, except those either permitted or placed by the Association, must not be placed outside of doors in corridors. No sign, notice or advertisement shall be inscribed or exposed on or at any window of a Unit or any part of the Condominium Property, except such as shall have been approved in writing by the Association or is permitted by the Condominium Documents; nor shall anything be projected out of any window on the Condominium Property. All personal property of Owners shall be stored within the Unit.

11. Children. Children are to play only in areas either designated or clearly intended for play, and they are not to play in public halls, on stairways, or other common areas which would cause an obstruction. Reasonable supervision by parents or guardians must be exercised at all times when children are playing on the Condominium Property.

12. Balconies. Plants, pots, receptacles and other movable objects must not be kept, placed or maintained on ledges or balconies. No objects shall be hung from balconies or window sills. No cloth, clothing, rugs or mops shall be hung up or shaken from windows, doors or balconies. No cooking shall be permitted on any balcony of a Unit. Owners shall not allow anything to be thrown or to fall from windows, doors, balconies or the interior of the building from hall doors.

13. Hallways. Bicycles, garbage cans, laundry, dry cleaning, supplies or other articles shall not be placed in the halls or on staircase landings without prior authorization from the board of directors or the Management Company. No Owner shall allow doors to the corridor to remain open for any purpose other than for immediate ingress and egress.

14. Entry for Emergencies. In case of emergency originating in or threatening any Unit, regardless of whether or not the Owner is present at the time of such emergency, the board of directors of the Association, the Management Company or any other person authorized by them, shall have the right to enter such Unit for the purpose of remedying or abating the cause of such

emergency, and such right of entry shall be immediate, and to facilitate entry in the event of any such emergency, the Association or its designee shall be allowed to retain a key for each Unit.

15. Plumbing. Plumbing shall not be used for any other purpose than those for which it was constructed, and no sweepings, rubbish, rags or other foreign substances shall be deposited into plumbing. The cost of any damage resulting from misuse shall be borne by the Owner.

16. Roof. Owners are not permitted on the roof of any building within the Condominium Property for any purpose without the express approval of the board of directors or Management Company.

17. Solicitation. There shall be no solicitation by any person anywhere on the Condominium Property for any cause, charity or purpose whatsoever, unless specifically authorized in writing by the board of directors or the Management Company, except for solicitation by the Developer or an entity affiliated with the Developer in marketing the sale or rental of Units.

18. Parking. No vehicle belonging to any Owner or to a member of the family of an Owner or guest, tenant or employee of an Owner shall be parked in any unauthorized area or in such manner as to impede or prevent access to another Owner's or authorized user's parking space or any fire lanes. The Owners, their employees, agents, visitors, licensees and the Owner's family will obey all posted parking regulations. Vehicles parked in any unauthorized areas or impeding another Owner's or authorized user's parking space or any fire lanes are subject to being towed away at the Owner's or authorized user's sole expense. No repair of vehicles shall be made within the Condominium Property. No Owner shall store or leave boats, trailers, mobile homes, recreational vehicles and the like on the Condominium Property, except in areas, if any, designated by the board of directors for same. No commercial trucks or buses may be parked anywhere on Condominium Property, except for those owned or authorized by the Developer or the Management Company, if any. Parking spaces are not assigned as appurtenances to particular Units. As such, each space may be used by any Owner, family member, lessee or guest. Owners may not park vehicles in spaces designated for handicapped persons, unless they fall within this category of individuals, and the Association or Management Company shall have the right to notify local authorities of any such violations. Vehicles should be parked within the painted lines.

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19. Use of Swimming Pool. Owners and authorized users of the swimming pool do so at their own risk. All users shall obey the rules posted by the Management Company.

20. Storage of Dangerous Items. No inflammable, combustible, or explosive fluid, chemical or substance, shall be kept in any Unit, Common Element or Limited Common Element except as are required for normal household use.

21. Employees/Agents Control and Entry of Units for Maintenance. Employees and/or agents of the Association or Management Company, and employees and/or agents of the Developer's or affiliated entity's on-going sales or rental programs, shall not be sent off the Condominium Property by any Owner or authorized user at any time for any purpose. No Owner or authorized user shall direct, supervise or in any manner attempt to assert any control over the employees of the Management Company or the Association. Violations of these Rules and Regulations, or other matters of concern, should be brought to the attention of the Management Company for proper resolution. Employees or agents of the Management Company shall be permitted to enter Units for maintenance and repairs during reasonable hours.

22. Complaints. Complaints regarding the service of the Condominium shall be made in writing to the Management Company, as long as the Management Contract remains in effect, and thereafter, to the board of directors.

23. Payment of Maintenance Fees, Special Charges and Fines. Payment of maintenance fees and other duly authorized charges and assessments shall be made at the office of the Management Company, as designated in the Management Contract. Payments made in the form of checks shall be made to the order of such party as the Management Company shall designate.

24. Weapons. No explosives, firearms, knives or weapons of any kind shall be permitted in any Unit or anywhere on the Condominium Property.

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Fort Myers Beach Access 41 Boardwalk Replacement - Land Development Code Narrative

Request:

Ehab Guirguis (Lee County, applicant) is requesting a special exception for 252 Estero Blvd., Fort Myers Beach 33931 (STRAP: 24-46-23-W1-03600.00CE) to allow for the replacement of the existing boardwalk at Fort Myers Beach Access 41 within a zoned EC (project location) and CPD area. A concept plan showing the proposed layout of the boardwalk is included within this submittal.

History/ Background:

The applicant is the easement holder where the proposed boardwalk is located along the south side of 252 Estero Blvd. This lot is currently zoned EC and CPD. The proposed boardwalk is located exclusively along the EC portion. The Future Land Use (FLUM) categories of the subject property are Recreation and Mixed Residential. The proposed boardwalk is located exclusively along the Recreation portion. The subject property and surrounding properties are developed. The boardwalk is located at Fort Myers Beach Access North 41.



Narrative:

It is the Applicant's desire to submit a Special Exception request to allow for the design, permitting, and construction of a boardwalk within the zoned Environmentally Critical (EC) area. The property is located at 252 Estero Blvd., FL. The proposed project area and the properties surrounding the subject parcel are currently developed. This use is consistent with the existing easement use. The intent is to replace the

previously existing boardwalk which was destroyed during Hurricane Ian with a newer and more resilient structure. The proposed boardwalk will be located within the same footprint. The traffic generated by the proposed Special Exception will remain the same since public access already exists. The proposed project will not impact stormwater runoff and will not require a stormwater system.

The proposed project area (STRAP: 24-46-23-W1-03600.00CE) had a boardwalk which was destroyed by Hurricane Ian. No further structures are located within this easement, and no additional structures are being proposed. The area has already been cleared of all debris post hurricane and no impact on any vegetation is anticipated.

The intent of this project is to recreate the previously existing ADA access to Fort Myers Beach, to improve the post-hurricane conditions and to bring them back to pre-hurricane conditions. The proposed improvements will only improve the experience of all beach visitors. The construction of the new boardwalk will have a positive impact on the community and does not propose any changes in use or any improvements that did not exist in the past.

The subject easement does not and will not have a stormwater management system since it only consists of a boardwalk. The proposed project does not include any water or sewer improvements. Landscaping improvements are part of a separate project through Lee County. No lighting improvements are being proposed. No further improvements are included within this scope.

The proposed project is currently being reviewed by the Florida Department of Environmental Protection CCCL Program. All improvements will be consistent with the CCCL and FWC requirements as shown on the proposed civil and structural plans.

Reasons for Request:

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

The approval of this request is both necessary and appropriate to facilitate the restoration of this beach access following the extensive damage sustained during Hurricane Ian in September 2022. Ensuring the safety and welfare of the general public remains a primary consideration in moving this project forward. Given that the property is zoned EC (Environmentally Critical), the proposed improvements cannot proceed without the granting of a Special Exception, making this approval an essential step toward recovery and the continued safe use of the site.

b) "Whether the request is consistent with the goals, objective, policies, and intent of the Fort Myers Beach Comp Plan."

The property is designated "Recreation" on the Future Land Use map. Beach access points is a permitted use.

c) "Whether the request meets or exceeds all performance and locational standards for the proposed use."

Beach Access 41 is an existing beach access strategically located to allow all beach visitors with a safe and accessible route to the beach. Open space requirements and preservation, and the level of service will not change since the beach access already exists.

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

The boardwalk replacement will incorporate environmentally sensitive design measures to safeguard native habitats, ensure long-term preservation of beaches, preserve and Gulf-front ecosystems.

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

Beach Access 41 has existed for many years and will continue to serve the community. The use remains consistent with environmental sensitivity.

f) “Whether a request use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the LDC.”

The existing and proposed use of the property fully complies with the applicable zoning provisions and regulations outlined in Chapter 34 of the LDC. The site is designated EC, a zoning classification that expressly permits beach accesses and boardwalks. The proposed improvements are consistent with these permitted uses and maintain the intended character and purpose of the EC zoning district.

Special Exception Standards:

I. “In accordance with Section 34-652(e)(6) of the Fort Myers Beach Land Development Code (LDC), a perpendicular dune walkover may be permitted within the Environmentally Critical (EC) zoning district as a special exception, provided it is required to protect indigenous plant communities and elevation change exists. The proposed walkover must also comply with the open space requirements found in § 10-415(b) and the construction requirements in Section 34-652(f) of the LDC. “

The proposed dune walkover is designed in accordance with Section 34-652(e)(6) of the Fort Myers Beach Land Development Code (LDC), which permits construction of perpendicular dune walkovers within the Environmentally Critical (EC) zoning district as a special exception, provided that the structure is necessary to protect indigenous plant communities and that a change in elevation exists. The proposed design meets both conditions.

Prior to Hurricane Ian, an elevated structure existed in this location and provided public access across the dunes without disturbing the natural vegetation. That original structure was destroyed during the storm event, along with the surrounding vegetation and dune community. Since then, the area has been recovering, and the County seeks to reestablish responsible public access while minimizing impacts to the environment and preserving the natural dune rebuilding process.

The current proposal involves a new elevated boardwalk that has been carefully designed to protect existing and future plant communities by minimizing ground disturbance and maintaining vertical clearance above the dune surface. The boardwalk alignment follows a perpendicular orientation as required by code and terminates landward of the 30-Year Erosion Projection (30-YEP) line, in full compliance with Florida Department of Environmental Protection (FDEP) Coastal Construction Control Line (CCCL) regulations.

Elevation data shown on the civil plans confirms that the walkover spans an area with natural grade elevations increasing from approximately 4.5 feet to 6.2 feet NAVD, demonstrating the elevation change required by Section 34-652(e)(6). This elevation gradient justifies the need for an elevated access structure to protect sensitive topography and allow for future dune stabilization and revegetation.

To minimize environmental impact and maintain compliance with all regulatory thresholds, the proposed boardwalk has been shortened and repositioned during the design phase. While the original concept

extended seaward of the 30-YEP line, the revised design terminates just beyond the dune crest, ensuring no encroachment seaward of the 30-YEP. This adjustment reduces the footprint of the structure while still restoring equitable public access, which was lost post-storm.

Furthermore, the project has been designed to meet the open space requirements outlined in LDC Section 10-415(b) and adheres to the construction standards of Section 34-652(f), including provisions for elevation, minimal disturbance, and materials compatible with the coastal environment.

In summary, the proposed walkover is consistent with all applicable sections of the Fort Myers Beach LDC and is essential for restoring public access in a manner that preserves dune integrity, protects plant communities, and ensures regulatory compliance with both local and state environmental guidelines.

II. Open space requirements Sec 10-415(b): "Indigenous plant communities. The major indigenous plant communities in the town are listed in Sec. 10-413 of this LDC. Dune vegetation and landward line of dune vegetation are defined in Sec. 14-1 of this LDC. These plant communities must be identified in each application for a development order on the existing conditions drawing (see Sec. 10-154 of this LDC)."

The proposed dune walkover complies with the open space requirements of Section 10-415(b) of the Fort Myers Beach Land Development Code (LDC), which requires identification of indigenous plant communities on the existing conditions drawing submitted with a development order application.

At the time of site evaluation, the project area no longer contains any identifiable indigenous vegetation. The site was severely impacted by Hurricane Ian, which resulted in the complete loss of vegetative cover and the destruction of the prior elevated walkover structure. The current site conditions consist exclusively of unvegetated sand and dune formations, as documented in the project's existing conditions plan prepared in accordance with Section 10-154.

Although the area presently lacks the plant communities listed in Section 10-413 of the LDC, the proposed boardwalk design has been developed with a strong emphasis on future environmental recovery. Lee County is working on a separate project in this location to restore the lost vegetation. Once completed, the new boardwalk and established vegetation will restore the area to be more similar to pre-hurricane conditions. By elevating the walkover structure above grade and minimizing physical disturbance to the dune, the design allows for passive natural regeneration of native dune vegetation over time. The elevated structure avoids compaction or shading of potential growth zones and thus preserves the conditions necessary for future colonization by indigenous species, as defined in Section 14-1.

Additionally, the proposed walkover spans a defined change in dune elevation—from approximately 4.5 feet to 6.2 feet NAVD, as detailed in the civil plans—further justifying the necessity of the elevated access in this location. The project maintains compliance with applicable coastal construction and open space guidelines by ensuring that no fill, grading, or hardening is introduced within the dune system.

Although no indigenous vegetation is currently present at the project location due to the extensive damage caused by Hurricane Ian, the proposed dune walkover complies with the requirements of Section 10-415(b) by accurately documenting existing site conditions and preserving the natural dune topography. The structure has been designed to avoid any further disruption to the area and to maintain the open space necessary for natural recovery. Its elevated configuration ensures that any future recolonization by native plant species can occur without interference. By restoring public access in a manner that is

environmentally sensitive and forward-looking, the project supports both the ecological and community resilience goals outlined in the Land Development Code.

III. Sec. 34-652. - Environmentally Critical (EC) zoning district.

(2) Any dune walkover must be state approved and constructed consistent with the following requirements:

a. "Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover."

The proposed boardwalk is located in the same footprint as the pre-existing walkover that was destroyed during Hurricane Ian. Its alignment remains perpendicular to the dune system and complies with the spacing requirement, as no other walkovers exist within 150 feet of the proposed structure.

b. "Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete."

The structural plans include embedded post depths that have been engineered to ensure stability and compliance with wind and load requirements. No posts will be encased in concrete, consistent with local code and environmental protection standards.

c. "Walkovers cannot exceed four feet in width when serving single-family homes or six feet in width otherwise. Alternate widths require a variance. "

The proposed boardwalk will have a width of eight feet, matching the pre-storm footprint. The boardwalk is intended to serve as a public access point and replaces a previously existing public walkover that was destroyed during Hurricane Ian. The width of the proposed structure has been intentionally matched to the original configuration to maintain continuity with the historical use of the site, accommodate safe and accessible passage for users of all abilities, and comply with current public infrastructure standards. The boardwalk is located within an established public right-of-way and designated beach access, and as such, the proposed width supports the Town's efforts to restore safe, equitable, and resilient access to the beach without exceeding code limitations or requiring a variance.

d. "Walkovers must be elevated at least two feet, and no more than three feet, above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation."

The proposed boardwalk extends to the crest of the existing dune and terminates landward of the 30-Year Erosion Projection (30-YEP) line, in compliance with Florida Department of Environmental Protection (FDEP) Coastal Construction Control Line (CCCL) Program regulations, which prohibit major structures seaward of this line. The walkover does not achieve a full two-foot clearance above the dune crest at its seaward end, this is due to the combined constraints of ADA-compliant slope requirements and the proximity of the 30-YEP line, which limits the allowable length of the structure. The design represents a careful balance between regulatory compliance, public accessibility, and environmental sensitivity. The structure remains elevated throughout, supported by deep foundation piles and designed to avoid dune disturbance, while still providing functional and resilient beach access for the public.

Although no vegetation currently exists within the project footprint due to storm-related impacts, the elevated design intentionally avoids grading or compaction of the substrate, thereby preserving the conditions necessary for natural dune recovery and future colonization by native vegetation. The

boardwalk's configuration allows sunlight, airflow, and sand movement beneath the structure, supporting long-term stabilization and regrowth of the dune system. The design reflects a balanced approach that meets regulatory constraints, ensures public accessibility, and promotes the ecological restoration of the coastal environment.

e. "Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization and increases either plant density or area of plantings."

The proposed walkover follows the same alignment as the previously existing structure, which minimizes further disturbance to the dune area. While the site currently contains no vegetation due to storm impacts, any native vegetation encountered during construction will be restored using appropriate beach-stabilizing species to comply with replanting requirements.

f. "Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31)."

Construction of the proposed boardwalk will be scheduled entirely outside of the sea turtle nesting season, ensuring full compliance with seasonal environmental restrictions.

g. Walkovers may not be attached to any other structures.

The proposed walkover is a stand-alone structure and will not be attached to any other buildings or improvements.

IV. Comprehensive Plan Consistency

The following is an analysis of how the proposed improvements are consistent with the goals, objectives, and policies of the Comprehensive Plan:

"GOAL 1: To continually improve the appearance and functioning of transportation corridors, commercial areas, and links to natural and recreational areas."

The proposed boardwalk directly supports this goal by restoring and enhancing a vital public connection between Estero Boulevard and the Gulf-front recreational and natural areas of Fort Myers Beach. Located within an existing, designated public access corridor, the new structure will reestablish a safe, resilient, and visually appealing pedestrian link that was lost during Hurricane Ian. In addition to restoring function, the boardwalk has been designed with durable materials and a clean, minimal profile that will improve the overall aesthetic quality of the area, contributing to the long-term revitalization of the beachside environment and surrounding public realm.

"POLICY 1-A-1: Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping scaled to people rather than high-speed traffic."

The proposed improvements contribute to the intent of Estero Boulevard functioning as a true boulevard—pedestrian-oriented, attractive, and engaging. By reconstructing the public boardwalk at Beach Access 41, the project enhances the pedestrian experience at a key node along the corridor. The location—consistent with the previously existing access—provides an inviting transition from the street to the beach and encourages walkability. The boardwalk is elevated and ADA-compliant, providing safe

and equitable access for all users. Its placement and design reflect human scale and public use, reinforcing the boulevard character through enhanced connectivity and coastal identity.

“POLICY 1-A-2 (iv): Priorities should include positive impacts on: improving pedestrian crossings (...) and beach accesses.”

The proposed reconstruction of the boardwalk at Beach Access 41 represents a direct investment in improving one of the town’s designated public beach access points. Before being destroyed by Hurricane Ian, this access was ADA-compliant and provided an important route for individuals with mobility challenges to enjoy the beach. The proposed project restores this accessibility, enabling safe and equitable use of the shoreline for all residents and visitors. By rebuilding this access with compliance to modern standards, the project enhances the public realm and positively contributes to the town’s overall network of pedestrian-friendly beach connections.

“Sec. 34-88 – Special Exceptions

(b) Considerations. In reaching its decision, the town council shall consider the following whenever applicable:”

“(5) Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.”

“Future Land Use Element, Policy 4-A-6: The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment, when necessary, can increase both. Frequent beach accesses are essential to the town’s character and shall be maintained and expanded where possible.”

The proposed special exception aligns directly with the intent of Policy 4-A-6 by facilitating the reconstruction of a previously existing boardwalk along a designated public beach access path (Beach Access 41). This access point served the public prior to its destruction during Hurricane Ian and remains a critical part of the Town’s established network of frequent beach access corridors. By restoring this infrastructure, the Town is actively maintaining an essential component of its coastal identity, in line with its stated goal of preserving and, where possible, expanding beach access. In addition to improving public access to the recreational and environmental resources of the beach, the project enhances the community’s connection to the shoreline in a way that is consistent with the character and values outlined in the Comprehensive Plan. The proposal reinforces equitable and resilient access for all users, including individuals with disabilities, supporting the broader vision of inclusive coastal recreation and long-term shoreline stewardship.

“Future Land Use Element, POLICY 5-D-1-ii: ... Dune walkovers should be constructed where they do not exist, and existing structures should be maintained.”

This project directly supports Policy 5-D-1-ii by pursuing the reconstruction of an existing dune walkover that was lost during a major storm event. Rather than representing new development or expansion into undisturbed dune areas, the proposed boardwalk is designed to recreate previously existing conditions and reestablish public access through the same location where a permitted structure once stood. The Town recognizes the importance of maintaining functional dune walkovers as a means of protecting fragile dune systems while enabling safe and controlled public passage to the beach. By reinstating this structure, the project meets the dual objectives of preserving coastal ecosystems and upholding public access, in full alignment with the policy’s guidance. Additionally, the project includes an elevated design that supports the future recovery of dune vegetation and minimizes disturbance, further advancing the

Town's goals of environmentally responsible infrastructure maintenance and long-term resilience.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

Site Address: 252 Estero Blvd., Fort Myers Beach 33931

STRAP Number: 24-46-23-W1-03600.00CE

Applicant: Lee County Phone: 239-533-8838

Contact Name: Ehab Guirguis Phone: 239-533-8838

Email: EGuirguis@leegov.com Fax: N/A

Current Zoning District: EC (project location), CPD

Future Land Use Map (FLUM) Category: Recreation (project location), Mixed Residential

FLUM Density Range: N/A Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

☒ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Lee County Phone: 239-533-8838

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

Applicant Mailing Address: 1500 Monroe St, Fort Myers, FL 33901

Email: EGuirguis@leegov.com Fax: N/A

Contact Name: Ehab Guirguis Phone: 239-533-8838



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☒ Other* (please indicate) <u>Easement Holder</u> | |

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

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

Name: Jordan Varble Phone: 239-334-0046
Address: 2122 Johnson St, Fort Myers FL 33901
Email: jlv@johnsoneng.com Fax: N/A

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

Name: Robin Palmer Phone: 941-505-1700
Address: 201 W. Marion Ave, Punta Gorda FL 33950
Email: rpalmer@weilerengineering.org Fax: N/A

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

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

Code Section: N/A Description: N/A

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Ehab Guirguis Phone: 239-533-8838

Mailing Address: 1500 Monroe St, Fort Myers, FL 33901

Email: EGuirguis@leegov.com Fax: N/A

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

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

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

Ehab Guirguis
Signature

Ehab Guirguis

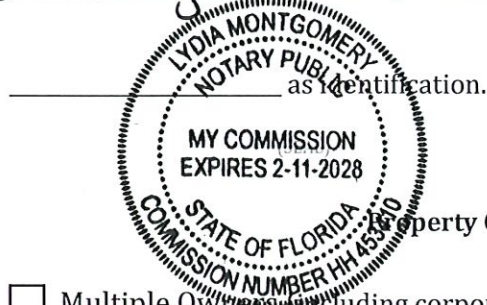
Printed Name

STATE OF FL COUNTY OF LEE

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

presence OR ☒ online notarization, this 16 day of April, 2025, by

Ehab Guirguis ☒ who is personally known to me OR ☐ who has produced



Lydia Montgomery
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

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

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

DISCLOSURE OF OWNERSHIP INTEREST

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

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

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

Name, Address and Office	Percentage of Stock
_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____

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

Name and Address	Percentage of Ownership
_____	_____
_____	_____
_____	_____
_____	_____

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

Name, Address and Office	Percentage of Stock
_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

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

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

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

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

_____	_____
Signature	Printed Name

AFFIDAVIT

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

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

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



COMMUNITY DEVELOPMENT DEPARTMENT
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Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 24-46-23-W1-03600.00CE

Property Address: 252 Estero Blvd., Fort Myers Beach 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

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

B. Boundary Survey:

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



COMMUNITY DEVELOPMENT DEPARTMENT
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C. Property Dimensions:

Width (please provide an average width if irregular in shape) 165 feet
Depth (please provide an average width if irregular in shape) 425 feet
Frontage on street: 100 feet. Frontage on waterbody: 165 feet
Total land area: 1.8 ☒ acres ☐ square feet

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

From Big Carlos Pass Bridge: Head west on Estero Blvd. Turn right onto Crescent
St., and left onto Second St. Then turn left onto Old San Carlos Blvd, and right onto
Estero Blvd. Turn left onto Gulfshore Ct.

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

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

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

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

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☒ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

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



Case# _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

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

Project Name: Fort Myers Beach Access 41
Authorized Applicant: Lee County
LEPA STRAP Number(s): 24-46-23-W1-03600.00CE

Current Property Status: Existing Beach Access 41
Current Zoning: EC (project location, CPD
Future Land Use Map (FLUM) Category: Recreation (project location), Mixed Residential
Platted Overlay? ☐ yes ☒ no FLUM Density Range:

Requested Action:

☒ Use of premises in the EC (Environmentally Critical) zoning district for:
Fort Myers Beach Access 41 is an existing beach access located in the Town of Fort Myers Beach.
The use of the subject property is not changing and remains consistent with LDC Section 34-88. Due to the damage caused by Hurricane Ian on September 28, 2022
a Special Exception is required for the proposed replacement of the previously existing boardwalk to allow for full access with increased public safety including improved beach access.
☐ Use of premises in the _____ zoning district for:



Case# _____

Date Received: _____

PART I
Narrative Statements

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

See attached narrative.

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

The property qualifies for a Special Exception because:
A) "Whether there exist changed or changing conditions which make approval of the request appropriate. "The approval of this request is both necessary and appropriate to facilitate the restoration of this beach access following the extensive damage sustained during Hurricane Ian in September 2022. Ensuring the safety and welfare of the general public remains a primary consideration in moving this project forward. Given that the property is zoned EC (Environmentally Sensitive) the proposed improvements cannot proceed without the granting of a Special Exception, making this approval an essential step toward recovery and the continued safe use of the site.
B) "Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comp Plan." The property is designated "Recreation" on the Future Land Use map. Beach access points is a permitted use.
C) "Whether the request meets or exceeds all performance and locational standards for the proposed use." Beach Access 41 is an existing beach access strategically located to allow all beach visitors with a safe and accessible route to the beach.
Open space requirements and preservation, and the level of service will not change since the beach access already exists.
D) "Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources." The boardwalk replacement will incorporate environmentally sensitive design measures to safeguard native habitats, ensure long-term protection of natural resources, and maintain the intended character and purpose of the EC zoning district.
E) "Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property." Beach Access 41 has existed for a while and will continue to serve the community. The use is consistent with the intended character and purpose of the EC zoning district.
F) "Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the LDC." The existing and proposed use of the property fully complies with the applicable zoning provisions and regulations outlined in Chapter 34 of the LDC. The site is designated EC, a zoning classification that expressly permits beach accesses and boardwalks.
The proposed improvements are consistent with these permitted uses and maintain the intended character and purpose of the EC zoning district.



Case# _____

Date Received: _____

Granting the requested Special Exception could impact surrounding properties as follows:

Granting the Special Exception will not adversely impact surrounding properties. Beach Access 41 is an existing beach access.

The proposed project includes the replacement of the previously existing boardwalk along the same path

following local and state guidelines. The approval of this request will not result in any negative impacts to the public's health, safety, comfort, convenience,

or general welfare. Furthermore, the proposed Special Exception is consistent with the intent and provisions of the Land Development Code

and remains in compliance with all applicable regulations of the Comprehensive Plan.

PART 2
Submittal Requirements

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

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of \$3800.00/\$3300.00 for an amendment

For New Communication Towers:

- a. Lee County Application for Communication Tower
- b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

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

For transit terminals:

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

For use of the EC zoning district:

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

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

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

Part 1 Narrative Statements:

“Request for...”

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

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

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

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

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

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

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

Submittal Requirements Check List and Filing Guide



A completed Public Hearing Application Form.



A completed Supplemental form PH-A.

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

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.

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

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

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

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

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

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

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

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

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

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

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

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

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

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

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

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

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

Explanatory Notes – Part I

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

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

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

Explanatory Notes – Part IV

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

Explanatory Notes – Part V

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

Explanatory Notes – Part VI

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

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

Explanatory Notes – Part IV & V

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

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2026-78**

1. Request:

Meeting Date: November 12, 2025

PROPOSED ORDINANCE NO. 25-27

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA: 1) ESTABLISHING PROCEDURES FOR THE REVIEW AND APPROVAL OF APPLICATIONS FOR REASONABLE ACCOMMODATIONS NEEDED TO OPERATE CERTIFIED RECOVERY RESIDENCES FROM EXISTING LAND USE REGULATIONS IN NEW SECTION 34-204 IN DIVISION 4 "APPLICATIONS AND PROCEDURES" OF ARTICLE II "ZONING DISTRICTS STANDARDS AND NONCONFORMITIES" OF CHAPTER 34, AS MANDATED BY SECTION 397.487(15)(A), FLORIDA STATUTES; AND 2) AMENDING SECTION 34-232 "REQUIRED HEARINGS" OF DIVISION 5 "PUBLIC HEARINGS AND REVIEW" OF ARTICLE II "ZONING PROCEDURES" OF CHAPTER 34 "ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES" TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY ("LPA") FOR APPROVAL OF APPLICATIONS FOR REASONABLE ACCOMMODATIONS TO OPERATE A CERTIFIED RECOVERY RESIDENCE AS PROVIDED IN SECTION 34-204, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

State Law requires local jurisdictions to adopt an Ordinance that establishes a streamlined process for review of requests for needed and reasonable accommodations for Certified Recovery Residences.

What the action accomplishes:

Amends the Town's LDC to comply with state law

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

5. Background:

In 2025 the Florida Legislature created a new law mandating that each municipality and county in Florida must adopt an Ordinance establishing streamlined procedures for review and approval of needed and reasonable accommodations for certified recovery residences. The decisions shall be consistent with and in compliance with the Fair Housing Accommodations Act of 1988, and Title II of the Americans with Disabilities Act.

The intent of the Ordinance is to create a process by which the LPA can review the application for needed and reasonable accommodations for certified recovery residences and potentially provide final agency action if approved and the Town does not receive a request for an additional public hearing within an established time period. This approach is similar to recent changes in the LDC text to allow variances and like for like Special Exceptions within the EC zoning district to proceed.

Attachments:

1. Oct. 31 FMB Draft Certified Recovery Residence Ordinance (1)

Financial Impact:

None

6. Alternative Action

7. Staff Recommendations:

8. Recommended Approval:

Frankie Kropacek, Community Development Director

Date: November 04, 2025

nancy stuparich, Town Attorney

Date: November 04, 2025

Amy Baker, Town Clerk

Date: November 04, 2025



William McKannay, Town Manager

Date: November 04, 2025

ORDINANCE NO. 25-27

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA: 1) ESTABLISHING PROCEDURES FOR THE REVIEW AND APPROVAL OF APPLICATIONS FOR REASONABLE ACCOMMODATIONS NEEDED TO OPERATE CERTIFIED RECOVERY RESIDENCES FROM EXISTING LAND USE REGULATIONS IN NEW SECTION 34-204 IN DIVISION 4 “APPLICATIONS AND PROCEDURES” OF ARTICLE II “ZONING DISTRICTS STANDARDS AND NONCONFORMITIES” OF CHAPTER 34, AS MANDATED BY SECTION 397.487(15)(A), FLORIDA STATUTES; AND 2) AMENDING SECTION 34-232 “REQUIRED HEARINGS” OF DIVISION 5 “PUBLIC HEARINGS AND REVIEW” OF ARTICLE II “ZONING PROCEDURES” OF CHAPTER 34 “ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES” TO REQUIRE ONLY ONE PUBLIC HEARING BEFORE THE LOCAL PLANNING AGENCY (“LPA”) FOR APPROVAL OF APPLICATIONS FOR REASONABLE ACCOMMODATIONS TO OPERATE A CERTIFIED RECOVERY RESIDENCE AS PROVIDED IN SECTION 34-204, IF THE DECISION BY ELIGIBLE MEMBERS OF THE LPA IS UNANIMOUS AND THE TOWN CLERK DOES NOT RECEIVE A REQUEST FOR AN ADDITIONAL PUBLIC HEARING BEFORE THE TOWN COUNCIL FROM ANYONE, INCLUDING TOWN STAFF, WITHIN 10 DAYS AFTER THE LPA DECISION; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

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

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

WHEREAS, in 2025, the Florida Legislature created new law in Section 397.487(15)(a), Florida Statutes, which mandates that by no later than January 1, 2026, each municipality and county in the State of Florida must adopt an ordinance establishing streamlined procedures for the review and approval of certified recovery residences and a process for requesting reasonable accommodations from any local land use regulation that impacts certified recovery residences; and

WHEREAS, the Section 397.487(15)(a) provides that the local government’s regulations for approval of certified recovery residences must be consistent with the Fair Housing Amendments Act of 1988 (42 U.S.C. §§ 3601 et seq.) and Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131 et seq.); and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2025 to consider adoption of Ordinance 25-27; and

WHEREAS, at the November 12, 2025 public hearing the LPA gave full and complete consideration of the recommendations by staff, the documents in the record, and the testimony of all interested persons, and found that Ordinance is consistent with the Town's Comprehensive Plan and the requirements of the Fort Myers Beach Land Development Code ("LDC") and thereafter voted ___ to ___ to recommend approval of Ordinance 25-27 to the Town Council; and

WHEREAS, on November 17, 2025 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council public hearing on the 1st day of December 2025; and

WHEREAS, at the December 1, 2025 public hearing, the Town Council gave full and complete consideration to the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, a Business Impact Estimate has been prepared and timely published on the Town's website; and

WHEREAS, this Ordinance is adopted for the purpose of compliance with Section 397.487(15)(a), Florida Statutes and is in the best interest of the residents of the Town of Fort Myers Beach.

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

Section 1. Incorporation by Reference and Intent. That the above recitals are true and correct and are incorporated herein by this reference as legislative findings in support of adoption of Ordinance 25-27. It is the intent of the Town Council to fully comply with the mandates contained in Section 397.487(15)(a), Florida Statutes and all applicable local, state, and federal law, including the Fair Housing Amendments Act of 1988, 42 U.S.C. ss. 3601 et seq., and Title II of the Americans with Disabilities Act, 42 U.S.C. ss. 12131 et seq.

Section 2. That Section 34-204 of the Land Development Code is created to read as follows:

Sec. 34-204. Procedures for Review and Approval of an Application to for Needed Reasonable Accommodations as Mandated by Section 397.487(15)(a), Florida Statutes for Certified Recovery Residences.

(a) Definitions. The following terms shall be defined as follows:

1. Certified recovery residence means a residential dwelling that provides a peer-supported, alcohol-free, and drug-free living environment, which is certified by a credentialing entity approved by the Florida Department of Children and Families, pursuant to Section 397.487, Florida Statutes.
2. Reasonable accommodation means a modification or exception to a local land use, zoning, or building regulation or policy, as necessary to afford individuals with disabilities an equal opportunity to use and enjoy a residential dwelling.
3. Disability shall have the same meaning as defined under the Fair Housing Amendments Act of 1988, 42 U.S.C. ss. 3601 et seq., and Title II of the Americans with Disabilities Act, 42 U.S.C. ss. 12131 et seq.

(b) Application for Review and Approval of a Reasonable Accommodation to Operate a Certified Recovery Residence.

(c) Written Application Required. An applicant seeking to operate a certified recovery residence with requires a reasonable accommodation shall complete a written application created by and available from the Town. The application must be submitted to the Community Development Department and will include, at a minimum to following information:

1. Applicant Information: The name, mailing address, phone number, and email address of the Applicant or the Applicant's authorized representative.
2. Location of the Certified Recovery Residence: The address and parcel identification number of the property where the certified recovery residence will be located.
3. Reasonable Accommodation: A description of the specific reasonable accommodation needed to operate the certified recovery residence, including the applicable regulation or policy from which relief is sought, and an explanation of how the accommodation is necessary and will afford equal housing opportunity.

(d) Date-Stamping and Acknowledgement. Upon receipt of the application, the Town shall date-stamp the application and provide written acknowledgment of receipt to the Applicant.

(e) Request for Additional Information. If additional information is required from an Applicant, the Town shall notify the Applicant in writing within thirty (30) days of receipt of the application. The Applicant shall respond to such request within thirty (30) days from the date of receipt of such notification.

(f) Final Determination. The application shall be scheduled for review by the Local Planning Agency (“LPA”) within sixty (60) days after receipt of a complete application. The LPA shall:

1. Approve the reasonable accommodation request in whole, with or without conditions;
2. Approve the reasonable accommodation in part, with or without conditions;
3. Deny the reasonable accommodation request, stating with specificity the objective, evidence-based reason for the denial and identifying any deficiencies or actions necessary for reconsideration.

The LPA’s decision shall include a specific finding of consistency with the Town’s Comprehensive Plan, the Fair Housing Amendments Act of 1988, 42 U.S.C. ss. 3601 et seq., and Title II of the Americans with Disabilities Act, 42 U.S.C. ss. 12131 et seq. The LPA’s decision shall constitute final agency action unless otherwise provided in Section 34-232.

(g) Automatic approval. If a final written determination is not issued by the Town within sixty (60) days after receipt of a completed application, the request shall be deemed approved by operation of law, unless the parties mutually agree in writing to a reasonable extension of time.

(h) Revocation of accommodation. The LPA may revoke a previously granted reasonable accommodation for cause, including but not limited to violation of conditions of approval; lapse, revocation, or failure to maintain required certification or licensure under Florida law, if such status is not reinstated within one hundred eighty (180) days from lapse; and material misrepresentation of facts in the application process. Applicants subjected to revocation shall be provided written notice of such revocation and shall have thirty (30) days upon receipt of written notice to respond contesting the validity of an accommodation revocation.

Section 3. That Section 34-232 “Required Hearings” of Division 5 “Public Hearings and Review” of Article II “Zoning Procedures” of Chapter 34 “Zoning Districts, Design Standards and Nonconformities is hereby amended as follows:

Section 34-232 – Required hearings.

(a) Amendment or adoption of land use ordinances.

(1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

(2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) Owner-initiated requests. Owner-initiated requests for rezonings, certain special exceptions, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council. Owner-initiated requests for variances, **and** special exceptions to replace a lawful and permitted structure(s) in the Environmentally Critical (EC) zoning district that was in effect prior to a natural disaster and requests for reasonable

accommodations that are requested to operate a certified recovery residence, which is unanimously approved by the local planning agency and there is no request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 calendar days after the date of the local planning agency decision, excluding holidays, only requires one public hearing before the local planning agency, and the local planning agency decision is final agency action.

(c) *Town-initiated requests.* Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

(1) Applications covering less than ten abutting acres of land will require a single public hearing before the town council.

(2) Applications covering more than ten abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

Section 4. Direct Town staff to create an application to implement this Ordinance as provided herein and also to amend the fee schedule to include a fee for review of these applications. If an application is received as provided herein prior to amendment of the fee schedule, the applicant shall be charged the same fee as for a variance.

Section 5. If any section, subsection, sentence, clause, word, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. This Ordinance shall take effect immediately upon its adoption.

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

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

DULY PASSED AND ADOPTED on this 1st day of December 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

ATTEST:

TOWN OF FORT MYERS BEACH

Amy Baker, Town Clerk

Dan Allers, Mayor

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

Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this _____ day of _____ 2025.